Risk Factors Comparison 2024-02-29 to 2023-03-02 Form: 10-K

Legend: **New Text** ~~Removed Text~~ Unchanged Text Moved Text Section

The following are important factors that could cause actual results or events to differ materially from those contained in any forward- looking statements made by us or on our behalf. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we deem immaterial also may impair our business operations. If any of the following risks or such other risks actually occurs, our business, financial condition, results of operations and cash flows could be harmed. ~~In addition, many of the following risks and uncertainties may be exacerbated by the ongoing COVID- 19 pandemic, including any new variants that may become predominant, and any worsening of the global business and economic environment as a result.~~ Risk Factors Related to Our Financial Condition ~~and Our Indebtedness~~ We may need additional funding and may be unable to raise capital when needed, which could force us to delay, reduce, or eliminate planned activities. Our total revenue was approximately $ ~~60~~ **63** . ~~0~~ **8** million for the year ended December 31, ~~2022~~ **2023** , and $ ~~55~~ **60** . ~~1~~ **0** million for the year ended December 31, ~~2021~~ **2022** . As of December 31, ~~2022~~ **2023** , we had cash and cash equivalents of approximately $ ~~26~~ **36** . ~~8~~ **9** million. Based on our current operating plan, we believe our existing cash and cash equivalents, coupled with ~~availability under our credit facility and~~ our anticipated growth and sales levels, will be sufficient to meet our anticipated cash requirements for at least the next 12 months. However, our existing capital may be insufficient to meet our long- term requirements. We have no committed sources of funding ~~other than our revolving line of credit facility~~ and there is no assurance that additional funding will be available to us in the future or be secured on acceptable terms. If adequate funding is not available when needed, we may be forced to curtail operations, including our commercial activities and research and development programs, or cease operations altogether, file for bankruptcy, or undertake any combination of the foregoing. In such event, our stockholders may lose their entire investment in our company. Further, we may need to raise additional funds through ~~financing~~ **financings** or borrowings in order to accomplish our long- term planned objectives. If we raise additional funds through issuances of equity, convertible debt securities or other securities convertible into equity, our existing stockholders could suffer significant dilution in their percentage ownership of our company, and any new equity securities we issue could have rights, preferences, and privileges senior to those of holders of our common stock. In addition, if we do not meet our payment obligations to third parties as they become due, we may be subject to litigation claims and our creditworthiness would be adversely affected. Even if we are successful in defending against these claims, litigation could result in substantial costs and would be a distraction to management, and may have other unfavorable results that could further adversely impact our financial condition. Stockholders should not rely on our balance sheet as an indication of the amount of proceeds that would be available to satisfy claims of creditors, and potentially be available for distribution to stockholders, in the event of liquidation. We cannot be certain that we will sustain profitability. While our products offer unique benefits over other industry memory technologies, the rate of adoption of our products and our ability to capture market share from legacy technologies is uncertain. Our revenue may also be adversely impacted by a number of other possible reasons, many of which are outside our control, including business conditions that adversely affect the semiconductor memory industry resulting in a decline in end market demand for our products, adverse impacts resulting from ~~the~~ COVID- 19 ~~pandemic~~ , increased competition, ongoing supply chain constraints, or our failure to capitalize on growth opportunities. We also rely on achieving specific cost reduction targets that have uncertainty in their timing and magnitude. We may also incur unforeseen expenses in the ongoing operation of our business that cause us to exceed our operational spending plan. As a result, our ability to generate sufficient revenue growth and / or control expenses to transition to profitability and generate consistent positive cash flows is uncertain. ~~Provisions of our credit facility may restrict our ability to pursue our business strategies. Borrowings under our existing credit facility are secured by substantially all of our assets, except for intellectual property. Additionally, the operating restrictions and covenants relating to our existing credit facility restrict, and any future financing agreements that we may enter into may further restrict, our ability to finance our operations, engage in business activities or expand or fully pursue our business strategies. For example, our existing credit facility prohibits our ability to, among other things: ● dispose of or sell assets; ● consolidate or merge with other entities; ● incur additional indebtedness; ● create liens on our assets; ● pay dividends; ● make investments; ● enter into transactions with affiliates; and ● redeem subordinated indebtedness. These restrictions are subject to certain exceptions. In addition, our existing credit facility requires that we meet certain operating covenants, such as maintaining insurance on the collateral and meeting certain financial covenants, such as maintaining a minimum cash balance and availability under our revolving line of credit facility. Our ability to comply with these covenants may be affected by events beyond our control, and we may not be able to meet those covenants. A breach of any of these covenants could result in an event of default under the credit facility. We are required to make mandatory prepayments of the outstanding loan upon the acceleration by lender following the occurrence of an event of default, along with a payment of the end of term fee, the prepayment fee and any other obligations that are due and payable at the time of prepayment. In the event of default, the interest rate in effect will increase by 5. 0 % per annum.~~ Risk Factors Related to Our Business and Our IndustryThe ~~ongoing COVID- 19 global pandemic has adversely affected, and is expected to continue to adversely affect, our business, results of operations and financial condition. The widespread outbreak of any other illnesses or communicable diseases could also adversely affect our business, results of operations and financial condition. We could be negatively impacted by the widespread outbreak of an illness, any other communicable disease or any other public health crisis that results in economic and trade disruptions, including the disruption of global supply chains. More recently, new variants of COVID- 19 have emerged. The spread of these new strains caused many government authorities and businesses to implement measures to try to reduce the spread that had~~

~~become less prevalent. While some of these restrictions have begun to be lifted, the lingering impact of the COVID- 19 pandemic continues to create significant volatility throughout the global economy, including supply chain constraints, labor supply issues, and higher inflation. Accordingly, it is unclear at this point the full impact COVID- 19 and its variants will have on the global economy and on our Company. As a result of the COVID- 19 pandemic and the related responses from government authorities, our business, results of operations and financial condition have been adversely impacted. For example, we have experienced electronics supply chain and demand disruptions from extended factory shutdowns, particularly in some Asian countries, which 12created unusual order patterns, and subsequently slowed Toggle MRAM demand, particularly from our industrial customers. Further, in an effort to protect the health and safety of our employees, we took the following actions: transitioned most of our office and support employees and contractors to working from home; suspended all non- essential business travel; and implemented social distancing guidelines for our employees and contractors who must work in our manufacturing and laboratory locations. Additionally, our business, results of operations and financial condition have been and may be further impacted in several ways, including, but not limited to, the following: ● further disruptions to our operations, including due to additional facility closures, restrictions on our operations and sales, marketing and distribution efforts and / or interruptions to our research and development activities, product development and other important business activities; ● further reduced demand for our products, particularly due to disruptions to the businesses and operations of our customers; ● interruptions, availability or delays in global shipping to transport our products; ● further slowdowns, stoppages or other limitations in the supply chain for our products, in addition to higher costs, such as due to suppliers raising prices; ● limitations on employee resources and availability, including due to sickness, government restrictions, labor supply shortages, and the desire of employees to avoid contact with large groups of people or mass transit disruptions; ● a continuation or worsening of general economic conditions, including increased inflation; ● greater difficulty in collecting customer receivables; ● a fluctuation in foreign currency exchange rates or interest rates could result from market uncertainties; and ● an increase in the cost or the difficulty to obtain debt or equity financing could affect our financial condition or our ability to fund operations or future investment opportunities. Additionally, COVID- 19 could impact our internal controls over financial reporting as a portion of our workforce is required to work from home and therefore new processes, procedures, and controls could be required to respond to changes in our business environment. Further, should any key employees become ill from COVID- 19 and unable to work, the attention of the management team could be diverted. The emergence of different variants of COVID- 19 and the prevalence of breakthrough cases of infection among fully vaccinated people adds additional uncertainty and could result in further impacts to our business and operations, including those discussed above. Although we will continue to monitor the situation and take further actions, which may include further altering our operations, in order to protect the best interests of our employees, customers and suppliers and comply with government requirements, there is no certainty that such measures will be enough to mitigate the risks posed by the virus, and our ability to perform critical functions could be harmed. Any of the foregoing could adversely affect our business, results of operations and financial condition. The potential effects of COVID- 19 may also impact many of our other risk factors discussed in this " Risk Factors " section. The ultimate extent of the impact of the COVID- 19 pandemic on our business, results of operations and financial condition will depend on future developments, which are highly uncertain, continuously evolving and cannot be predicted, including, but not limited to the duration and spread of the COVID- 19 outbreak and its severity; the emergence and severity of its variants; the actions to contain the virus or treat its impact, such as the availability and efficacy of vaccines (particularly with respect to emerging strains of the virus) and potential hesitancy to use them; general economic factors, such as increased inflation; supply chain restraints; labor supply issues; and how quickly and to what extent normal economic and operating conditions can resume. 13The~~ limited history of STT- MRAM adoption makes it difficult to evaluate our current business and future prospects. We have been in existence as a stand- alone company since 2008, when Freescale Semiconductor, Inc. (subsequently acquired by NXP Semiconductor) spun- out its MRAM business as Everspin. We have been shipping magnetoresistive random- access memory (MRAM) products since our incorporation in 2008. However, we only began to manufacture and ship our ~~Spin Transfer Torque MRAM (~~ STT- MRAM ~~)~~ products in the fourth quarter of 2017 **. We began to manufacture our second set of STT- MRAM products targeting the NVSRAM markets in the fourth quarter of 2022** . Our limited experience **in** selling our STT- MRAM products, combined with the rapidly evolving and competitive nature of our ~~market~~ **markets** , makes it difficult to evaluate our current business and future prospects. In addition, we have limited insight into emerging trends that may adversely affect our business, financial condition, results of operations and prospects. We have encountered and will continue to encounter risks and difficulties frequently experienced by growing companies in rapidly changing industries, including unpredictable and volatile revenue and increased expenses as we continue to grow our business. The viability and demand for our products may be affected by many factors outside of our control, such as the factors affecting the growth of the industrial, automotive, transportation, and data center market segments and changes in macroeconomic conditions. If we do not manage these risks and overcome these difficulties successfully, our business will suffer. We may be unable to match production with customer demand for a variety of reasons including macroeconomic factors due to the cyclical nature of the semiconductor industry, our inability to accurately forecast customer demand, supply chain constraints, or the capacity constraints of our suppliers, which could adversely affect our operating results. We make planning and spending decisions, including determining production levels, production schedules, component procurement commitments, personnel needs, and other resource requirements, based on our estimates of product demand and customer requirements. Our products are typically purchased pursuant to individual purchase orders. While our customers may provide us with their demand forecasts, they are not contractually committed to buy any quantity of products beyond purchase orders. Furthermore, many of our customers may increase, decrease, cancel, or delay purchase orders already in place without significant penalty. The short- term nature of commitments by our customers and the possibility of unexpected changes in demand for their products reduce our ability to accurately estimate future customer requirements. On occasion, customers may require rapid increases in production, which can strain our resources, necessitate more onerous procurement commitments, and reduce our gross margin. If we overestimate customer demand, we may purchase products that we may not be able to sell, which could result in decreases in our prices or write- downs of unsold inventory. Conversely, we could lose sales opportunities and could lose market share or damage our customer relationships if, for example, we underestimate customer demand, are affected by supply chain constraints, or sufficient manufacturing is unavailable. We manufacture MRAM products at our 200mm facility we lease in Chandler, Arizona and use a single foundry, GLOBALFOUNDRIES, for production of higher density products on advanced technology nodes, which may not have sufficient capacity to meet customer demand. The rapid pace of innovation in our industry could also render significant portions of our inventory obsolete. Excess or obsolete inventory levels could result in unexpected expenses or write- downs of inventory values that could adversely affect our business, operating results, and financial condition. As we expand into new potential markets, we expect to face intense competition, including from our customers and potential customers, and may not be able to compete effectively, which could harm our business. We expect that our new and future MRAM products will be applicable to markets in which we are not currently operating. The markets in which we operate and may operate in the future are extremely competitive and are characterized by rapid technological change, continuous evolving customer requirements and declining average selling prices. We may not be able to compete successfully against current or potential competitors, which include our current or potential customers as they seek to internally develop solutions competitive with ours or as we develop products potentially competitive with their existing products. If we do not compete successfully, our market share and revenue may decline. We compete with large semiconductor manufacturers and designers and others, and our current and ~~potential~~ **12potential** competitors have longer operating histories, significantly greater resources and name recognition and a larger base of customers than we do. This may allow them to respond more quickly than we can to new or emerging technologies or changes in customer requirements. In addition, these competitors may have greater credibility with our existing and potential customers. Some of our current and potential customers with their own internally developed solutions may choose not to purchase products from third- party suppliers like us. ~~14We~~ **We** rely on third parties to distribute, manufacture, package, assemble and test our products, which exposes us to a number of risks, including reduced control over manufacturing and delivery timing and potential exposure to price fluctuations, which could result in a loss of revenue or reduced profitability. Although we operate an integrated magnetic fabrication line located in Chandler, Arizona, we purchase wafers from third parties and outsource the manufacturing, packaging, assembly and testing of our products to third- party foundries and assembly and testing service providers. We use a single foundry, GLOBALFOUNDRIES Singapore Pte. Ltd., for production of higher density products on advanced technology nodes. Our primary product package and test operations are located in China, Taiwan and other Asian countries. We also use standard CMOS wafers from third- party foundries, which we process at our Chandler, Arizona facility. Relying on third- party distribution, manufacturing, assembly, packaging, and testing presents a number of risks, including but not limited to: ● our interests could diverge from those of our foundries, or we may not be able to agree with them on ongoing development, manufacturing and operational activities, or on the amount, timing, or nature of further investments in our joint development; ● capacity and materials shortages during periods of high demand or supply constraints; ● reduced control over delivery schedules, inventories and quality; ● the unavailability of, or potential delays in obtaining access to, key process technologies; ● the inability to achieve required production or test capacity and acceptable yields on a timely basis; ● misappropriation of our intellectual property; ● the third party' s ability to perform its obligations due to bankruptcy or other financial constraints; ● exclusive representatives for certain customer engagements; ● limited warranties on wafers or products supplied to us; and ● potential increases in prices including due to inflation. Our manufacturing agreement with GLOBALFOUNDRIES includes a customary forecast and ordering mechanism for the supply of certain of our wafers, and we are obligated to order and pay for, and GLOBALFOUNDRIES is obligated to supply, wafers consistent with the binding portion of our forecast. However, our manufacturing arrangement is also subject to both a minimum and maximum order quantity that while we believe currently addresses our projected foundry capacity needs, may not address our maximum foundry capacity requirements in the future. We may also be obligated to pay for unused capacity if our demand decreases in the future, or if our estimates prove inaccurate. GLOBALFOUNDRIES also has the ability to discontinue its manufacture of any of our wafers upon due notice and completion of the notice period. This could cause us to have to find another foundry to manufacture those wafers or redesign our core technology and would mean that we may not have products to sell until such time. Any time spent engaging a new manufacturer or redesigning our core technology could be costly and time consuming and may allow potential competitors to take opportunities in the marketplace. Moreover, if we are unable to find another foundry to manufacture our products or if we have to redesign our core technology, this could cause material harm to our business and operating results. ~~If~~ **13If** we need other foundries or packaging, assembly, and testing contractors, or if we are unable to obtain timely and adequate deliveries from our providers, we might not be able to cost- effectively and quickly retain other vendors to satisfy our requirements. Because the lead time needed to establish a relationship with a new third- party supplier could be several quarters, there is no readily available alternative source of supply for any specific component. In addition, the time and expense to qualify a new foundry could result in additional expense, diversion of resources or lost sales, any of which would negatively impact our financial results. ~~15If~~ **If** any of our current or future foundries or packaging, assembly and testing subcontractors significantly increases the costs of wafers or other materials or services, interrupts or reduces our supply, including for reasons outside of their control, such as due to ~~the~~ COVID- 19 ~~pandemic~~ , or if any of our relationships with our suppliers is terminated, our operating results could be adversely affected. Such occurrences could also damage our customer relationships, result in lost revenue, cause a loss in market share, or damage our reputation. Disruptions in our supply chain and increased cost of components used in our products may adversely impact our business, results of operations and financial condition, including our ability to fulfill customer demand. If we fail to procure sufficient components used in our products, we may be unable to deliver our products to our customers on a timely basis, which could lead to customer dissatisfaction and could harm our reputation and ability to compete. We would likely experience significant delays or cessation in producing some of our products if a labor strike, natural disaster, public health crisis, geopolitical event, or other supply disruption were to occur, including as a result of ~~the~~ COVID- 19 ~~pandemic~~ or the military conflict in Ukraine, at any of our main suppliers. Further, the upturn in the semiconductor industry has stretched the supply chain, and we are subject to supply shortages, as well as higher costs as suppliers opportunistically raise prices. For example, there is currently a worldwide shortage of semiconductor, memory and other electronic components affecting many industries. Our products are dependent on some of these electronic components. A continued shortage of electronic components may impact us significantly and could cause us to experience extended lead times and increased prices from our suppliers, which could be significant. Extended lead times and decreased availability of key components could result in a significant disruption to our production schedule, all of which would have an adverse effect on our business, results of operations and financial condition. Additionally, the military conflict in Ukraine creates additional uncertainty and risks relating to our supply chain and the cost of components. See " — General Risk Factors — Unfavorable economic, market and geopolitical conditions, domestically and internationally, may adversely affect our business, financial condition, results of operations and cash flows " for additional information. We do not have any guarantees of supply from our third- party suppliers, and in certain cases we have limited contractual arrangements or are relying on standard purchase orders or on component parts available on the open market, which may further result in increased costs combined with reduced availability. A continued delay in our ability to produce and deliver our products could also cause our customers to purchase alternative products from our competitors and / or harm our reputation. Our joint development agreement and strategic relationships involve numerous risks. We have entered into strategic relationships to manufacture products and develop new manufacturing process technologies and products. These relationships include our joint development agreement with GLOBALFOUNDRIES to develop advanced MTJ technology and STT- MRAM. These relationships are subject to various risks that could adversely affect the value of our investments and our results of operations. These risks include the following: ● our interests could diverge from those of our foundries, or we may not be able to agree with them on ongoing development, manufacturing and operational activities, or on the amount, timing, or nature of further investments in our joint development; ● we may experience difficulties in transferring technology to a foundry; ● we may experience difficulties and delays in getting to and / or ramping production at foundries; ● our control over the operations of foundries is limited; **14** ● due to financial constraints, our joint development collaborators may be unable to meet their commitments to us and may pose credit risks for our transactions with them; ● due to differing business models or long- term business goals, our collaborators may decide not to join us in funding capital investment, which may result in higher levels of cash expenditures by us; ~~16~~ ● our cash flows may be inadequate to fund increased capital requirements; ● we may experience difficulties or delays in collecting amounts due to us from our collaborators; ● the terms of our arrangements may turn out to be unfavorable; ● we are migrating toward a fabless model as 300mm production becomes required and this increases risks related to less control over our critical production processes; and ● changes in tax, legal, or regulatory requirements may necessitate changes in our agreements. The term of the agreement, as amended, is the completion, termination, or expiration of the last statement of workentered into pursuant to the joint development agreement. If our strategic relationships are unsuccessful, our business, results of operations, or financial condition may be materially adversely affected. We must continuously develop new and enhanced products, and if we are unable to successfully market our new and enhanced products for which we incur significant expenses to develop, our results of operations and financial condition will be materially adversely affected. To compete effectively in our markets, we must continually design, develop, and introduce new and improved technology and products with improved features in a cost- effective manner in response to changing technologies and market demand. This requires us to devote substantial financial and other resources to research and development. We are developing new technology and products, which we expect to be one of the drivers of our revenue growth in the future. We also face the risk that customers may not value or be willing to bear the cost of incorporating our new and enhanced products into their products, particularly if they believe their customers are satisfied with current solutions. Regardless of the improved features or superior performance of our new and enhanced products, customers may be unwilling to adopt our solutions due to design or pricing constraints, or because they do not want to rely on a single or limited supply source. Because of the extensive time and resources that we invest in developing new and enhanced products, if we are unable to sell customers our new products, our revenue could decline and our business, financial condition, results of operations and cash flows would be negatively affected. For example, if we are unable to generate more customer adoption of our 1Gb product and address new growth opportunities with subsequent STT- MRAM products, we may not be able to materially increase our revenue. If we are unable to successfully develop and market our new and enhanced products that we have incurred significant expenses developing, our results of operations and financial condition will be materially and adversely affected. Our success and future revenue depend on our ability to secure design wins and on our customers' ability to successfully sell the products that incorporate our solutions. Securing design wins is a lengthy, expensive, and competitive process, and may not result in actual orders and sales, which could cause our revenue to decline. We sell to customers, including OEMs and ODMs, that incorporate MRAM into their products. A design win occurs after a customer has tested our product, verified that it meets the customer' s requirements and qualified our solutions for their products. We believe we are dependent, among other things, on the adoption of our 256Mb and 1Gb MRAM products by our customers to secure design wins. Our customers may need several months to years to test, evaluate, and adopt our product and additional time to begin volume production of the product that incorporates our solution. Due to this generally lengthy design cycle, we may experience significant delays from the time we increase our operating expenses and make investments in our products to the time that we generate revenue from sales of these products. Moreover, even if a customer selects our solution, we cannot guarantee that this will result in any sales of our products, as the customer may ultimately change or cancel its product plans, or efforts by our customer to market and sell its ~~product~~ **15product** may not be successful. We may not generate any revenue from design wins after incurring the associated costs, which would cause our business and operating results to suffer. If a current or prospective customer incorporates a competitor' s solution into its product, it becomes significantly more difficult for us to sell our solutions to that customer because changing suppliers involves significant time, cost, effort, and risk for the customer even if our solutions are superior to other solutions and remain compatible with their product design. Our ability to compete successfully depends on customers viewing us as a stable and reliable supplier to ~~17mission~~ -- **mission** - critical customer applications when we have less production capacity and less financial resources compared to most of our larger competitors. If current or prospective customers do not include our solutions in their products and we fail to achieve a sufficient number of design wins, our results of operations and business may be harmed. The loss of one or several of our customers or reduced orders or pricing from existing customers may have a significant adverse effect on our operations and financial results. We have derived and expect to continue to derive a significant portion of our revenues from a small group of customers during any particular period due in part to the concentration of market share in the semiconductor industry **. Our two largest end customers together accounted for 22 % of our total revenue for the year ended December 31, 2023, and each of these customers accounted for more than 10 % of our revenue during that period** . Our four largest end customers together accounted for 24 % of our total revenue for the year ended December 31, 2022, and one of ~~these~~ **those** ~~customers accounted for more than 10 % of our revenue during that period. Our four largest end customers together accounted for 47 % of our total revenue for the year ended December 31, 2021, and one of these~~ customers individually accounted for more than 10 % of our total revenue during the period. The loss of a significant customer, a business combination among our customers, a reduction in orders or decrease in price from a significant customer or disruption in any of our commercial or distributor arrangements may result in a significant decline in our revenues and could have a material adverse effect on our business, liquidity, results of operations, financial condition, and cash flows. We face competition and expect competition to increase in the future. If we fail to compete effectively, our revenue growth and results of operations will be materially and adversely affected. The global semiconductor market in general, and the semiconductor memory market in particular, are highly competitive. We expect competition to increase and intensify as other semiconductor companies enter our markets, many of which have greater financial and other resources with which to pursue technology development, product design, manufacturing, marketing and sales and distribution of their products. Increased competition could result in price pressure, reduced revenue, and profitability and loss of market share, any of which could materially and adversely affect our business, revenue, and operating results. Currently, our competitors range from large, international companies offering a wide range of traditional memory technologies to companies specializing in other alternative, specialized emerging memory technologies. Our primary memory competitors include Fujitsu, Infineon, Integrated Silicon Solution, Intel, Macronix, Microchip, Micron, Renesas, Samsung, and Toshiba. In addition, as the MRAM market opportunity grows, we expect new entrants may enter this market and existing competitors, including leading semiconductor companies, may make significant investments to compete more effectively against our products. These competitors could develop technologies or architectures that make our products or technologies obsolete. Our ability to compete successfully depends on factors both within and outside of our control, including: ● the functionality and performance of our products and those of our competitors; ● our relationships with our customers and other industry participants; ● prices of our products and prices of our competitors' products; ● our ability to develop innovative products; ● our competitors' greater resources to make acquisitions; ● our ability to obtain adequate capital to finance operations; ● our ability to retain high- level talent, including our management team and engineers; ~~and~~ **and16** ● the actions of our competitors, including merger and acquisition activity, launches of new products and other actions that could change the competitive landscape. In the event of a market downturn, competition in the markets in which we operate may intensify as our customers reduce their purchase orders. Our competitors that are significantly larger and have greater financial, technical, marketing, distribution, customer support and other resources or more established market recognition than us may be better positioned to accept lower prices and withstand adverse economic or market conditions. ~~18Our~~ -- **Our** costs may increase substantially if we or our third- party manufacturing contractors do not achieve satisfactory product yields or quality. The fabrication process is extremely complicated and small changes in design, specifications or materials can result in material decreases in product yields or even the suspension of production. From time to time, we and / or the third- party foundries that we contract to manufacture our products may experience manufacturing defects and reduced manufacturing yields. In some cases, we and / or our third- party foundries may not be able to detect these defects early in the fabrication process or determine the cause of such defects in a timely manner. There may be a higher risk of product yield issues in newer STT- MRAM products. Generally, in pricing our products, we assume that manufacturing yields will continue to improve, even as the complexity of our products increases. Once our products are initially qualified either internally or with our third- party foundries, minimum acceptable yields are established. We are responsible for the costs of the units if the actual yield is above the minimum set with our third- party foundries. If actual yields are below the minimum, we are not required to purchase the units. Typically, minimum acceptable yields for our new products are generally lower at first and gradually improve as we achieve full production ~~,~~ but yield issues can occur even in mature processes due to break downs in mechanical systems, equipment failures or calibration errors. Unacceptably low product yields or other product manufacturing problems could substantially increase overall production time and costs and adversely impact our operating results. Product yield losses may also increase our costs and reduce our gross margin. In addition to significantly harming our results of operations and cash flow, poor yields may delay shipment of our products and harm our relationships with existing and potential customers. The complexity of our products may lead to defects, which could negatively impact our reputation with customers and result in liability. Products as complex as ours may contain defects when first introduced to customers or as new versions are released. Delivery of products with production defects or reliability, quality or compatibility problems could significantly delay or hinder market acceptance of the products or result in a costly recall and could damage our reputation and adversely affect our ability to retain existing customers and attract new customers. Defects could cause problems with the functionality of our products, resulting in interruptions, delays, or cessation of sales of these products to our customers. We may also be required to make significant expenditures of capital and resources to resolve such problems. We cannot assure our stockholders that problems will not be found in new products, both before and after commencement of commercial production, despite testing by us, our suppliers, or our customers. For example, any such problems could result in: ● delays in development, manufacture and roll- out of new products; ● additional development costs; ● loss of, or delays in, market acceptance; ● diversion of technical and other resources from our other development efforts; ● claims for damages by our customers or others against us; and ● loss of credibility with our current and prospective customers. Any such event could have a material adverse effect on our business, financial condition, and results of operations. ~~We~~ **17We** may experience difficulties in transitioning to new wafer fabrication process technologies or in achieving higher levels of design integration, which may result in reduced manufacturing yields, delays in product deliveries and increased expenses. We aim to use the most advanced manufacturing process technology appropriate for our solutions that is available from our third- party foundries. As a result, we periodically evaluate the benefits of migrating our solutions to other technologies to improve performance and reduce costs. These ongoing efforts require us from time to time to modify the ~~19manufacturing~~ -- **manufacturing** processes for our products and to redesign some products, which in turn may result in delays in product deliveries. For example, as smaller line width geometry manufacturing processes become more prevalent, we intend to move our future products to increasingly smaller geometries to integrate greater levels of memory capacity and / or functionality into our products. This transition will require us and our third- party foundries to migrate to new designs and manufacturing processes for smaller geometry products. We may face difficulties, delays, and increased expense as we transition our products to new processes, and potentially to new foundries. We will depend on our third- party foundries as we transition to new processes. We cannot assure our stockholders that our third- party foundries will be able to effectively manage such transitions or that we will be able to maintain our relationship with our third- party foundries or develop relationships with new third- party foundries. If we or any of our third- party foundries experience significant delays in transitioning to new processes or fail to efficiently implement transitions, we could experience reduced manufacturing yields, delays in product deliveries and increased expenses, any of which could harm our relationships with our customers and our operating results. Changes to industry standards and technical requirements relevant to our products and markets could adversely affect our business, results of operations and prospects. Our products are only a part of larger electronic systems. All products incorporated into these systems must comply with various industry standards and technical requirements created by regulatory bodies or industry participants to operate efficiently together. Industry standards and technical requirements in our markets are evolving and may change significantly over time. For our products, the industry standards are developed by the Joint Electron Device Engineering Council, an industry trade organization. In addition, large industry- leading semiconductor and electronics companies play a significant role in developing standards and technical requirements for the product ecosystems within which our products can be used. Our customers also may design certain specifications and other technical requirements specific to their products and solutions. These technical requirements may change as the customer introduces new or enhanced products and solutions. Our ability to compete in the future will depend on our ability to identify and comply with evolving industry standards and technical requirements. The emergence of new industry standards and technical requirements could render our products incompatible with products developed by other suppliers or make it difficult for our products to meet the requirements of certain of our customers in automotive, transportation, industrial, data storage, and other markets. As a result, we could be required to invest significant time and effort and to incur significant expense to redesign our products to ensure compliance with relevant standards and requirements. If our products are not in compliance with prevailing industry standards and technical requirements for a significant period of time, we could miss opportunities to achieve crucial design wins, our revenue may decline and we may incur significant expenses to redesign our products to meet the relevant standards, which could adversely affect our business, results of operations and prospects. Our success depends on our ability to attract and retain key employees, and our failure to do so could harm our ability to grow our business and execute our business strategies. Our success depends on our ability to attract and retain our key employees, including our management team and experienced engineers. Competition for personnel in the semiconductor memory technology field, and in the MRAM space in particular, is intense, and the availability of suitable and qualified candidates is limited. We compete to attract and retain qualified research and development personnel with other semiconductor companies, universities, and research institutions. Given our experience as an early entrant in the MRAM space, our employees are frequently contacted by MRAM startups and MRAM groups within larger companies seeking to employ them. The members of our management and our key employees are at- will. If we lose the services of any key senior management member or employee, we may not be able to locate suitable or qualified replacements, and may incur additional expenses to recruit and train new ~~personnel~~ **18personnel** , which could severely impact our business and prospects. The loss of the services of one or more of our key employees, especially our key engineers, or our inability to attract and retain qualified engineers, could harm our business, financial condition, and results of operations. ~~20We~~ **We** currently maintain and are seeking to expand operations outside of the United States which exposes us to significant risks. The success of our business depends, in large part, on our ability to operate successfully from geographically disparate locations and to further expand our international operations and sales. Operating in international markets requires significant resources and management attention and subjects us to regulatory, economic, and political risks that are different from those we face in the United States. We cannot be sure that further international expansion will be successful. In addition, we face risks in doing business internationally that could expose us to reduced demand for our products, lower prices for our products or other adverse effects on our operating results. The success and profitability, as well as the expansion, of our international operations are subject to numerous risks and uncertainties, many of which are outside of our control, such as the following: ● public health issues, such as ~~the~~ COVID- 19 ~~pandemic~~ , which can result in varying impacts to our business, employees, partners, customers, distributors or suppliers internationally as discussed elsewhere in this " Risk Factors " section; ● difficulties, inefficiencies and costs associated with staffing and managing foreign operations; ● longer and more difficult customer qualification and credit checks; ● greater difficulty collecting accounts receivable and longer payment cycles; ● the need for various local approvals to operate in some countries; ● difficulties in entering some foreign markets without larger- scale local operations; ● changes in import / export laws, trade restrictions, regulations and customs and duties and tariffs (foreign and domestic); ● compliance with local laws and regulations; ● unexpected changes in regulatory requirements, including the elimination of tax holidays; ● reduced protection for intellectual property rights in some countries; ● adverse tax consequences as a result of repatriating cash generated from foreign operations to the United States; ● adverse tax consequences, including potential additional tax exposure if we are deemed to have established a permanent establishment outside of the United States; ● the effectiveness of our policies and procedures designed to ensure compliance with the Foreign Corrupt Practices Act of 1977 and similar regulations; ● fluctuations in currency exchange rates, which could increase the prices of our products to customers outside of the United States, increase the expenses of our international operations by reducing the purchasing power of the U. S. dollar and expose us to foreign currency exchange rate risk if, in the future, we denominate our international sales in currencies other than the U. S. dollar; ● new and different sources of competition; ● political, economic, and social instability; **19** ● terrorism and acts of war, such as the military conflict in Ukraine, which could have a negative impact on sales throughout Europe and Asia; ~~and21~~ -- **and** ● US Department of Commerce regulations or restrictions on exports of certain semiconductor technologies and equipment to China. Our failure to manage any of these risks successfully could harm our operations and reduce our revenue. Risk Factors Related to Our Intellectual Property and TechnologyFailure to protect our intellectual property could substantially harm our business. Our success and ability to compete depend in part upon our ability to protect our intellectual property. We rely on a combination of intellectual property rights, including patents, mask work protection, copyrights, trademarks, trade secrets and know- how, in the United States and other jurisdictions. The steps we take to protect our intellectual property rights may not be adequate, particularly in foreign jurisdictions such as China. Any patents we hold may not adequately protect our intellectual property rights or our products against competitors, and third parties may challenge the scope, validity, or enforceability of our issued patents, which third parties may have significantly more financial resources with which to litigate their claims than we have to defend against them. In addition, other parties may independently develop similar or competing technologies designed around any patents or patent applications that we hold. Some of our products and technologies are not covered by any patent or patent application, as we do not believe patent protection of these products and technologies is critical to our business strategy at this time. A failure to timely seek patent protection on products or technologies generally precludes us from seeking future patent protection on these products or technologies. In addition to patents, we also rely on contractual protections with our customers, suppliers, distributors, employees, and consultants, and we implement security measures designed to protect our trade secrets and know- how. However, we cannot assure our stockholders that these contractual protections and security measures will not be breached, that we will have adequate remedies for any such breach or that our customers, suppliers, distributors, employees, or consultants will not assert rights to intellectual property or damages arising out of such contracts. We may initiate claims against third parties to protect our intellectual property rights if we are unable to resolve matters satisfactorily through negotiation. Litigation brought to protect and enforce our intellectual property rights could be costly, time- consuming, and distracting to management. It could also result in the impairment or loss of portions of our intellectual property, as an adverse decision could limit our ability to assert our intellectual property rights, limit the value of our technology or otherwise negatively impact our business, financial condition, and results of operations. Additionally, any enforcement of our patents or other intellectual property may provoke third parties to assert counterclaims against us. Our failure to secure, protect and enforce our intellectual property rights could materially harm our business. We may face claims of intellectual property infringement, which could be time- consuming, costly to defend or settle, result in the loss of significant rights, harm our relationships with our customers and distributors, or otherwise materially adversely affect our business, financial condition, and results of operations. The semiconductor memory industry is characterized by companies that hold patents and other intellectual property rights and that vigorously pursue, protect, and enforce intellectual property rights. These companies include patent holding companies or other adverse patent owners who have no relevant product revenue and against whom our own patents may provide little or no deterrence. From time to time, third parties may assert against us and our customers' patent and other intellectual property rights to technologies that are important to our business. We have in the past, and may in the future, face such claims. ~~Claims~~ **20Claims** that our products, processes, or technology infringe third- party intellectual property rights, regardless of their merit or resolution, could be costly to defend or settle and could divert the efforts and attention of our management and technical personnel. We may also be obligated to indemnify our customers or business partners in connection with any such litigation, which could result in increased costs. Infringement claims also could harm our relationships with our customers or distributors and might deter future customers from doing business with us. If any such proceedings result in an adverse outcome, we could be required to: ● cease the manufacture, use or sale of the infringing products, processes or technology; ● pay substantial damages for infringement; ~~22~~ ● expend significant resources to develop non- infringing products, processes or technology, which may not be successful; ● license technology from the third- party claiming infringement, which license may not be available on commercially reasonable terms, or at all; ● cross- license our technology to a competitor to resolve an infringement claim, which could weaken our ability to compete with that competitor; or ● pay substantial damages to our customers to discontinue their use of or to replace infringing technology sold to them with non- infringing technology, if available. Any of the foregoing results could have a material adverse effect on our business, financial condition, and results of operations. Furthermore, our exposure to the foregoing risks may also be increased if we acquire other companies or technologies. For example, we may have a lower level of visibility into the development process with respect to intellectual property or the care taken to safeguard against infringement risks with respect to the acquired company or technology. In addition, third parties may make infringement and similar or related claims after we have acquired technology that had not been asserted prior to the acquisition. We make significant investments in new technologies and products that may not achieve technological feasibility or profitability or that may limit our revenue growth. We have made and will continue to make significant investments in research and development of new technologies and products, including new and more technically advanced versions of our MRAM technology. Investments in new technologies are speculative and technological feasibility may not be achieved. Commercial success depends on many factors including demand for innovative technology, availability of materials and equipment, selling price the market is willing to bear, competition and effective licensing or product sales. We may not achieve significant revenue from new product investments for a number of years, if at all. Moreover, new technologies and products may not be profitable, and even if they are profitable, operating margins for new products and businesses may not be as high as the margins we have experienced historically or originally anticipated. Our inability to capitalize on or realize substantial revenue from our significant investments in research and development could harm our operating results and distract management, harming our business. Interruptions in **or other compromises of** our information technology systems **or data or that of third parties upon whom we rely** could adversely affect our business. We rely on the efficient ~~and~~ **,** uninterrupted **and uncompromised** operation of complex information technology systems and networks **(and those of third parties)** to operate our business. Any significant disruption to **or other compromise of** our systems ~~or~~ **,** networks **or data (or those of third parties upon whom we rely)** , including, but not limited to, **due to** new system implementations, computer viruses, **social- engineering attacks, personnel (including former personnel) misconduct or error, supply- chain attacks, ransomware attacks, software bugs, software or hardware failure,** security breaches, facility issues, natural disasters, terrorism, war, telecommunication failures ~~or~~ **,** energy blackouts **, loss, theft or similar threats** , could have a material adverse impact on our operations, sales, and financial results. Such disruption **or other compromise** could result in a loss of our intellectual property or the release of sensitive competitive information or supplier, customer, **personnel** or ~~employee~~ **other relevant stakeholder' s** personal data **. Additionally, future or past business 21transactions (such as acquisitions or integrations) could expose us to additional cybersecurity risks and vulnerabilities, as our systems could be negatively affected by vulnerabilities present in acquired or integrated entities' systems and technologies. Furthermore, we may discover security issues that were not found during due diligence of such acquired or integrated entities, and it may be difficult to integrate companies into our information technology environment and security program** . Any loss of such information could harm our competitive position, result in a loss of customer confidence, **result in breaches of applicable obligations (such as laws and contracts)** and cause us to incur significant costs to remedy the damages caused by any such disruptions or security breaches. Additionally, any failure to properly manage the collection, handling, transfer, or disposal of personal data of employees and customers may result in regulatory penalties, **bans on processing personal data or orders not to use or destroy data,** enforcement actions, remediation obligations, litigation, fines, and other ~~sanctions~~ -- **actions** . We may experience attacks on our data **and / or information systems** , attempts to breach our security and attempts to introduce malicious software into our IT systems **. Such threats are prevalent and continue to rise, are increasingly difficult to detect, and come from a variety of sources. During times of war and other major conflicts, we and the third parties upon which we rely may be vulnerable to a heightened risk of these attacks** . If attacks are successful, we may be unaware of the incident, its magnitude, or its effects until significant harm is done. Any such attack or disruption could result in additional costs related to rebuilding of our internal systems, defending litigation, responding to regulatory actions, or paying damages. Such attacks or disruptions could have a material adverse impact on our business, operations, and financial results. **Attempts to gain unauthorized access to our IT systems or other attacks have in the past, in certain instances and to certain degrees, been successful (but have not caused significant harm), and may in the future be successful, and in some cases, we might be unaware of an incident or its magnitude and effects.** Third- party service providers, such as wafer foundries, assembly and test contractors, distributors and other vendors have access to certain portions of our and our customers' sensitive data **. Our ability to monitor these third parties' information security practices is limited, and these third parties may not have adequate information security measures in place** . In the event that these service providers do not properly safeguard the data that they hold, security breaches and loss of data could result. Any such loss of data by our ~~23third~~ -- **third** - party service providers could negatively impact our business, operations, and financial results, as well as our relationship with our customers **. While we have implemented security measures designed to protect against security incidents, there can be no assurance that these measures will be effective. We take steps designed to detect, mitigate, and remediate vulnerabilities in our information systems (such as our hardware and / or software, including that of third parties upon which we rely). We may not, however, detect and remediate all such vulnerabilities including on a timely and effective basis. Further, we may experience delays in developing and deploying remedial measures and patches designed to address identified vulnerabilities. Vulnerabilities could be exploited and result in a security incident. We may expend significant resources or modify our business activities to try to protect against security incidents. Additionally, certain data privacy and security obligations may require us to implement and maintain specific security measures or industry- standard or reasonable security measures to protect our information technology systems and sensitive data** . Risk Factors Related to Regulatory Matters and ComplianceTo comply with environmental laws and regulations, we may need to modify our activities or incur substantial costs, and if we fail to comply with environmental regulations, we could be subject to substantial fines or be required to have our suppliers alter their processes. The semiconductor memory industry is subject to a variety of international, federal, state, and local governmental regulations directed at preventing or mitigating environmental harm, as well as to the storage, discharge, handling, generation, disposal and labeling of toxic or other hazardous substances. Failure to comply with environmental regulations could subject us to civil or criminal sanctions and property damage or personal injury claims. Compliance with current or future environmental laws and regulations could restrict our ability to expand our business or require us to modify processes or incur other substantial expenses which could harm our business. In response to environmental concerns, some customers and government agencies impose requirements for the elimination of hazardous substances, such as lead (which is widely used in soldering connections in the process of semiconductor packaging and assembly), from electronic equipment. For example, the European Union adopted its Restriction on Hazardous Substance Directive which prohibits, with specified exceptions, the sale in the EU market of new electrical and electronic equipment ~~containing~~ **22containing** more than agreed levels of lead or other hazardous materials and China has enacted similar regulations. Environmental laws and regulations such as these could become more stringent over time, causing a need to redesign technologies, imposing greater compliance costs, and increasing risks and penalties associated with violations, which could seriously harm our business. Increasing public attention has been focused on the environmental impact of electronic manufacturing operations. While we have not experienced any materially adverse effects on our operations from recently adopted environmental regulations, our business and results of operations could suffer if for any reason we fail to control the storage or use of, or to adequately restrict the discharge or disposal of, hazardous substances under present or future environmental regulations. Regulations related to " conflict minerals " may force us to incur additional expenses, may make our supply chain more complex and may result in damage to our reputation with customers. Pursuant to the Dodd- Frank Wall Street Reform and Consumer Protection Act, the SEC has adopted requirements for companies that use certain minerals and metals, known as conflict minerals, in their products, whether or not these products are manufactured by third parties. These requirements require companies to perform diligence and disclose and report whether or not such minerals originate from the Democratic Republic of Congo and adjoining countries. These requirements could adversely affect the sourcing, availability and pricing of minerals used in the manufacture of our products, and affect our costs and relationships with customers, distributors, and suppliers as we must obtain additional information from them to ensure our compliance with the disclosure requirement. In addition, we incur additional costs in complying with the disclosure requirements, including costs related to determining the source of any of the relevant minerals and metals used in our products. Since our supply chain is complex, we have not been able to sufficiently verify the origins for these minerals and metals used in our products through the due diligence procedures that we implement, which may harm our reputation. In such event, we may also face difficulties in satisfying customers who require that all of the components of our products are certified as conflict mineral free and these customers may discontinue, or materially reduce, purchases of our products, which could result in a material adverse effect on our results of operations and our financial condition may be adversely affected. Our ability to use net operating losses to offset future taxable income may be subject to certain limitations. In general, under Section 382 of the U. S. Internal Revenue Code of 1986, as amended, or the Code, a corporation that undergoes an " ownership change " is subject to limitations on its ability to utilize its pre- change net operating losses, or NOLs, to offset future taxable income and tax credits to offset tax. As of December 31, ~~2022~~ **2023** , we had gross federal net operating loss carryforwards of approximately $ ~~119~~ **96** . ~~9~~ **2** million, of which $ ~~79~~ **55** . ~~1~~ **8** million will expire in 2028 through 2037 if not utilized, and $ 40. ~~8~~ **5** million will carryover indefinitely. As of December 31, ~~2022~~ **2023** , we had state net operating loss carryforwards of approximately $ ~~50~~ **48** . ~~3~~ **7** million, of which $ ~~47~~ **45** . ~~5~~ **9** million will expire in 2028 through ~~2041~~ **2043** if not utilized, and $ 2. 8 million will carryover indefinitely. The federal NOLs generated prior to 2018 will continue to be governed by ~~24the~~ -- **the** NOL tax rules as they existed prior to the adoption of the 2017 Tax Cuts and Jobs Act (2017 Tax Act), which means that generally they will expire 20 years after they were generated if not used prior thereto. The 2017 Tax Act repealed the 20- year carryforward and two- year carryback of NOLs originating after December 31, 2017, and also limits the NOL deduction to 80 % of taxable income for tax years beginning after December 31, 2017. Any NOLs generated in 2018 and forward will be carried forward and will not expire. There is no current impact to us as **the NOLs that** we **are utilizing** ~~continue to be~~ in ~~a loss position for U. S. income tax purposes~~ **the current year were generated prior to 2018, and therefore, are not subject to the 80 % limitation** . Future changes in our stock ownership, many of which are outside of our control, could result in an ownership change under Section 382 of the Code. The ability to utilize our net operating losses and tax credits could also be impaired under state law. As a result, we might not be able to utilize a material portion of our state NOLs and tax credits. Risks Related to Our Common Stock We expect that the price of our common stock will fluctuate substantially. The market price of our common stock is likely to be highly volatile and may fluctuate substantially due to many factors, including: ● the ~~duration and severity of the COVID- 19 pandemic and its effects on our business, financial condition, results of operations and cash flows; ● the~~ introduction of new products or product enhancements by us or others in our industry; **23** ● announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures, capital commitments or restructurings; ● disputes or other developments with respect to our or others' intellectual property rights; ● product liability claims or other litigation; ● quarterly variations in our results of operations or those of others in our industry; ● sales of large blocks of our common stock, including sales by our executive officers and directors; ● changes in senior management or key personnel; ● changes in earnings estimates or recommendations by securities analysts; and ● general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors, including ~~those~~ -- **the effects** ~~due to the duration and severity~~ of ~~the~~ COVID- 19 ~~pandemic~~ and the military conflict in Ukraine. Stock markets generally have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Further, the semiconductor memory industry is highly cyclical, and our markets may experience significant cyclical fluctuations in demand as a result of changing economic conditions, budgeting and buying patterns of customers and other factors. Fluctuations in our revenue and operating results could also cause our stock price to decline. In addition, in the past, class action litigation has often been instituted against companies whose securities have experienced periods of volatility in market price, or for other reasons. Securities litigation brought against us following volatility in our stock price or otherwise, regardless of the merit or ultimate results of such litigation, could result in substantial costs, which would hurt our financial condition and operating results and divert management' s attention and resources from our business. These and other factors may make the price of our stock volatile and subject to unexpected fluctuation. ~~25Provisions~~ -- **Provisions** in our corporate charter documents and under Delaware law could make an acquisition of us more difficult and may prevent attempts by our stockholders to replace or remove our current management. Provisions in our amended and restated certificate of incorporation and our amended and restated bylaws may discourage, delay, or prevent a merger, acquisition, or other change in control of us that stockholders may consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. Because our board of directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt by our stockholders to replace current members of our management team. Among others, these provisions include that: ● our board of directors has the right to expand the size of our board of directors and to elect directors to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors; ● our stockholders may not act by written consent or call special stockholders' meetings; as a result, a holder, or holders, controlling a majority of our capital stock would not be able to take certain actions other than at annual stockholders' meetings or special stockholders' meetings called by the board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors, the chairman of the board or the chief executive officer; **24** ● our amended and restated certificate of incorporation prohibits cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates; ● the affirmative vote of holders of at least 66- 2 / 3 % of the voting power of all of the then outstanding shares of voting stock, voting as a single class, will be required (a) to amend certain provisions of our certificate of incorporation, including provisions relating to the size of the board, special meetings, actions by written consent and cumulative voting and (b) to amend or repeal our amended and restated bylaws, although such bylaws may be amended by a simple majority vote of our board of directors; ● stockholders must provide advance notice and additional disclosures to nominate individuals for election to the board of directors or to propose matters that can be acted upon at a stockholders' meeting, which may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror' s own slate of directors or otherwise attempting to obtain control of our company; and ● our board of directors may issue, without stockholder approval, shares of undesignated preferred stock; the ability to issue undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to acquire us. Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which prohibits a person who owns in excess of 15 % of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15 % of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner. Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware and the federal district courts of the United States of America will be the exclusive forums for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, or employees. Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware is the exclusive forum for the following types of actions or proceedings under Delaware statutory or common law: ● any derivative action or proceeding brought on our behalf; ~~26~~ ● any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee to us or our stockholders; ● any action asserting a claim against us arising under the Delaware General Corporation Law, our amended and restated certificate of incorporation or our amended and restated bylaws; and ● any action asserting a claim against us that is governed by the internal- affairs doctrine. This provision would not apply to suits brought to enforce a duty or liability created by the Exchange Act. Furthermore, Section 22 of 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. 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 certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States will be the 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 certificate of incorporation. 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 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 either exclusive- forum provision in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur further significant **25** ~~additional costs associated with resolving the dispute in other jurisdictions, all of which could seriously harm our business. Effective December 31, 2021, we ceased to be an " emerging growth company, " and certain reduced reporting requirements applicable to emerging growth companies no longer apply to us, which is expected to increase our costs as a public company and place additional demands on management. Effective December 31, 2021, we ceased to be classified as an " emerging growth company " as defined in the Jumpstart Our Business Startups Act (the JOBS Act). We have previously taken advantage of certain reduced reporting requirements pursuant to the JOBS Act specifically applicable to emerging growth companies, including exemptions from the requirements of holding advisory " say- on- pay " and the related " say- on frequency " votes on executive compensation. Since we are no longer classified as an emerging growth company, we are now required to comply with those additional reporting requirements for which we were previously exempt. For example, we were required to hold a say- on- pay vote and a say- on frequency vote at our 2022 annual meeting of stockholders. As a result, we expect that we will require additional attention from management with respect to our additional reporting requirements and will incur increased costs, which could include higher legal fees, accounting fees, consultant fees and fees associated with investor relations activities, among others. General Risk FactorsUnfavorable economic and market conditions, domestically and internationally, may adversely affect our business, financial condition, results of operations and cash flows. We have significant customer sales both in the United States and internationally. We also rely on domestic and international suppliers, manufacturing partners and~~

~~distributors. We are therefore susceptible to adverse U. S. and international economic and market conditions. If any of our manufacturing partners, customers, distributors or suppliers experience slowdowns in their business, serious financial difficulties or cease operations, including as a result of the COVID- 19 pandemic, our business will be adversely affected. In addition, the adverse impact of general economic factors that are beyond our control, including, but not limited to, housing markets, recession, inflation, deflation, consumer credit activity, consumer debt levels, fuel and energy costs, interest rates, tax rates and policy, unemployment trends, potential industry downturn, the impact of natural disasters such as pandemics, civil disturbances, terrorist activities and acts of war, including the military conflict in Ukraine, may adversely impact consumer spending, which 27may adversely impact our customers' spending and demand for our products. Additionally, the military conflict in Ukraine and escalating geopolitical tensions resulting from such conflict have resulted and may continue to result in sanctions, tariffs, and import- export restrictions which, when combined with retaliatory actions taken by Russia, could cause further inflationary pressures and economic and supply chain disruptions, as well as cause us to experience extended lead times and increased prices from our suppliers. Any of the foregoing could adversely affect our business, financial condition, results of operations and cash flows. Our business may be adversely impacted by natural disasters and other catastrophic events. Our operations and business, and those of our manufacturing partners, customers, distributors, or suppliers, can be disrupted by natural disasters; industrial accidents; public health issues, such as the COVID- 19 pandemic; cybersecurity incidents; interruptions of service from utilities, transportation, telecommunications, or IT systems providers; manufacturing equipment failures; or other catastrophic events. For example, some of our foundries and suppliers' facilities in Asia are located near known earthquake fault zones and, therefore, are vulnerable to damage from earthquakes. We are also vulnerable to damage from other types of disasters, such as power loss, fire, floods, and similar events. If any such natural disasters or other catastrophic events were to occur, our ability to operate our business could be seriously impaired. In addition, we may not have adequate insurance to cover our losses resulting from disasters or other similar significant business interruptions. Any significant losses that are not recoverable under our insurance policies could seriously impair our business and financial condition. 28~~