

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

(Mark One)

(X) QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15 (d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended March 29, 1998  
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OR

( ) TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 1-7882  
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ADVANCED MICRO DEVICES, INC.

-----  
(Exact name of registrant as specified in its charter)

Delaware 94-1692300  
-----  
State or other jurisdiction (I.R.S. Employer Identification No.)  
of incorporation or organization

One AMD Place  
P. O. Box 3453  
Sunnyvale, California 94088-3453  
-----  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (408) 732-2400  
-----

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes X No  
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The number of shares of \$0.01 par value common stock outstanding as of April 10, 1998: 143,365,262.

ADVANCED MICRO DEVICES, INC.  
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I. FINANCIAL INFORMATION

ITEM 1.

FINANCIAL STATEMENTS

ADVANCED MICRO DEVICES, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(Unaudited)

(Thousands except per share amounts)

<TABLE>

<CAPTION>

	Quarter Ended	
	March 29, 1998	March 30, 1997
<S>	<C>	<C>
Net sales	\$ 540,856	\$ 551,999
Expenses:		
Cost of sales	423,591	349,076
Research and development	128,120	104,908
Marketing, general and administrative	88,214	94,519
	639,925	548,503
Operating income (loss)	(99,069)	3,496
Litigation settlement	(11,500)	--
Interest income and other, net	5,581	13,322
Interest expense	(12,472)	(9,410)
Income (loss) before income taxes and equity in joint venture	(117,460)	7,408
Provision (benefit) for income taxes	(46,997)	2,148
Income (loss) before equity in joint venture	(70,463)	5,260
Equity in net income of joint venture	7,736	7,691
Net income (loss)	\$ (62,727)	\$ 12,951
Net income (loss) per common share:		
Basic	\$ (0.44)	\$ 0.09
Diluted	\$ (0.44)	\$ 0.09
Shares used in per share calculation:		
Basic	142,503	138,616
Diluted	142,503	146,758

</TABLE>

See accompanying notes

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ADVANCED MICRO DEVICES, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS\*

(Thousands)

<TABLE>

<CAPTION>

	March 29, 1998	December 28, 1997
<S>	<C>	<C>
Assets		
Current assets:		
Cash and cash equivalents	\$ 192,481	\$ 240,658
Short-term investments	114,323	226,374

Total cash, cash equivalents and short-term investments	306,804	467,032
Accounts receivable, net	254,346	329,111
Inventories:		
Raw materials	32,028	33,375
Work-in-process	92,712	96,712
Finished goods	33,119	38,430
Total inventories	157,859	168,517
Deferred income taxes	160,583	160,583
Prepaid expenses and other current assets	36,214	50,024
Total current assets	915,806	1,175,267
Property, plant and equipment, at cost	3,951,830	3,799,051
Accumulated depreciation and amortization	(1,897,535)	(1,808,362)
Property, plant and equipment, net	2,054,295	1,990,689
Investment in joint venture	208,616	204,031
Other assets	153,589	145,284
	\$ 3,332,306	\$ 3,515,271
Liabilities and Stockholders' Equity		
-----		
Current liabilities:		
Notes payable to banks	\$ 5,372	\$ 6,601
Accounts payable	279,176	359,536
Accrued compensation and benefits	74,047	63,429
Accrued liabilities	113,186	134,656
Income tax payable	13,500	12,676
Deferred income on shipments to distributors	78,427	83,508
Current portion of long-term debt and capital lease obligations	95,048	66,364
Total current liabilities	658,756	726,770
Deferred income taxes	41,568	96,269
Long-term debt and capital lease obligations, less current portion	666,271	662,689
Stockholders' equity:		
Capital stock:		
Common stock, par value	1,435	1,428
Capital in excess of par value	1,026,313	1,018,884
Retained earnings	1,003,404	1,066,131
Accumulated other comprehensive income	(65,441)	(56,900)
Total stockholders' equity	1,965,711	2,029,543
	\$ 3,332,306	\$ 3,515,271
	=====	=====

\* Amounts as of March 29, 1998 are unaudited. Amounts as of December 28, 1997 were derived from the December 28, 1997 audited financial statements.

See accompanying notes

</TABLE>

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<TABLE>  
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ADVANCED MICRO DEVICES, INC.  
-----  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
-----  
(Unaudited)  
(Thousands)

	Quarter Ended	
	March 29, 1998	March 1997
	-----	-----
30,		
<S>	<C>	<C>
Cash flows from operating activities:		
Net income (loss)	\$ (62,727)	\$
12,951		
Adjustments to reconcile net income (loss) to net cash (used in) provided by operating activities:		
Depreciation and amortization	112,160	
88,821		
Net loss on disposal of property, plant and equipment	528	
3,110		
Net gain realized on sale of available-for-sale securities	-	
(4,978)		
Compensation recognized under employee stock plans	1,961	

7,733		
Undistributed income of joint venture	(7,736)	
(7,691)		
Changes in operating assets and liabilities:		
Net decrease (increase) in receivables, inventories, prepaid expenses and other assets	83,843	
(5,286)		
Net (increase) decrease in deferred income taxes	(54,701)	
4,440		
Decrease (increase) in income tax payable	824	
(5,777)		
Net (decrease) increase in payables and accrued liabilities	(95,730)	
21,475		
--	-----	-----
Net cash (used in) provided by operating activities	(21,578)	
114,798		
--	-----	-----
Cash flows from investing activities:		
Purchase of property, plant and equipment	(181,230)	
(150,594)		
Proceeds from sale of property, plant and equipment	5,707	
130		
Purchase of available-for-sale securities	(248,361)	
(308,326)		
Proceeds from sale of available-for-sale securities	359,184	
138,892		
Investment in joint venture	-	
(128)		
--	-----	-----
Net cash used in investing activities	(64,700)	
(320,026)		
--	-----	-----
Cash flows from financing activities:		
Proceeds from borrowings	49,083	
261,584		
Payments on debt and capital lease obligations	(16,457)	
(21,993)		
Proceeds from issuance of stock	5,475	
24,828		
--	-----	-----
Net cash provided by financing activities	38,101	
264,419		
--	-----	-----
Net (decrease) increase in cash and cash equivalents	(48,177)	
59,191		
Cash and cash equivalents at beginning of period	240,658	
166,194		
--	-----	-----
Cash and cash equivalents at end of period	\$ 192,481	\$
225,385		
=====	=====	
Supplemental disclosures of cash flow information:		
Cash paid (refunded) during the first three months for:		
Income taxes	\$ (1,498)	\$
(101,435)		
=====	=====	

</TABLE>  
See accompanying notes  
-----

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
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- The results of operations for the interim periods shown in this report are not necessarily indicative of results to be expected for the fiscal year. In the opinion of management, the information contained herein reflects all adjustments necessary to make the results of operations for the interim periods a fair statement of such operations. All such adjustments are of a normal recurring nature.

The Company uses a 52- to 53-week fiscal year ending on the last Sunday in December. The quarters ended March 29, 1998 and March 30, 1997 each included 13 weeks.

Certain prior year amounts on the Condensed Consolidated Financial Statements have been reclassified to conform to the 1998 presentation.

2. The following is a summary of available-for-sale securities as of March 29, 1998 (in thousands):

<TABLE>	
<S>	
<C>	
Cash equivalents:	
Commercial paper	\$ 4,954
Certificates of deposit	20,001
Federal agency notes	28,032
Other debt securities	26
	-----
Total cash equivalents	\$ 53,013
	=====
Short-term investments:	
Money market auction rate preferred stocks	\$ 61,500
Certificates of deposit	14,993
Treasury notes	10,009
Corporate notes	17,950
Commercial paper	9,871
	-----
Total short-term investments	\$114,323
	=====
Long-term investments:	
Equity investments	\$ 12,438
Treasury notes	1,996
	-----
Total long-term investments	\$ 14,434
	=====

</TABLE>

3. Basic earnings per share is based upon weighted-average common shares outstanding. Diluted earnings per share is computed using the weighted-average common shares outstanding plus any potential dilutive securities. Dilutive securities include stock options, warrants, restricted stock, convertible debt and convertible preferred stock. The following table sets forth the computation of basic and diluted net income (loss) per common share:

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<TABLE>  
<CAPTION>

(Thousands except per share data)

	Quarter Ended	
	March 29, 1998	March 30, 1997
	-----	-----
<S>	<C>	<C>
Numerator:		
Net income (loss)	\$ (62,727)	\$ 12,951
	-----	-----
Numerator for basic and diluted net income (loss) per common share	\$ (62,727)	\$ 12,951
	-----	-----
Denominator:		
Denominator for basic net income (loss) per common share - weighted-average shares	142,503	138,616
Effect of dilutive securities:		
Employee stock options	-	7,873
Warrants	-	269
	-----	-----
Dilutive potential common shares	-	8,142
Denominator for diluted net income (loss) per common share - adjusted weighted-average shares	142,503	146,758
	-----	-----
Basic net income (loss) per common share	\$ (0.44)	\$ 0.09
	=====	=====
Diluted net income (loss) per common share	\$ (0.44)	\$ 0.09
	=====	=====

</TABLE>

Options, warrants and restricted stock were outstanding during the quarter ended March 29, 1998, but were not included in the computation of diluted net loss per common share because the effect in periods with a net loss would be antidilutive. Options to purchase 335,980 shares of common stock at a weighted-average price of \$35.51 per share were outstanding during the quarter ended March 30, 1997, but were not included in the computation of diluted net income per common share because the options' exercise price was greater than the average market price of the common shares and, therefore, the effect would be antidilutive.

4. In 1996, the Company entered into a syndicated bank loan agreement (the

Credit Agreement), which provides for a \$150 million three-year secured revolving line of credit (which is currently unused) and a \$250 million four-year secured term loan. All of the secured term loan is outstanding at March 29, 1998. The secured loan is repayable in eight equal quarterly installments of approximately \$31 million commencing in October 1998. The Credit Agreement contains provisions regarding limits on the Company's and its subsidiaries' ability to engage in various transactions and requires satisfaction of specified financial performance criteria. At March 29, 1998, the Company was in compliance with all restrictive covenants of the Credit Agreement and all retained earnings were restricted as to payments of cash dividends on common stock.

5. In 1993, AMD and Fujitsu Limited formed a joint venture, Fujitsu AMD Semiconductor Limited (FASL), for the development and manufacture of non-volatile

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memory devices. FASL operates advanced integrated circuit manufacturing facilities in Aizu-Wakamatsu, Japan, to produce Flash memory devices. The Company's share of FASL is 49.992 percent and the investment is being accounted for under the equity method. At March 29, 1998, the cumulative adjustment related to the translation of the FASL financial statements into U.S. dollars resulted in a decrease of approximately \$49 million to the investment in FASL. In the first quarter of 1998 and of 1997, the Company purchased \$60 million and \$50 million, respectively, of Flash memory devices from FASL. At March 29, 1998 and March 30, 1997, the Company had outstanding payables of \$39 million and \$24 million, respectively, to FASL for Flash memory device purchases. At March 29, 1998 and March 30, 1997, the Company had outstanding royalty receivables of \$6 million and \$8 million, respectively, as a result of FASL sales. In the first quarter of 1998 and of 1997, the Company earned royalty income of \$6 million and \$4 million, respectively, as a result of FASL sales.

The following is condensed unaudited financial data of FASL:

(Unaudited)	Quarter Ended	
	March 29, 1998	March 30, 1997
<S>	<C>	<C>
Net sales	\$119,001	\$78,837
Gross profit	16,714	12,349
Operating income	13,929	12,324
Net income	10,550	6,047

The Company's share of the above FASL net income differs from the equity in net income of joint venture reported on the Condensed Consolidated Statements of Operations due to adjustments resulting from the related party relationship between FASL and the Company which are reflected on the Company's Condensed Consolidated Statements of Operations.

6. As of January 1, 1998, the Company adopted Statement of Financial Accounting Standards No. 130 (SFAS 130), "Reporting Comprehensive Income." SFAS 130 establishes new rules for the reporting and display of comprehensive income and its components; however, the adoption of this Statement had no impact on the Company's net loss or stockholders' equity. SFAS 130 requires unrealized gains or losses on the Company's available-for-sale securities and foreign currency translation adjustments, which prior to adoption were reported separately in stockholders' equity, to be included in other comprehensive income.

Total comprehensive loss amounted to approximately \$71 million and \$11 million, respectively. The following are the components of comprehensive loss:

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(Thousands)	Quarter Ended	
	March 29, 1998	March 30, 1997
<S>	<C>	<C>
Net income (loss)	\$ (62,727)	\$ 12,951
Foreign currency translation adjustments	(7,313)	(22,568)
Unrealized losses on securities, net of tax:		
Unrealized holding losses arising during the period	(1,228)	2,473
Less: Reclassification adjustment for gains included in earnings	-	(3,534)
Other comprehensive loss	(8,541)	(23,629)
Comprehensive loss	\$ (71,268)	\$ (10,678)

The components of accumulated other comprehensive income, net of related tax are as follows:

(Thousands)	March 29, 1998	December 28, 1997
<S>	<C>	<C>
Unrealized gain on investments	779	2,007
Cumulative translation adjustments	(66,220)	(58,907)
	-----	-----
	(65,441)	(56,900)
	=====	=====

</TABLE>

7. On April 23, 1998, the Company announced it had reached an agreement in principle to settle the class action securities lawsuit against the Company and certain of its current and former officers and directors. The agreement in principle to settle is subject to the approval of the Company's Board of Directors and confirmation by the United States District Court in San Jose, California. The suit was filed in November 1995 and related to the Company's AMD-K5 microprocessor development project. The Company has recorded a liability of \$11,500,000 for the cost of settlement to the Company.

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

### Cautionary Statement Regarding Forward-Looking Statements

The statements in this Management's Discussion and Analysis of Financial Condition and Results of Operations that are forward-looking are based on current expectations and beliefs and involve numerous risks and uncertainties that could cause actual results to differ materially. The forward-looking statements relate to operating results; anticipated cash flows; realization of net deferred tax assets; capital expenditures; adequacy of resources to fund operations and capital investments; the Company's ability to access external sources of capital; the Company's ability to transition to new process technologies; anticipated market growth; Year 2000 expenses; the effect of foreign currency hedging transactions; the effect of adverse economic conditions in Asia; and the Dresden Fab 30 and FASL manufacturing facilities. See Financial Condition and Risk Factors below, as well as such other risks and uncertainties as are detailed in the Company's Securities and Exchange Commission reports and filings for a discussion of the factors that could cause actual results to differ materially from the forward-looking statements.

The following discussion should be read in conjunction with the included Condensed Consolidated Financial Statements and Notes thereto, and with the Company's Consolidated Financial Statements and Notes thereto at December 28, 1997 and December 29, 1996 and for each of the three years in the period ended December 28, 1997.

AMD, the AMD logo, and combinations thereof, Advanced Micro Devices, Vantis, NexGen, K86, AMD-K5, AMD-K6, AMD-K7, Nx586 and Nx686 are either trademarks or registered trademarks of Advanced Micro Devices, Inc. Microsoft, Windows, Windows 95 and Windows NT are registered trademarks of Microsoft Corporation. Pentium is a registered trademark of Intel Corporation. Other terms used to identify companies and products may be trademarks of their respective owners.

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### RESULTS OF OPERATIONS

AMD participates in all three technology areas within the digital integrated circuit (IC) market--memory circuits, logic circuits and microprocessors--through, collectively, its Computation Products Group (CPG), its Memory Group, its Communications Group, and its programmable logic subsidiary, Vantis Corporation (Vantis). CPG products include microprocessors and core logic products. Memory Group products include Flash memory devices and Erasable Programmable Read-Only Memory (EPROM) devices. Communications Group products include telecommunication products, networking and input/output (I/O) products, and embedded processors. Vantis products are complex and simple, high-performance CMOS (complementary metal oxide semiconductor) programmable logic devices (PLDs).

The following is a summary of the net sales of the CPG, Memory Group, Communications Group and Vantis for the periods presented below:

(Millions)	Quarters Ended		
	March 29, 1998	December 28, 1997	March 30, 1997
	-----	-----	-----

<S>	<C>	<C>	<C>
CPG	\$169	\$203	\$128
Memory Group	167	181	184
Communications Group	149	174	171
Vantis	56	55	69
	----	----	----
Total	\$541	\$613	\$552
	=====	=====	=====

</TABLE>

REVENUE COMPARISON OF QUARTERS ENDED MARCH 29, 1998 AND MARCH 30, 1997

Net sales of \$541 million in the first quarter of 1998 decreased approximately 2 percent as compared to the first quarter of 1997 as CPG sales increases were offset by lower sales in the other groups.

CPG net sales increased during the first quarter of 1998 as compared to the first quarter of 1997 largely due to sales of AMD-K6(TM) microprocessors. AMD-K6 microprocessors sold at substantially higher average selling prices than AMD-K5(TM) microprocessors that made up the majority of CPG net sales during the first quarter of 1997. CPG sales growth during the remainder of 1998 is dependent on a successful transition to the 0.25 micron process technology in Feb 25 in order to meet customer microprocessor needs for performance and volume.

Memory Group net sales of both EPROM and Flash memory devices decreased. EPROM prices declined significantly, and unit sales were lower as customer demand continued to shift to Flash memory from EPROM. Flash memory device net sales declined slightly as significant unit volume increases were more than offset by significant price declines due to continuing increased competition. The Company expects continued price pressure from intense competition in Flash memory devices.

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Communications Group net sales decreased primarily due to substantial decreases in unit shipments of the Company's network products, as other Communications Group product sales were flat. The Company's offerings of network products have not kept pace with the market shift towards higher performance products and sales are likely to continue to decline until the Company introduces new competitive products in volume, which the Company anticipates will occur no earlier than the fourth quarter of 1998. The Company expects the other Communications Group product divisions to have flat to lower sales in the second quarter of 1998 primarily due to the economic crisis in Asia. Results could be affected beyond the second quarter of 1998 if there is no improvement in the economic condition in Asia.

Vantis net sales decreased due to declines in the average selling price and unit shipments of both simple PLDs (SPLDs) and complex PLDs (CPLDs). Lower SPLD sales reflect the market transition to CPLDs, as well as increased competition in the SPLD market.

REVENUE COMPARISON OF QUARTERS ENDED MARCH 29, 1998 AND DECEMBER 28, 1997

Net sales in the first quarter of 1998 decreased approximately 12 percent as compared to the fourth quarter of 1997, due to lower sales in all groups except Vantis.

The decline in CPG sales from the fourth quarter of 1997 to the first quarter of 1998 was due to lower average selling prices for the AMD-K6 microprocessor, as unit volume remained relatively flat. During the first quarter of 1998, the microprocessor market migrated to higher performance products, which the Company only manufactured in limited quantities. This migration, together with increased price competition, resulted in a reduction of the average selling price on AMD microprocessor products. In addition, due to inadequate manufacturing yields on AMD-K6 microprocessors, the Company was unable to increase microprocessor unit volume. CPG sales growth during the remainder of 1998 is dependent on a successful transition to the 0.25 micron process technology in Feb 25 in order to meet customer microprocessor needs for performance and volume.

Memory Group net sales decreased. EPROM prices declined significantly, and unit sales were lower as customer demand continued to shift to Flash memory from EPROM. Flash memory device sales declined as relatively flat unit volume was offset by average selling price declines from continuing increased competition. The Company expects continued price pressure from intense competition in Flash memory devices.

Communications Group net sales decreased as unit volume for networking and other Communications Group products declined during the first quarter of 1998. The Company's offerings of network products have not kept pace with the market shift towards higher performance products and sales are likely to continue to decline until the Company introduces new competitive products in volume, which the Company anticipates will occur no earlier than the fourth quarter of 1998. Net sales were also affected by declines in unit volume and average selling price for other communication products. The Company expects the other Communications Group product divisions to have flat to lower sales in the second quarter of



1998 primarily due to the economic crisis in Asia. Results could be affected beyond the second quarter of 1998 if there is no improvement in the economic condition in Asia.

Vantis net sales increased slightly as both unit shipments and average selling prices of both SPLDs and CPLDs were flat.

COMPARISON OF EXPENSES, GROSS MARGIN PERCENTAGE AND INTEREST INCOME AND OTHER, NET

The following is a summary of expenses, gross margin percentage and interest income and other, net for the periods presented below:

<TABLE>  
<CAPTION>

(Millions)	Quarters Ended		
	March 29, 1998	December 28, 1997	March 30, 1997
<S>	<C>	<C>	<C>
(Millions except for gross margin percentage)			
Cost of sales	\$424	\$429	\$349
Gross margin percentage	22%	30%	37%
Research and development	\$128	\$127	\$105
Marketing, general and administrative	88	102	95
Litigation settlement	12	--	--
Interest income and other, net	6	7	13
Interest expense	12	12	9

</TABLE>

Gross margin percentage decreased in the first quarter of 1998, as compared to the first quarter of 1997 and the fourth quarter of 1997. The Company has throughout this period continued to invest in the facilitization of Fab 25 and, during the first quarter of 1998, in the transition from 0.35 micron to 0.25 micron process technology in Fab 25. These investments have led to significant increases in the Company's fixed costs associated with its microprocessor products. The decline in gross margin percentage between the first quarter of 1997 and the first quarter of 1998 was caused in part by increases in fixed costs in Fab 25, increased back-end assembly costs in support of AMD-K6 microprocessor production and a decline in non-microprocessor product revenues. The decline in gross margin percentage between the fourth quarter of 1997 and the first quarter of 1998 was primarily attributable to significantly lower revenues in the first quarter of 1998 and the increased fixed costs associated with the transition to 0.25 micron process technology in Fab 25. The Company intends to continue to invest in 0.25 micron process technology capacity which will increase its fixed costs. Accordingly, absent significant increases in revenues, the Company will continue to experience pressure on its gross margin percentages.

Research and development expenses increased as compared to the first quarter of 1997 primarily due to a higher proportion of research and development activities in the Submicron Development Center in Sunnyvale, California, primarily to support CPG and the Memory Group. Research and development expenses in the first quarter of 1998 as compared to the fourth quarter of 1997 were flat.

Marketing, general and administrative expenses decreased in the first quarter of 1998 from both the first quarter of 1997 and the fourth quarter of 1997. In each case the decrease was primarily due to reduced spending on advertising and marketing expenses associated with the AMD-K6 microprocessor. The Company expects advertising and promotional expenses associated with the AMD-K6 microprocessor to increase during the remainder of 1998.

The litigation settlement of \$11,500,000 in the first quarter of 1998 represents the estimated costs associated with an agreement in principle to settle the class action securities lawsuit against the Company and certain of its current and former officers and directors, announced by the Company on April 23, 1998. The agreement in principle to settle is subject to approval of the Company's Board of Directors and confirmation by the United States District Court in San Jose, California. The suit was filed in November 1995 and related to the Company's AMD-K5 microprocessor development project.

Interest income and other, net decreased in the first quarter of 1998 as compared to the first quarter of 1997 primarily due to a pre-tax gain of \$5 million resulting from the sale of equity securities in the first quarter of 1997. Interest income and other, net decreased in the first quarter of 1998 as compared to the fourth quarter of 1997 due to lower average cash balances. Interest expense increased as compared to the first quarter of 1997 primarily due to higher average debt balances and lower capitalized interest related to the second phase of construction of Fab 25 and construction of Dresden Fab 30. Interest expense was flat as compared to the fourth quarter of 1997.

## INCOME TAX

The Company recorded a tax benefit of \$47 million and a tax provision of \$2 million in the first quarter of 1998 and 1997, respectively, for an effective tax benefit rate of 40 percent and a positive tax rate of 29 percent for the respective periods. The difference in the effective tax rates primarily reflects the impact of foreign tax benefits on different levels of income. Realization of the Company's net deferred tax assets (\$119 million at March 29, 1998) is dependent on future taxable income. While the Company believes that it is more likely than not that such assets will be realized, other factors, including those mentioned in the discussion of Risk Factors, may impact the ultimate realization of such assets.

## OTHER ITEMS

International sales were 55 percent of total sales in the first quarter of 1998 as compared to 56 percent for the same period in 1997 and the immediate prior quarter. In the first quarter of 1998, approximately 10 percent of the Company's net sales were denominated in foreign currencies. The Company does not have sales denominated in local currencies in those countries which have highly inflationary economies. (A highly inflationary economy is defined in accordance with the Statement of Financial Accounting Standards No. 52 as one in which the cumulative inflation over a three-year consecutive period approximates 100 percent or more.) The Company has recently experienced slightly lower than expected demand in Asia, primarily in its telecommunication products. The impact on the Company's operating results from changes in foreign currency rates individually and in the aggregate has not been material. The Company anticipates that the Asian economic crisis will continue to adversely affect the Company's results of operations at least through the second quarter of 1998, and further decline of the economic crisis in Asia could have a material adverse effect on the Company's results of operations.

## LIQUIDITY AND CAPITAL RESOURCES

Cash used in operating activities was approximately \$22 million for the first quarter of 1998. This compares to cash flow provided by operating activities of approximately \$115 million for

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the first quarter of 1997. Net operating cash flows decreased as compared to the same period in 1997 due to a net decrease in earnings of \$76 million, combined with an increase in depreciation and amortization of \$23 million and a decrease in the net change in operating assets and liabilities of \$81 million.

Investing activities consumed \$65 million in cash during the first quarter of 1998 and \$320 million during the first quarter of 1997. Capital expenditures totaled \$181 million in the first quarter of 1998, up from \$151 million in the same period in 1997, as the Company continued to invest in property, plant and equipment primarily for Fab 25 and Dresden Fab 30. Capital expenditures in the first quarter of 1998 were offset by net proceeds from the sale of short-term investments of approximately \$111 million. In the first quarter of 1997 the increase in available-for-sale securities was approximately \$169 million.

The Company's financing activities provided cash of \$38 million during the first quarter of 1998, compared to \$264 million during the same period in 1997. Financing sources of cash for the first quarter of 1998 included borrowings from Dresdner Bank AG in the amount of DM90 million (\$49 million), as part of the Dresden Loan Agreement, as defined below. The loan amount was offset by debt repayments of \$16 million. Financing sources of cash for the first quarter of 1997 included borrowings from a \$250 million four-year secured term loan, offset by debt repayments of \$22 million. Financing activities for both periods include issuance of common stock under employee stock plans.

The Company plans to continue to make significant capital investments, at a significantly higher rate than in previous years. These investments include those relating to the conversion of Fab 25 to 0.25 micron process technology and the construction and facilitization of Dresden Fab 30.

The conversion of Fab 25 from 0.35 to 0.25 micron process technology is anticipated to be completed in 1998 at a cost in 1998 of approximately \$351 million, although there can be no assurance that the actual amount will not vary materially.

Dresden Fab 30 is being constructed by AMD Saxony, an indirect wholly owned German subsidiary of the Company. This 900,000-square-foot submicron integrated circuit manufacturing and design facility is to be completed over the next four years. The project is being supported by the Company together with the Federal Republic of Germany, the State of Saxony and a consortium of banks. The plan for Dresden Fab 30 was revised in February 1998 to reflect planned upgrades in wafer production technology as well as the decline in the deutsche mark relative to the U.S. dollar, which has increased the proportion of the project to be funded by the Company rather than the Federal Republic of Germany, the State of Saxony and the consortium of banks. The Company entered into foreign currency hedging transactions for Dresden Fab 30 during the first quarter of 1997 and the first quarter of 1998 and anticipates entering into additional such foreign currency hedging transactions in the future.

The present estimated construction cost of Dresden Fab 30 is approximately \$1.9 billion. In March 1997, AMD Saxony entered into a Loan Agreement (the

Dresden Loan Agreement), denominated in deutsche marks, with a consortium of banks led by Dresdner Bank AG under

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which loan facilities totaling \$932 million will be made available for the Dresden Fab 30 project. In connection with the Dresden Loan Agreement, as amended, the Company has agreed to invest in AMD Saxony over the next two years equity and subordinated loans in an amount totaling approximately \$270 million (\$100 million in 1998 and \$170 million in 1999), and to guarantee a portion of AMD Saxony's obligations under the Dresden Loan Agreement up to a maximum of approximately \$123 million until Dresden Fab 30 has been completed. AMD is required to fund \$70 million of the \$170 million due in 1999 on an accelerated basis as follows: (i) if the Company undertakes a sale or other placement of its stock in the capital markets in 1998, the \$70 million will be funded upon receipt of the offering proceeds; (ii) if the Company generates \$140 million of net income (as defined in the Indenture for the Senior Secured Notes) in 1998, the \$70 million will be funded prior to January 31, 1999; (iii) if the Company does not fund through (i) or (ii) above, the Company will fund the maximum amount allowed under the Indenture for the Senior Secured Notes by January 31, 1999 and will fund the remaining amount through the sale of at least \$200 million of the Company's stock by June 30, 1999. Because the Company's obligations under the Dresden Loan Agreement are denominated in deutsche marks, the dollar amounts set forth herein are subject to change based on applicable conversion rates.

In addition, after completion of Dresden Fab 30, the Company has agreed to make funds available to AMD Saxony up to approximately \$82 million if the subsidiary does not meet its fixed charge coverage ratio covenant. The Company has also agreed to fund certain contingent obligations, including various obligations to fund project cost overruns, if any, and to fund shortfalls in government subsidies resulting from a default under the subsidy agreements caused by AMD Saxony or its affiliates, if any.

The Federal Republic of Germany and the State of Saxony have agreed to support the Dresden Fab 30 project in the form of (i) guarantees of 65 percent of bank debt to be incurred by AMD Saxony up to a maximum of \$932 million, (ii) investment grants and subsidies totaling \$283 million and (iii) interest subsidies from the State of Saxony totaling \$169 million, all of which are denominated in deutsche marks in the applicable agreements. In the event the grants or subsidies are delayed, the Company is obligated, as requested by AMD Saxony, to provide interim funding, such interim funding will be repaid to the Company as the grants and subsidies are received by AMD Saxony. As of March 29, 1998, the Company has invested \$170 million in AMD Saxony. The remaining \$161 million required to complete Dresden Fab 30 is to be provided from cash generated by AMD Saxony from 1999 to 2001, which will be derived from sales of wafers to the Company.

Defaults under the Dresden Loan Agreement include the failure of the Company, AMD Saxony or AMD Holding to comply with obligations under the Dresden Loan Agreement, the government subsidy and grant agreements and related documents, including material variances from the approved schedule and budget, the Company's failure to fund equity contributions or shareholder loans or otherwise comply with its obligations relating to the Dresden Loan Agreement, the sale of shares in AMD Saxony or AMD Holding, the failure to pay material obligations, the occurrence of a material adverse change or filings or proceedings in bankruptcy or insolvency with respect to the Company, AMD Saxony or AMD Holding and the occurrence of a default under the Credit Agreement or the Indenture. Generally, any such default which either (i) results from the Company's non-compliance with the Dresden Loan Agreement and is

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not cured by the Company or (ii) results in recourse to the Company of more than \$10 million and is not cured by the Company, would result in a cross-default under the Credit Agreement and the Indenture.

The FASL joint venture completed construction of the building for a second Flash memory device wafer fabrication facility, FASL II, in the third quarter of 1997 at a site contiguous to the existing FASL facility in Aizu-Wakamatsu, Japan. Equipment installation is in progress and the facility is expected to cost approximately \$1.1 billion when fully equipped, which is anticipated in the second quarter of 2000. Approximately \$260 million of such cost has been funded as of March 29, 1998. Capital expenditures for FASL II construction to date have been funded by cash generated from FASL operations and borrowings by FASL and during the remainder of 1998, the Company presently anticipates that such capital expenditures will continue to be funded by cash generated from FASL operations and borrowings by FASL. However, to the extent that FASL is unable to secure the necessary funds for FASL II, the Company may be required to contribute cash or guarantee third-party loans in proportion to its 49.992 percent interest in FASL. At March 29, 1998, AMD had loan guarantees of \$48 million outstanding with respect to such loans. The planned FASL II costs are denominated in yen and are therefore subject to change due to foreign exchange rate fluctuations.

In 1996, the Company entered into a syndicated bank loan agreement (the Credit Agreement), which provides for a \$150 million three-year secured revolving line of credit (which is currently unused) and a \$250 million four-year secured term loan. All of the secured term loan is outstanding at March 29, 1998. The secured loan is repayable in eight equal quarterly installments of approximately \$31 million commencing in October 1998. As of March 29, 1998, the Company also had

available unsecured uncommitted bank lines of credit in the amount of \$67 million, of which \$5 million was outstanding.

In February 1998, certain of the covenants under the Credit Agreement, including those related to the modified quick ratio, minimum tangible net worth and fixed charge coverage ratio, were amended at the request of the Company. The Company sought to amend the covenants because otherwise it risked violating certain of the covenants unless it scaled back on its business and capital investment plan. As of March 29, 1998, the Company is in compliance with all covenants under the Credit Agreement. However, the Company will be required to raise \$300-400 million of funds through external financing in the second quarter of 1998 in order to meet certain of these amended covenants and to continue to make the substantial capital investments required to convert Fab 25 to 0.25 micron process technology, as well as for other ongoing capital investments. The Company has filed a shelf registration statement for the offering of debt or equity securities under the Securities Act of 1933, as amended.

In the event the Company is unable to meet its obligation to make loans to, or equity investments in, AMD Saxony as required under the Dresden Loan Agreement, AMD Saxony will be unable to complete Dresden Fab 30 and the Company will be in default under the Dresden Loan Agreement, the Credit Agreement and the Indenture, which would permit acceleration of indebtedness, which would have a material adverse effect on the Company. There can be no

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assurance that the Company will be able to obtain the funds necessary to fulfill these obligations and any such failure would have a material adverse effect on the Company.

The Company has historically been able to raise external financing to fund its capital expenditures and believes that cash flows from operations and current cash balances, together with external financing activities during 1998, will be sufficient to fund operations and capital investments currently planned through 1998.

#### RISK FACTORS

The Company's business, results of operations and financial condition are subject to a number of risk factors, including the following:

##### Financing Requirements

The Company plans to continue to make significant capital investments, at a significantly higher rate than in previous years. These investments include those relating to the conversion of Fab 25 to 0.25 micron process technology and the construction and facilitization of Dresden Fab 30.

Equipment installation is in progress at FASL II and the facility is expected to cost approximately \$1.1 billion when fully equipped, which is anticipated in the second quarter of 2000. Capital expenditures for FASL II construction to date have been funded by cash generated from FASL operations and borrowings by FASL. To the extent that FASL is unable to secure the necessary funds for FASL II, the Company may be required to contribute cash or guarantee third-party loans in proportion to its 49.992 percent interest in FASL.

In 1996, the Company entered into a syndicated bank loan agreement (the Credit Agreement), which provided for a \$150 million three-year secured revolving line of credit (which is currently unused) and a \$250 million four-year secured term loan. All of the secured term loan is outstanding at March 29, 1998. The secured loan is repayable in eight equal quarterly installments of approximately \$31 million commencing in October 1998.

In February 1998, certain of the covenants under the Credit Agreement were amended. The Company will be required to raise funds through external financing in the second quarter of 1998 in order to meet certain of these amended covenants and to continue to make the substantial capital investments required to convert Fab 25 to 0.25 micron process technology, as well as for other ongoing capital investments.

In March 1997, the Company's indirect wholly owned subsidiary, AMD Saxony, entered into a Loan Agreement (the Dresden Loan Agreement) with a consortium of banks led by Dresdner Bank AG. Under the terms of the February 1998 amendments to the Dresden Loan Agreement, the Company is required to make subordinated loans to, or equity investments in, AMD Saxony, totaling \$100 million in 1998 and \$170 million in 1999. AMD is required to fund \$70 million of the 1999 amount on an accelerated basis as follows: (i) if the Company undertakes a sale or other placement of its stock in the capital markets in 1998, the \$70 million will be funded upon receipt

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of the offering proceeds; (ii) if the Company generates \$140 million of net income (as defined in the Indenture for the Senior Secured Notes) in 1998, the \$70 million will be funded prior to January 31, 1999; (iii) if the Company does not fund through (i) or (ii) above, the Company will fund the maximum amount allowed under the Indenture for the Senior Secured Notes by January 31, 1999 and will fund the remaining amount through the sale of at least \$200 million of the Company's stock by June 30, 1999.

In the event the Company is unable to obtain the external financing necessary

to meet its covenants under the Credit Agreement, it will also be unable to fund its capital investments planned for 1998. In addition, in the event the Company is unable to meet its obligation to make loans to, or equity investments in, AMD Saxony as required under the Dresden Loan Agreement, AMD Saxony will be unable to complete Dresden Fab 30 and the Company will be in default under the Dresden Loan Agreement, the Credit Agreement and the Indenture, which would permit acceleration of indebtedness, which would have a material adverse effect on the Company. There can be no assurance that the Company will be able to obtain the funds necessary to fulfill these obligations and any such failure would have a material adverse effect on the Company.

#### Microprocessor Products

Investment in and Dependence on K86(TM) AMD Microprocessor Products; Transition to 0.25 Micron Process Technology. The Company's microprocessor business has in the past, and will in 1998, continue to significantly impact the Company's revenues, margins and operating results. The Company plans to continue to make significant capital expenditures to support the microprocessor business in 1998, which will be a substantial drain on the Company's cash flow and cash balances.

The Company's ability to increase microprocessor product revenues, and benefit fully from the substantial financial investments and commitments it has made and continues to make related to microprocessors, depends upon the success of the AMD-K6 microprocessor in 1998 and future generations of K86 microprocessors in 1999 and beyond. The microprocessor market is characterized by very short product life cycles and migration to ever higher performance microprocessors. To compete successfully against Intel Corporation in this market, the Company must transition to new process technologies at a faster pace than before and offer higher performance microprocessors in significantly greater volumes. The Company has recently experienced significant difficulty in achieving its microprocessor yield and volume plans on 0.35 micron process technology, which in turn has adversely affected the Company's results of operations and liquidity. Independent of these yield problems, the Company has determined that it must convert from 0.35 micron to 0.25 micron process technology in Fab 25 as soon as possible in order to meet customer microprocessor needs for performance and volume, and to compete successfully against Intel. The Company's process technology transition schedule is aggressive and entails a high degree of risk. The Company's 0.25 micron process technology has not been qualified in Fab 25. There can be no assurance that the Company will execute a successful transition to 0.25 micron process technology in Fab 25, or that the Company will achieve the production ramp necessary to meet customer needs for higher performance AMD-K6

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microprocessors in the volumes customers require, or that the Company will increase revenues sufficient to achieve profitability in the microprocessor business. The failure to convert Fab 25 to 0.25 micron process technology on a timely basis could adversely affect unit production yields and volumes, result in the failure to meet customer demands, cause customers to cease purchasing AMD-K6 microprocessors, and could impact the viability of the Company's microprocessor business, any of which would have a material adverse effect on the Company.

The Company's production and sales plans for the AMD-K6 microprocessors are subject to other risks and uncertainties, including: whether the Company can successfully fabricate higher performance AMD-K6 microprocessors in planned volume mixes; whether it can maintain and continue to improve production yields on wafers still being processed on 0.35 micron process technology; the effects of Intel new product introductions, marketing strategies and pricing; the continued development of worldwide market acceptance for the AMD-K6 microprocessor and systems based on it; whether the Company will have the financial and other resources necessary to continue to invest in the microprocessor business, including leading-edge wafer fabrication equipment and advanced process technologies; the possibility that products newly introduced by the Company may be found to be defective; possible adverse market conditions in the personal computer market and consequent diminished demand for the Company's microprocessors; and unexpected interruptions in the Company's manufacturing operations.

The Company's ability to sell the volume of AMD-K6 microprocessors it currently plans to make in 1998 depends on increasing sales to existing customers and developing new customers. The loss of any current top tier OEM customer, or the Company's failure to attract additional customers through direct sales and through the Company's distributors, would affect the Company's ability to sell the volume of units planned, which could have a material adverse effect on the Company.

In view of Intel Corporation's industry dominance and brand strength, AMD prices the AMD-K6 microprocessor at least 25 percent below the published price of Intel processors offering comparable performance. Thus, Intel Corporation's decisions on processor prices can impact and have impacted the average selling prices of the AMD-K6 microprocessors, and consequently can impact and have impacted the Company's margins. A failure to significantly improve production yields and volumes, achieve the production ramp and product performance improvements necessary to meet customer needs, continue to achieve market acceptance of the Company's AMD-K6 microprocessors and increase market share, or to increase AMD-K6 revenues substantially would have a material adverse effect on the Company.

AMD is also devoting substantial resources to the development of its seventh-generation Microsoft Windows compatible microprocessor. The success of the AMD-K7(TM) and future generation microprocessors depends greatly on the Company achieving success and increasing market share with the AMD-K6 microprocessor. See also discussions below regarding Intel Dominance and Process Technology.

Intel Dominance. Intel has long held a dominant position in the market for microprocessors used in personal computers. Intel Corporation's dominant market position enables it to set and control x86 microprocessor standards and thus dictate the type of product the market requires of Intel Corporation's competitors. In addition, Intel Corporation's financial strength and dominant position enable it to vary prices on its microprocessors at will and thereby affect the margins and profitability of its competitors. Intel Corporation's strength also enables it to exert substantial influence and control over PC manufacturers through the Intel Inside advertising rebate program and to invest hundreds of millions of dollars in, and as a result exert influence over, many other technology companies. The Company expects Intel to continue to invest heavily in research and development, new manufacturing facilities, other technology companies and to maintain its

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dominant position through the Intel Inside program, through other contractual constraints on customers, industry suppliers and other third parties, and by controlling industry standards. As an extension of its dominant microprocessor market share, Intel also now dominates the PC platform, which has made it difficult for PC manufacturers to innovate and differentiate their product offerings. The Company does not have the financial resources to compete with Intel on such a large scale. As long as Intel remains in this dominant position, its product introduction schedule, product pricing strategy, customer brand loyalty and control over industry standards, PC manufacturers and other PC industry participants, may have a material adverse effect on the Company.

As Intel has expanded its dominance over the entirety of the PC system platform, many PC manufacturers have reduced their system development expenditures and have begun to purchase microprocessors in conjunction with chipsets or in assembled motherboards. The trend has been for PC OEMs to be increasingly dependent on Intel, less innovative on their own, and more of a distribution channel for Intel technology. In marketing its microprocessors to these OEMs and dealers, AMD depends upon companies other than Intel for the design and manufacture of core-logic chipsets, motherboards, basic input/output system (BIOS) software and other components. In recent years, these third-party designers and manufacturers have lost significant market share to Intel. In addition, these companies are able to produce chipsets, motherboards, BIOS software and other components to support each new generation of Intel Corporation's microprocessors only if Intel makes information about its products available to them in time to address market opportunities. Delay in the availability of such information makes and will continue to make it increasingly difficult for them to retain or regain market share. To compete with Intel in this market in the future, the Company intends to continue to form closer relationships with third-party designers and manufacturers of core-logic chipsets, motherboards, BIOS software and other components. The Company similarly intends to expand its chipset and system design capabilities, and to offer OEMs licensed system designs incorporating the Company's microprocessors and companion products. There can be no assurance, however, that such efforts by the Company will be successful. The Company expects that, as Intel introduces future generations of microprocessors, chipsets and motherboards, the design of chipsets, memory and other semiconductor devices, and higher level board products which support Intel microprocessors, will become increasingly dependent on the Intel microprocessor design and may become incompatible with non-Intel processor-based PC systems.

Intel Corporation's Pentium II is sold only in the form of a "Slot 1" daughtercard that is not physically or interface protocol compatible with "Socket 7" motherboards currently used with Intel Pentium and AMD-K6 processors. Thus, Intel is decreasing its support of the Socket 7 infrastructure as it transitions away from its Pentium processors. Because the AMD-K6 microprocessor is designed to be Socket 7 compatible, and will not work with motherboards designed for Slot 1 Pentium II processors, the Company intends to continue to work with third-party designers and manufacturers of motherboards, chipsets and other products to assure the continued availability of Socket 7 infrastructure support for the AMD-K6 microprocessor, including support for enhancements and features the Company plans to add to the microprocessor. There can be no assurance that Socket 7 infrastructure support for the AMD-K6 microprocessor will endure over time as Intel moves the market to its Slot 1 designs. AMD has no plans to develop microprocessors that are bus interface protocol compatible with the Pentium II

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processors, because the Company's patent cross-license agreement with Intel does not extend to AMD microprocessors that are bus interface protocol compatible with Intel Corporation's Pentium Pro, Pentium II and subsequent generation processors. Similarly, the Company's ability to compete with Intel in the market for seventh-generation and future generation microprocessors will depend not only upon its success in designing and developing the microprocessors, but also in ensuring either that the microprocessors can be used in PC platforms designed to support Intel microprocessors as well as AMD microprocessors or that alternative platforms are available which are competitive with those used with Intel processors. A failure for any reason of the designers and producers of motherboards, chipsets and other system components to support the Company's x86

microprocessor offerings could have a material adverse effect on the Company.

**Dependence on Microsoft and Compatibility Certifications.** The Company's ability to innovate beyond the x86 instruction set controlled by Intel depends on support from Microsoft in its operating systems. There can be no assurance that Microsoft will provide support in its operating systems for x86 instructions innovated by the Company and designed into its processors but not used by Intel in its processors. This uncertainty may cause independent software providers to forego designing their software applications to take advantage of AMD innovations, which would adversely affect the Company's ability to market its processors. In addition, AMD has obtained Windows, Windows 95 and Windows NT certifications from Microsoft and other appropriate certifications from recognized testing organizations for its K86 microprocessors. A failure to maintain certifications from Microsoft would prevent the Company from describing and labeling its K86 microprocessors as Microsoft Windows compatible. This could substantially impair the Company's ability to market the products and could have a material adverse effect on the Company.

**Future Dependence on Planned AMD-K7 Microprocessor.** The Company's ability to increase microprocessor product revenues in 1999 and beyond, and to benefit fully from the substantial financial investments and commitments it has made and continues to make related to microprocessors, including the substantial investment the Company is making in Fab 30 in Dresden, Germany, depends upon its success in developing and marketing in a timely manner in 1999 its seventh-generation microprocessor, the AMD-K7. The Company currently plans to begin volume production of the AMD-K7 in the first half of 1999. No assurance can be made that such production will begin on the current planned schedule. The Company's production and sales plans for the AMD-K7 are subject to numerous risks and uncertainties, including: the successful development and installation of 0.18 micron process technology and copper interconnect technology; the pace at which the Company is able to ramp production in Dresden Fab 30 on 0.18 micron process technology; the use and market acceptance of a non-Intel processor bus (adapted by the Company from Digital Equipment Corporation's EV6 pin bus) in the design of the AMD-K7, and the availability of chipset vendors who will develop, manufacture and sell chipsets with the EV6 interface in volumes required by the Company; the availability to the Company's customers of cost and performance competitive Static Random Access Memories (SRAMs) (including TAG chips) if Intel corners the market for SRAM production capacity through its relationship with SRAM manufacturers; the Company's ability to design and manufacture modules internally or through subcontractors and the acceptance of motherboards used in the AMD-K7 as Intel moves the market to its Slot 1 design. A failure of

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the AMD-K7 microprocessor to be timely introduced or achieve market acceptance, would have a material adverse effect on the Company.

**Fluctuations in PC Market.** Since most of the Company's microprocessor products are used in personal computers and related peripherals, the Company's future growth is closely tied to the performance of the PC industry. The Company could be materially and adversely affected by industry-wide fluctuations in the PC marketplace in the future. For example, economic conditions in Asia could lead to reduced worldwide demand for PCs and the Company's microprocessors.

**Possible Rights of Others.** Prior to its acquisition by AMD, NexGen granted limited manufacturing rights regarding certain of its current and future microprocessors, including the Nx586(TM) and Nx686(TM), to other companies. The Company does not intend to produce any NexGen products. The Company believes that its AMD-K6 microprocessors are AMD products and not NexGen products because, among other things, the technology acquired in the NexGen merger was significantly modified using the Company's design, verification and manufacturing technologies. No NexGen licensee or other party has asserted any rights with respect to the AMD-K6 microprocessor; however, there can be no assurance that another company will not seek to establish rights with respect to the microprocessors. If another company were deemed to have rights to produce the Company's AMD-K6 microprocessors for its own use or for sale to third parties, such production could reduce the potential market for microprocessor products produced by AMD, the profit margin achievable with respect to such products, or both.

#### Flash Memory Products

**Importance of Flash Memory Device Business; Increasing Competition.** The market for Flash memory devices continues to experience increased competition as additional manufacturers introduce competitive products and industry-wide production capacity increases. The Company expects that the marketplace for Flash memory devices will continue to be increasingly competitive. A substantial portion of the Company's revenues is derived from sales of Flash memory devices, and the Company expects that this will continue to be the case for the foreseeable future. During 1996, 1997 and the first quarter of 1998, the Company experienced declines in the selling prices of Flash memory devices. There can be no assurance that the Company will be able to maintain its market share in Flash memory devices or that price declines may not accelerate as the market develops and as more competitors emerge. A decline in the Company's Flash memory device business or declines in the gross margin percentage in this business could have a material adverse effect on the Company.

#### Domestic and International Economic Conditions

The Company's business is subject to general economic conditions, both in the United States and abroad. A significant decline in economic conditions in any

significant geographic area could have a material adverse effect on the Company. For example, there is currently an economic crisis in Asia, which has led to weak demand for the Company's products in certain Asian economies - notably Korea and Japan. The Company anticipates that the Asian economic crisis

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may continue to affect adversely the Company's results of operations, and the further decline of the economic condition in Asia could in the future affect demand for microprocessors and other integrated circuits, which could have a material adverse effect on the Company's sales and operating results.

#### Manufacturing

**Capacity.** The Company's manufacturing facilities have been underutilized from time to time as a result of reduced demand for certain of the Company's products. The Company's operations related to microprocessors have been particularly affected by this situation. Any future underutilization of the Company's manufacturing facilities could have a material adverse effect on the Company. The Company is increasing its manufacturing capacity by making significant capital investments in Fab 25 and in Dresden Fab 30. In addition, the building construction of FASL II, a second Flash memory device manufacturing facility, is complete and equipment installation is in progress. The Company is also building a new test and assembly facility in Suzhou, China. There can be no assurance that the industry projections for future growth upon which the Company is basing its strategy of increasing its manufacturing capacity will prove to be accurate. If demand for the Company's products does not increase, underutilization of the Company's manufacturing facilities will likely occur and could have a material adverse effect on the Company.

In contrast to the above, there also have been situations in the past in which the Company's manufacturing facilities were inadequate to enable the Company to meet demand for certain of its products. Any inability of AMD to generate sufficient manufacturing capacities to meet demand, either in its own facilities or through foundry or similar arrangements with others, could have a material adverse effect on the Company.

**Process Technology.** In order to remain competitive, the Company must make continuing substantial investments in improving its process technologies. In particular, the Company has made and continues to make significant research and development investments in the technologies and equipment used to fabricate its microprocessor products and its Flash memory devices. Portions of these investments might not be recoverable if the Company fails to successfully ramp production in Fab 25 of 0.25 micron process technology, if the Company's microprocessors fail to continue to gain market acceptance or if the market for its Flash memory products should significantly deteriorate. This could have a material adverse effect on the Company. In addition, any inability of the Company to remain competitive with respect to process technology could have a material adverse effect on the Company. For example, the Company's ability to generate sufficient revenue to achieve profitability in the microprocessor business in the near future and the Company's success in competing with Intel, and producing higher performance AMD-K6 microprocessors in volumes sufficient to increase market share depends on the timely development and qualification of 0.25 micron process technology in Fab 25. There can be no assurance that the Company will be able to commit Fab 25 production to a qualified 0.25 micron process technology in order to fabricate product in sufficient volume to generate revenue necessary to offset investments in Fab 25 and meet the anticipated needs and demands of its customers. Likewise, the Company is making a substantial investment in Dresden Fab 30. The business plan for Dresden Fab 30 calls for the successful development and

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installation of 0.18 micron process technology and copper interconnect technology in order to manufacture the AMD-K7 microprocessor beginning in 1999. There can be no assurance that the Company will be able to develop or obtain the leading-edge process technologies that will be required in Dresden Fab 30 to fabricate the AMD-K7 microprocessor successfully.

**Manufacturing Interruptions and Yields.** Any substantial interruption with respect to any of the Company's manufacturing operations, either as a result of a labor dispute, equipment failure or other cause, could have a material adverse effect on the Company. For example, the Company's recent results have been negatively affected by disappointing AMD-K6 microprocessor yields. The Company may in the future be materially adversely affected by fluctuations in manufacturing yields. The manufacture of integrated circuits is a complex process. Normal manufacturing risks include errors and interruptions in the fabrication process and defects in raw materials, as well as other risks, all of which can affect yields. Additional manufacturing risks incurred in ramping up new fabrication areas and/or new manufacturing processes include errors and interruptions in the fabrication process, equipment performance, process controls as well as other risks, all of which can affect yields.

**Product Incompatibility.** There can be no assurance that the Company's products will be compatible with all industry-standard software and hardware. Any inability of the Company's customers to achieve such compatibility or compatibility with other software or hardware after the Company's products are shipped in volume could have a material adverse effect on the Company. There can be no assurance that AMD will be successful in correcting any such compatibility problems that are discovered or that such corrections will be acceptable to customers or made in a timely manner. In addition, the mere announcement of an



incompatibility problem relating to the Company's products could have a material adverse effect on the Company.

**Product Defects.** One or more of the Company's products may possibly be found to be defective after AMD has already shipped such products in volume, requiring a product replacement, recall, or a software fix which would cure such defect but impede performance. Product returns could impose substantial costs on AMD and have a material adverse effect on the Company.

**Essential Manufacturing Materials.** Certain raw materials used by the Company in the manufacture of its products are available from a limited number of suppliers. For example, several types of the integrated circuit packages purchased by AMD, as well as by the majority of other companies in the semiconductor industry, are principally supplied by a few foreign companies. Shortages could occur in various essential materials due to interruption of supply or increased demand in the industry. If AMD were unable to procure certain of such materials, it would be required to reduce its manufacturing operations which could have a material adverse effect on the Company.

**International Manufacturing and Foundries.** Nearly all product assembly and final testing of the Company's products are performed at the Company's manufacturing facilities in Penang, Malaysia; Bangkok, Thailand; and Singapore; or by subcontractors in Asia. AMD has a 50-year land lease in Suzhou, China, to be used for the construction and operation of an additional

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assembly and test facility. The Company also depends on foreign foundry suppliers and joint ventures for the manufacture of a portion of its finished silicon wafers. Foreign manufacturing and construction of foreign facilities entail political and economic risks, including political instability, expropriation, currency controls and fluctuations, changes in freight and interest rates, and loss or modification of exemptions for taxes and tariffs. For example, if AMD were unable to assemble and test its products abroad, or if air transportation between the United States and the Company's overseas facilities were disrupted, there could be a material adverse effect on the Company.

#### OTHER RISK FACTORS

**Debt Restrictions.** The Credit Agreement and the Indenture for the Senior Secured Notes contain significant covenants that limit the Company's and its subsidiaries' ability to engage in various transactions and require satisfaction of specified financial performance criteria. In addition, the occurrence of certain events (including, without limitation, failure to comply with the foregoing covenants, material inaccuracies of representations and warranties, certain defaults under or acceleration of other indebtedness and events of bankruptcy or insolvency) would, in certain cases after notice and grace periods, constitute events of default permitting acceleration of indebtedness. The limitations imposed by the Credit Agreement and the Indenture are substantial, and failure to comply with such limitations could have a material adverse effect on the Company.

In addition, the agreements entered into by AMD Saxony in connection with the Dresden Fab 30 loan substantially prohibit the transfer of assets from AMD Saxony to the Company, which will prevent the Company from using current or future assets of AMD Saxony other than to satisfy obligations of AMD Saxony.

**Programmable Logic Software Risks.** Historically, the Company's programmable logic subsidiary, Vantis, has depended on third parties to develop and maintain software "fitters" that allow electrical circuit designs to be implemented using Vantis' complex programmable logic devices. Currently, Vantis has contracted with MINC, Inc. (MINC), a vendor of complex programmable logic device software development tools, to develop and maintain software fitters for Vantis' products. If MINC were to stop developing and maintaining software fitters for Vantis' products, or if the software developed by MINC was subject to delays, errors or "bugs," and Vantis was not able to internally develop and maintain such software fitters, then Vantis would need to find another vendor for such services. No assurance can be given that Vantis would be able to locate additional software development tool vendors with the available capacity and technology necessary for the development and maintenance of software fitter tools, or, if an additional vendor or vendors were identified, that Vantis would be able to enter into contracts with such vendors on terms acceptable to Vantis. Any interruption in the MINC services, or Vantis' inability to find an acceptable alternative vendor for software services in a timely manner, could have a material adverse effect on Vantis.

Vantis recently initiated efforts to manage and control the development and maintenance of software fitters for Vantis' products internally. Undertaking significant software development projects is a new effort for Vantis and is subject to many risks, including risks of delays, errors and "bugs," and customer resistance to change. If Vantis' internally-developed software is not

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available as scheduled or fails to gain market acceptance, Vantis would need to contract on acceptable terms with vendors having the available capacity and technology to develop and maintain such software. No assurance can be given that Vantis' efforts to internally develop and maintain the software needed to sell and support its products will be successful. Any inability of Vantis to successfully develop and maintain software internally in a cost-effective manner

could have a material adverse effect on Vantis.

Vantis' Dependence on Effective Deployment and Management of Newly-Created FAE Staff. Vantis' major competitors each have a well established network of field application engineers (FAEs). In comparison, Vantis has only recently created its own network of FAEs in order to support its products more effectively and to enhance customer satisfaction with those products. FAEs service larger customer accounts by consulting with customers on specific product issues and providing feedback to Vantis as to customer needs. The future success of Vantis may be affected by its ability to deploy and manage such FAEs and to continue to attract and retain qualified technical personnel to fill these positions. Currently, availability of such qualified technical personnel is limited, and competition among companies for experienced FAEs is intense. During strong business cycles, Vantis expects to experience difficulty in filling its needs for FAEs. No assurance can be given that Vantis will be able to effectively deploy or manage its new network of FAEs, and the failure to do so could delay or limit customer acceptance of Vantis products and otherwise have a material adverse effect on Vantis.

Recent Introduction of Vantis' FPGA Products. In January of 1998, Vantis introduced its first field programmable gate array (FPGA) products, which it intends to sell under the VF1 name beginning in the second half of 1998. The market for FPGAs is highly competitive. The design, marketing and sale of FPGA products is subject to many risks, including risks of delays, errors, and customer resistance to change. Vantis does not anticipate significant sales of the VF1 family of products until 1999 at the earliest, and no assurance can be given that its VF1 FPGA products will be available as scheduled or will gain market acceptance. Inadequate forecasts of customer demand, delays in responding to technological advances or to limitations of the VF1 FPGA products, and delays in commencing volume shipments of the VF1 FPGA products each could have a material adverse effect on Vantis. Failure to compete successfully in this highly competitive FPGA market would restrict Vantis' ability to offer high performance products across all major segments of the PLD market and could have a material adverse effect on Vantis.

Technological Change and Industry Standards. The market for the Company's products is generally characterized by rapid technological developments, evolving industry standards, changes in customer requirements, frequent new product introductions and enhancements, short product life cycles and severe price competition. Currently accepted industry standards may change. The Company's success depends substantially upon its ability, on a cost-effective and timely basis, to continue to enhance its existing products and to develop and introduce new products that take advantage of technological advances and adhere to evolving industry standards. An unexpected change in one or more of the technologies related to its products, in market demand for products based on a particular technology or of accepted industry standards could have a material adverse effect on the Company. There can be no assurance that AMD will be able to develop new products in a timely and satisfactory manner to address new industry

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standards and technological changes, or to respond to new product announcements by others, or that any such new products will achieve market acceptance.

Competition. The IC industry is intensely competitive and, historically, has experienced rapid technological advances in product and system technologies. After a product is introduced, prices normally decrease over time as production efficiency and competition increase, and as a successive generation of products is developed and introduced for sale. Technological advances in the industry result in frequent product introductions, regular price reductions, short product life cycles and increased product capabilities that may result in significant performance improvements. Competition in the sale of ICs is based on performance, product quality and reliability, price, adherence to industry standards, software and hardware compatibility, marketing and distribution capability, brand recognition, financial strength and ability to deliver in large volumes on a timely basis.

Fluctuations in Operating Results. The Company's operating results are subject to substantial quarterly and annual fluctuations due to a variety of factors, including the effects of competition with Intel in the microprocessor industry, competitive pricing pressures, anticipated decreases in unit average selling prices of the Company's products, production capacity levels and fluctuations in manufacturing yields, availability and cost of products from the Company's suppliers, the gain or loss of significant customers, new product introductions by AMD or its competitors, changes in the mix of products produced and sold and in the mix of sales by distribution channels, market acceptance of new or enhanced versions of the Company's products, seasonal customer demand due to vacation and holiday schedules (for example, decreased demand in Europe during the summer), the timing of significant orders and the timing and extent of product development costs. In addition, operating results could be adversely affected by general economic and other conditions causing a downturn in the market for semiconductor devices, or otherwise affecting the timing of customer orders or causing order cancellations or rescheduling. The Company's customers may change delivery schedules or cancel orders without significant penalty. Many of the factors listed above are outside of the Company's control. These factors are difficult to forecast, and these or other factors could materially adversely affect the Company's quarterly or annual operating results.

Order Revision and Cancellation Policies. AMD manufactures and markets

standard lines of products. Sales are made primarily pursuant to purchase orders for current delivery, or agreements covering purchases over a period of time, which are frequently subject to revision and cancellation without penalty. As a result, AMD must commit resources to the production of products without having received advance purchase commitments from customers. Any inability to sell products to which it had devoted significant resources could have a material adverse effect on the Company. Furthermore, the failure to successfully ramp production to 0.25 micron process technology in Fab 25 and to increase production levels could cause existing demand to abate from current levels, which would have a material adverse effect on the Company. Distributors typically maintain an inventory of the Company's products. Pursuant to the Company's agreements with distributors, in most instances AMD protects its distributors' inventory of the Company's products against price reductions, as well as products that are slow moving or have been discontinued. These agreements, which may be canceled by either party on a specified notice, generally contain a provision for the return of the Company's products in the event the

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agreement with the distributor is terminated. The market for the Company's products is generally characterized by, among other things, severe price competition. The price protection and return rights AMD offers to its distributors could materially adversely affect the Company if there is an unexpected significant decline in the price of the Company's products.

**Key Personnel.** The Company's future success depends upon the continued service of numerous key engineering, manufacturing, sales and executive personnel. There can be no assurance that AMD will be able to continue to attract and retain qualified personnel necessary for the development and manufacture of its products. Loss of the service of, or failure to recruit, key engineering design personnel could be significantly detrimental to the Company's product development programs or otherwise have a material adverse effect on the Company.

**Intellectual Property Rights; Potential Litigation.** There can be no assurance that the Company will be able to protect its technology or other intellectual property adequately through patents, copyrights, trade secrets, trademarks and other measures or that competitors will not be able to develop similar technology independently. There can be no assurance that any patent applications that the Company may file will be issued or that foreign intellectual property laws will protect the Company's intellectual property rights. There can be no assurance that any patent licensed by or issued to the Company will not be challenged, invalidated or circumvented or that the rights granted thereunder will provide competitive advantages to the Company. Furthermore, there can be no assurance that others will not independently develop similar products, duplicate the Company's products or design around the Company's patents and other rights.

From time to time, AMD has been notified that it may be infringing intellectual property rights of others. If any such claims are asserted against the Company, the Company may seek to obtain a license under the third party's intellectual property rights. AMD could decide, in the alternative, to resort to litigation to challenge such claims. Such challenges could be extremely expensive and time-consuming and could materially adversely affect the Company. No assurance can be given that all necessary licenses can be obtained on satisfactory terms, or that litigation may always be avoided or successfully concluded.

**Environmental Regulations.** The failure to comply with present or future governmental regulations related to the use, storage, handling, discharge or disposal of toxic, volatile or otherwise hazardous chemicals used in the manufacturing process could result in fines being imposed on the Company, suspension of production, alteration of the Company's manufacturing processes or cessation of operations. Such regulations could require the Company to acquire expensive remediation equipment or to incur other expenses to comply with environmental regulations. Any failure by the Company to control the use, disposal or storage of, or adequately restrict the discharge of, hazardous substances could subject the Company to future liabilities and could have a material adverse effect on the Company.

**International Sales.** AMD derives a substantial portion of its revenues from its sales subsidiaries located in Europe and Asia Pacific. The Company's international sales operations entail political and economic risks, including expropriation, currency controls, exchange rate fluctuations, changes in freight rates and changes in rates for taxes and tariffs.

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**Volatility of Stock Price; Ability to Access Capital.** Based on the trading history of its stock, AMD believes factors such as quarterly fluctuations in the Company's financial results, announcements of new products and/or pricing by AMD or its competitors, the pace of new product manufacturing ramps, production yields of key products and general conditions in the semiconductor industry have caused and are likely to continue to cause the market price of AMD common stock to fluctuate substantially. In addition, an actual or anticipated shortfall in revenue, gross margins or earnings from securities analysts' expectations could have an immediate effect on the trading price of AMD common stock in any given period. Technology company stocks in general have experienced extreme price and volume fluctuations that often have been unrelated to the operating performance of the companies. This market volatility may adversely affect the market price of the Company's common stock and consequently limit the Company's ability to raise capital or to make acquisitions. The Company's current business plan

envisions substantial cash outlays requiring external capital financing. There can be no assurance that capital and/or long-term financing will be available on terms favorable to the Company or in sufficient amounts to enable the Company to implement its current plan.

Earthquake Danger. The Company's corporate headquarters, a portion of its manufacturing facilities, assembly and research and development activities and certain other critical business operations are located near major earthquake fault lines. The Company could be materially adversely affected in the event of a major earthquake.

Impact of Year 2000. The "Year 2000 Issue" is the result of computer programs being written using two digits rather than four to define the applicable year. If the Company's computer programs with date-sensitive functions are not Year 2000 compliant, they may recognize a date using "00" as the year 1900 rather than the year 2000. This could result in a system failure or miscalculations causing disruptions of operations, including, among other things, a temporary inability to process transactions, send invoices, or engage in similar normal business activities.

The Company will be required to modify or replace significant portions of its software so that its computer systems will function properly with respect to dates in the year 2000 and thereafter. If required modifications to existing software and conversions to new software are not made, or are not completed timely, the Year 2000 Issue could have a material impact on the operations of the Company. The Company will use both internal and external resources to reprogram or replace and test the software for Year 2000 modifications.

The Company has a plan to formally communicate with all of its significant suppliers and/or subcontractors to determine the extent to which the Company's interface systems are vulnerable to those third parties' failure to remediate their own Year 2000 Issues. The Company does not currently have any information concerning the Year 2000 compliance status of its customers. In the event that any of the Company's significant customers and suppliers do not successfully and timely achieve Year 2000 compliance, the Company's business or operations could be adversely affected. There can be no assurance that the systems of other companies on which the Company's systems rely will be timely converted and would not have an adverse effect on the Company's systems. The Company is currently assessing its exposure to contingencies related to the Year 2000 Issue for the products it has sold; however, it does not expect these to have a material impact on the operations of the Company.

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The Company anticipates completing the Year 2000 project by the first quarter of 1999, which is prior to any anticipated impact on its operating systems. This date is contingent upon the timeliness and accuracy of software upgrades from vendors, adequacy and quality of resources available to work on completion of the project and any other factors. The total expense of the Year 2000 project is estimated at \$10 million, which is not material to the Company's business operations or financial condition. The expenses of the Year 2000 project are being funded through operating cash flows.

The costs of the project and the date on which the Company believes it will complete the Year 2000 modifications are based on management's best estimates, which were derived utilizing numerous assumptions of future events, including the continued availability of certain resources, third-party modification plans and other factors. There can be no assurance that these estimates will be achieved and actual results could differ materially from those anticipated.

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## II. Other Information

### Item 1. Legal Proceedings

McDaid v. Sanders, et al. (Case No. C-95-20750-JW, N.D. Cal.): Kozlowski, et al. v. Sanders, et al. (Case No. C-95-20829-JW, N.D. Cal.). On April 23, 1998, the Company announced that it had reached an agreement in principle to settle this class action for \$11,500,000 to be funded by the Company. The agreement is subject to the approval of the Company's Board of Directors and confirmation by the United States District Court in San Jose, California. The Company's financial results are not materially adversely affected.

### Item 6. Exhibits and Report on Form 8-K

#### (a). Exhibits

\*3.2 By-Laws, as amended

27 Financial Data Schedule

#### (b). Report on Form 8-K

The following report on Form 8-K was filed during the quarter for which this report is filed:

1. Current Report on Form 8-K dated January 27, 1998 reporting

under Item 5 - Other Events - fourth quarter earnings.

\* This report includes a correct copy of the By-Laws in effect as of the date of this report in replacement of the copy of the By-Laws previously filed.

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Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly earned this report to be signed on its behalf by the undersigned thereunto duly authorized.

ADVANCED MICRO DEVICES, INC.

Date: April 23 , 1998  
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By: /s/ James P. Ashby  
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James P. Ashby  
Vice President and  
Corporate Controller

Signing on behalf of the  
registrant and as the principal  
accounting officer

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EXHIBIT INDEX  
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Exhibits  
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\* 3.2 By-Laws, as amended  
27 Financial Data Schedule

\* This report includes a correct copy of the By-Laws in effect as of the date of this report in replacement of the copy of the By-Laws previously filed.

ADVANCED MICRO DEVICES, INC.  
BYLAWS  
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(AS AMENDED)

ARTICLE I  
OFFICES

Section 1. The registered office shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 2. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II  
MEETING OF STOCKHOLDERS

Section 1. Subject to the rights of holders of any class or series of stock of the Corporation having a preference over the Common Stock as to dividends or upon liquidation to elect directors under specified circumstances, nominations for the election of directors may be made by or at the direction of the Board of Directors generally. Subject to the foregoing, only a stockholder of record entitled to vote in the election of directors generally may nominate one or more persons for election as directors at a meeting of stockholders and only if written notice of such stockholder's intent to make such nomination or nominations has been given, either by personal delivery or by United States mail, postage prepaid, to the Secretary of the Corporation and has been received by the Secretary not later than the following dates: (i) with respect to an election to be held at an annual meeting of stockholders, 90 days in advance of such meeting; and (ii) with respect to an election to be held at a special meeting of stockholders for the election of directors, the close of business on the tenth day following the date on which notice of such meeting is first given to stockholders.

Each such notice shall set forth:

- (a) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated;
- (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice;
- (c) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; and
- (d) such other information regarding each nominee proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission, had the nominee been nominated, or intended to be nominated, by the Board of Directors.

To be effective, each notice of intent to make a nomination given hereunder shall be accompanied by the written consent of each nominee to serve as a director of the Corporation if elected.

The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not properly brought before the meeting in accordance with the provisions hereof and, if he should so determine, he shall declare to the meeting that such nomination was not properly brought before the meeting and shall not be considered.

Section 2. Annual meetings of the stockholders shall be held on the third Wednesday in May if not a legal holiday, and if such a legal holiday, then at the next secular day following, at 4:00 p.m., or at such other date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which they shall elect by plurality vote, a Board of Directors, and transact such other business as may properly be brought before the meeting.

Section 3. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten or more than sixty days before the date of the meeting.

Section 4. The officer who has charge of the stock ledger of the

Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

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Section 5. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the chairman and shall be called by the chairman or secretary at the request in writing of a majority of the Board of Directors.

Section 6. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given less than ten nor more than sixty days before the date of the meeting, to each stockholder entitled to vote at such meeting.

Section 7. At any special meeting of stockholders only such business shall be conducted as shall have been set forth in the notice of special meeting. At an annual meeting of stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in the notice of the meeting (or any supplemental thereto) given by or at the direction of the Board of Directors, (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise (a) properly requested to be brought before the meeting by a stockholder of record entitled to vote in the election of directors generally, and (b) constitute a proper subject to be brought before such meeting.

For business (other than the election of directors) to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be given, either by personal delivery or by United States mail, postage prepaid, to the Secretary of the Corporation and must have been received by the Secretary no later than 90 days in advance of such meeting. A stockholder's notice to the Secretary shall set forth as to each matter (other than the election of directors) the stockholder proposes to bring before the annual meeting (a) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (b) the name and address, as they appear on the Corporation's books, of the stockholder intending to propose such business (c) the class and number of shares of capital stock of the Corporation which are beneficially owned by the stockholder, (d) a representative that the stockholder is a holder of record of capital stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to present such business, and (e) any material interest of the stockholder in such business.

Notwithstanding anything in the Bylaws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this Section 7. The chairman of the annual meeting shall, if the facts warrant, determine and declare to the meeting that (i) the business proposed to be brought before the meeting was not a proper subject therefor and/or (ii) such business was not properly brought before the meeting and in accordance with the provisions of this Section 7, and, if he should so determine, he shall so declare to the meeting and any

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such business not properly brought before the meeting or not a proper subject therefore shall not be transacted. Notwithstanding compliance with the requirements of this Section 7, the chairman presiding at any meeting of the stockholders may, in his sole discretion, refuse to allow a stockholder or stockholder's representative to present any proposal which the Corporation would not be required to include in a proxy statement under any rule promulgated by the Securities and Exchange Commission.

For purposes of this Section 7, and Section 1 of Article II of these Bylaws, reference to a requirement to deliver notice to the Corporation a set number of days in advance of an annual meeting shall mean that such notice must be delivered such number of days in advance of the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the

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date of the annual meeting is advanced by more than 30 days or delayed by more than 60 days from the first anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not later than the close of business on the later of the 60th day prior to such annual meeting or

the 10th day following the day on which notice of such meeting is first given to stockholders. For purposes of these Bylaws, notice of such meeting shall be deemed to be first given to stockholders when disclosure of such date is first made in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 and 15 (d) of the Securities Exchange Act of 1934.

Section 8. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the Certificate of Incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting, at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 9. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of applicable law, rule or regulation or of the Certificate of Incorporation, a different vote is required in which case such express provision shall govern and control the decision of such question.

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Section 10. Each stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder, but no proxy shall be voted on after three years from its date, unless the proxy provides for a longer period.

Section 11. Whenever the vote of stockholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, the meeting and vote of stockholders may be dispensed with if the written consent of the stockholders having not less than such percentage of the number of votes as may be required by the Certificate of Incorporation, applicable law, rule or regulation is delivered to the Corporation at its registered office in the State of Delaware or at its principal place of business or to an officer or agent of the Corporation having custody of the books in which the proceedings of the stockholders are recorded; provided that in no case shall the written consent be by the holders of stock having less than the minimum percentage of the vote required by statute for the proposed corporate action, and provided that prompt notice must be given to all stockholders of the taking of corporate action without a meeting and by less than unanimous written consent.

Section 12. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors of the Corporation may to the extent not prohibited by law adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgement of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may to the extent not prohibited by law include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine (iv) restrictions on entry to the meeting after the time fixed for commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless, and to the extent, determined by the Board of Directors or the chairman of the meeting, meetings or stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

### ARTICLE III DIRECTORS

Section 1. The number of directors which shall constitute the whole board shall be not less than three (3) not more than eleven (11). The first board shall consist



of three (3) directors. Thereafter, within the limits above specified, the number of directors shall be determined by resolution of the Board of Directors or by the stockholders at the annual meeting. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 2 of this Article, and each director elected shall hold office until his successor is elected and qualified. Directors need not be stockholders.

Section 2. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office.

Section 3. The business of the Corporation shall be managed by or under the direction of its Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

Section 4. The provisions of Sections 1 and 2 of this Article are subject to the rights, if any, of the holders of shares of any series of the Preferred Stock of the Corporation with respect to the election of directors in the event the Corporation defaults in the payment of dividends, the term of office of any director so elected and the filing of a vacancy in the office of any director so elected.

#### MEETINGS OF THE BOARD OF DIRECTORS

Section 5. Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware.

Section 6. The first meeting of each newly elected Board of Directors shall be held at such time and place as shall be fixed by the vote of the stockholders at the annual meeting and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the stockholders to fix the time or place of such first meeting of the newly elected Board of Directors, or in the event such meeting is not held at the time and place so fixed by the stockholders, the meeting may be held at

such time and place as shall be specified in a notice given hereinafter provided for special meetings of the Board of Directors, or as shall be specified in a written waiver signed by all of the directors.

Section 7. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board.

Section 8. Special meetings of the board may be called by the Chairman upon notice thereof given to each director either by mail not less than 48 hours before the date of the meeting, by telephone or telegram on 24 hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances. Special meetings shall be called by the Chairman, the president or the secretary in like manner or on like notice on the written request of two directors.

Section 9. At all meetings of the board a majority of the directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 10. Pursuant to Section 141 (i) of the Delaware Corporation Law, meetings of the Board of Directors may be held by use of conference telephone communications equipment by means of which all persons participating in the meeting can hear each other.

Section 11. Unless otherwise restricted by the Certificate of Incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the board or committee, as the case may be, consent thereto in writing or writings are filed with the minutes of proceedings of the board or committee.

#### COMMITTEES OF DIRECTORS

Section 12. The Board of Directors may, in the manner provided by law, designate one or more committees of the board. Any such committee, to the extent provided in the enabling resolution and permitted by applicable law, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; provided that in the absence or disqualification of any member of such committee or committees, the member or members thereof present at

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any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Such committee or committees shall have such name or names as they may be determined from time to time by resolution adopted by the Board of Directors.

Section 13. Meetings of a committee may be called by any member of the committee upon notice thereof given to each member either by mail not less than 48 hours before the date of the meeting, by telephone or telegram on 24 hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances. Except as may be otherwise specifically provided by the Board, at all committee meetings a majority of the members of the committee shall constitute a quorum for the transaction of business and the act of a majority of the members voting at any meeting at which there is a quorum shall be the act of the committee; if a quorum shall not be present at any committee meeting the members present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

#### COMPENSATION OF DIRECTORS

Section 14. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and any may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation thereof. Members of special or standing committees may be allowed like compensation for attending committee meetings.

#### ARTICLE IV NOTICES

Section 1. Whenever, under the provisions of the statutes or of the Certificate of Incorporation or of these bylaws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telegram.

Section 2. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation or of these bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

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#### ARTICLE V OFFICERS

Section 1. The officers of the Corporation shall be chosen by the Board of Directors and shall be a chairman of the board, a president, a vice president, a secretary and a treasurer. The Board of Directors may also choose additional vice presidents, and one or more assistant secretaries and assistant treasurers. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these bylaws otherwise provide.

Section 2. The Board of Directors at its first meeting after each annual meeting of stockholders shall choose a chairman of the board, a president, one or more vice presidents, a secretary and a treasurer.

Section 3. The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board.

Section 4. The salaries of all officers and agents of the Corporation shall be fixed by the Board of Directors, or by the officers under authority granted by the Board of Directors.

Section 5. The officers of the Corporation shall hold office until their successors are chosen and qualify. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

#### THE CHAIRMAN OF THE BOARD

Section 6. The Chairman of the board shall be the chief executive officer of the Corporation; he shall preside at all meetings of the stockholders and directors, shall have general and active management of the business of the Corporation, shall see that all orders and resolutions of the board are carried into effect and shall perform such other duties as the Board of Directors shall prescribe. The chairman of the board shall be a full time employee and subject to such compensation as the Board of Directors shall determine.

#### THE PRESIDENT

Section 7. The president of the Corporation shall be the principal operating and administrative officer of the Corporation. If there is no chairman of the board or during the absence or disability of the chairman of the board, he shall exercise all of the powers and discharge all of the duties of the chairman of the board. He shall possess

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power to sign all certificates, contracts and other instruments of the Corporation. He shall, in the absence of the chairman of the board, preside at all meetings of the stockholders and of the Board of Directors. He shall perform all such other duties as are incident to his office or are properly required of him by the Board of Directors.

#### THE VICE PRESIDENTS

Section 8. Unless otherwise provided by the Board of Directors, each senior vice president may, in the absence of the president and the chairman of the Board of Directors, perform the duties and exercise the powers of the president. Each vice president shall at all times possess power to sign all certificates, contracts and other instruments of the Corporation, except as otherwise limited in writing by the chairman of the board or the president of the Corporation, and shall have such other authority and perform such other duties as these bylaws or the Board of Directors, executive committee, chairman of the board or present shall prescribe.

#### THE SECRETARY AND ASSISTANT SECRETARIES

Section 9. The secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings of the meetings of the Corporation and of the Board of Directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or president, under whose supervision he shall be. He shall have custody of the corporate seal of the Corporation and he, or an assistant secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such assistant secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature.

Section 10. The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

#### THE TREASURER AND ASSISTANT TREASURERS

Section 11. The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation to such depositories as may be designated by the Board of Directors.

Section 12. He shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the president and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as treasurer and of the financial condition of the Corporation.

Section 13. If required by the Board of Directors, he shall give the Corporation a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 14. The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the treasurer and shall perform such other duties and have such powers as the Board of Directors may from time to time prescribe.

#### ARTICLE VI CERTIFICATES OF STOCK

Section 1. Every holder of stock in the Corporation shall be entitled to have a certificate, signed by, or in the name of the Corporation by, the chairman or vice chairman of the Board of Directors or the president or a vice president and the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the Corporation, certifying the number of shares owned by him in the Corporation.

Section 2. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

#### LOST CERTIFICATES

Section 3. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in

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its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

#### TRANSFERS OF STOCK

Section 4. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

#### FIXING RECORD DATE

Section 5 (a). In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date which shall not be more than sixty days nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date of the adjourned meeting.

(b) In order that the Corporation may determine the stockholders

entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten (10) days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of

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stockholders' meeting are recorded, to the attention of the Secretary of the Corporation. Delivery shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action.

#### REGISTERED STOCKHOLDERS

Section 6. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

#### ARTICLE VII GENERAL PROVISIONS DIVIDENDS

Section 1. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 2. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

#### ANNUAL STATEMENT

Section 3. The Board of Directors shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the Corporation.

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#### CHECKS

Section 4. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

#### FISCAL YEAR

Section 5. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

#### SEAL

Section 6. The corporate seal shall have inscribed thereon the name of the

Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII  
INDEMNIFICATION

Section 1. Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) (a "third party proceeding") by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (an "indemnatee"), against all expenses, liability and loss (including attorneys' fees, judgements, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgement, order, settlement, conviction, or upon a plea of nolo contendere or

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its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgement in its favor (together with third party proceedings, "proceedings") by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another

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corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (an "indemnatee"), against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

AUTHORIZATION OF INDEMNIFICATION

Section 3. Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, or officer is proper in the circumstances because he has not met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Such determination shall be made (i) by a majority vote of the directors who were not parties to such actions, suit or proceeding, even though less than a quorum, or (ii) if there are no such directors or if such directors so direct, by independent legal counsel in a written opinion, or (iii) by the stockholders. To the extent, however, that a director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding, described above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, without the necessity of authorization in the specific case.

GOOD FAITH DEFINED

Section 4. For the purposes of any determination under Section 3 of this Article VIII, a person shall be deemed to have acted or refrained from acting in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe his action or forbearance from acting was unlawful, if his action, or forbearance as the case may be, is based on the records or books of account of the Corporation or other enterprise, or on information supplied to him by the officers of the Corporation or other enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or other enterprise or on information or records given or

reports made to the Corporation or other enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or other enterprise. The term "other enterprise" as used in this Section 4 shall mean any other Corporation or any partnership, joint

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venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Corporation as a director, officer or employee. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Sections 1 or 2 of this Article VIII, as the case may be.

#### PROCEDURES FOR INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 5 (a). Any indemnification under Sections 1 or 2 or advancement of expenses under Section 6 accompanied by the requisite undertaking of this Article VIII shall be made promptly, and in any event within ninety days, upon the written request of the person seeking indemnification or advancement of expense, unless, in the case of indemnification a determination is reasonably and promptly made by the Board of Directors by a majority vote of the directors who are not parties to the action, suit or proceeding in question, even though less than a quorum, that such person acted in a manner set forth in such Sections 1 or 2, as the case may be, as to justify the Corporation's not indemnifying such person. In the event there are no such directors or if such directors so direct, the Board of Directors shall promptly direct that independent legal counsel shall give its opinion in writing whether such person acted in the manner set forth in such Sections 1 or 2, as the case may be, as to justify the Corporation's not indemnifying such person.

(b) The right to indemnification or advancement of expenses granted by this Article shall be enforced by such person in the Court of Chancery of the State of Delaware, if the Board of Directors or independent legal counsel denies the claim, in whole or in part, or if no disposition of such claim is made within ninety days. The costs and expenses incurred by such person in connection with successfully establishing his right to indemnification, in whole or in part, in any such proceeding shall also be indemnified by the Corporation.

#### EXPENSES PAYABLE IN ADVANCE

Section 6. Except as limited by Section 5 of this Article, expenses incurred in defending a threatened or pending action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VIII.

#### NON-EXCLUSIVITY AND SURVIVAL OF INDEMNIFICATION

Section 7. The indemnification and advancement of expenses provided by or granted pursuant to the other Sections of this Article VIII shall not be deemed exclusive

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of any other rights to which any person seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, contract, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Sections 1 and 2 of this Article VIII shall be made to the fullest extent permitted by Delaware law. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in Sections 1 or 2 of this Article VIII but whom the Corporation has the power or obligation to indemnify under the provisions of Delaware law or otherwise. The indemnification and advancement of expenses provided by or granted pursuant to this Article VIII shall, unless otherwise provided or ratified, continue as to a person who has ceased to be a director, officer or employee and shall inure to the benefit of the heirs, executors and administrators of such person.

#### INSURANCE

Section 8. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer or employee of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not

the Corporation would have the power or the obligation to indemnify him against such liability under the provisions of this Article VIII, or otherwise under Delaware law.

MEANING OF "CORPORATION" FOR PURPOSES OF ARTICLE VIII

Section 9. For purposes of this Article VIII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers or employees, so that any person who is or was a director, officer or employee, of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer or employee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

Section 10. Subject to Subject 5 (b) hereof, the Corporation shall be required to indemnify an indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if the initiation of such proceeding (or part thereof) by the indemnitee was authorized in writing by the Board of Directors.

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ARTICLE IX  
AMENDMENTS

Section 1. These bylaws may be altered, amended or repealed or new bylaws may be adopted by the stockholders or by the Board of Directors, when such power is conferred upon the Board of Directors, by the Certificate of Incorporation, at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new bylaws be contained in the notice of such meeting.

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<CURRENT-LIABILITIES>	583,473
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<SALES>	1,952,439
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<CGS>	1,440,828
<TOTAL-COSTS>	1,440,828
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<TOTAL-COSTS>	1,086,206
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<PERIOD-START>	JAN-01-1996
<PERIOD-END>	JUN-30-1996
<CASH>	77,806
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<RECEIVABLES>	220,727
<ALLOWANCES>	(11,036)
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<CURRENT-LIABILITIES>	467,941
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<SALES>	998,996
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<CGS>	748,514
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<CASH>	85,382
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<SALES>	544,060
<TOTAL-REVENUES>	544,212
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<CASH>	126,316
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