Risk Factors Comparison 2024-03-15 to 2023-03-15 Form: 10-K

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

Our operations and financial results are subject to various risks and uncertainties, including those described below, that could adversely affect our business, financial condition, results of operations, cash flows, and the trading price of our common stock. Some statements in this Annual Report on Form 10- K, including statements in the following risk factors, constitute forward-looking statements. Please refer to the section entitled " Special Note Regarding Forward Looking Statements " for more information. Risks Relating to Our Business and Our Industry If either of our semiconductor foundries is damaged or becomes inoperable, we will be unable to develop or produce wafers in a timely manner, if at all, and our business would be materially adversely affected. We currently perform our manufacturing and design services at our foundry facilities in Bloomington, Minnesota and Kissimmee, Florida. Our foundry operations and the equipment we use to manufacture wafers would be costly to replace and could require substantial lead time to repair or replace. Our foundry facilities or equipment may be harmed or rendered inoperable by physical damage from fire, floods, tornadoes, hurricanes, power loss, telecommunications or mechanical failures, break- ins **,** and similar events, which may render it difficult or impossible for us to produce or test products for a considerable period of time. If any of the foregoing events occur, we may incur significant additional costs including, among other things, loss of profits due to unplanned temporary or permanent shutdowns of our foundries, cleanup costs, liability for damages or injuries, and legal, repair **,** and reconstruction expenses, which would harm our results of operations and financial condition. In addition, because any substitute facility must hold any required licensures or certifications, we may be limited in our ability to rely on a third ~~-~~party to perform interim design and manufacturing services or testing processes. We cannot provide any assurance that we would be able to find another semiconductor foundry that is capable or willing to design and produce wafers in compliance with applicable specifications, or that such a substitute foundry would be willing to produce wafers for us on commercially reasonable terms. A substitute foundry may not have rights to intellectual property of others that is necessary to design, manufacture, and test products for us, and we may not be permitted to extend our license rights to a substitute foundry. Any unexpected constraints on our foundries' ability to design, manufacture **,** or test products could result in the loss of customers or harm our reputation, and we may be unable to regain those customers in the future, all of which would materially adversely affect our business. Defects or performance problems in our products could result in loss of customers, reputational damage **,** and decreased revenue, and we may face warranty, indemnity **,** and product liability claims arising from defective products. Although our products are tested to meet our stringent quality requirements, they may contain undetected errors or defects, especially when first introduced or when new generations are released. Errors, defects **,** or poor performance can arise due to design flaws, defects in raw materials or components **,** or manufacturing errors or difficulties, which can affect both the quality and the yield of the product. Any actual or perceived errors, defects **,** or poor performance in our products could result in the replacement or recall of our products, shipment delays, rejection of our products, damage to our reputation, lost revenue, diversion of our engineering personnel from our product development efforts **,** and increases in customer service and support costs, all of which could have a material adverse effect on our business, financial condition **,** and results of operations. We typically provide a one- year warranty on the operability of the products we design and manufacture. Defective components may give rise to warranty, indemnity **,** or product liability claims against us that exceed any revenue or profit we receive from the affected products. If we do not achieve satisfactory yields or quality, our reputation and customer relationships could be harmed. The fabrication of wafers is a complex and technically demanding process. Minor deviations in the manufacturing process can cause substantial decreases in yields and, in some cases, cause production to be suspended. Our ~~foundry~~ **foundries** could, from time to time, experience manufacturing defects and reduced manufacturing yields. Changes in manufacturing processes or the use of defective or contaminated materials could result in lower than anticipated production yields or unacceptable performance of our wafers. Many of these problems are difficult to detect at an early stage of the manufacturing process and may be time- consuming and expensive to correct. We also may experience manufacturing problems in achieving acceptable yields as a result of, among other things, transferring production to other facilities, upgrading or expanding existing facilities **,** or changing our process technologies. Poor production or defects, integration issues **,** or other performance problems in our solutions could significantly harm our customer relationships and financial results and give rise to financial or other damages to our customers. Our customers may cancel their orders, change production quantities **,** or delay production, and if we fail to forecast demand accurately, we may incur supply shortages or lose revenue. We generally do not obtain firm ~~,~~ long- term purchase commitments from our customers. Because production lead times often exceed the amount of time required to fulfill orders, we often must build our products in advance of orders, relying on an imperfect demand forecast to optimize use of our manufacturing capacity. Our demand forecast accuracy can be adversely affected by a number of factors, including inaccurate forecasting by our customers, changes in market conditions, and demand for our customers' products. Even after an order is received, our customers may cancel these orders or request a decrease in production quantities. Any such cancellation or decrease subjects us to a number of risks, most notably that our projected sales will not materialize on schedule or at all, leading to unanticipated revenue shortfalls and excess manufacturing capacity. Either underestimating or overestimating demand could lead to insufficient, excess or obsolete inventory, which could harm our operating results, cash flow and financial condition, as well as our relationships with our customers. A material decrease in demand for products that contain semiconductors may decrease the demand for our services and products, and a decrease in the selling prices of our customers' products may significantly affect our business, financial results and financial position. Our customers generally use the semiconductors produced in our fab in a wide variety of applications. Any significant decrease in the demand for end- market devices or products may decrease the demand for our services and products. In addition, if the average selling prices of end- market devices or products decline significantly, we may be pressured to reduce our selling prices, which may reduce our revenues and margins significantly. As demonstrated in the past by downturns in demand for high technology products, market conditions can change rapidly, without warning or advance notice. In such instances, our customers may experience inventory buildup or difficulties in selling their products and, in turn, may reduce or cancel orders for wafers from us, which may harm our business and profitability. The timing, severity and recovery of these downturns cannot be predicted. In order for demand for our wafer fabrication services to increase, the markets for the end products utilizing the ICs that we manufacture must develop and expand. Because our services may be used in many new applications, it is difficult to forecast demand. If demand is lower than expected, we may have excess capacity and our revenue may not be sufficient to cover all our costs and serve all our debt, which may adversely affect our financial results and financial position. Our industry has experienced rapid technological changes, and new technologies may prove difficult to commercialize or may not gain market acceptance by our customers, which may have a material adverse effect on demand for our products and service offerings. The industry in which we operate is subject to rapid technological change, industry standards**,** and technological obsolescence. Our future success will depend on our ability to appropriately respond to changing technologies, including significant developments in wafer production ~~,~~ and changes in function of products and quality on a timely and cost- effective basis. If we adopt products and technologies that are not attractive to customers, we may not be successful in capturing or retaining our share of the market. If we fail to adopt new or enhanced technologies or processes, we could experience product obsolescence, loss of competitiveness of our products, decreased revenue**,** and a loss of market share to competitors. In addition, some new technologies are relatively untested and unperfected and may not perform as expected or as desired, in which event our and our customers' adoption of such products or technologies may adversely affect our revenues, profitability**,** and business. We have a finite amount of production capacity, and to the extent customer demand exceeds our capacity**,** we may lose customers and potential revenues. In periods during which demand for our foundry services exceeds our capacity and manufacturing capabilities, we may be unable to fulfill customer demand**,** in whole or in part, in a timely manner or at all; assure production of customers' next- generation products; or provide additional capacity through transfer of process technologies, or ensure successful implementation, which could result in the loss of one or more of our current or potential customers, which may adversely affect our revenues, profitability**,** and business. We currently have limited or no redundancy in certain of our manufacturing tooling and infrastructure equipment, and we may lose revenue and be unable to maintain our customer relationships if we lose our production capacity. If our foundries become incapable of manufacturing products for any reason, including as a result of manufacturing tooling or infrastructure equipment failure, we may be unable to meet production requirements, lose revenue**,** and not be able to maintain our relationships with our customers. Without full production capacity at our foundries, we would have no other means of manufacturing products until we were able to restore the manufacturing capability at these facilities or develop one or more alternative manufacturing facilities. Although we carry business interruption insurance to cover lost revenue and profits in an amount we consider adequate, this insurance does not cover all possible situations. In addition, our business interruption insurance would not compensate us for the loss of opportunity and potential adverse impact on relations with our existing customers resulting from our inability to produce products for them. A significant portion of our sales comes from ~~three~~ **four** customers, the loss of which would adversely affect our financial results. Infineon ~~Technologies AG, or Infineon (formerly Cypress Semiconductor)~~ accounted for **17 % and** 28 % ~~and 25 %~~ of our revenue for ~~the~~ **fiscal** years ended **December 31, 2023 and** January 1, 2023 ~~and January 2, 2022~~ , respectively. ~~Two~~ **Three** customers, other than Infineon, represented **24 %, 15 %, and 10 % of our revenue for the fiscal year ended December 31, 2023. Two customers, other than Infineon, represented** 20 % and 11 % of our revenue for the **fiscal** year ended January 1, 2023 ~~and one customer, other than Infineon, represented 24 % of our revenue for the year ended January 2, 2022~~ . If we were to lose any of these key customers or experience a significant decrease in volume or sales prices, our financial results would be adversely affected. We currently sell to a relatively small number of customers in total, and we expect our operating results will likely continue to depend on sales to a relatively small number of customers for the foreseeable future. We cannot be certain that these customers will generate significant revenue for us in the future or if these customer relationships will continue to develop. If our relationships with our other customers do not continue to develop, we may not be able to expand our customer base or maintain or increase our revenue. In addition, the loss or reduction in volume or sales price, whether due to their insolvency, or their unwillingness or inability to perform their obligations under their respective relationships with us, or if we are unable to renew or engage with them in commercially reasonable terms, or attract new customers to replace such lost business, may materially negatively impact our overall business. This is exacerbated by our current manufacturing constraints which limit our ability to sell to other customers. In addition, our business is affected by competition in the markets for the end products that our customers sell, and any decline in their business could harm our business and cause our revenue to decline. We may not be able to successfully diversify our customer base and penetrate new markets, which would negatively impact our growth strategy. Our growth strategy depends on our ability to diversify our customer base and penetrate new markets. Our ability to add new customers to our **ATS** ~~Advanced Technology Services~~ and Wafer Services businesses is subject to various elements outside of our control, such as fluctuations in demand for discrete components in both commodity and differentiated categories. If we are unable to attract new customers, our customer revenue could remain highly concentrated. In addition, even if we add new customers, they may not require high levels of production, negatively impacting our growth strategy. Our growth strategy may also be adversely affected if we are unable to enter new markets, such as the rad- hard electronic markets. Because we face competition from companies with substantially greater production and marketing resources than we have, we may not be able to penetrate these new markets successfully. Our expansion strategy carries inherent risks. Our growth strategy includes, among other matters, diversifying our customer base, growing our presence in existing markets, expanding into new end markets, and seeking acquisition opportunities to drive growth. Although management believes that pursuing our growth strategy is in our best interests, such strategy involves substantial expenditures and risks. For example, business acquisitions or strategic partnerships pursued in connection with our growth strategy may not be completed successfully or, if completed, may not yield the expected benefits to us. In addition, such business acquisitions or strategic partnerships may materially and adversely affect our business, financial condition or results of operations. The pursuit of expansion opportunities through business acquisitions, joint ventures, stockholder agreements, government contracts or otherwise could result in operating losses and the impairment of assets, which would increase our losses or reduce or eliminate our earnings, if any. We depend on successful parts and materials procurement for our ~~foundry~~ **foundries** . Shortages and / or increases in the prices of these raw materials ~~has interrupted and~~ could ~~continue to~~ interrupt our operations and result in a decline in revenues. The raw materials used to manufacture our products are subject to availability constraints and price volatility caused by weather, supply conditions, government regulations, general economic conditions and other unpredictable factors ~~. In 2021 and 2022, we experienced supply chain disruptions and increases in the prices for substrates, chemicals and spare parts~~ . In the event that these or other raw materials we acquire from third parties further increase in price, we will be required to further increase the prices we charge our customers, which could result in decreased sales, or we may not be permitted under our customer agreements to increase the cost to our customers, which could result in a loss or in decreased profits. Customers also may seek alternative sources of raw materials for comparable products. In the event we are unable to procure the necessary raw materials, we may not be able to operate our ~~foundry~~ **Minnesota and Florida facilities** at capacity or at all. If either of these events occur, our business and operations may be materially ~~harmed~~ **impacted** . Our dependence on a limited number of third- party suppliers for key components and capital equipment used in our manufacturing process could prevent us from delivering our products to our customers within required timeframes, which could result in order cancellations and loss of market share. We manufacture our products using components and capital equipment procured from a limited number of third- party suppliers. In some instances, the capital equipment we use has been developed and made specifically for us or for a customer, is not readily available from multiple vendors and would be difficult to repair or replace if it were to become damaged or stop working. If we fail to develop or maintain our relationships with these or our other suppliers, we may be unable to manufacture our products or our products may be available only at a higher cost or after a long delay, which could prevent us from delivering our products to our customers within required timeframes and we may experience order cancellation and loss of market share. To the extent the designs or processes that our suppliers use to manufacture components and capital equipment are proprietary, we may be unable to obtain comparable components or capital equipment from alternative suppliers. The failure of a supplier to supply components or capital equipment in a timely manner, or to supply components or capital equipment that meets our quality, quantity **,** and cost requirements, could impair our ability to manufacture our products or decrease costs to our customers, particularly if we are unable to obtain substitute sources of these components or capital equipment on a timely basis or on terms acceptable to us. The costs incurred by us to provide development services and manufacture our wafers may be higher than anticipated, which could hurt our ability to earn a profit. We may incur substantial cost overruns in our **ATS** ~~Advanced Technology Services~~ and Wafer Services businesses. In particular, pricing for ~~wafer~~ **Wafer** ~~services~~ **Services** is typically based on a fixed price per wafer which accounts for electrical yield and mechanical scrap, in addition to ~~all of~~ the associated manufacturing and overhead costs. If, despite our process controls currently in place, the wafer fabrication process shifts, it may cause electrical or performance yield loss. Wafer fabrication is also especially susceptible to interruptions caused by process tooling errors or facility support interruptions such as power loss, leading to the potential for scrap. In our **ATS** ~~Advanced Technology Services~~ business, many customers contract with us on a consumption basis, but some contract with us on a firm ~~-~~ fixed price basis where milestone attainment is required for payment. If the milestone scope is unexpectedly difficult, we may be required to continue expending effort and funds to achieve the milestone, which may delay revenue and increase costs. Unanticipated costs may force us to obtain additional capital or financing from other sources and would hinder our ability to earn a profit. If we incur cost overruns, there is no assurance that we could obtain the financing or capital to cover them. A breach of our security systems or a **cyberattack** ~~cyber- attack~~ that disrupts our operations or results in the breach of confidential information about us, our technology **,** or our customers could harm our business and expose us to costly regulatory enforcement and other liability. Our security systems are designed to maintain the physical security of our facilities and protect the confidential information and trade secrets of our customers, suppliers **,** and employees. The risk of a security breach or disruption, particularly through cyberattacks, including by computer hackers, foreign governments **,** and cyber terrorists, has generally increased as the number, intensity **,** and sophistication of attempted attacks and intrusions from around the world have increased. In addition, our accreditation as a Trusted Foundry by the DMEA ~~, our publicly- announced DARPA programs~~ , our rad- hard program with the DoD, and other USG and defense- related programs may make us a specific target for such attacks or industrial or nation- state espionage. A failure to comply with cybersecurity requirements imposed by those entities may result in fines or a disruption of our ability to acquire certain contracts. Criminal or other threat actors may seek to penetrate our network security and misappropriate or compromise our confidential information, systems or trade secrets, or that of our customers, create system disruptions **,** or cause shutdowns. If such an event were to be discovered or cause interruptions in our operations, it could result in a material reduction in the value of our trade secrets or disruption of our development and production programs, and our business operations, including, without limitation, the cancellation or delay of our sales of wafers. The costs to address the foregoing security problems and any security vulnerabilities identified before or after a ~~cyber~~ **cybersecurity** incident could be significant. Remediation efforts may not be successful and could result in interruptions, delays **,** or cessation of service and loss of existing or potential customers that may impede our sales or other critical functions. Breaches of our security measures and the unapproved dissemination of proprietary information, such as trade secrets, or sensitive or confidential data about us or our customers **,** could expose us, our customers **,** or other affected third parties to a risk of loss or misuse of this information, result in regulatory enforcement, litigation and potential liability for us **,** and damage our brand and reputation or otherwise harm our business. Our security program includes controls intended to mitigate risks to our systems, data, personnel **,** and facilities. The program includes logical and physical controls designed to protect the confidentiality, integrity **,** and availability of our resources. Performance of these controls is accomplished by both internal and trusted third parties. Possible security problems and security vulnerabilities of those third- party cybersecurity or other vendors may have similar effects on us. **The potential consequences of a future material cybersecurity incident may include reputational damage, litigation with third parties, government enforcement actions, penalties, disruption to our systems or operations of our facilities, unauthorized release of confidential or otherwise protected information, corruption of data, diminution in the value of our investment in research, development and engineering, increased cybersecurity protection costs and unplanned remediation costs, which in turn could adversely affect our business strategy, results of operations and financial condition.** We operate in the highly cyclical semiconductor industry, which is subject to significant downturns that may negatively impact our results of operations. The semiconductor industry is highly cyclical and is characterized by rapid technological change and price erosion, wide fluctuations in product supply and demand, evolving technical standards, and short product life **-** cycles for semiconductors and the end- user products in which they are used. In addition, changes in general economic conditions also can cause significant upturns and downturns in the semiconductor industry. During previous periods of downturns in the semiconductor industry, we have experienced diminished demand for end- user products and underutilization of manufacturing capacity, among other effects. We may experience renewed, and possibly more severe and prolonged, industry downturns in the future as a result of such cyclical changes. We base our planned operating expenses in part on our expectations of future revenue, and a significant portion of our expenses is relatively fixed in the short term. If an industry downturn or other unforeseen event causes revenue for a particular quarter to be lower than we initially expected, we likely will be unable to proportionately reduce our operating expenses for that quarter, which would harm our operating results. Because the markets in which we compete are highly competitive and many of our competitors have greater resources than us, we may not be able to compete successfully, and we may lose or be unable to gain market share. We compete with a large number of competitors in the semiconductor market, including Taiwan Semiconductor Manufacturing Company Limited, United Microelectronics Corporation, Vanguard International Semiconductor Corporation, Tower Semiconductor Ltd., X- FAB Silicon Foundries SE, ON Semiconductor Corporation, GlobalFoundries Inc., MIT Lincoln Labs **,** and ~~Intel Corporation~~ **Silex Microsystems** . We expect to face increased competition in the future. Many of our current and potential competitors have longer operating histories, greater name recognition, access to larger customer bases **,** and significantly greater financial, sales and marketing, manufacturing, distribution, technical **,** and other resources than us. As a result, they may be able to respond more quickly to changing customer demands or to devote greater resources to the development, promotion **,** and sales of their products than we can. Our business relies on sales of our products and our competitors with more diversified product offerings may be better positioned to withstand a decline in the demand for semiconductor products. Some of our competitors have longer term relationships with polysilicon providers which could result in them being able to obtain raw materials on a more favorable basis than us. It is possible that new competitors or alliances among existing competitors could emerge and rapidly acquire significant market share, which would harm our business. If we fail to compete successfully, our business would suffer and we may lose or be unable to gain market share. In addition, from time to time, governments may provide subsidies or make other investments that could further magnify the competitive advantages to our competitors with longer operating histories, greater name recognition **,** and access to larger customer bases. For example, as discussed above, in August 2022, the U. S. enacted the CHIPS and Science Act, which, among other things, provides funding to increase domestic production and research and development in the semiconductor industry. **While we have submitted an application for CHIPS and Science Act funding for modernization and equipment upgrades to enhance production at our Minnesota fab, there is no guarantee that such application will be approved and we will receive** ~~Many~~ - **any such CHIPS and Science Act funding. Regardless of whether our application is approved, many** of our competitors will **receive CHIPS and Science Act funding and** benefit from the investments, which will help increase their production capacity, shorten their lead time **,** and gain market share. These competitive pressures could distort the market space in which we ~~operated~~ - **operate** and materially and adversely affect our business, financial condition and results of operations. Existing or future customers could eventually transition their business to a competitor with a higher production capacity or lower- cost means of production. As a result of our smaller manufacturing footprint, we target opportunities that larger competitors are unable to fulfill efficiently. These contracts are typically lower volume but require higher levels of customization and engineering expertise. Rapid growth in demand for a customer' s products could outpace our capacity, causing that customer to supplement or fully transition production to a higher volume foundry. In addition, as a customer' s product matures, demand for customization and engineering expertise may decrease, causing downward pricing pressure or forcing the customer to seek lower- cost means of production than are economically feasible for us. Although we are seeking to increase our customer and production mixes, the loss of one or more significant customers as a result of any such customer developments could have a material adverse impact on our financial results. In addition, our **ATS** ~~Advanced Technology Services~~ customers may choose to implement their wafer production with other foundry providers, which could limit our Wafer Services revenue growth. **We are party to public- private partnerships, and if we or our counterparties fail to meet the obligations of our agreements, or if we are not able to realize some or all of the anticipated benefits of such partnerships in the anticipated time frame or at all, our business, results of operations and financial condition may be materially and adversely affected. In 2021, we expanded our operations with the addition of the Center for NeoVation, a 200 mm advanced packaging facility in Kissimmee, Florida. The facility is operated and maintained by SkyWater through a public- private partnership with Osceola County, Florida, which is developing a broader technology and STEM education infrastructure at the same campus where the Center for NeoVation is located. In addition, in July 2022, we announced our plans to build a production and research and development facility in West Lafayette, Indiana through a public- private partnership with the State of Indiana and Purdue University. If we or our counterparties fail to meet our obligations in connection with these public- private partnerships, or if we are not able to realize some or all of the anticipated benefits of such partnerships in the anticipated time frame or at all, our business, financial condition and**

results of operations may be materially and adversely affected. Failure to satisfy the obligations of the agreements' terms, including the milestones we have committed to achieve, may give rise to certain rights and remedies of the counterparties, including, for example, termination of such agreement and other related agreements and potential recoupment of a percentage of the grant funding and other benefits received, subject to the terms and conditions of the applicable agreements. We may also be subject to lawsuits or claims for damages against us if we are unable to comply with our obligations under these arrangements, which could materially and adversely affect our business, results of operations and financial condition. Furthermore, there is no guarantee that the counterparties to our public- private partnerships will comply with the terms of the agreements, including that their ability to fund their capital commitments under the agreements may be subject to their ability to raise additional capital and that further construction or operational timetables may not be met. Public- private partnerships are also subject to risks associated with government and government agency counterparties, including risks related to government relations compliance, sovereign immunity, shifts in the political environment, changing economic and legal conditions and social dynamics. Planned efficiency and cost- savings initiatives could disrupt our operations or adversely affect our results of operations and financial condition, and we may not realize some or all of the anticipated benefits of such initiatives in the anticipated time frame or at all. We are currently pursuing several efforts to improve profitability of our operations, including, but not limited to, efficiency improvements, cost reductions, supplier pricing negotiation **,** and workforce reorganizations. These efforts, if implemented successfully, are planned to have an impact on our short- term and long- term financial results. The implementation of these efficiency and cost- savings initiatives, including the impact of any workforce reductions, could impair our ability to invest in developing, marketing **,** and selling new and existing products, be disruptive to our operations, make it difficult to attract or retain employees, result in higher than anticipated charges, divert the attention of management, result in a loss of accumulated knowledge, impact our customer and supplier relationships **,** and otherwise adversely affect our results of operations and financial condition. In addition, our ability to complete our efficiency and cost- savings initiatives and achieve the anticipated benefits within the expected time frame is subject to estimates and assumptions and may vary materially from our expectations, including as a result of factors that are beyond our control. Furthermore, our efforts to grow our business could be delayed or jeopardized through planned or inadvertent results of cost- savings initiatives. If we are unable to attract, train **,** and retain highly qualified personnel, the quality of our services may decline, and we may not successfully execute our internal growth strategies. Our success depends in large part upon our ability to continue to attract, train, motivate **,** and retain highly skilled and experienced employees, including technical personnel. Qualified technical employees periodically are in great demand and may be unavailable on the timing required to satisfy our customers' requirements. Our business requires sufficient technical expertise and expansion of our business could require us to employ additional highly skilled technical personnel. We expect competition for such personnel to increase as the market for our products expands. We cannot guarantee that we will be able to attract and retain sufficient numbers of highly skilled technical employees in the future. **In addition, an important aspect of attracting and retaining qualified personnel is continuing to offer competitive wages, employee healthcare, retirement and other benefits. The expenses we record for our employee benefit plans depend on factors such as changes in market interest rates and healthcare cost inflation, and significant unfavorable changes in these factors could increase our expenses and funding requirements.** The loss of personnel or our inability to hire or retain sufficient personnel at competitive rates of compensation could impair our ability to secure and complete customer engagements and could harm our business. If the competition for personnel necessitates that we increase the wages and benefits paid to our current employees and to attract new employees, our operating expenses will increase, which would negatively impact our earnings. We may face litigation in the future, including potential product liability claims. As a manufacturer and seller of goods, we are exposed to the risk of litigation for a variety of reasons, including product liability lawsuits, employee lawsuits, commercial contract disputes, government enforcement actions **,** and other legal proceedings. Any future litigation in which we may become involved may have a material adverse effect on our financial condition, operating results, business performance **,** and business reputation. If one of our products were to cause injury to someone or cause property damage, including as a result of product malfunctions, defects **,** or improper installation, then we could be exposed to product liability claims. We could incur significant costs and liabilities if we are sued and if damages are awarded against us. Further, any product liability claim we face could be expensive to defend and could divert management' s attention. The successful assertion of a product liability claim against us could result in potentially significant monetary damages, penalties or fines, subject us to adverse publicity, damage our reputation and competitive position, and adversely affect sales of our products. In addition, product liability claims, injuries, defects **,** or other problems experienced by other companies in the wafer industry or related industries could lead to unfavorable market conditions for the industry as a whole, and may have an adverse effect on our ability to attract new customers, both of which would harm our growth and financial performance. We are exposed to various possible claims and hazards relating to our business, and our insurance may not fully protect us. Although we maintain modest business disruption, theft, casualty, liability **,** and property insurance coverage, along with worker' s compensation and related insurance, we may incur uninsured liabilities and losses as a result of the conduct of our business. In particular, we may incur liability if one or more of our products is deemed to have caused a personal injury or if we experience damage to our facilities or disruptions in our business, whether or not such disruptions result from damage at our facilities. Should uninsured losses occur, they could have a material adverse effect on our operating results, financial condition **,** and business performance. Further, we cannot be sure that any such insurance will be sufficient to cover any actual losses or that such insurance will continue to be available to us on acceptable terms, or at all. Changes in trade policies, including the imposition of tariffs, could negatively impact our business, financial condition and results of operations. The U. S. government may signal support for, and in some instances has taken action with respect to, major changes to certain trade policies, such as the imposition of tariffs on imported products and the withdrawal from or renegotiation of certain trade agreements. We procure certain materials, tools **,** and maintenance parts which are essential in the manufacturing of our products directly or indirectly from outside of the United States. The imposition of tariffs and other potential changes in U. S. trade policy could increase the cost or limit the availability of these essential materials, tools , and maintenance parts, which could hurt our competitive position and adversely impact our business, financial condition and results of operations in several ways. For example, the increase in costs and risk of supply chain interruption could drive some of our foreign customers to overseas foundries. In addition, availability concerns with respect to some of our essential materials, tools , and maintenance parts could also prompt a lengthy and expensive search for alternative sources which would necessitate requalification cycles and production delays. We are exposed to risks associated with a potential financial crisis and weaker global economy. The further tightening of monetary policy in the United States, prolonged turmoil in the financial markets , and a further weakened global economy, including a recession, may contribute to slowdowns in the semiconductor industry. The market for the installation of wafers depends largely on commercial, customer , and government capital spending. Economic uncertainty exacerbates negative trends in these areas of spending, and may cause our customers to delay, cancel , or refrain from placing orders, which may reduce our sales. Difficulties in obtaining capital or further deteriorating market conditions may also lead to the inability of some customers to obtain affordable financing. Further, these conditions and uncertainty about future economic conditions may make it challenging for us to obtain equity and debt financing to meet our working capital requirements to support our business, forecast our operating results, make business decisions , and identify the risks that may affect our business, financial condition and results of operations. If we are unable to timely and appropriately adapt to changes resulting from the difficult macroeconomic environment, our business, financial condition and results of operations may be materially and adversely affected. Our sales cycles are long and unpredictable, and our sales efforts require considerable time and expense, which could adversely affect our results of operations. Sales of our products usually require lengthy sales cycles. Sales to our customers can be complex and require us to educate our clients about our technical capabilities and the use and benefits of our services. Customers typically undertake a significant evaluation and acceptance process, and their decisions frequently are influenced by budgetary constraints, technology evaluations, multiple approvals and unplanned administrative, processing , and other delays. We spend substantial time, effort , and money in our sales efforts without any assurance that our efforts will generate long- term contracts. If we do not realize the sales we expect from potential clients, our revenue and results of operations could be adversely affected. Certain of our purchase orders are cancellable until shortly before the start of production, and our lack of significant backlog makes it difficult for us to forecast our revenues and margins in future periods and may cause actual revenue and results to fall short of expectations. Our purchase orders often are cancellable until shortly before the start of production, and we do not typically operate with any significant backlog, which makes it difficult for us to forecast our revenues in future periods. In addition, since our expense levels are based in part on our expectations of future revenues, we may be unable to adjust costs in a timely manner to compensate for revenue shortfalls caused by cancellations, rescheduling of orders , or lower actual orders than quantities forecasted. Rescheduling may relate to quantities or delivery dates, and sometimes relates to the specifications of the products we are shipping. Consequently, we cannot be certain that orders on backlog will be shipped when expected or at all. While customers will typically provide twelve- month rolling forecasts, we expect that, in the future, our revenues in any quarter will continue to be substantially dependent upon cancellable purchase orders received in the immediately preceding quarter or two. We cannot provide any assurance that any of our customers will continue to place orders with us in the future at the same levels as in prior periods. For these reasons, our backlog at any given date may not be a reliable indicator of our future revenues and, as a result, revenue and margin forecasts, targets and guidance that we provide from time to time may fall short of expectations. We may manufacture wafers based on forecasted demand, and if our forecasted demand exceeds actual demand, we may accumulate obsolete inventory, which may have a negative impact on our financial results. We target manufacturing wafers in an amount matching each customer' s specific purchase order. On occasion, we may produce wafers in excess of a customer' s orders based on forecasted customer demand, because we may forecast future excess demand or because of future capacity constraints. If we manufacture more wafers than are actually ordered by customers, we may be left with excess inventory that may ultimately become obsolete and must be scrapped or sold at a significant discount. Significant amounts of obsolete inventory may have a negative impact on our financial results. ~~The ongoing COVID- 19 pandemic has adversely affected and could continue to adversely affect our business, results of operations and financial condition. The ongoing COVID- 19 pandemic has led to significant disruption of normal business operations globally, which has given rise to significant volatility in the global capital markets and financial system and caused a decline in consumer and business confidence. As a result of COVID- 19, our customers have or may in the future reduce their planned research and development expenditures with us, negatively affecting our revenues. Ultimately, the extent of the adverse impact of the COVID- 19 pandemic on our business, results of operations, liquidity and financial condition will depend on, among other matters, the duration and intensity of the pandemic; the level of success of global vaccination efforts; governmental and private sector responses to the pandemic and the impact of such responses on us; and the impact of the pandemic on our team members, contractors, suppliers, third- party service providers, customers or distributors, all of which are uncertain, difficult to predict and may remain prevalent for a significant period of time even after the pandemic subsides. These effects, alone or taken together, could have a material adverse effect on our business, results of operations, legal exposure or financial condition and may also heighten or exacerbate the other risk factors described in this Annual Report on Form 10- K. A sustained, prolonged or recurring outbreak could exacerbate the adverse impact of such measures.~~ Earthquakes, fires, power outages, floods, terrorist attacks, wars, public health issues , and other catastrophic events could disrupt our business and ability to serve our customers and could have a material adverse effect on our business, results of operations or financial condition. A significant natural disaster, such as an earthquake, a fire, a flood ~~or~~ , a significant power outage (including as a result of climate change), or a widespread public health issue ~~, such as the COVID- 19 pandemic~~ , could have a material adverse effect on our business, results of operations or financial condition. Although our foundry operation center is designed to be redundant and to offer seamless backup support in an emergency, we rely on two onsite data centers in addition to public cloud providers to sustain our operations. Losing any one of these three infrastructure sources could severely impact our operations. In addition, our ability to deliver our solutions as agreed with our customers depends on the ability of our supply chain, manufacturing vendors or logistics providers to deliver products or perform services we have procured from them. If any natural disaster ~~, including a pandemic such as COVID- 19,~~ impairs the ability of our vendors or service providers to support us on a timely basis, our ability to perform our customer engagements may suffer. Disruptions from ~~COVID- 19 or~~ a ~~similar~~ pandemic or public health issue could include, and have included, restrictions on the ability of our employees or the employees of our customers, vendors **,** or suppliers to travel, or closures of our facilities or the facilities of these third parties. Such restrictions or closures could affect our ability to sell our solutions, develop and maintain customer relationships **,** or render services, such as our consulting services, could adversely affect our ability to generate revenues or could lead to inadvertent breaches of contract by us or by our customers, vendors **,** or suppliers. Acts of terrorism, wars **,** ~~(including the war in Ukraine)~~ or other geopolitical unrest also could cause disruptions in our business or the business of our supply chain, manufacturing vendors **,** or logistics providers. The adverse impacts of these risks may increase if the disaster recovery plans for us and our suppliers prove to be inadequate. Our operating results may prove unpredictable, which could negatively affect our profit. Our operating results fluctuate and may continue to fluctuate in the future due to a variety of factors, many of which we have no control over. Factors that may cause our operating results to fluctuate significantly include: our inability to generate enough working capital from sales; the level of commercial acceptance by clients of our products; fluctuations in the demand for our ~~service~~ **services** ; the amount and timing of operating costs and capital expenditures relating to expansion of our business, operations **,** and infrastructure; the timing and recognition of revenue and related expenses; adverse litigation ~~judgment~~ **judgments** , settlements **,** or other litigation- related costs; our ability to increase sales to existing customers and to renew contracts with our customers; the ability of our customers to obtain funding to pay for our products and services; our ability to attract new customers; our ability to secure government incentives and grants, such as funding available to U. S. semiconductor manufacturers under the CHIPS and Science Act ~~of 2022~~ ; changes in our pricing policies or those of our competitors; our ability to manage the impacts of inflationary pressures and interest rate fluctuations; our customers obtaining the technical knowledge and other resources to complete the design and development of their technologies **;** and changing general economic conditions. If realized, any of these risks could have a material adverse effect on our business, financial condition and operating results. As a public company, we are obligated to develop and maintain proper and effective internal control over financial reporting and any failure to maintain the adequacy of these internal controls may adversely affect investor confidence in our company and, as a result, the value of our common stock. We are required, pursuant to Section 404 of the Sarbanes- Oxley Act, to furnish a report by our management on, among other matters, the effectiveness of our internal control over financial reporting. This assessment includes disclosure of any material weaknesses identified by our management in our internal control over financial reporting. Our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting until our first annual report required to be filed with the SEC following the date we are no longer an ~~"~~ **"** emerging growth company ~~"~~. **"** We are required to disclose significant changes made in our internal control procedures on a quarterly basis. As disclosed in **this** ~~Item 9A. " Controls and Procedures " in our~~ Annual Report on Form 10- K ~~for the year ended January 1, 2023~~ , we have **a** material ~~weaknesses~~ -- **weakness** in the ~~Control Environment, Risk Assessment and~~ Control Activities ~~components~~ - **component** of the **Committee of Sponsoring Organizations of the Treadway Commission ("** COSO **")** framework. **This** ~~As an emerging growth company, we have limited accounting and finance resources. We continue to implement policies, procedures, and internal controls to improve our control environment and risk assessment and we have hired certain employees that have had a limited period of time in their roles. The~~ material weakness ~~in Control Activities has resulted in deficiencies in the design and implementation of controls, that individually or in the aggregate were considered a material weakness, in certain processes, including financial reporting, accounting information technology, primarily related to our inventory and time recording systems that impact revenue recording, and the operation of our controls in the expenditures process. These material weaknesses~~ could result in a **material** misstatement of account balances or disclosures ~~that would result~~ in ~~a material misstatement to~~ the annual or interim **consolidated** financial statements that would not be prevented or detected **on a timely basis** . ~~To~~ **Between fiscal years 2021 and 2023, with the oversight of the Audit Committee of the Board of Directors, the Company began implementing remediation plans to** address ~~our~~ **the** material weaknesses **identified as of January 2** , ~~we have developed a Sarbanes~~ **2022 and January 1, 2023. As disclosed in this Annual Report on Form 10** - ~~Oxley 404~~ **K, as a result of implementation of this remediation plan, we remediated the Control Environment and Risk Assessment material weaknesses identified in prior fiscal years as of December 31, 2023. Despite the progress discussed above, during fiscal years 2022 and 2023, our ability to remediate the previously identified material weakness in the Control Activities component of the COSO framework, including the revenue accounting process material weakness, was slowed due to (a) the significant growth in our market offerings and business operations, which increased the volume and complexity of our transactions and necessitated the implementation of a significant number of new controls and enhancements to existing controls; (b) the onboarding of new accounting and finance personnel; and (c) the timing of when new controls were implemented or enhanced, which limited our time and ability to remediate any control deficiencies identified in the operation of those controls post-implementation.** Remediation ~~Plan which~~ **of the material weakness in the Control Activities component of the COSO framework, including the revenue accounting process material weakness,** will **require further validation** ~~focus on continuing to ensure we have adequate accounting~~ and **testing** ~~finance resources with the appropriate tenure with the Company, the hiring~~ of ~~a controller or other~~ -- **the design** ~~senior accounting position,~~ and ~~the implementation~~ **operating effectiveness** of **internal** controls ~~in~~ **over a sustained period of time. To remediate** ~~the~~ **these** ~~financial reporting~~ **material weaknesses** , ~~accounting~~ **management plans to sustain the execution of the process- level and** information technology ~~and expenditures processes identified during~~ **controls implemented or enhanced in** fiscal year ~~2022~~ **2023 throughout fiscal year 2024 and perform testing** ~~. The actions that we are taking are subject~~ to **validate the effectiveness of those controls** ~~ongoing senior~~

~~management review, as well as audit committee oversight~~ . We will not be able to conclude whether the ~~steps~~ **actions** we are taking will ~~fully~~ remediate ~~the~~ **these** material weaknesses **until we have completed our remediation plans and perform testing to validate the effectiveness of these controls. As we continue to evaluate and work to remediate the control deficiencies that gave rise to the material weakness** in **the Control Activities component of the COSO framework, including the revenue accounting process material weakness, we may determine that additional measures or time are required to address the control deficiencies or that we need to modify or otherwise adjust the remediation actions described above. We will also continue to assess the effectiveness of our remediation efforts in connection with our evaluation of** our internal control over financial reporting **. The material weakness in the Control Activities component of the COSO framework, including the revenue accounting process material weakness, cannot be considered remediated** until **the controls** we **implemented in fiscal year 2023** have **operated for a sufficient period** ~~completed our remediation efforts and subsequent evaluation~~ of ~~their effectiveness. Until~~ **time and management has concluded, through testing, that** these **controls** ~~material weaknesses~~ are **operating effectively** ~~remediated, we plan to continue to perform additional analyses and other procedures to ensure that our consolidated financial statements are prepared in accordance with U. S. GAAP~~ . If we fail to comply with the rules under the Sarbanes- Oxley Act related to disclosure controls and procedures in the future, or ~~,~~ if we continue to have **a** material ~~weaknesses~~ -- **weakness** and other deficiencies in our internal control and accounting procedures and disclosure controls and procedures, our stock price could decline significantly and raising capital could be more difficult. If additional material weaknesses or significant deficiencies are discovered or if we otherwise fail to address the adequacy of our internal control and disclosure controls and procedures, our business may be harmed. Effective internal controls are necessary for us to produce reliable financial reports and are important to helping prevent financial fraud. If we cannot provide reliable financial reports or prevent fraud, our business and operating results could be harmed, investors could lose confidence in our reported financial information, and the trading price of our common stock could drop significantly. After we are no longer an " emerging growth company, " we will need to comply with auditor attestation requirements of Section 404 of the Sarbanes- Oxley Act. In that regard, as we prepare for such compliance, we will need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge. We cannot predict or estimate the amount of additional costs we may incur or the timing of such costs. Failure to meet environmental, social **,** and governance (" ESG ") expectations or standards could adversely affect our business, results of operations, financial condition, and stock price. In recent years, there has been an increased focus from stakeholders on ESG matters, including greenhouse gas emissions and climate- related risks, renewable energy, water stewardship, waste management, diversity, equality and inclusion, responsible sourcing and supply chain, human rights, and social responsibility. Evolving stakeholder expectations and our efforts to manage these issues, report on them, and accomplish our goals present numerous operational, regulatory, reputational, financial, legal, and other risks, any of which could have a material adverse impact, including on our reputation and stock price. Such risks and uncertainties include: • reputational harm, including damage to our relationships with customers, suppliers, investors, governments, or other stakeholders; • adverse impacts on our ability to sell and manufacture products; • the success of our collaborations with third parties; • increased risk of litigation, investigations, or regulatory enforcement action; and • adverse impacts on our stock price. Risks Relating to **the** Ability to Raise Financing and Our Indebtedness We may need to raise additional capital or financing to continue to execute and expand our business. We may need to raise additional capital to expand or if positive cash flow is not achieved and maintained. As of ~~January 1~~ **December 31** , 2023, our available cash balance, not including cash held by a variable interest entity that we consolidate, was $ ~~30~~ **18** . ~~0~~ **4** million. We may be required to pursue sources of additional capital through various means, including joint venture projects, strategic partnerships and alliances, licensing or sale and leasing arrangements, and debt or equity financings, including sales of our common stock under our at the market offering program. If we raise additional equity or securities convertible or exchangeable for our equity, our stockholders may experience significant dilution of their ownership interests and the per share value of our common stock could decline. Newly- issued securities may include preferences, superior voting rights **,** and the issuance of warrants or other convertible securities that could have additional dilutive effects. The incurrence of additional indebtedness would result in increased fixed payment obligations and could involve certain restrictive covenants, such as limitations on our ability to incur additional debt, limitations on our ability to acquire or license intellectual property rights **,** and other operating restrictions that could adversely impact our ability to conduct our business. If we raise additional funds through joint venture projects, strategic partnerships and alliances, licensing or sale and leasing arrangements, we may have to relinquish valuable rights to our technologies or other assets, or grant licenses on terms unfavorable to us. Further, we may incur substantial costs in pursuing future capital or financing, including investment banking fees, legal fees, accounting fees, printing and distribution expenses **,** and other costs. We also may be required to recognize non- cash expenses in connection with certain securities we may issue, such as convertible notes and warrants, which could adversely impact our financial condition and results of operations. Our ability to obtain needed financing may be impaired by such factors as the weakness of capital markets, and the fact that we have not been profitable, which could impact the availability and cost of future financings. In addition, our ability to execute our operating strategy is dependent on our ability to maintain liquidity and access capital through our Loan and Security Agreement (the " Loan Agreement "), which provides for a revolving line of credit of up to $ 100 million with scheduled maturity date of December 28, 2025, and other sources of financing. Borrowing under the Loan Agreement is limited by a borrowing base of specified advance rates applicable to billed accounts receivable, unbilled accounts receivable, inventory **,** and equipment, subject to various conditions, limits and any availability block as provided in the Loan Agreement. The Loan Agreement also provides for borrowing base sublimits applicable to each of unbilled accounts receivable and equipment. Our current business plans indicate that we may require additional liquidity to continue our operations **and maintain compliance with financial covenants** for the next ~~12~~ **twelve** months from the date of the issuance of the consolidated financial statements contained in this Annual Report on Form 10- K. We have identified specific actions we could take to reduce operating costs to improve cash flow, which include a reduction in spending and a delayed increase in certain personnel, and may require us to decrease our level of investment in new products and technologies, or discontinue further expansion of our business. Additionally, we could raise additional capital through our at the market offering program and seek additional equity or debt financing, however we cannot provide any assurance that additional funds will be available when needed from any source or, if available, will be available on terms that are acceptable to us. Further, we can provide no assurance that we will be successful with such actions or that such actions will not materially and adversely impact our business, results of operations or financial condition. If we are not successful with such actions, our liquidity, business, results of operations and financial condition could be materially and adversely impacted. We have also obtained a support letter from Oxbow Industries, ~~LLC (" Oxbow"),~~ an affiliate of our principal stockholder, to provide funding in an amount up to $ 12. 5 million, if necessary, to enable us to meet our obligations as they become due. Pursuant to the support letter, such funding would be in the form of a loan or equity investment. However, if such funding is required and Oxbow **Industries** does not provide additional funding to us, our liquidity, business, results of operations and financial condition could be materially and adversely impacted. The support letter expires March ~~11~~ **18** , ~~2025~~ **2026** . We believe our expected results of operations, cash and cash equivalents on hand, available borrowings from our Loan Agreement, potential cost reduction measures, and the support letter from Oxbow **Industries** , as needed, will provide sufficient liquidity to fund our operations for the next ~~12~~ **twelve** months from the date of issuance of the consolidated financial statements in this Annual Report on Form 10- K; however, we may need to seek additional financing and cannot provide any assurance that additional funds will be available when needed from any source or, if available, will be available on terms that are acceptable to us. If the amount of capital we are able to raise from financing activities, together with our revenues from operations, is not sufficient to satisfy our capital needs, we may have to reduce our operations accordingly, which could materially and adversely impact our business, results of operations and financial condition. Our indebtedness could adversely affect our cash flows and limit our flexibility to raise additional capital. We have a significant amount of indebtedness and may need to incur additional debt to support our growth. As of ~~January 1~~ **December 31** , 2023, our indebtedness totaled $ ~~99~~ **68** . ~~9~~ **2** million, consisting of $ ~~60~~ **21** . ~~1~~ **8** million under our Loan Agreement currently with an interest rate of 10. ~~5~~ **6** %, subject to adjustment in accordance with the terms of the Loan Agreement, $ 3. ~~0~~ **8** million of tool financing **advance payments** , ~~and a~~ $ ~~36~~ **6. 8 million of tool financing, and a $ 35** . 8 million financing from the sale of the land and building representing our corporate headquarters in Minnesota (the “ Financing ”). Recent significant increases in interest rates have increased our borrowing costs and continued increases in interest rates will further increase the cost of servicing our outstanding indebtedness, refinancing our outstanding indebtedness **,** and increase the cost of any new indebtedness. Under the terms of the Financing, we entered into an agreement to lease the land and building for our corporate headquarters from Oxbow Realty **Partners** , LLC **(“ Oxbow Realty ”)** , an affiliate of our principal stockholder, for initial payments of $ 0. 4 million per month over 20 years. The monthly payments are subject to a 2 % increase each year during the term of the lease. We are also required to make certain customary payments constituting additional rent, including certain monthly reserve, insurance **,** and tax payments, in accordance with the terms of the lease. Our substantial amount of debt could have important consequences, and could: • require us to dedicate a substantial portion of our cash and cash equivalents to make interest, rent **,** and principal payments, reducing the availability of our cash and cash equivalents and cash flow from operations to fund future capital expenditures, working capital, execution of our strategy and other general corporate requirements; • increase our cost of borrowing and limit our ability to access additional debt to fund future growth; • increase our vulnerability to general adverse economic and industry conditions and adverse changes in governmental regulations; • limit our flexibility in planning for, or reacting to, changes in our business and industry, which may place us at a disadvantage compared with our competitors; and • limit our ability to borrow additional funds, even when necessary to maintain adequate liquidity, which would also limit our ability to further expand our business. The occurrence of any of the foregoing factors could have a material adverse effect on our business, results of operations and financial condition. Our Loan Agreement contains restrictive covenants that may impair our ability to conduct business. Our Loan Agreement contains a number of customary affirmative and negative covenants that, among other things, limit or restrict our ability to: merge with another entity; acquire assets; enter into transactions outside the ordinary course; sell assets; make loans or investments; incur indebtedness; create liens; guaranty obligations; pay or declare dividends; repurchase our common stock; dissolve; engage in new businesses; pay amounts on subordinated debt; ~~and~~ enter into transactions with affiliates; change our jurisdiction of organization; amend our charter documents; enter into negative pledge agreements; and restrict subsidiary distributions, in each case, subject to certain limited exceptions. As a result of these covenants and restrictions, we are limited in how we conduct our business and we may be unable to raise additional debt or other financing to compete effectively or to take advantage of new business opportunities. The terms of any future indebtedness we may incur could include more restrictive covenants. Failure to comply with such restrictive covenants may lead to default and acceleration under our credit facility and may impair our ability to conduct business. Although we have not been in full compliance with all of the covenants and requirements in our credit facility in the past, to date our lenders have either waived these violations, permitted us to amend the covenants and / or otherwise not declared an event of default. We may not be able to maintain compliance with these covenants in the future and, if we fail to do so, we may not be able to obtain waivers from the lenders or amend the covenants, which may adversely affect our financial condition **.** **Recent events affecting the financial services industry could negatively impact our business, financial condition and results of operations. The closures in early- 2023 of Silicon Valley Bank, Signature Bank, and Silvergate Capital Corporation, as well as acquisitions of Credit Suisse and First Republic Bank at regulators’ behest, have created bank-specific and broader financial institution liquidity risks and concerns. While we did not have deposits at any of these institutions, uncertainty remains over potential impacts of such bank closures and acquisitions on the financial markets and broader global economy, and our business, our customers and suppliers, and / or our industry as a whole may be adversely impacted in ways that we cannot predict at this time. If other banks and financial institutions enter receivership or become insolvent in the future, our ability to access our existing cash and cash equivalents may be**

threatened. In addition, if our customers, suppliers, or other parties with whom we conduct business are unable to access funds, such parties' ability to pay or perform their obligations to us or to enter into new commercial arrangements requiring additional payments to us could be adversely affected. Moreover, continued volatility and disruptions in the capital and credit markets could affect our ability to obtain future financing on a timely basis, on commercially reasonable terms or at all. Any of these factors could adversely affect our business, financial condition and results of operations . Risks Relating to Government Regulation We are a party to several significant USG contracts, which are subject to unique risks. The funding of USG programs is subject to annual U. S. congressional appropriations. Many of the USG programs in which we or our customers participate may extend for several years. Long- term government contracts and related orders are subject to cancellation if appropriations for subsequent performance periods are not made. In addition, the USG may modify, curtail **,** or terminate its contracts and subcontracts without prior notice at its convenience upon payment for work done and commitments made at the time of termination. The termination of funding for a USG program, or any modification or curtailment of one of our major USG programs or contracts, would result in a loss of anticipated future revenue attributable to that program, which could have an adverse effect on our operations, financial condition **,** or demand for our products and services. Our government contracts are primarily fixed- price contracts where we bear a significant portion of the risk of cost overruns. These types of government contracts are priced, in part, on cost and scheduling estimates that are based on assumptions including prices and availability of experienced labor, equipment **,** and materials as well as productivity, performance **,** and future economic conditions. If these estimates prove inaccurate, if there are errors or ambiguities as to contract specifications, or if circumstances change due to, among other reasons, unanticipated technical problems, poor project execution, difficulties in obtaining permits or approvals, changes in local laws or labor conditions, weather delays, changes in the costs of equipment and materials **,** or our suppliers' or subcontractors' inability to perform, then cost overruns may occur. Our failure to accurately estimate the resources and time required for fixed- price contracts or our failure to complete our contractual obligations within a specified time frame or cost estimate could result in reduced profits or, in certain cases, a loss for that contract. If the contract is significant, or we encounter issues that impact multiple contracts, cost overruns could have a material adverse effect on our business, financial condition and results of operations. Our government contract activities are subject to audits by USG agencies, including agency Inspectors General. If any audit, inquiry **,** or investigation uncovers improper or illegal activities, we may be subject to civil and criminal penalties and administrative sanctions, including termination of contracts, suspension of payments, fines, and suspension or debarment from doing business with the USG. In addition, we rely on certain third- party business strategy consultants to assist us in procuring new opportunities to compete for and receive USG contracts. If these contractors were to engage in any improper or illegal activities, our USG contracts could be terminated and we could be prohibited from obtaining government contract in the future, regardless of whether we had involvement or knowledge of any such activities. We also could suffer reputational harm if allegations of impropriety were made against us, even if such allegations are later determined to be false. We have not been audited in the past by the USG but expect that we may be audited in the future. We are sometimes subject to potential USG review of our business and security practices due to our participation in government contracts. Any such inquiry or investigation could potentially result in a material adverse effect on our results of operations and financial condition. Our USG business also is subject to specific procurement regulations and other requirements. These requirements, although customary in USG contracts, increase our performance and compliance costs. For example, we are required to comply with the DMEA Trust Accreditation process, the U. S. International Traffic in Arms Regulations ~~, or~~ **("** ITAR **")** , the U. S. Export Administration Regulations ~~, or~~ **("** EAR **")** , as well as labor requirements, pricing justifications, cybersecurity requirements **,** and other federal contractor requirements imposed by the Federal Acquisition Regulation ~~, or~~ **("** FAR **")** , and the Defense FAR Supplement. In addition, we are subject to certain registration requirements, including registration with the Directorate of Defense Trade Controls and consortium registration or membership requirements. These compliance costs might further increase in the future, reducing our margins, which could have a negative effect on our financial condition. Failure to comply with these regulations and requirements could lead to suspension or debarment, for cause, from USG contracting or subcontracting for a period of time and could have a material adverse effect on our reputation and ability to secure future USG contracts. Some of our subsidiaries hold USG- issued facility security clearances and certain of our employees have qualified for and hold USG- issued personnel security clearances necessary to qualify for and ultimately perform certain USG contracts. Obtaining and maintaining security clearances for employees involves lengthy processes, and it is difficult to identify, recruit **,** and retain employees who already hold security clearances. If these employees are unable to obtain or retain security clearances or if our employees who hold security clearances terminate employment with us and we are unable to find replacements with equivalent security clearances, we may be unable to perform our obligations to customers whose work requires cleared employees, or such customers could terminate their contracts or decide not to renew them upon their expiration. The USG could also " invalidate " our facility security clearances for several reasons including unmitigated foreign ownership, control or influence, mishandling of classified materials, or failure to properly report required activities. An inability to obtain or retain our facility security clearances or engage employees with the required personnel security clearances for a particular contract could disqualify us from bidding for and winning new contracts with security requirements as well as result in the termination of any existing contracts requiring such security clearances. Changes to DoD business practices could have a material effect on the DoD' s procurement process and adversely impact our current programs and potential new awards. The defense industry has experienced, and we expect will continue to experience, significant changes to business practices resulting from an increased focus by the DoD on affordability, efficiencies, business systems, recovery of costs **,** and a reprioritization of available defense funds to key areas for future defense spending. The DoD continues to adjust its procurement practices, requirements criteria **,** and source selection methodology in an ongoing effort to reduce costs, gain efficiencies **,** and enhance program management and control. We expect the DoD' s focus on business practices to impact the contracting environment in which we operate as we and others in the industry adjust our practices to address the DoD' s initiatives and the reduced level of spending by the DoD. Depending on how these initiatives are implemented, they could have an impact on our current programs, as well as new business opportunities with the DoD. Our international sales and domestic operations are subject to applicable laws relating to trade, export controls , and foreign corrupt practices, the violation of which could adversely affect its operations. Due to our international sales and domestic operations, we must comply with all applicable international trade, customs, export controls , and economic sanctions laws and regulations of the United States and other countries. Conducting our operations subjects us to risks that include: • the burdens of complying with a wide variety of U. S. and international laws, regulations , and legal standards, including local data privacy laws, local consumer protection laws that could regulate permitted pricing and promotion practices, and restrictions on the use, import or export of certain technologies; • the restrictions imposed on our business, operations, and additional security requirements required for compliance with United States export regulations, including ITAR and the EAR, including " deemed export " compliance which precludes foreign national access to restricted data, and export restrictions on materials and technology; • longer accounts receivable payment cycles and difficulties in collecting accounts receivable; • fluctuations in currency exchange rates; • tariffs and trade barriers and other regulatory or contractual limitations on our ability to sell or develop our solutions in some international markets; • difficulties in managing and staffing international operations; • compliance with U. S. laws that apply to our operations, including the Foreign Corrupt Practices Act, the Trading with the Enemy Act , and regulations of the Office of Foreign Assets Control; • changes in trade sanctions laws may restrict our business practices, including cessation of business activities in sanctioned countries or with sanctioned entities, and may result in modifications to compliance programs; • potentially adverse tax consequences and compliance costs resulting from the complexities of international tax systems and overlap of different tax regimes; • reduced or varied protection of intellectual property rights in some countries that could expose us to increased risk of infringement of our patents and other intellectual property; • global disruptions in custom spending patterns or our ability to provide service to our customers as a result of any widespread public health issues ~~,~~ including a pandemic ~~such as COVID- 19~~ ; and • political, social , and economic instability, terrorist attacks, wars , and security concerns in general. The occurrence of any of these risks could negatively affect our international business and, consequently, our overall business, results of operations and financial condition **. Failure to comply with the broad range of laws, regulations, and standards in the jurisdictions in which we operate may result in exposure to substantial disruptions, costs, and liabilities. In addition to the laws relating to trade, export controls, and foreign corrupt practices discussed above, our products, manufacturing facilities, and business operations are subject to numerous federal, state, and local statutory and regulatory requirements that impose on us increasingly complex, stringent, and costly monitoring and compliance activities, including but not limited to environmental, health, and safety protection standards and permitting, labeling, and other requirements regarding (among other things) product efficiency and performance, material makeup, air quality and emissions, and wastewater discharges; the use, handling, and disposal of hazardous or toxic materials and substances, including per- and polyfluoroalkyl substances (commonly known as PFAS or " forever chemicals ") and other substances of concern; remediation of environmental contamination; and working conditions for and compensation of our employees. We may also be affected by future standards, laws, or regulations, including those imposed in response to energy, climate change, product functionality, geopolitical, corporate social responsibility, or similar concerns. These standards, laws, or regulations may impact our costs of operation, the sourcing of raw materials, and the manufacture and distribution of our products and place restrictions and other requirements or impediments on the products and solutions we can sell in certain geographical locations or on the willingness of certain investors to own our shares** . Risks Relating to Intellectual Property We depend on intellectual property to succeed in our business, and any failure or inability to obtain, preserve, enforce, defend , and protect our technologies or intellectual property rights could harm our business and financial condition. Our business relies in part on trade secrets and other non- patent intellectual property rights, all of which offer only limited protection to our products and services (including technologies and processes used in our business). Although we regularly enter into non- disclosure and confidentiality agreements with employees, vendors, customers , and other third parties, these agreements may be breached or otherwise fail to prevent disclosure or use of trade secrets, know-how, and other proprietary or confidential information effectively or fail to provide an adequate remedy in the event of such unauthorized disclosure or use. Our ability to police misappropriation or infringement of our trade secrets and other non- patent intellectual property rights is uncertain, particularly in other countries. In addition, the existence of our own proprietary and confidential information, including trade secrets and know- how, does not protect against independent discovery or development of such intellectual property by other persons. If our proprietary or confidential information is misappropriated, is no longer confidential, or is not protectable as a trade secret, we may no longer be able to protect that information from further disclosure or use by others. We currently do not own any patents. Patents can provide a competitive advantage to the patent holder because they may give the patent holder the ability to prevent competitors or other parties from practicing the inventions covered by the patents during the patent term, or they may give the patent holder the right to collect royalties from those parties, even if those parties arrived at the covered inventions independently of the patent holder. Without patent protection on our products and services, we will not have this competitive advantage. In addition, if we do not obtain patent protection for our products and services, we would not have patents to assert in response against a competitor or other party that asserts its patents against us or our customers, and we may be at a disadvantage in any patent dispute with such a party. We may in the future seek to obtain patent protection for some of our products and services, but we may not be successful. The process of applying for patents to obtain patent protection may take a long time and can be expensive. We cannot provide any assurance that patents will be issued from applications we may submit or that, if patents are issued, they will not be challenged, invalidated , or circumvented , or that the rights granted under the patents will provide us with meaningful protection or any commercial advantage. We have sought, and may in the future seek, trademark registrations for certain trademarks used in our business, but we may not be successful. Registered trademarks can provide advantages to the trademark owner in the jurisdictions covered by the registrations. The process of applying for trademark registrations may take a long time and can be expensive. We cannot provide any assurance that trademark registrations will be granted from applications we have submitted or may submit or that, if trademark registrations are granted, they will not be challenged, invalidated , or circumvented , or that the rights granted under the trademark registrations will provide us with meaningful protection or any commercial advantage. Costly and time- consuming litigation could be necessary to enforce and determine the scope of our proprietary rights. In addition, other countries in which we market our products and services may not respect our intellectual property rights to the same extent as the United States. Effective intellectual property enforcement may be unavailable or limited in some countries. We cannot provide any assurance that we will, at all times, enforce our intellectual property rights, and it may be difficult for us to protect our technologies and intellectual property rights from misuse or infringement by others. Further, courts may not uphold our intellectual property rights or enforce the contractual arrangements that we have entered into to protect our proprietary and confidential information, which may reduce our opportunities to generate revenues. In the event that we are unable to enforce our intellectual property rights, our business and financial condition may be harmed. We depend on intellectual property licensed from third parties to succeed in our business, and any failure or inability to obtain or preserve rights under third- party licenses could harm our business and financial condition. We use technologies and intellectual property rights that we license from third parties and that are material to our business. As one example, we received a license to certain technology and intellectual property rights in connection with our divestiture from Cypress. This license remains in effect and is critical to our business, and it may be terminated in the case of specified breaches or other events. Parties with which we currently have license agreements, or with which we may enter into license agreements in the future, may elect not to renew those agreements or may have the right to terminate those agreements for our material breach, for convenience, or upon the occurrence of a change of control or other events or circumstances at any time, which could affect our ability to make use of material technologies or intellectual property rights. We are required to pay ongoing royalties under some of these licenses, we may undertake obligations to pay royalties in the future, and these royalty obligations do or would impose costs on our business. Our suppliers of technologies and intellectual property rights may suffer delays, quality issues, or other problems affecting their supply to us, or a supplier' s technologies and intellectual property rights may no longer be available to us, for example if the supplier discontinues a line of business or all of its business, or liquidates, merges, or is acquired by another company. Changes in our business from time to time may require us to negotiate new licenses or modifications to existing licenses, which may not be possible. As an alternative to the above, we might be required to develop non- infringing technology, which could require significant effort and expense and ultimately might not be successful. If third - party licenses terminate or are not renewed, or if third - party technologies or intellectual property rights are no longer available to us, our business and financial condition could be harmed. Our collaboration with others regarding the development of technologies and intellectual property may require that we restrict use of certain technologies and intellectual property and may result in disputes regarding ownership of or rights to use or enforce intellectual property rights, which could harm our business and financial condition. Our business involves collaboration, including customization and other development of technologies and intellectual property, with and for our customers, vendors , and other third parties. We frequently enter into agreements with customers, vendors , and others that involve customization and other development of technologies and intellectual property. Some of these agreements contain terms that allocate ownership of, and rights to use and enforce, technologies and intellectual property rights. As a result of these agreements, we may be required to limit use of, or refrain from using, certain technologies and intellectual property rights in parts of our business. Determining inventorship and ownership of technologies and intellectual property rights resulting from development activities can be difficult and uncertain. Disputes may arise with customers, vendors , and other third parties regarding ownership of and rights to use and enforce these technologies and intellectual property rights or regarding interpretation of our agreements with these third parties, and these disputes may result in claims against us or claims that intellectual property rights are not owned by us, are not enforceable, or are invalid. The cost and effort to resolve these types of disputes, or the loss of rights in technologies in intellectual property rights if we lose these types of disputes, could harm our business and financial condition. Claims by others that we infringe their proprietary rights could harm our business and financial condition. Third parties could claim that we, or our products or services (including technologies and processes used in our business) infringe, misappropriate, or otherwise violate their intellectual property rights. The communications, technology, and other industries in which we operate are characterized by the existence of a large number of patents, copyrights, trademarks and trade secrets and by frequent litigation, including by non- practicing entities, based on allegations of infringement, misappropriation , or other violations of intellectual property rights, and we expect that such claims may increase as competition in the markets we serve continues to intensify, as we introduce new products and services (including in geographic areas where we currently do not operate) and as business- model or product or service overlaps between our competitors and us occur. To the extent that we have greater prominence and market exposure as a public company, we may face a higher risk of being the target of intellectual property claims (including infringement claims). From time to time, we may receive notices alleging that we have infringed, misappropriated , or otherwise violated other parties' intellectual property rights. There may be third- party intellectual property rights, including patents and pending patent applications, that cover significant aspects of our products and services. If our employees, consultants , or contractors use technology or know- how, including proprietary or confidential information, such as trade secrets, owned by third parties in their work for us, disputes may arise between us and those third parties. Any claims of infringement, misappropriation, or other violation by a third party, even claims without merit, could cause us to incur substantial defense costs and could distract our management and technical personnel from our business, and there can be no assurance that we or our products or services will be able to withstand such claims. Competitors may have the capability to dedicate substantially greater resources to enforce their intellectual property rights and to defend claims that may be brought against them than we do. Further, a party making such a claim, if successful, could secure a judgment that requires us to pay substantial damages, which potentially could include treble damages if we are found to have willfully infringed patents. A judgment also could include an injunction or other court order that could prevent us from using our technologies, offering our products or services, or otherwise conducting our business. In addition, we might be required to enter into a cross license or otherwise seek a license or enter into royalty arrangements for the use of the infringed intellectual property rights, which may not be available on commercially reasonable terms or at all. We may also be required to re- engineer our products or services, incur additional costs, discontinue the distribution or provision of certain products or services or the availability of certain features or capabilities of our products or services, or take other remedial actions. Any one or more of these events or circumstances, or the failure to obtain a license or the costs associated with any license, could harm our business and financial condition. Third parties also may assert intellectual property claims against our customers relating to our products or services. Any of these claims might require us to initiate or defend potentially protracted and costly litigation on their behalf, regardless of the merits of these claims, because under specified conditions we agree to defend and indemnify our customers from claims of infringement, misappropriation, or other violation of intellectual property or other rights of third parties. We may be required to incur costs of the defense of these claims, we may be required to pay settlements of these claims, and if any of these claims were to succeed, we might be forced to pay damages on behalf of our customers, which could harm our business and our reputation in the industry. We use open source software and other technology, which could negatively affect our business and subject us to litigation or other actions. We use software and other technology in our business that is licensed under open source license terms, and we may use more open source technology in the future. We do not currently distribute technology that includes open source, but we may do so in the future, either ourselves or through a partner. The terms of many open source licenses have not been interpreted by U. S. courts, and there is a risk that these licenses could be construed in a way that could impose unanticipated conditions or restrictions on our ability to commercialize products that include open source. As a result, we could be subject to lawsuits by parties claiming ownership of what we believe to be open source technology or claiming breach of open source licenses. Litigation could be costly for us to defend, harm our business and financial condition, or require us to devote additional research and development resources to change our products or services. In addition, if we were to combine our proprietary source code or other technology with open source technology in a certain manner, we could, under certain of the open source licenses, be required to release our source code or other proprietary technology to the public. This would allow our competitors to create similar products with less development effort and time. If we inappropriately use open source technology, or if the license terms for open source technology that we use change, we may be required to re- engineer our products or services, incur additional costs, discontinue the distribution of certain products or services or the availability of certain features or capabilities of our products or services, or take other remedial actions. In addition to risks related to license requirements, usage of open source software or other technology can lead to greater risks than use of third- party commercial technology, as open source licensors generally do not provide warranties or assurance of title or controls on origin of the technology. In addition, many of the risks associated with usage of open source, such as the lack of warranties or assurances of title, cannot be eliminated, and could, if not properly addressed, harm our business and financial condition. We have established processes to help alleviate these risks, but we cannot be sure that all of our use of open source is in a manner that is consistent with our current policies and procedures, or will not subject us to liability. Risks Relating to Ownership of ~~our~~ **Our** Common Stock The price of our common stock has been volatile and may continue to fluctuate substantially. The trading price of shares of our common stock has been **,** and is likely to continue to be **,** volatile. The stock market in general **,** and the market for smaller technology companies in particular **,** have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. Since shares of our common stock were sold in our IPO in April 2021 at a price of $ 14. 00 per share, the closing price of our common stock has ranged from $ 4. 43 to $ 36. 80 through ~~January 1~~ **December 31** , 2023. The price of our common stock could be subject to wide fluctuations in response to the following factors, among others: • announcements of new products, services or technologies, commercial relationships **,** or other events by us or our competitors; • regulatory or legal developments in the United States and other countries in which we operate; • developments or disputes concerning patent applications, issued patents **,** or other proprietary rights; • the recruitment or departure of key personnel; • the level of expenses related to any of our wafers or development programs; • actual or anticipated changes in estimates as to financial results, development timelines **,** or recommendations by securities analysts; • operating results that fail to meet expectations of securities analysts that cover our company; • variations in our financial results or those of companies that are perceived to be similar to us; • general economic and political factors, including market conditions in our industry or the industries of our customers, inflationary pressures **,** and interest rate fluctuations; • major catastrophic events; including those resulting natural disasters, incidents of terrorism, wars ~~(including the war in Ukraine)~~ or responses to these events; • price and volume fluctuations in the overall stock market from time to time; • significant volatility in the market price and trading volume of smaller technology companies in general and of companies in the semiconductor, microelectronics **,** and quantum computing industries in particular; • sales of large blocks of our common stock; • litigation involving us, our industry, or both, including disputes or other developments relating to our ability to patent our processes and technologies and protect our other proprietary rights; • fluctuations in the trading volume of our shares or the size of the trading market for our shares held by non- affiliates; and • the other factors described in this “ Risk Factors ” section. If the market for smaller technology company stocks or the stock market in general experiences a loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, results of operations or financial condition. The market price of our common stock may also decline in reaction to events that affect other companies in our industry, even if these events do not directly affect us. In addition, the stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. Stock prices of many companies have fluctuated in a manner unrelated or disproportionate to the operating performance of those companies. In the past, following periods of volatility in the market price of a company’ s securities, securities class action litigation has often been brought against that company. Litigation of this nature, if instituted against us, could cause us to incur substantial costs and divert our management’ s attention and resources from our business. Fluctuations in our operating results and cash flow could, among other things, give rise to short- term liquidity issues. In addition, our revenue, gross and operating margin, net loss, key operating metrics, cash flows **,** and other operating results in future quarters may fall short of the expectations of investors and financial analysts, which could have an adverse effect on the price of our common stock. We do not intend to pay dividends in the future and any return on investment may be limited to the value of our common stock. We do not anticipate paying cash dividends in the foreseeable future. Any future payment of dividends on our common stock will depend on earnings, financial condition and other business and economic factors affecting us at such time as our board of directors may consider relevant. Our current intention is to apply net earnings, if any, to finance the growth and development of our business **,** and we do not anticipate declaring or paying any cash dividends in the foreseeable future. In addition, the terms of our Loan Agreement prohibit us from paying dividends and any future debt agreements we may enter into may preclude us from paying dividends. If we do not pay dividends, our common stock may be less valuable because a return on investment will only occur if our stock price appreciates. We are a holding company and rely on dividends, distributions, and other payments, advances, and transfers of funds from our subsidiaries to meet our obligations. We are a holding company and we conduct substantially all activities through our subsidiaries. As a result, satisfying any future payment obligations we may have, and our ability to pay dividends to our stockholders if we desire to do so in the future, may be largely dependent upon cash dividends and distributions and other transfers from our subsidiaries. The agreements governing the indebtedness of our subsidiaries impose restrictions on our subsidiaries' ability to pay dividend distributions or other transfers to us. In particular, our subsidiary SkyWater Technology Foundry is limited in its ability to declare dividends or make any payment on equity to, directly or indirectly, fund a dividend or other distribution to us. Consequently, substantially all of the net assets of our subsidiaries are restricted. The deterioration of the earnings from, or other available assets of, our subsidiaries for any reason could also limit or impair their ability to pay dividends or other distributions to us. ~~We have elected to take advantage of the controlled company exemption phase- in periods from certain corporate governance requirements, which could make our common stock less attractive to some investors or otherwise adversely affect its trading price. Under the marketplace rules of the Nasdaq Capital Market, a company of which more than 50 % of the voting power is held by an individual, a group or another company is a " controlled company " and may elect not to comply with certain Nasdaq corporate governance requirements. Prior to December 12, 2022, Oxbow, and its affiliates, beneficially owned shares of our common stock representing more than 50 % of the combined voting power of our outstanding common stock and we therefore qualified as a " controlled company ". On December 12, 2022, we ceased to be a controlled company under the Nasdaq rules. Consequently, we are required to comply with Nasdaq' s corporate governance requirements applicable to listed companies generally, subject to certain phase- in periods. Under the Nasdaq rules phase- in periods, we will be required, subject to certain exceptions, to have each of our compensation committee and nominating and corporate governance committee consist entirely of independent directors by December 12, 2023. Because our compensation committee and nominating and corporate governance committee are not composed entirely of independent directors, our stockholders do not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance rules of the Nasdaq Capital Market, which could make our common stock less attractive to some investors or otherwise adversely affect its trading price.~~ A limited number of stockholders have the ability to influence the outcome of director elections and other matters requiring stockholder approval. As of ~~January 1~~ **December 31** , 2023, **an affiliate of** Oxbow **Industries** and our directors and executive officers beneficially owned approximately ~~55~~ **45** % of our outstanding common stock. These stockholders, if they acted together, could exert substantial influence over matters requiring approval by our stockholders, including electing directors, adopting new compensation plans and approving mergers, acquisitions or other business combination transactions. This concentration of ownership may discourage, delay **,** or prevent a change of control of our company, which could deprive our stockholders of an opportunity to receive a premium for their stock as part of a sale of our company and might reduce our stock price. These actions may be taken even if they are opposed by our other stockholders. We are an " emerging growth company " and **a " smaller reporting company " and** our election to comply with the reduced disclosure requirements applicable to emerging growth **companies and smaller reporting** companies may make our common stock less attractive to investors. We are an " emerging growth company, " as defined in the JOBS Act, and we take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not " emerging growth companies " including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404, reduced financial disclosure obligations, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and any golden parachute payments not previously approved. We may take advantage of these provisions until we are no longer an " emerging growth company. " We would cease to be an " emerging growth company " upon the earliest to occur of: (1) the last day of the fiscal year in which we have more than $ 1. ~~07~~ **235** billion in annual revenue; (2) the date we qualify as a large accelerated filer, with at least $ 700 million of equity securities held by non- affiliates; (3) the issuance, in any three- year period, by us of more than $ 1. 0 billion in non- convertible debt securities; and (4) the last day of the fiscal year ending after the fifth anniversary of our IPO. In addition, Section 107 of the JOBS Act also provides that an " emerging growth company " can take advantage of an extended transition period provided for complying with new or revised accounting standards. In other words, an " emerging growth company " can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to opt in to the extended transition period for complying with new or revised accounting standards. Our financial statements therefore may not be comparable to those of companies that comply with such new or revised accounting standards. **We are also a " smaller reporting company, " as defined in the Exchange Act. Even after we no longer qualify as an " emerging growth company, " we may still qualify as a " smaller reporting company, " and would be able to continue to take advantage of certain of the scaled disclosures available to " smaller reporting companies. "** As a result, the information that we provide our security holders may be different than the information other public companies provide their security holders. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile. Provisions in our certificate of incorporation and bylaws and in Delaware law could discourage takeover attempts even if our stockholders might benefit from a change in control of our company. Provisions in our certificate of incorporation and bylaws and in Delaware law may discourage, delay , or prevent a merger, acquisition , or other change in control of our company that stockholders may favor, including transactions in which stockholders might receive a premium for their shares of common stock. These provisions also could make it more difficult for our stockholders to elect directors of their choosing and to cause us to take other corporate actions our stockholders support, including removing or replacing our current management. The certificate of incorporation and bylaw provisions: • limit the number of directors constituting the entire board of directors to a maximum of eleven directors, subject to the rights of the holders of any outstanding series of preferred stock, and provide that the authorized number of directors at any time will be fixed exclusively by a resolution adopted by the affirmative vote of the authorized number of directors (without regard to vacancies); • establish advance notice procedures for stockholders to make nominations of candidates for election as directors or to present any other business for consideration at any annual or special stockholder meeting; • require that any action to be taken by our stockholders must be affected at a duly called annual or special meeting of stockholders and not be taken by written consent; and • provide authority for the board of directors without stockholder approval to provide for the issuance of up to 80, 000, 000 shares of preferred stock, in one or more series, with terms and conditions, and having rights, privileges and preferences, to be determined by the board of directors. In addition, we are subject to Section 203 of the General Corporation Law of the State of Delaware, or the Delaware General Corporation Law. This statute prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder (generally a person who, together with its affiliates, owns 15 % or more of our voting stock) for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in the manner prescribed by this statute. Our certificate of incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or with our directors, our officers , or our other employees. Our certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will, to the fullest extent permitted by law, be the sole and exclusive forum for: • any derivative action or proceeding brought on our behalf; • any action asserting a claim of breach of a fiduciary duty owed by, or other wrongdoing by, any of our directors, officers or other employees, or stockholders to us or our stockholders; • any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law or as to which the Delaware General Corporation Law confers jurisdiction on the Court of Chancery of the State of Delaware; • any action to interpret, apply, enforce , or determine the validity of our certificate of incorporation or the bylaws (including any right, obligation , or remedy thereunder); and • any action asserting a claim governed by the internal affairs doctrine or any other " internal corporate claim " as such term is defined in Section 115 of the Delaware General Corporation Law, in each case subject to such court' s having personal jurisdiction over the indispensable parties named as defendants. Our certificate of incorporation also 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 the resolution of any complaint asserting a cause of action arising under the Securities Act. Any person purchasing or otherwise acquiring any interest in shares of our common stock is deemed to have received notice of and consented to the foregoing provisions. This choice of forum provision may limit a stockholder' s ability to bring a claim in a judicial forum that it finds more favorable for disputes with us or with our directors, our officers or other employees, or our other stockholders, which may discourage such lawsuits against us and such other persons. Alternatively, if a court were to find this choice of forum provision inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect our business, results of operations and financial condition.