TreeHouse Foods, Inc.
Form 4
April 05, 2017

FORM 4

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

OMB APPROVAL	
OMB Number:	3235-0287
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(Print or Type Responses)

1. Name and Address of Reporting Person *
Kahler Erik Thomas

(Last) (First) (Middle)

2021 SPRING ROAD, SUITE 600

(Street)

OAK BROOK, IL 60523

(City) (State) (Zip)

2. Issuer Name **and** Ticker or Trading Symbol
TreeHouse Foods, Inc. [THS]

3. Date of Earliest Transaction (Month/Day/Year)
03/31/2017

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

_____ Director _____ 10% Owner
__X__ Officer (give title below) _____ Other (specify below)
Sr VP-Corporate Development

6. Individual or Joint/Group Filing(Check Applicable Line)
_X_ Form filed by One Reporting Person
___ Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1.Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)		4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price			

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474 (9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(*e.g.*, puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security	2. Conversion or Exercise	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any	4. Transaction Code	5. Number of Derivative Securities	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount Underlying Securitie (Instr. 3 and 4)

(Instr. 3)	Price of Derivative Security	(Month/Day/Year)	(Instr. 8)		Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)					
			Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amou or Numb of Shares
Restricted Stock Unit	(1)	03/31/2017 (2)	A		1,970		(3)	(3)	Common Stock	1,97
Non-Qualified Stock Option (Right to Buy)	$ 84.66	03/31/2017 (2)	S		8,650		(4)	03/31/2027	Common Stock	8,65

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
Kahler Erik Thomas 2021 SPRING ROAD SUITE 600 OAK BROOK, IL 60523			Sr VP-Corporate Development	

Signatures

Thomas E. O'Neill, by power of attorney	04/05/2017
**Signature of Reporting Person	Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).
- ** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- **(1)** Each restricted stock unit represents a contingent right to receive one share of common stock of TreeHouse Foods, Inc.
- **(2)** This Form 4 is being filed late due to inadvertent administrative error.
- **(3)** The restricted stock units vest and settle in stock or cash in three approximately equal installments on each of the first three anniversaries of the grant date.
- **(4)** The stock options shall vest in approximately three equal installments on each of the first three anniversaries of the grant date.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.
Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. #CCEEFF;padding:0pt;">

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Holders

As of March 26, 2018 there were approximately 9 holders of record of our shares of common stock, plus an indeterminate number of additional stockholders whose shares of our common stock are held on their behalf by brokerage firms or other agents.

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Dividend Policy

We have never declared or paid cash dividends on our capital stock in the past, and we have no intention of declaring or paying any such dividends in the foreseeable future. Additionally, our credit facility with SVB prohibits the payment of cash dividends without obtaining SVB's prior consent. Any declaration or payment of dividends in the future will be at the discretion of our board of directors, and will depend on our results of operations, capital requirements, legal and contractual restrictions and other factors deemed relevant by our board of directors.

Item 6. Selected Financial Data

Not applicable.

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Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Unless the context indicates otherwise, all references to "Netlist," our "Company," "we," "us," or "our" in this discussion and analysis refer to Netlist, Inc., together with its consolidated subsidiaries. This discussion and analysis should be read in conjunction with our audited consolidated financial statements and the related notes included in Part II, Item 8 of this report, and all cross-references to notes in this discussion and analysis refer to the identified note contained in such consolidated financial statements.

Forward-Looking Statements

This discussion and analysis includes "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements other than historical facts and often address future events or our future performance. Words such as "anticipate," "estimate," "expect," "project," "intend," "may," "will," "might," "plan," "predict," "believe," "should," "could" and similar words or expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Forward-looking statements contained in this discussion and analysis include statements about, among other things: our beliefs regarding the market and demand for our products or the component products we resell; our ability to develop and launch new products that are attractive to the market and stimulate customer demand for these products; our plans relating to our intellectual property, including our goals of monetizing, licensing, expanding and defending our patent portfolio; our expectations and strategies regarding outstanding legal proceedings and patent reexaminations relating to our intellectual property portfolio, including our pending proceedings against SK hynix Inc., a South Korean memory semiconductor supplier ("SK hynix"); our expectations with respect to any strategic partnerships or other similar relationships we may pursue; our business strategies and objectives; and our expectations regarding our future operations and financial position, including revenues, costs and prospects, and our liquidity and capital resources, including cash flows, sufficiency of cash resources, efforts to reduce expenses and the potential for future financings. All forward-looking statements reflect management's present assumptions, expectations and beliefs regarding future events and are subject to known and unknown risks, uncertainties and other factors that could cause actual results to differ materially from those expressed in or implied by any forward-looking statements. These risks and uncertainties include those described in Item 1A. Risk Factors of this report. In addition, we operate in a competitive and rapidly evolving industry in which new risks emerge from time to time, and it is not possible for us to predict all of the risks we may face, nor can we assess the impact of all factors on our business or the extent to which any factor or combination of factors could cause actual results to differ from our expectations. In light of these risks, uncertainties and other factors, our forward-looking statements should not be relied on as predictions of future events. All forward-looking statements reflect our assumptions, expectations and beliefs only as of the date they are made, and except as required by law, we undertake no obligation to revise or update any forward-looking statements for any reason.

Overview

We provide high-performance modular memory subsystems to customers in diverse industries that require enterprise and storage class memory solutions to empower critical business decisions. We have a history of introducing disruptive new products, such as one of the first load reduced dual in-line memory modules ("LRDIMM") based on our distributed buffer architecture, which has been adopted by the industry for DDR4 LRDIMM. We were also one of the first to bring NAND flash memory ("NAND flash") to the memory channel with our NVvault non-volatile dual in-line memory modules ("NVDIMM") using software-intensive controllers and merging dynamic random access memory integrated circuits (“DRAM ICs” or "DRAM") and NAND flash to solve data bottleneck and data retention challenges encountered in high-performance computing environments. We recently introduced a new generation of storage class memory products called HybriDIMM to address the growing need for real-time analytics in Big Data applications, in-memory databases, high performance computing and advanced data storage solutions. We publicly demonstrated a HybriDIMM prototype in August 2016 and we sampled HybriDIMM to select customers in the second half of 2017, and we are now working with certain customers to transition to volume production. We also resell NAND flash, DRAM products and other component products to end-customers that are not reached in the distribution models of the component manufacturers, including storage customers, appliance customers, system builders and cloud and datacenter customers.

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Due to the ground-breaking product development of our engineering teams, we have built a robust portfolio of over 100 issued and pending U.S. and foreign patents, many seminal, in the areas of hybrid memory, storage class memory, rank multiplication and load reduction. Since our inception, we have dedicated substantial resources to the development, protection and enforcement of technology innovations we believe are essential to our business. Our early pioneering work in these areas has been broadly adopted in industry-standard registered dual in-line memory modules ("RDIMM"), LRDIMM and in NVDIMM. Our objective is to continue to innovate in our field and invest further in our intellectual property portfolio, with the goal of monetizing our intellectual property through a combination of product sales and licensing, royalty or other revenue-producing arrangements, which may result from joint development or similar partnerships or defense of our patents through enforcement actions against parties we believe are infringing them.

We recorded total net revenues of $38.3 million and $19.7 million, gross profit of $2.5 million and $7.4 million, and net losses of $13.4 million and $11.2 million, in each case for the years ended December 30, 2017 and December 31, 2016, respectively. We have historically financed our operations primarily with proceeds from issuances of equity and debt securities and revenues generated from operations, including from product sales and a non-recurring engineering ("NRE") fee from our November 2015 joint development and license agreement ("JDLA") with Samsung Electronics Co., Ltd ("Samsung"). We have also funded our operations with a revolving line of credit and term loans under a bank credit facility, a funding arrangement for costs associated with certain of our legal proceedings against SK hynix and, to a lesser extent, equipment leasing arrangements. See "Liquidity and Capital Resources" below for more information.

2017-2018 Developments

Developments relating to SK Hynix Proceedings

Final Determination in First ITC Action

We have taken action to protect and defend our innovations by filing legal proceedings for patent infringement against SK hynix and two of its subsidiaries in the U.S. International Trade Commission ("ITC"), U.S. district court and the courts of Germany and the People's Republic of China ("PRC"). In our two separate ITC actions against SK hynix, we have requested exclusion orders that direct U.S. Customs and Border Protection to stop allegedly infringing SK hynix RDIMM and LRDIMM products from entering the United States. In our U.S. district court and international court proceedings, we are primarily seeking damages. All of our patents involved in these proceedings cover key features of RDIMM and LRDIMM products.

On January 16, 2018, the ITC issued a final determination regarding our first ITC action against SK hynix filed in September 2016, in which it concluded there was no infringement of the patents in this action and terminated the ITC's investigation related to these proceedings. Standard procedures at the ITC afford us the opportunity to appeal the ITC's

final determination, and we are currently considering our options regarding any such appeal. Our second ITC action against SK hynix, which we filed in October 2017 and which is based on alleged infringement of different patents, as well as our district and international court proceedings, are unaffected by this determination and remain ongoing. Based on target dates set by the ITC, our second ITC action is currently scheduled for an evidentiary hearing in November 2018 and a final initial determination in March 2019 if the action continues through these dates; however, as with all legal proceedings, the timing and outcomes of the ITC action are inherently uncertain and subject to change.

TRGP Agreement

On May 3, 2017, we entered into an investment agreement (the "TRGP Agreement") with TR Global Funding V, LLC, an affiliate of TRGP Capital Management, LLC ("TRGP"), which generally provides that TRGP will directly fund the costs incurred by us or on our behalf in connection with certain of our proceedings against SK hynix, including costs incurred since January 1, 2017 and costs to be incurred in the future in our first ITC action and our U.S. district court proceedings, but excluding our subsequent ITC action and our proceedings in international courts. In exchange for such funding, we have agreed that, if we recover any proceeds in connection with the funded SK hynix proceedings, we will pay to TRGP the amount of its funding plus an escalating premium based on when any such proceeds are recovered, such that the premium will equal a specified low-to-mid double-digit percentage of the amount of TRGP's funding and such percentage will increase by a specified low double-digit amount each quarter after a specified date until any such

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proceeds are recovered. In addition, we have granted to TRGP a first priority security interest in the claims underlying the funded SK hynix proceedings and any proceeds we may receive in connection with these proceedings, and a second priority security interest in our patents that are the subject of these proceedings. We have established this funding arrangement in order to provide us with increased security that we will be able to vigorously pursue our claims against SK hynix through their final resolution.

Rights Agreement

On April 17, 2017, we adopted a rights agreement to implement a standard "poison pill." In general terms, for so long as the rights issued under the rights agreement are outstanding, the rights agreement prevents any person or group from acquiring a significant percentage of our outstanding capital stock or attempting a hostile takeover of our Company by significantly diluting the ownership percentage of such person or group. As a result, the rights agreement has a significant anti-takeover effect. Our board of directors approved the rights agreement as part of our strategy in connection with our proceedings against SK hynix, with the intent of disconnecting our market capitalization from the damages calculations and any settlement negotiations that may develop in connection with these proceedings.

2017 Offering

On August 22, 2017, we completed an underwritten public offering (the "2017 Offering"), pursuant to which we sold 8,500,000 shares of our common stock at a price to the public of $0.60 per share. The net proceeds to us from the 2017 Offering were $4.4 million, after deducting underwriting discounts and commissions and offering expenses paid by us.

ATM Program

On November 14, 2017, we entered into an At Market Issuance Sales Agreement (the "Sales Agreement") with B. Riley FBR, Inc. (the "Agent") to sell shares of our common stock, with aggregate gross proceeds of up to $9.0 million, from time to time, through an "at-the-market" equity offering program under which the Agent will act as sales agent (the "ATM Program"). Under the Sales Agreement, we will set the parameters for the sale of shares, including the number of shares to be issued, the time period during which sales are requested to be made, any limitation on the number of shares that may be sold in any one trading day and any minimum price below which sales may not be made. The Sales Agreement provides that the Agent will be entitled to compensation for its services in an amount equal to 3.0% of the gross proceeds from the sale of shares under the Sales Agreement. We have no obligation to sell any shares under the Sales Agreement and may suspend solicitation and offers under the Sales Agreement at any time. We sold 8,894,222 shares of stock for net proceeds of $2.8 million as of December 30, 2017 and subsequent to our year end through March 26, 2018 we sold 6,101,312 shares of stock for approximate net proceeds of $1.8 million.

Amendments to SVB Credit Agreement

On March 20, 2018, March 27, 2017 and April 12, 2017, we entered into amendments to our credit agreement (as amended, the “SVB Credit Agreement”) with Silicon Valley Bank (“SVB”). The amendments extend the maturity date of advances under the SVB Credit Agreement to March 31, 2019; modify our financial covenants under the SVB Credit Agreement to remove all prior financial standards and replace them with a liquidity ratio standard; remove or amend certain termination, anniversary and unused facility fees payable by us under the SVB Credit Agreement; and make certain other administrative changes.

Key Business Metrics

The following describes certain line items in our consolidated statements of operations that are important to management’s assessment of our financial performance:

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Net Product Revenues

Net product revenues consist of resales of certain component products, including NAND flash and DRAM products, and sales of our high-performance memory subsystems, net of a provision for estimated returns under our right of return policies, which generally range up to 30 days. Product sales are made primarily pursuant to stand-alone purchase orders, which generally have no cancellation or rescheduling penalty provisions. Our customers typically provide us with non-binding forecasts of future product demand over specific periods of time, but they generally place orders with us no more than two weeks in advance of the desired delivery date. Selling prices are typically negotiated monthly, based on competitive market conditions and the then-current price of relevant component products, including DRAM ICs and NAND flash. We often ship products to our customers' international manufacturing sites, but all of our sales to date have been denominated in U.S. dollars.

The component products we resell include products we purchase for the purpose of resale, as well as excess component inventory we purchase for, but do not use in, our memory subsystems. Resales of these products have increased over the past several years, and we expect this trend may continue. We also resell excess component inventory to distributors and other users of memory integrated circuits, but these sales have historically been, and we expect will continue to be, a relatively small percentage of our net product revenues.

We also sell our memory subsystem products, primarily to original equipment manufacturers ("OEMs"). Sales of our memory subsystem products have declined in recent periods, and we expect these declines could continue unless and until our next-generation products gain significantly greater customer and market acceptance.

Engineering Services

Pursuant to the terms of our JDLA with Samsung, we provided certain engineering services for Samsung and received a NRE fee as compensation for these services. These fees from Samsung are the only such fees for engineering services we have received to date, but we could in the future receive additional fees of this type, from Samsung or other parties, depending on the terms of the relationships we may develop.

Cost of Sales and Gross Margin

Our cost of sales includes the cost of materials (including component products), labor and other manufacturing costs, depreciation and amortization of equipment expenses, inventory valuation provisions, stock-based compensation expenses, occupancy costs and other allocated fixed costs.

For resales of component products, including NAND flash and DRAM products, cost of sales includes the cost of the products we purchase for resale. We purchase these products from Samsung under the terms of the JDLA and from other suppliers on the terms we negotiate with these suppliers. For sales of our memory subsystem products, cost of sales also includes the DRAM ICs and NAND flash we purchase and incorporate into these products. As a result, the

DRAM ICs and NAND flash we purchase for resale or for use in our products constitute a significant portion of our cost of sales in any period. Our cost of sales fluctuates between periods based on the cost to us to purchase DRAM ICs and NAND flash. We attempt to pass through these DRAM IC and NAND flash cost fluctuations to our customers, but any inability to do so negatively impacts our gross margin.

Research and Development

Research and development expenses consist primarily of employee and independent contractor compensation and related costs, stock based compensation expenses, NRE fees that we pay to third parties, computer aided design software license costs, reference design development costs, depreciation or rental of evaluation equipment expenses, and occupancy and other allocated overhead costs. Also included in research and development expenses are the costs of materials and overhead related to the production of engineering samples of new products under development or products used solely in the research and development process. Our customers typically do not separately compensate us for design and engineering work involved in developing application specific products for them. All research and development costs

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are expensed as incurred. We have been spending less on research and development but we continue to anticipate spending more for HybriDIMM.

Intellectual Property Legal Fees

Intellectual property legal fees consist of legal fees incurred for patent filings, protection and enforcement. Intellectual property legal fees are generally expensed as incurred. Although we expect intellectual property legal fees to generally increase over time as we continue to protect, defend and enforce and seek to expand our patent portfolio, these increases may not be linear but may occur in lump sums depending on the due dates of patent filings and their associated fees and the arrangements we may make with our legal advisors in connection with enforcement proceedings, which may include contingent fee arrangements in which we would pay these legal advisors on a scaled percentage of any negotiated fees, settlements or judgments awarded to us based on if, how and when the fees, settlements or judgments are obtained.

We expect our intellectual property legal fees may show different trends for so long as the TRGP Agreement remains in effect. Pursuant to the terms of the TRGP Agreement, the legal expenses we incur that are paid directly by TRGP are excluded in their entirety from our financial statements in each period in which the agreement remains in effect. In addition, any settlement or other cash proceeds we may recover in the future in connection with the SK hynix proceedings funded by TRGP would be reduced by the aggregate amount of legal expenses we exclude as a result of TRGP's payment of these expenses, plus the premium amount due to TRGP under the terms of the TRGP Agreement at the time of any such recovery. As a result, we expect our intellectual property legal fees could decrease or increase at a slower rate if and to the extent these fees are funded by TRGP, which would be the case if the TRGP Agreement remains in effect, the proceedings covered by the TRGP Agreement remain ongoing and our focus is directed to such proceedings (rather than other existing or potential future intellectual property legal proceedings). Additionally, we expect our intellectual property legal fees would be significantly higher in the period in which a recovery from the SK hynix proceedings covered by the TRGP Agreement, if any, occurs. In light of the final determination in our first ITC action and the current stay of our U.S. district court proceedings, which are the main SK hynix proceedings presently covered by the TRGP Agreement, as well as our current focus on our second ITC action against SK hynix, which is not presently covered by the TRGP Agreement, the impact of the TRGP Agreement on our intellectual property legal fees may not be as significant in near-term future periods as it was in 2017.

Selling, General and Administrative

Selling, general and administrative expenses primarily consist of employee compensation and related costs, stock-based compensation expenses, independent sales representative commissions, professional service fees, promotional and other selling and marketing expenses, and occupancy and other allocated overhead costs. Selling expenses also includes the cost of materials and overhead related to products manufactured for customer qualifications, since working through the product approval and qualification process with OEMs and other potential customers of our memory subsystem products can comprise a significant portion of our selling effort for these products. Selling, general and administrative expenses are generally expensed as incurred.

Provision for Income Taxes

Our net deferred tax assets consist primarily of net operating loss carryforwards. Because we provide a full valuation allowance against net deferred tax assets, our effective tax rate differs from the federal statutory rate and we do not recognize an income tax benefit related to losses incurred.

Factors Affecting Our Performance

Trends in Product Sales

We are and in the past have been substantially dependent on sales of single products or product categories. For instance, we have historically been dependent on sales of our memory subsystem products, including particularly our NVvault NVDIMM, and in recent periods, we have been dependent on our resales of component products. Demand for

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any of these products could increase or decrease at any time for a number of reasons, including new customer qualifications, changing customer requirements or preferences, product obsolescence, introduction of more advanced or otherwise superior products by us or our competitors, the ability of our customers to obtain these products or substitute products from alternate sources, customers increasing or reducing their need for these products generally, or a variety of other factors. We have no long-term agreements or other commitments with respect to sales of any of these products. As a result, any fluctuations in demand for these products from us would impact our sale levels and net product revenues.

For example, we have experienced a sharp decline in demand for and sales of NVvault. This rapid decline has been due in large part to the loss of our former most significant NVvault customer, Dell, beginning in 2012. We have recognized no NVvault sales to Dell in the past several years, and we expect no future demand from Dell for these products. We have also experienced declines in demand for and sales of our other memory subsystem products in recent periods, and these declines could continue or intensify in the future.

Contrastingly, we have experienced marked increases in component product resales in recent years. Because the cost of the component products we purchase for resale is added to our cost of sales for these products, our gross margin on resales of component products is significantly lower than our gross margin on sales of our memory subsystem products. As a result, increases or decreases in component product resales as a percentage of our total product revenues have a significant impact on our gross margins.

We believe our ability to record revenues and gross profits at levels sufficient to replace lost NVvault sales will depend on our ability to grow demand for and sales of our memory subsystem products, by securing new NVvault customers or successfully commercializing NVvault product extensions and other next-generation products. Although we continue to pursue qualifications of NVvault with OEMs and potential new customer applications, we have had limited success with these efforts to date and may not be successful in the future. In addition, although we have introduced NVvault product extensions and other next-generation products, including most recently our HybriDIMM memory subsystem, the rate and degree of customer adoption of these products has been slower and smaller than expected and these trends could continue. Further, HybriDIMM and some of our other next-generation products are still under development and may require additional time and capital investments in order to commercialize, and our development and commercialization strategies for these products, including, for instance, our JDLA with Samsung relating to the joint development of new storage class memory technologies to facilitate broad industry adoption of this new technology, may not be successful. Our ability to obtain customer or market acceptance of these next-generation products will materially impact our net product revenues and gross profits, as well as our ability to recoup our investments in developing these products.

Customer Composition and Concentrations

Our target markets are characterized by a limited number of large companies, and consolidation in one or more of these target markets may further increase this concentration. As a result, sales to small numbers of customers have

historically represented a substantial portion of our net product revenues, and we expect this concentration to continue. Additionally, the composition of major customers and their respective contributions to our net product revenues have fluctuated and will likely continue to fluctuate from period to period as our existing and prospective customers progress through the life cycle of the products they produce and sell and experience resulting fluctuations in their product demand. We believe our performance depends in significant part on our ability to establish and maintain relationships with and effect substantial sales to our large customers. We do not have long-term agreements with any of our customers and, as result, any or all of them could decide at any time to increase, accelerate, decrease, delay or discontinue their purchase of our products or the component products we resell. These fluctuations in customer demand and concentrations could significantly impact our net product revenues.

Product Sale Prices

The prices customers pay for the products we sell can fluctuate due to many factors, including, among others, competitive conditions in our key customer markets, changes in customer requirements or preferences, volatility in the market prices for DRAM ICs, NAND flash and other component products, and changes in manufacturing efficiencies or capacities. Our industry has historically been characterized by declines in average sale prices. If sale price declines are

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not offset by corresponding decreases in costs or increases in sales volume or sales of products with higher margins, these sale price declines could have a material adverse effect on our operating results.

Once our prices with a customer are negotiated, we are generally unable to revise pricing with that customer until our next regularly scheduled price adjustment. As a result, if market prices for essential components increase, we generally cannot pass the price increases through to our customers for products purchased under an existing purchase order. Consequently, we are exposed to the risks associated with the volatility of prices for these components and our cost of sales could increase and our gross margins could decrease in the event of sudden price increases. Alternatively, if there are declines in the prices of these components, we may be required to reduce our selling prices for subsequent purchase orders, which may result in a decline in our net product revenues.

In addition, because a large percentage of our product revenues are often from sales to a small number of customers, these customers may exert pressure on us to make concessions in the prices at which we sell products to them. These sale price concessions could have a material effect our net product revenues.

Component Product Supply

Our ability to fulfill customer orders for our memory subsystem products or the component products we resell is dependent on a sufficient supply of DRAM ICs, NAND flash and other component products. We have no long-term supply contracts for any of these component products. There are a relatively small number of suppliers of these components, and we typically purchase from only a subset of these suppliers.

From time to time, shortages in DRAM ICs and NAND flash have required some suppliers to limit the supply of these components. In the past, we have experienced supply chain disruptions and shortages of DRAM and NAND flash required to create certain of our memory subsystem products, and we have been forced to procure the component products we resell from other suppliers to the extent sufficient product is not available from Samsung to meet customer demand or in the event of other Samsung supply issues. Supply shortages can occur at any time and for a variety of reasons, including, among others, spikes in customer demand that cannot be satisfied by our suppliers, any problems that arise with the supplier’s manufacturing operations or facilities that cause disruptions or delays, or any failure by the supplier to comply with the terms of its supply arrangements with us. If we are not able to obtain components in the amounts needed, on a timely basis and at commercially reasonable prices, we may lose customers due to order delivery interruptions or failures, which could impact our net product revenues, and we may experience increases in our cost of sales if we are forced to procure components from alternative suppliers and are not able to negotiate favorable terms with these suppliers. For example, with respect to Samsung, any inability to obtain sufficient component products from Samsung could increase our cost of sales for component product resales because we may not be able to make arrangements with other suppliers on financial and other terms comparable to those we have negotiated with Samsung under the JDLA. As described above, we may or may not be able to pass any such cost increases through to our customers, in which case they could materially adversely impact our results by increasing our cost of sales without a corresponding increase in our net product revenues.

Product Demand Forecasting

Because of the short-term nature of the commitments by many of our customers and the short turnaround times that apply to most orders, as well as our customers' ability to cancel or defer purchase orders for any reason, we are required to make component procurement decisions based on forecasts of customer demand for the products we sell.

Our production expense and component purchase levels are to a large extent fixed in the short term. As a result, we may be unable to adjust spending on a timely basis to compensate for any unexpected shortfall in customer orders. If we overestimate customer demand, we may have excess component or finished goods inventory, which may not be able to be used in other products or resold and may become obsolete before any such use or resale. If there is a subsequent decline in the prices of components, the value of our inventory would fall and we may be required to write-down the value of our component inventory, which may result in a significant increase in our cost of sales and decrease in our gross margins. In the past, we have had to write-down inventory due to obsolescence, excess quantities and declines in

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market value below our costs. As a result, any significant shortfall of customer orders in relation to our expectations could hurt our operating results, cash flows and financial condition.

Conversely, any rapid increases in demand by our customers could strain our resources. If we underestimate customer demand, we may not have sufficient inventory of necessary components on hand to meet that demand and we may need to try to procure additional quantities, which may not be available or may only be available at high prices or on otherwise unfavorable terms. We also may not have sufficient manufacturing capacity at any given time to meet any demands for rapid increases in production of our memory subsystem products. Any shortages of inventory or manufacturing capacity could lead to delays in the delivery of products, which may reduce our net product revenues.

In addition, if our product demand forecasts are wrong, we may understate or overstate the provision required for excess and obsolete inventory. If our inventories are determined to be overvalued, we would be required to recognize additional expense in our cost of sales at the time of the determination. Conversely, if our inventories are determined to be undervalued, we may have over-reported our costs of sales in previous periods and would be required to recognize additional gross profit at the time the inventories are sold.

Intellectual Property Protection, Enforcement and Monetization

We dedicate substantial resources to developing technology innovations we believe are essential to our business. We intend to pursue monetization avenues for our intellectual property portfolio, potentially including licensing, royalty or other revenue-producing arrangements. However, we have not generated any such revenue stream from our intellectual property to date. If we are not successful in monetizing our intellectual property portfolio, we may never recoup our investments of time, capital and other resources in the development, maintenance, defense and enforcement of this portfolio, which could materially adversely affect our results of operations.

We also dedicate substantial resources to protecting and enforcing our intellectual property rights, including with patent infringement proceedings we file against third parties and defense of our patents against challenges made by way of reexamination and review proceedings at relevant government agencies. We expect these activities to continue for the foreseeable future, with no guarantee that any ongoing or future patent protection or litigation activities will be successful. We are also subject to litigation based on claims that we have infringed the intellectual property rights of others. Any litigation, regardless of its outcome, is inherently uncertain, involves a significant dedication of resources, including time and capital, and diverts management’s attention from our other activities. As a result, any current or future infringement claims or patent challenges by or against third parties, whether or not eventually decided in our favor or settled, could materially adversely affect our business, financial condition and results of operations. Additionally, the outcome of pending or future litigation and related patent reviews and reexaminations, as well as any delay in their resolution, could affect our ability to continue to sell our products, protect against competition in the current and expected markets for our products or license or otherwise monetize our intellectual property rights in the future.

Impact of Certain Recent Accounting Pronouncements

In July 2015, the FASB issued Accounting Standards Update ("ASU") No. 2015-11, Simplifying the Measurement of Inventory ("ASU 2015-11"), which requires entities to measure inventory at the lower of cost or net realizable value. Current guidance requires inventory to be measured at the lower of cost or market, with market defined as replacement cost, net realizable value, or net realizable value less a normal profit margin. This ASU simplifies the subsequent measurement of inventory by replacing the lower of cost or market test with a lower of cost or net realizable value test. We adopted this guidance in the first quarter of 2017 and there was no material impact on our consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-09, Compensation-Stock Compensation (Topic 718) Improvements to Employee Share-Based Payment Accounting ("ASU 2016-09"), which is intended to simplify several aspects of the accounting for share-based payment transactions, including the accounting for income taxes, forfeitures, statutory tax withholding requirements, classification of awards as either equity or liabilities, and classification on the statement of cash flows. ASU 2016-09 is effective for fiscal years beginning after December 15, 2016, including interim periods. We adopted this guidance in the first quarter of 2017 and elected to continue to estimate forfeitures expected to

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occur to determine the amount of compensation cost to be recognized in each period. As a result, there was no material impact on its consolidated financial statements.

Business Risks and Uncertainties

Our business, financial condition and prospects are exposed to a number of risks and uncertainties. See the discussion in Item 1A. Risk Factors of this report for more information.

Critical Accounting Policies

The preparation of our consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of net revenues and expenses during the reporting period. By their nature, these estimates and assumptions are subject to an inherent degree of uncertainty. We base our estimates and assumptions on our historical experience, knowledge of current conditions and our beliefs of what could occur in the future considering available information. We review our estimates and assumptions on an ongoing basis. Actual results may differ from our estimates, which may result in material adverse effects on our consolidated operating results and financial position.

We believe the following critical accounting policies involve our more significant assumptions and estimates used in the preparation of our consolidated financial statements:

Revenue Recognition

We generate revenue from sales of products and performance of engineering services.

Net Product Revenues

Net product revenues consist primarily of resales of NAND flash, DRAM products and other component products to end-customers that are not reached in the distribution models of the component manufacturers, including storage

customers, appliance customers, system builders and cloud and datacenter customers, as well as sales of high-performance modular memory subsystems primarily to original equipment manufacturers (“OEMs”) in the server, high-performance computing and communications markets.

We recognize revenues in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 605. Accordingly, we recognize revenues when there is persuasive evidence that an arrangement exists, product delivery and acceptance have occurred, the sales price is fixed or determinable, and collectability of the resulting receivable is reasonably assured.

We generally use customer purchase orders and/or contracts as evidence of an arrangement. Delivery occurs when goods are shipped for customers with shipping point terms and upon receipt for customers with destination terms, at which time title and risk of loss transfer to the customer. Shipping documents are used to verify delivery and customer acceptance. We assess whether the sales price is fixed or determinable based on the payment terms associated with the transaction and whether the sales price is subject to refund. Customers are generally allowed limited rights of return for up to 30 days, except for sales of excess component inventories, which contain no right-of-return privileges. Estimated returns are provided for at the time of sale based on historical experience or specific identification of an event necessitating a reserve. We offer a standard product warranty to customers of its memory subsystem products and have no other post-shipment obligations. We assess collectability based on the creditworthiness of the customer as determined by credit checks and evaluations, as well as the customer’s payment history.

All amounts billed to customers related to shipping and handling are classified as net product revenues, while all costs incurred by us for shipping and handling are classified as cost of sales.

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Engineering Services

From time-to-time, we provide engineering services to our customers. We recognize revenue from these services when all of the following conditions are met: (1) evidence existed of an arrangement with the customer, typically consisting of a purchase order or contract; (2) our services were performed and risk of loss passed to the customer; (3) we completed all of the necessary terms of the contract; (4) the amount of revenue to which we were entitled was fixed or determinable; and (5) we believed it was probable that it would be able to collect the amount due from the customer. To the extent one or more of these conditions has not been satisfied, we defer recognition of revenue.

Deferred Revenue

From time-to-time, we receive pre-payments from our customers related to future services. Engineering development fee revenues, including NRE fees, are deferred and recognized ratably over the period the engineering work is completed.

Fair Value of Financial Instruments

We follow ASC Topic 820 to account for the fair value of certain assets and liabilities. ASC Topic 820 defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. ASC Topic 820 emphasizes that fair value is a market-based measurement, not an entity-specific measurement. Therefore, a fair value measurement should be determined based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, ASC Topic 820 establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within Levels 1 and 2 of the hierarchy) and the reporting entity's own assumptions about market participant assumptions (unobservable inputs classified within Level 3 of the hierarchy).

Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that we have the ability to access. An active market is defined as a market in which transactions for the assets or liabilities occur with sufficient frequency and volume to provide pricing information on an ongoing basis. Level 2 inputs are inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs may include quoted prices for similar assets and liabilities in active markets, as well as inputs that are observable for the asset or liability (other than quoted prices), such as interest rates, foreign exchange rates and yield curves that are observable at commonly quoted intervals. Level 3 inputs are unobservable inputs for the asset or liability, which are typically based on our own assumptions, as there is little, if any, related market activity. In instances where the determination of the fair value measurement is based on inputs from different levels of the fair value hierarchy, the level in the fair value hierarchy within which the entire fair value measurement falls is based on

the lowest level input that is significant to the fair value measurement in its entirety. Our assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability.

Our financial instruments consist principally of cash and cash equivalents, restricted cash, accounts receivable, accounts payable, accrued expenses, revolving line of credit and convertible promissory note. We consider the carrying values of cash and cash equivalents, restricted cash, accounts receivable, accounts payable and accrued liabilities to approximate the fair value for these financial instruments based upon an evaluation of the underlying characteristics, market data and because of the short period of time between origination of the instruments and their expected realization. The fair value of our revolving line of credit and convertible promissory note are determined using current applicable rates for similar instruments as of the balance sheet date and an assessment of our credit rating. The carrying value of our revolving line of credit at December 30, 2017 approximates fair value because our interest rate yield is near current market rates for comparable debt instruments. The fair value of our convertible promissory note was estimated using a discounted cash flow analysis using borrowing rates available to us for debt instruments with similar terms and maturities. We have determined that the valuation of our convertible promissory note is classified in Level 2 of the fair value hierarchy. The carrying value and estimated fair value of the convertible promissory note as of December 30, 2017 were $14.1 million and $12.3 million, respectively. The carrying value and estimated fair value of the convertible promissory note as of December 31, 2016 were $13.9 million and $12.2 million, respectively.

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Allowance for Doubtful Accounts

We perform credit evaluations of our customers' financial condition and limit the amount of credit extended to our customers as deemed necessary, but generally require no collateral. We evaluate the collectability of accounts receivable based on a combination of factors. In cases where we are aware of circumstances that may impair a specific customer's ability to meet its financial obligations subsequent to the original sale, we will record an allowance against amounts due, and thereby reduce the net recognized receivable to the amount we reasonably believe will be collected. For all other customers, we record allowances for doubtful accounts based primarily on the length of time the receivables are past due based on the terms of the originating transaction, the current business environment, and our historical experience. Uncollectible accounts are charged against the allowance for doubtful accounts when all cost-effective commercial means of collection have been exhausted. Generally, our credit losses have been within expectations and the provisions established. However, we cannot guarantee that we will continue to experience credit loss rates similar to those experienced in the past.

Our accounts receivable are generally highly concentrated among a small number of customers, and a significant change in the liquidity or financial position of one of these customers could have a material adverse effect on the collectability of our accounts receivable, liquidity and future operating results.

Inventories

Inventories are valued at the lower of actual cost to purchase or manufacture the inventory or the net realizable value of the inventory. Cost is determined on an average cost basis which approximates actual cost on a first-in, first-out basis and includes raw materials, labor and manufacturing overhead. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. At each balance sheet date, we evaluate our ending inventory quantities on hand and on order and record a provision for excess quantities and obsolescence. Among other factors, we consider historical demand and forecasted demand in relation to inventory on hand, competitiveness of product offerings, market conditions and product life cycles when determining obsolescence and net realizable value. In addition, we consider changes in the market value of components in determining the net realizable value of our inventory. Once established, lower of cost or net realizable value write-downs are considered permanent adjustments to the cost basis of the excess or obsolete inventories.

Impairment of Long-Lived Assets

We evaluate the recoverability of the carrying value of long-lived assets held and used by us in our operations for impairment on at least an annual basis or whenever events or changes in circumstances indicate that their carrying

value may not be recoverable. When such factors and circumstances exist, we compare the projected undiscounted future net cash flows associated with the related asset or group of assets over their estimated useful lives against their respective carrying amount. These projected future cash flows may vary significantly over time as a result of increased competition, changes in technology, fluctuations in demand, consolidation of our customers and reductions in average sale prices. If the carrying value is determined not to be recoverable from future operating cash flows, the asset is deemed impaired and an impairment loss is recognized to the extent the carrying value exceeds the estimated fair value of the asset. The fair value of the asset or asset group is based on market value when available, or when unavailable, on discounted expected cash flows. Our management believes there is no impairment of long-lived assets as of December 30, 2017. However, market conditions could change or demand for the products we sell could decrease, which could result in future impairment of long-lived assets.

Debt Issuance Costs, Debt Discount and Detachable Debt-Related Warrants

Costs incurred to issue debt are deferred and recorded as a reduction to the debt balance in our consolidated balance sheets. We amortize debt issuance costs over the expected term of the related debt using the effective interest method. Debt discounts relate to the relative fair value of warrants issued in conjunction with the debt and are also recorded as a reduction to the debt balance and accreted over the expected term of the debt to interest expense using the effective interest method.

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Warranty Liability

We offer product warranties generally ranging from one to three years, depending on the product and negotiated terms of any purchase agreements with our customers. Such warranties require us to repair or replace defective product returned to us during the warranty period at no cost to the customer. Warranties are not offered on sales of component products. We record an estimate for warranty-related costs at the time of sale based on our historical and estimated future product return rates and expected repair or replacement costs. While such costs have historically been within management’s expectations and the provisions established, unexpected changes in failure rates could have a material adverse impact on us, requiring additional warranty reserves, and could adversely affect our gross profit and gross margins.

Stock-Based Compensation

We account for equity issuances to non-employees in accordance with FASB ASC Topic 505. All transactions in which goods or services are the consideration received for the issuance of equity instruments are accounted for based on the fair value of the consideration received or the fair value of the equity instrument issued, whichever is more reliably measurable. The measurement date used to determine the estimated fair value of the equity instrument issued is the earlier of the date on which the third-party performance is complete or the date on which it is probable that performance will occur.

In accordance with FASB ASC Topic 718, employee and director stock-based compensation expense recognized during the period is based on the value of the portion of stock-based payment awards that is ultimately expected to vest during the period. Given that stock-based compensation expense recognized in our consolidated statements of operations is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures. We estimate our forfeitures at the time of grant and revise such estimates, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Our estimated average forfeiture rates are based on historical forfeiture experience and estimated future forfeitures.

The estimated fair value of common stock option awards to employees and directors is calculated using the Black-Scholes option pricing model. The Black-Scholes model requires subjective assumptions regarding future stock price volatility and expected time to exercise, along with assumptions about the risk-free interest rate and expected dividends, all of which affect the estimated fair values of our common stock option awards. The expected term of options granted is calculated as the weighted-average of the vesting period and the contractual expiration date of the option. This calculation is in accordance with FASB ASC Topic 718, as amended by certain Securities and Exchange Commission guidance providing for a safe harbor method in instances where the vesting and exercise terms of options granted meet certain conditions and where limited historical exercise data is available. The expected volatility is based on the historical volatility of our common stock. The risk-free rate selected to value any particular grant is based on the U.S. Treasury rate that corresponds to the expected term of the grant effective as of the date of the grant. The expected dividend assumption is based on our history and management’s expectation regarding dividend payouts.

Compensation expense for common stock option awards with graded vesting schedules is recognized on a straight-line basis over the requisite service period for the last separately vesting portion of the award, provided that the accumulated cost recognized as of any date at least equals the value of the vested portion of the award.

If there are any modifications or cancellations of the underlying vested or unvested stock-based awards, we may be required to accelerate, increase or cancel any remaining unearned stock-based compensation expense, or record additional expense for vested stock-based awards. Future stock-based compensation expense and unearned stock-based compensation may increase to the extent we grant additional stock options or other stock-based awards.

Income Taxes

Deferred tax assets and liabilities are recognized to reflect the estimated future tax effects, calculated at currently effective tax rates, of future deductible or taxable amounts attributable to events that have been recognized on a cumulative basis in our consolidated financial statements. A valuation allowance related to a net deferred tax asset is

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recorded when it is more likely than not that some portion of the deferred tax asset will not be realized. Deferred tax liabilities, deferred tax assets and valuation allowances are classified as non-current in our consolidated balance sheets.

FASB ASC Topic 740 prescribes a recognition threshold and measurement requirement for the financial statement recognition of a tax position that has been taken or is expected to be taken on a tax return and also provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. Under FASB ASC Topic 740, we may only recognize or continue to recognize tax positions that meet a "more likely than not" threshold.

The application of tax laws and regulations is subject to legal and factual interpretation, judgment and uncertainty. Tax laws and regulations may change as a result of changes in fiscal policy, changes in legislation, the evolution of regulations and court rulings. Therefore, the actual liability for U.S. or foreign taxes may be materially different from our estimates, which could require us to record additional tax liabilities or to reduce previously recorded tax liabilities, as applicable.

Interest Expense

Interest expense consists primarily of interest associated with our debt instruments, including fees related to the term loans, accretion of debt discounts and amortization of debt issuance costs. We recognize the accretion of debt discounts and the amortization of interest costs using the effective interest method.

Results of Operations

The table below presents each line item of our consolidated statements of operations as a percentage of total net revenues for the years ended December 30, 2017 and December 31, 2016. Historical results are not indicative of the results to be expected in the current period or any future period.

	Year Ended	
	December 30, 2017	December 31, 2016

Net product revenues	100	%	65	%
NRE revenues	-		35	
Total net revenues	100		100	
Cost of sales	94		62	
Gross profit	6		38	
Operating expenses:				
Research and development	14		32	
Intellectual property legal fees	7		16	
Selling, general and administrative	19		46	
Total operating expenses	40		94	
Operating loss	(34)		(56)	
Other expense, net:				
Interest expense, net	(1)		(3)	
Other income, net	-		2	
Total other expense, net	(1)		(1)	
Loss before provision for income taxes	(35)		(57)	
Provision for income taxes	-		-	
Net loss	(35)	%	(57)	%

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Net Product Revenues, NRE Revenues, Cost of Sales and Gross Profit

The following table presents net product revenues, NRE revenues, cost of sales and gross profit for the years ended December 30, 2017 and December 31, 2016:

	Year Ended December 30, 2017	December 31, 2016	Change	% Change
	(in thousands, except percentages)			
Net product revenues	$ 38,322	$ 12,798	$ 25,524	199 %
NRE revenues	-	6,857	(6,857)	(100) %
Total net revenues	38,322	19,655	18,667	95 %
Cost of sales	35,866	12,259	23,607	193 %
Gross profit	$ 2,456	$ 7,396	$ (4,940)	(67) %
Gross margin	6.4%	37.6%	(31.2) %	

Net Product Revenues

Our net product revenues are comprised of revenues from resales of component products and sales of our memory subsystem products. In 2017 and 2016, resales of component products represented 85% and 66% of our net product revenues, respectively.

The increase in our net product revenues for 2017 as compared to 2016 resulted primarily from increases of $23.8 million in resales of component products, including primarily NAND flash and DRAM products, $0.8 million in sales of our very low profile (VLP) memory subsystem products, $0.4 million in sales of certain NVvault product extensions, and $0.3 million in sales of other small outline dual in-line memory module (SODIMM) and RDIMM products.

Our largest customer in 2016, which accounted for 16% of net product revenues in 2016, made significantly fewer purchases and contributed a significantly smaller portion of our net product revenues in 2017. None of our customers accounted for greater than 10% of net product revenues in 2017.

NRE Revenues.

The decrease in NRE revenues for 2017 as compared to 2016 resulted from the recognition of revenues from the $6.9 million NRE fee for engineering services performed under our JDLA with Samsung in the 2016 period due to our completion of the engineering services required under the initial phase of the agreement in 2016.

Cost of Sales, Gross Profit and Gross Margin.

The increase in our cost of sales in 2017 as compared to 2016 resulted primarily from increased costs associated with our increased net product revenues.

The decrease in our gross profit and our gross margin (or gross profit as a percentage of revenue) in 2017 as compared to 2016 resulted primarily from the decrease of NRE revenues, partially offset by increased margins on our net product revenues.

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Research and Development

The following table presents research and development expenses for the years ended December 30, 2017 and December 31, 2016:

	Year Ended December 30, 2017	December 31, 2016	Change	% Change
	(in thousands, except percentages)			
Research and development	$ 5,231	$ 6,287	$ (1,056)	(17) %

The decrease in research and development expenses for 2017 as compared to 2016 resulted primarily from decreases of $0.3 million in product research expenses, $0.7 million in headcount costs and related overhead and travel expenses and $0.07 million in professional and outside service fees.

Intellectual Property Legal Fees

The following table presents intellectual property legal fees for the years ended December 30, 2017 and December 31, 2016:

	Year Ended December 30, 2017	December 31, 2016	Change	% Change
	(in thousands, except percentages)			
Intellectual property legal fees	$ 2,705	$ 3,110	$ (405)	(13) %

The decrease in intellectual property legal fees for 2017 as compared to 2016 resulted primarily from our establishment of the TRGP Agreement, pursuant to which we excluded $10.2 million of legal expenses incurred in 2017 in connection with certain of our legal proceedings against SK hynix as a result of TRGP’s payment of these expenses, as well as a decrease in 2017 in legal fees incurred for certain trade secret litigation, offset by increases in other legal fees incurred.

Selling, General and Administrative

The following table presents selling, general and administrative expenses for the years ended December 30, 2017 and December 31, 2016:

	Year Ended			
	December 30, 2017	December 31, 2016	Change	% Change
	(in thousands, except percentages)			
Selling, general and administrative	$ 7,374	$ 9,033	$ (1,659)	(18) %

The decrease in selling, general and administrative expenses for 2017 as compared to 2016 resulted primarily from decreases of $1.3 million in sales and marketing headcount costs and related overhead and travel expenses, $0.2 million in management bonus payments, $0.1 million in advertising and product evaluation costs, and $0.1 million in fees for outside services, partially offset by an increase of $0.1 million in bank fees related to the SVB Credit Agreement.

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Other Expense, Net

The following table presents other expense, net for the years ended December 30, 2017 and December 31, 2016:

	Year Ended				
	December 30, 2017	December 31, 2016	Change	% Change	
	(in thousands, except percentages)				
Interest expense, net	$ (564)	$ (578)	$ 14	2	%
Other income, net	4	386	(382)	99	%
Total other expense, net	$ (560)	$ (192)	$ (368)	(192)	%

Interest expense, net, for 2017 and 2016 consisted primarily of interest expense under the SVB Credit Agreement and a Senior Secured Convertible Note with an original principal amount of $15.0 million (“SVIC Note”) that we issued to an affiliate of Samsung Venture Investment Co. in November 2015 in connection with the JDLA (see Note 5 to our consolidated financial statements included elsewhere in this annual report), and the decrease between periods resulted primarily from lower amortization expense on the SVIC Note and a reduction of interest expense on the SVB Credit Agreement, due to lower unused credit line fees, offset by interest expense for the increase in net borrowings under the line of credit.

The decrease in other income, net, for 2017 as compared to 2016 resulted primarily from a reversal in 2016 of an engineering accrual expense for $0.5 million for work that was not billed in 2016.

Income Tax Provision.

The following table presents the provision for income taxes for the years ended December 30, 2017 and December 31, 2016:

	Year Ended				
	December 30, 2017	December 31, 2016	Change	% Change	
	(in thousands, except percentages)				
Provision for income taxes	$ 6	$ 5	$ 1	20	%

The federal statutory rate was 34% for 2017 and 2016. In both of these periods, we continued to provide a full valuation allowance against our net deferred tax assets, which consist primarily of net operating loss carryforwards. Our effective tax rate differed from the 34% statutory rate in all periods primarily due to the valuation allowance on newly generated loss carryforwards, and accordingly we did not recognize an income tax benefit related to losses incurred for the fiscal years ended December 30, 2017 and December 31, 2016.

On December 27, 2017, new U.S. federal tax legislation was enacted that, among other things, lowers the corporate tax rate from 35% to 21%. In addition to applying the new lower corporate tax rate in 2018 and thereafter to any taxable income we may record, the legislation affects the way we can use and carry forward net operating losses previously accumulated, and has resulted in a revaluation of our deferred tax assets and liabilities. Because our existing deferred tax assets are currently offset by a full valuation allowance, these tax law changes have had no net impact on our consolidated balance sheet as of December 30, 2017. However, if and when we become profitable, we would receive a reduced benefit from our deferred tax assets. As a result, the impact of the new tax law on us was a reduction in our deferred tax assets and corresponding valuation allowance of $14.7 million. See Note 6 to our consolidated financial statements included elsewhere in this annual report for more information.

Liquidity and Capital Resources

Liquidity generally refers to the ability to generate adequate amounts of cash to meet our cash needs. We require cash to fund our operating expenses and working capital requirements, to make required payments of principal and interest under our outstanding debt instruments and, to a lesser extent, to fund capital expenditures.

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Working Capital

The following table presents working capital as of December 30, 2017 and December 31, 2016:

	December 30, 2017	December 31, 2016
	(in thousands)	
Current assets(1)	$ 16,925	$ 19,253
Current liabilities	9,289	6,210
Working capital	$ 7,636	$ 13,043

(1) Includes cash and cash equivalents of $6.7 million and $9.5 million as of December 30, 2017 and December 31, 2016, respectively.

Our working capital decreased by $5.4 million in 2017.

Our current assets decreased by $2.3 million primarily from decreases of $3.1 million in cash and cash equivalents and restricted cash attributable to our use of cash to fund our operations and $1.5 million of prepaid and other current assets primarily attributable to a reclassification of other assets from current asset to long-term assets, partially offset by a increases of $1.2 million in accounts receivable primarily attributable to increased net product revenues and $0.9 million in inventory costs to support the increase in our net product revenues.

Our current liabilities increased by $3.1 million primarily from increases of $2.1 million in accounts payable attributable to inventory purchases to support the increase in our net product revenues and legal expenses to defend our intellectual property and $1.3 million in our borrowings under the SVB Credit Agreement to fund our operations, partially offset by a decrease of $0.3 million in accrued payroll and related liabilities attributable to a reduction in headcount.

Cash Provided by and Used in the Years Ended December 30, 2017 and December 31, 2016.

The following table summarizes our cash flows for the years ended December 30, 2017 and December 31, 2016:

	Year Ended December 30, 2017	December 31, 2016
	(in thousands)	
Net cash provided by (used in):		
Operating activities	$ (11,045)	$ (20,794)
Investing activities	(94)	(346)
Financing activities	8,383	10,932
Net change in cash and cash equivalents	$ (2,756)	$ (10,208)

Operating Activities

Net cash used in operating activities for the year ended December 30, 2017 was primarily the result of a net loss of $13.4 million and $0.4 million in net cash used by changes in operating assets and liabilities, which were primarily from increases of $0.9 million in inventories and $1.3 million in accounts receivable partially offset by an increase of $2.1 million in accounts payable and by $2.0 million in net non-cash operating expenses, mainly comprised of depreciation and amortization, amortization of debt discount, accrued interest on outstanding debt and stock-based compensation. The increase in inventories between periods was primarily due to our purchase of additional inventory to support the increase in our net product revenues. The increase in accounts receivable between periods was primarily due

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to the increase in net product revenues. The increase in accounts payable between periods was primarily due to increased purchases of inventory.

Net cash used in operating activities for the year ended December 31, 2016 was primarily the result of a net loss of $11.2 million and $12.0 million in net cash used by changes in operating assets and liabilities, which were primarily from the recognition of $6.9 million of deferred revenue in 2016 and increases of $2.7 million in restricted cash, $1.5 million in inventories and $1.1 million in accounts receivable, partially offset by $2.4 million in net non-cash operating expenses, mainly comprised of depreciation and amortization, amortization of debt discount, accrued interest on outstanding debt and stock-based compensation. The increase in restricted cash between periods was primarily to secure a portion of our line of credit with Samsung. The increase in inventories between periods was primarily due to our purchase of additional inventory to support the increase in our net product revenues. The increase in accounts receivable between periods was primarily due to the increase in net product revenues.

Investing Activities

Net cash used in investing activities for the years ended December 30, 2017 and December 31, 2016 was primarily the result of property and equipment purchases of $0.09 million and $0.3 million, respectively.

Financing Activities

Net cash provided by financing activities for the year ended December 30, 2017 was primarily the result of net proceeds of $4.4 million from the 2017 Offering, net proceeds of $2.8 million from the ATM Program, net proceeds of $1.3 million from borrowings under our line of credit with SVB, and net proceeds of $0.2 million from cash exercises of equity awards, partially offset by $0.4 million in payments on debt.

Net cash provided by financing activities for the year ended December 31, 2016 was primarily the result of net proceeds of $10.3 million from the 2016 Offering (as defined and discussed under “Capital Resources” below), net proceeds of $0.7 million from borrowings under our line of credit with SVB, and net proceeds of $0.2 million from cash exercises of equity awards, partially offset by $0.3 million in payments on debt.

Capital Resources

Our sources of cash have historically consisted of proceeds from issuances of equity and debt securities and revenues generated from operations, including from product sales and the NRE fee from our JDLA with Samsung. We have also funded our operations with a revolving line of credit and term loans under a bank credit facility, a funding arrangement for costs associated with certain of our legal proceedings against SK hynix and, to a lesser extent, equipment leasing arrangements.

ATM Program

In November 2017, we entered into the Sales Agreement with the Agent to establish the ATM Program, pursuant to which we can offer and sell our common stock, from time to time, up to aggregate sales proceeds of $9.0 million.

As of December 30, 2017, we had sold 8,894,222 shares of our common stock in the ATM Program for gross proceeds of $3.0 million and net proceeds, after deducting sales commissions and other offering expenses paid by us, of $2.8 million. In addition, subsequent to our fiscal year end through March 26, 2018 the Company sold 6,101,312 shares of its common stock for approximate net proceeds of $1.8 million, after deducting sales commissions and other offering expenses paid by the Company.

2017 Offering

On August 22, 2017, we completed the 2017 Offering for net proceeds to us of $4.4 million, after deducting underwriting discounts and commissions and offering expenses paid by us.

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TRGP Agreement

On May 3, 2017, we entered into the TRGP Agreement, which generally provides that TRGP will directly fund the costs incurred by us or on our behalf in connection with our first ITC action and our U.S. district court proceedings against SK hynix. In 2017, TRGP directly paid $10.2 million of legal expenses on our behalf incurred in connection with these proceedings.

2016 Offering

On September 23, 2016, we completed an underwritten registered public offering (the “2016 Offering”), pursuant to which we sold 9,200,000 shares of our common stock at a price to the public of $1.25 per share. The net proceeds to us from the 2016 Offering were $10.3 million, after deducting underwriting discounts and commissions and offering expenses paid by us.

SVB Credit Agreement

On October 31, 2009, we entered into the SVB Credit Agreement, which provides that we may borrow up to the lesser of 80% of eligible accounts receivable or $5.0 million, subject to certain adjustments as set forth in the SVB Credit Agreement. On March 20, 2018, the Company and SVB entered into another amendment to the SVB Credit Agreement to among other things, (i) extend the maturity date of advances under the SVB Credit Agreement to March 31, 2019 and (ii) revise certain inventory reporting requirements under the SVB Credit Agreement.

As of December 30, 2017, we had outstanding borrowings under the SVB Credit Agreement of $2.0 million. We made net borrowings of $1.3 million and $0.7 million under the SVB Credit Agreement in the years ended December 30, 2017 and December 31, 2016, respectively. As of December 30, 2017 and December 31, 2016, we had borrowing availability under the SVB Credit Agreement of $0.1 million and $0.8 million, respectively.

Equipment Leasing Arrangements

We have in the past utilized equipment leasing arrangements to finance certain capital expenditures. Although equipment leases did not contribute material cash during the periods covered by this report, they continue to be a

financing alternative that we may pursue in the future.

Sufficiency of Cash Balances and Potential Sources of Additional Capital

Our capital requirements depend on many factors, including, among others: the acceptance of, and demand for, our products and the component products we resell; our levels of net product revenues and any other revenues we may receive, including NRE, license, royalty or other fees; the extent and timing of any investments in developing, marketing and launching new or enhanced products or technologies; the costs of developing, improving and maintaining our internal design, testing and manufacturing processes; the costs associated with maintaining, defending and enforcing our intellectual property rights; and the nature and timing of acquisitions and other strategic transactions or relationships in which we engage, if any.

We believe our existing cash balance, together with cash provided by our operations and borrowing availability under the SVB Credit Agreement and funds raised through the ATM and taking into account cash expected to be used in our operations, will be sufficient to meet our anticipated cash needs for at least the next 12 months. However, our estimates of our operating revenues and expenses and working capital requirements could be incorrect and we may use our cash resources faster than we anticipate. Further, some or all of our ongoing or planned investments may not be successful and could further deplete our capital without immediate, or any, cash returns. Until we can generate sufficient revenues to finance our cash requirements from our operations, which we may never do, we may need to increase our liquidity and capital resources by one or more measures, which may include, among others, reducing operating expenses, restructuring our balance sheet by negotiating with creditors and vendors, entering into strategic partnerships or alliances, raising additional financing through the issuance of debt, equity or convertible securities or pursuing

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alternative sources of capital, such as through asset or technology sales or licenses or other alternative financing arrangements. Further, even if our near-term liquidity expectations prove correct, we may still seek to raise capital through one or more of these financing alternatives. However, we may not be able to obtain capital when needed or desired, on terms acceptable to us or at all.

Inadequate working capital would have a material adverse effect on our business and operations and could cause us to fail to execute our business plan, fail to take advantage of future opportunities or fail to respond to competitive pressures or customer requirements. A lack of sufficient funding may also require us to significantly modify our business model and/or reduce or cease our operations, which could include implementing cost-cutting measures or delaying, scaling back or eliminating some or all of our ongoing and planned investments in corporate infrastructure, research and development projects, business development initiatives and sales and marketing activities, among other activities. Modification of our business model and operations could result in an impairment of assets, the effects of which cannot be determined. Furthermore, if we continue to issue equity or convertible debt securities to raise additional funds, our existing stockholders may experience significant dilution, and the new equity or debt securities may have rights, preferences and privileges that are superior to those of our existing stockholders. Additionally, if we are not able to maintain the listing of our common stock on the Nasdaq Capital Market, the challenges and risks of equity financings may significantly increase, including potentially increasing the dilution of any such financing or decreasing our ability to effect such a financing at all. If we incur additional debt, it may increase our leverage relative to our earnings or to our equity capitalization or have other material consequences. If we pursue asset or technology sales or licenses or other alternative financing arrangements to obtain additional capital, our operational capacity may be limited and any revenue streams or business plans that are dependent on the sold or licensed assets may be reduced or eliminated. Moreover, we may incur substantial costs in pursuing any future capital-raising transactions, including investment banking, legal and accounting fees, printing and distribution expenses and other similar costs, which would reduce the benefit of the capital received from the transaction.

Off-Balance Sheet Arrangements.

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditure or capital resources that is material to investors.

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Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 8. Financial Statements and Supplementary Data

The financial statements and supplementary data required by this Item 8 are included immediately following the signature page of this report and are incorporated herein by reference.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosures.

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Our management conducted an evaluation, with the participation of our principal executive officer and principal financial officer, of the effectiveness of our disclosure controls and procedures as of the end of the period covered by this report. Based on this evaluation, our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were effective as of December 30, 2017.

Management's Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting for our Company, as such term is defined in Rule 13a-15(f) under the Exchange Act. Our management conducted an evaluation, with the participation of our principal executive officer and principal financial officer, of the effectiveness of our internal control over financial reporting as of December 30, 2017, based on the criteria set forth in the 2013 Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, our management concluded that our internal control over financial reporting was effective as of December 30, 2017.

This report does not include an attestation report of our independent registered public accounting firm regarding our internal control over financial reporting, in accordance with applicable SEC rules that permit us to provide only management's report in this report.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting during our most recently completed fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Disclosure Controls and Procedures and Internal Control Over Financial Reporting

In designing our disclosure controls and procedures and internal control over financial reporting, management recognizes that any control system, no matter how well-designed and operated, can provide only reasonable, not absolute, assurance of achieving the desired control objectives. Further, the design of our controls and procedures must reflect the fact that there are resource constraints, and management necessarily applies its judgment in evaluating the benefits of possible controls and procedures relative to their costs. Because of the inherent limitations, our disclosure and internal controls may not prevent or detect all instances of fraud, misstatements or other control issues,

and our evaluations of disclosure and internal controls cannot provide assurance that all such control issues have been detected.

In addition, projections of any evaluation of the effectiveness of disclosure or internal controls to future periods are subject to risks, including, among others, that controls may become inadequate because of changes in conditions or that compliance with policies or procedures may deteriorate.

Item 9B. Other Information

On March 29, 2018, we received a letter from Nasdaq notifying us that our securities are subject to delisting from the Nasdaq Capital Market because we are not in compliance with certain of Nasdaq's requirements for continued listing. Specifically, (i) we failed to comply with Nasdaq Listing Rule 5550(a)(2) in September 2017 because, for a period of 30 consecutive business days, the bid price of our common stock had not closed at or above the minimum of $1.00 per share, (ii) we failed to regain compliance with this rule within the 180-day period afforded to us by Nasdaq rules to regain compliance, and (iii) we are not automatically eligible for a 180-day extension of the deadline to regain compliance with this rule due to our failure to comply with the stockholders' equity initial listing requirement for the Nasdaq Capital Market as of our most recent financial statement reporting date. As described elsewhere in this annual report, we also are not in compliance with certain other Nasdaq listing rules, including Nasdaq Listing Rule 5550(b)(2), which we violated because, in January 2018, the market value of our common stock, calculated based on the then-most recent total shares outstanding multiplied by the closing bid price per share, fell below a minimum of $35.0 million for a period of 30 consecutive business days.

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In accordance with the Nasdaq Listing Rules 5800 Series, we are entitled to appeal the delisting determination to a Nasdaq Hearings Panel pursuant to the procedures set forth in these rules. A request for a hearing before such a Hearings Panel will stay the delisting of our common stock pending the Panel's decision. We have elected to pursue such an appeal, and we will request a hearing for our appeal within the time period prescribed by applicable Nasdaq listing rules. As a result, the Nasdaq delisting notification letter does not immediately impact our listing on the Nasdaq Capital Market, and our common stock remains listed thereon pending the results of our appeal. The likelihood of success on this appeal is unpredictable, see Item 1A. Risk Factors for more information.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information required by this item is incorporated by reference to the definitive proxy statement for our 2018 annual meeting of stockholders or an amendment to this report, in either case to be filed with the SEC within 120 days after the end of the fiscal year ended December 30, 2017.

Item 11. Executive Compensation

The information required by this item is incorporated by reference to the definitive proxy statement for our 2018 annual meeting of stockholders or an amendment to this report, in either case to be filed with the SEC within 120 days after the end of the fiscal year ended December 30, 2017.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this item is incorporated by reference to the definitive proxy statement for our 2018 annual meeting of stockholders or an amendment to this report, in either case to be filed with the SEC within 120 days after the end of the fiscal year ended December 30, 2017.

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by this item is incorporated by reference to the definitive proxy statement for our 2018 annual meeting of stockholders or an amendment to this report, in either case to be filed with the SEC within 120 days after the end of the fiscal year ended December 30, 2017.

Item 14. Principal Accounting Fees and Services

The information required by this item is incorporated by reference to the definitive proxy statement for our 2018 annual meeting of stockholders or an amendment to this report, in either case to be filed with the SEC within 120 days after the end of the fiscal year ended December 30, 2017.

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PART IV

Item 15. Exhibits, Financial Statement Schedules

(a)(1) Consolidated Financial Statements.

The following financial statements are included immediately following the signature page to this report and are filed in Part II, Item 8 of this report:

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(a)(2) Financial Statement Schedules.

All financial statement schedules have been omitted, as they are not required, not applicable, or the required information is otherwise included.

(a)(3) Exhibits.

The information required by this Item 15(a)(3) is set forth on the Exhibit Index that immediately precedes the signature page to this report and is incorporated herein by reference.

Item 16. Form 10-K Summary.

We have elected not to provide summary information.

Explanation of Responses:

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EXHIBIT INDEX

Exhibit No.	Description
3.1	Restated Certificate of Incorporation of Netlist, Inc. (incorporated by reference to exhibit 3.1 of the registration statement on Form S-1 of the registrant (No. 333-136735) filed with the SEC on October 23, 2006)
3.1.1	Certificate of Amendment to the Restated Certificate of Incorporation of Netlist, Inc. (incorporated by reference to exhibit 3.1.1 of the registrant's Quarterly Report on Form 10-Q filed with the SEC on August 15, 2017)
3.1.2	Certificate of Designation of the Series A Preferred Stock of Netlist, Inc. (incorporated by reference to exhibit 3.1.2 of the registrant's Quarterly Report on Form 10-Q filed with the SEC on August 15, 2017)
3.2	Amended and Restated Bylaws of Netlist, Inc. (incorporated by reference to exhibit number 3.1 of the registrant's Current Report on Form 8-K filed with the SEC on December 20, 2012)
3.2.1	Certificate of Amendment to Amended and Restated Bylaws of Netlist, Inc. (incorporated by reference to exhibit number 3.1 of the registrant's Current Report on Form 8-K filed with the SEC on December 29, 2017)
4.1	Form of Warrant issued pursuant to the Securities Purchase Agreement, dated July 17, 2013 (incorporated by reference to exhibit 4.1 of the registrant's Current Report on Form 8-K filed with the SEC on July 18, 2013)
4.2	Senior Secured Convertible Promissory Note, dated November 18, 2015, issued by Netlist, Inc. to SVIC No. 28 New Technology Business Investment LLP (incorporated by reference to exhibit 4.1 of the registrant's Current Report on Form 8-K filed with the SEC on November 19, 2015)
4.3	Stock Purchase Warrant, dated November 18, 2015, issued by Netlist, Inc. to SVIC No. 28 New Technology Business Investment LLP (incorporated by reference to exhibit 4.2 of the registrant's Current Report on Form 8-K filed with the SEC on November 19, 2015)
4.4	Stock Purchase Warrant, dated November 18, 2015, issued by Netlist, Inc. (incorporated by reference to exhibit 4.4 of the registrant's Annual Report on Form 10-K filed with the SEC on March 31, 2017)

4.5	Rights Agreement, dated as of April 17, 2017, by and between Netlist, Inc. and Computershare Trust Company, N.A., as rights agent (incorporated by reference to exhibit 4.1 of the registrant's Current Report on Form 8-K filed with the SEC on April 17, 2017)
10.1#	Form of Indemnity Agreement for officers and directors (incorporated by reference to exhibit 10.12 of the registration statement on Form S-1 of the registrant (No. 333-136735) filed with the SEC on August 18, 2006)
10.2#	Employment Agreement, dated September 5, 2006, between Netlist, Inc. and Chun K. Hong (incorporated by reference to exhibit 10.13 of the registration statement on Form S-1 of the registrant (No. 333-136735) filed with the SEC on September 27, 2006)
10.3#	Amended and Restated 2006 Equity Incentive Plan of Netlist, Inc. (incorporated by reference to exhibit 10.1 of the registrant's Current Report on Form 8-K filed with the SEC on June 9, 2016)

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10.4#	Form of Restricted Stock Award Agreement issued pursuant to the 2006 Equity Incentive Plan of Netlist, Inc. (incorporated by reference to exhibit 10.2 of the Quarterly Report on Form 10-Q of the registrant filed with the SEC on May 17, 2010)
10.5#	Form of Stock Option Award Agreement issued pursuant to the 2006 Equity Incentive Plan of Netlist, Inc. (incorporated by reference to exhibit 10.6 of the registrant’s Annual Report on Form 10-K filed with the SEC on March 31, 2017)
10.6	Loan and Security Agreement, dated October 31, 2009, between Silicon Valley Bank and Netlist, Inc. (incorporated by reference to exhibit 10.1 of the registrant’s Current Report on Form 8-K filed with the SEC on November 2, 2009)
10.7	Intercompany Subordination Agreement, dated October 31, 2009, among Silicon Valley Bank, Netlist, Inc., and Netlist Technology Texas, L.P. (incorporated by reference to exhibit 10.2 of the registrant’s Current Report on Form 8-K filed with the SEC on November 2, 2009)
10.8	Guarantor Security Agreement, dated October 31, 2009, between Silicon Valley Bank and Netlist Technology Texas LP (incorporated by reference to exhibit 10.3 of the registrant’s Current Report on Form 8-K filed with the SEC on November 2, 2009)
10.9	Intellectual Property Security Agreement, dated October 31, 2009, between Silicon Valley Bank and Netlist, Inc. (incorporated by reference to exhibit 10.4 of the registrant’s Current Report on Form 8-K filed with the SEC on November 2, 2009)
10.10	Amendment to Loan Documents, dated March 24, 2010, between Silicon Valley Bank and Netlist, Inc. (incorporated by reference to exhibit 10.1 of the registrant’s Quarterly Report on Form 10-Q filed with the SEC on May 17, 2010)
10.11	Amendment to Loan Documents, dated June 30, 2010, between Silicon Valley Bank and Netlist, Inc. (incorporated by reference to exhibit 10.2 of the registrant’s Quarterly Report on Form 10-Q filed with the SEC on August 12, 2010)
10.12	Amendment to Loan Documents, dated September 30, 2010, between Silicon Valley Bank and Netlist, Inc. (incorporated by reference to exhibit 10.1 of the registrant’s Quarterly Report on Form 10-Q filed with the SEC on November 17, 2010)
10.13	Amendment to Loan Documents, dated May 11, 2011, between Silicon Valley Bank and Netlist, Inc. (incorporated by reference to exhibit 10.1 of the registrant’s Quarterly Report on Form 10-Q filed with the SEC on May 12, 2011)

10.14 Amendment to Loan Documents, dated August 10, 2011, between Silicon Valley Bank and Netlist, Inc. (incorporated by reference to exhibit 10.1 of the registrant's Quarterly Report on Form 10-Q filed with the SEC on August 15, 2011)

10.15 Amendment to Loan Documents, dated May 14, 2012, between Silicon Valley Bank and Netlist, Inc. (incorporated by reference to exhibit 10.1 of the registrant's Quarterly Report on Form 10-Q filed with the SEC on May 15, 2012)

10.16 Forbearance to Loan and Security Agreement, dated March 27, 2013, between Netlist, Inc. and Silicon Valley Bank (incorporated by reference to exhibit 10.32 of the registrant's Annual Report on Form 10-K for the fiscal year ended December 29, 2012 filed with the SEC on March 29, 2013)

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10.17	Amendment to Credit Agreement, dated July 17, 2013, between Netlist, Inc. and Silicon Valley Bank (incorporated by reference to exhibit 10.6 of the registrant's Quarterly Report on Form 10-Q filed with the SEC on November 12, 2013)
10.18	Amendment to Loan Documents, dated September 30, 2014, between Netlist, Inc. and Silicon Valley Bank (incorporated by reference to exhibit 10.24 of the registrant's Annual Report on Form 10-K filed with the SEC on March 27, 2015)
10.19	Senior Secured Convertible Promissory Note and Warrant Purchase Agreement, dated November 18, 2015, between Netlist, Inc. and SVIC No. 28 New Technology Business Investment LLP (incorporated by reference to exhibit 10.1 of the registrant's Current Report on Form 8-K filed with the SEC on November 19, 2015)
10.20	Registration Rights Agreement, dated November 18, 2015, between Netlist, Inc. and SVIC No. 28 New Technology Business Investment LLP (incorporated by reference to exhibit 10.2 of the registrant's Current Report on Form 8-K filed with the SEC on November 19, 2015)
10.21	Amendment to Loan Documents, dated January 29, 2016, between Netlist, Inc. and Silicon Valley Bank (incorporated by reference to exhibit 10.1 of the registrant's Current Report on Form 8-K filed with the SEC on February 1, 2016)
10.22	Amendment to Loan Documents, dated March 27, 2017, between Netlist, Inc. and Silicon Valley Bank (incorporated by reference to exhibit 10.1 of the registrant's Current Report on Form 8-K filed with the SEC on March 29, 2017)
10.23	Amendment to Loan and Security Agreement, dated April 12, 2017, by and between Netlist, Inc. and Silicon Valley Bank (incorporated by reference to exhibit 10.1 of the registrant's Quarterly Report on Form 10-Q filed with the SEC on August 15, 2017)
10.24§	Investment Agreement, dated May 3, 2017, by and between Netlist, Inc. and TR Global Funding V, LLC (incorporated by reference to exhibit 10.2 of the registrant's Quarterly Report on Form 10-Q filed with the SEC on August 15, 2017)
10.25	Security Agreement, dated May 3, 2017, by and between Netlist, Inc. and TR Global Funding V, LLC (incorporated by reference to exhibit 10.3 of the registrant's Quarterly Report on Form 10-Q filed with the SEC on August 15, 2017)
10.26	Intercreditor Agreement, dated May 3, 2017, by and between SVIC No. 28 New Technology Business Investment L.L.P. and TR Global Funding V, LLC and consented and agreed to by Netlist, Inc. (incorporated by reference to exhibit 10.4 of the registrant's Quarterly Report on Form 10-Q filed with the SEC on August 15, 2017)

10.27	Intercreditor Agreement, dated May 3, 2017, by and between Silicon Valley Bank and TR Global Funding V, LLC and consented and agreed to by Netlist, Inc. (incorporated by reference to exhibit 10.5 of the registrant's Quarterly Report on Form 10-Q filed with the SEC on August 15, 2017)
10.28	Amended and Restated Intercreditor Agreement, dated April 20, 2017, by and between SVIC No. 28 New Technology Business Investment L.L.P and Silicon Valley Bank and consented and agreed to by Netlist, Inc. (incorporated by reference to exhibit 10.6 of the registrant's Quarterly Report on Form 10-Q filed with the SEC on August 15, 2017)
21.1+	Subsidiaries of Netlist, Inc.

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23+	Consent of KMJ Corbin & Company LLP
24+	Power of Attorney (included on the signature page to this report)
31.1+	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Exchange Act, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2+	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Exchange Act, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32++	Certification by Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS+	XBRL Instance Document
101.SCH+	XBRL Taxonomy Extension Schema Document
101.CAL+	XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB+	XBRL Taxonomy Extension Label Linkbase Document
101.PRE+	XBRL Taxonomy Extension Presentation Linkbase Document
101.DEF+	XBRL Taxonomy Extension Definition Linkbase Document

+	Filed herewith.
++	Furnished herewith.
#	Management contract or compensatory plan or arrangement.
§	Confidential treatment has been granted with respect to portions of this exhibit pursuant to Rule 24b-2 under the Exchange Act, and these confidential portions have been redacted from the version of this agreement that is filed with this report. A complete copy of this exhibit, including the redacted portions, has been separately furnished to the SEC.

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Explanation of Responses:

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: March 30, 2018

Netlist, Inc.

By: /s/ Chun K. Hong
Chun K. Hong
President, Chief Executive Officer and
Chairman of the Board

POWER OF ATTORNEY

IN WITNESS WHEREOF, each person whose signature appears below constitutes and appoints Chun K. Hong and Gail Sasaki as his or her true and lawful agent, proxy and attorney-in-fact, each acting alone, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to (i) act on and sign any amendments to this Annual Report on Form 10-K, with exhibits thereto and other documents in connection therewith, (ii) act on and sign such certificates, instruments, agreements and other documents as may be necessary or appropriate in connection therewith, and in each case file the same with the Securities and Exchange Commission, hereby approving, ratifying and confirming all that such agent, proxy and attorney-in-fact or any of his substitutes may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated:

Signature	Title	Date
/s/ Chun K. Hong Chun K. Hong	President, Chief Executive Officer and Chairman of the Board (Principal	March 30, 2018

	Executive Officer)	
/s/ Gail Sasaki Gail Sasaki	Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	March 30, 2018
/s/ Jun S. Cho Jun S. Cho	Director	March 30, 2018
/s/ Kiho Choi Kiho choi	Director	March 30, 2018
/s/ Blake A. Welcher Blake A. Welcher	Director	March 30, 2018
/s/ Jeff Benck Jeff Benck	Director	March 30, 2018

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of

Netlist, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Netlist, Inc. and subsidiaries (the "Company") as of December 30, 2017 and December 31, 2016, the related consolidated statements of operations, stockholders' deficit, and cash flows for each of the years then ended, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 30, 2017 and December 31, 2016, and the results of its operations and its cash flows for each of the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures

included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ KMJ Corbin & Company LLP

We have served as the Company's auditor since 2005.

Costa Mesa, California
March 30, 2018

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NETLIST, INC. AND SUBSIDIARIES

Consolidated Balance Sheets

(in thousands, except par value amounts)

	December 30, 2017	December 31, 2016
ASSETS		
Current Assets:		
Cash and cash equivalents	$ 6,720	$ 9,476
Restricted cash	2,800	3,100
Accounts receivable, net of reserves of $44 (2017) and $151 (2016)	2,997	1,751
Inventories	4,105	3,160
Prepaid expenses and other current assets	303	1,766
Total current assets	16,925	19,253
Property and equipment, net	459	645
Other assets	1,406	70
Total assets	$ 18,790	$ 19,968
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current Liabilities:		
Accounts payable	$ 6,120	$ 4,028
Revolving line of credit	2,024	676
Accrued payroll and related liabilities	807	1,085
Accrued expenses and other current liabilities	338	270
Notes payable and capital lease obligation, current	-	151
Total current liabilities	9,289	6,210
Convertible promissory note and accrued interest, net of debt discount	14,766	14,251
Long-term warranty liability	61	36
Total liabilities	24,116	20,497
Commitments and contingencies		
Stockholders' deficit:		
Preferred stock, $0.001 par value - 10,000 shares authorized: Series A preferred stock, $0.001 par value; 1,000 shares authorized; none issued and outstanding	-	-
Common stock, $0.001 par value - 150,000 shares authorized (2017) and 90,000 shares authorized (2016); 79,314 (2017) and 61,653 (2016) shares issued and	80	62

outstanding		
Additional paid-in capital	152,640	144,035
Accumulated deficit	(158,046)	(144,626)
Total stockholders' deficit	(5,326)	(529)
Total liabilities and stockholders' deficit	$ 18,790	$ 19,968

See accompanying notes to consolidated financial statements.

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NETLIST, INC. AND SUBSIDIARIES

Consolidated Statements of Operations

(in thousands, except per share amounts)

	Year Ended December 30, 2017	December 31, 2016
Net product revenues	$ 38,322	$ 12,798
Non-recurring engineering revenues	-	6,857
Total net revenues	38,322	19,655
Cost of sales(1)	35,866	12,259
Gross profit	2,456	7,396
Operating expenses:		
Research and development(1)	5,231	6,287
Intellectual property legal fees	2,705	3,110
Selling, general and administrative(1)	7,374	9,033
Total operating expenses	15,310	18,430
Operating loss	(12,854)	(11,034)
Other expense, net:		
Interest expense, net	(564)	(578)
Other income, net	4	386
Total other expense, net	(560)	(192)
Loss before provision for income taxes	(13,414)	(11,226)
Provision for income taxes	6	5
Net loss	$ (13,420)	$ (11,231)
Net loss per common share:		
Basic and diluted	$ (0.20)	$ (0.21)
Weighted-average common shares outstanding:		
Basic and diluted	65,513	53,784

(1) Amounts include stock-based compensation expense as follows:

Cost of sales	$ 40	$ 64

Research and development	348	350
Selling, general and administrative	829	1,061
Total stock-based compensation	1,217	1,475

See accompanying notes to consolidated financial statements.

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NETLIST, INC. AND SUBSIDIARIES

Consolidated Statements of Stockholders' Deficit

(in thousands)

	Series A Preferred Stock Shares	Amount	Common Stock Shares	Amount	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
Balance, January 2, 2016	-	$ -	50,354	$ 50	$ 132,011	$ (133,395)	$ (1,334)
Stock-based compensation	-	-	-	-	1,475	-	1,475
Exercise of stock options	-	-	293	1	203	-	204
Exercise of warrants	-	-	1,806	2	25	-	27
Issuance of common stock, net	-	-	9,200	9	10,321	-	10,330
Net loss	-	-	-	-	-	(11,231)	(11,231)
Balance, December 31, 2016	-	-	61,653	62	144,035	(144,626)	(529)
Stock-based compensation	-	-	-	-	1,217	-	1,217
Exercise of stock options	-	-	267	1	181	-	182
Issuance of common stock, net	-	-	17,394	17	7,207	-	7,224
Net loss	-	-	-	-	-	(13,420)	(13,420)
Balance, December 30, 2017	-	$ -	79,314	$ 80	$ 152,640	$ (158,046)	$ (5,326)

See accompanying notes to consolidated financial statements.

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NETLIST, INC. AND SUBSIDIARIES

Consolidated Statements of Cash Flows

(in thousands)

	Year Ended December 30, 2017	December 31, 2016
Cash flows from operating activities:		
Net loss	$ (13,420)	$ (11,231)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	280	287
Interest accrued on convertible promissory note	299	335
Amortization of debt discount	216	217
Loss on disposal of equipment	-	1
Stock-based compensation	1,217	1,475
Provision for bad debt	10	81
Changes in operating assets and liabilities:		
Restricted cash	300	(2,700)
Accounts receivable	(1,256)	(1,116)
Inventories	(945)	(1,502)
Prepaid expenses and other assets	347	228
Accrued engineering	-	(500)
Accounts payable	2,092	729
Accrued payroll and related liabilities	(278)	(158)
Accrued expenses and other liabilities	93	(83)
Deferred revenue	-	(6,857)
Net cash used in operating activities	(11,045)	(20,794)
Cash flows from investing activities:		
Acquisition of property and equipment	(94)	(346)
Net cash used in investing activities	(94)	(346)
Cash flows from financing activities:		
Net borrowings under line of credit	1,348	676
Payments on debt	(371)	(305)
Proceeds from issuance of common stock, net	7,224	10,330
Proceeds from exercise of stock options and warrants	182	231

Net cash provided by financing activities	8,383	10,932
Net change in cash and cash equivalents	(2,756)	(10,208)
Cash and cash equivalents at beginning of period	9,476	19,684
Cash and cash equivalents at end of period	$ 6,720	$ 9,476

See accompanying notes to consolidated financial statements.

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NETLIST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 30, 2017

Note 1—Description of Business

Netlist, Inc. together with its wholly owned subsidiaries (hereinafter collectively referred to as the “Company” or “Netlist,” unless the context or the use of the term indicates otherwise), provides high-performance modular memory subsystems to customers in diverse industries that require enterprise and storage class memory solutions to empower critical business decisions. The Company has a history of introducing disruptive new products, such as one of the first load-reduced dual in-line memory modules (“LRDIMM”) based on its distributed buffer architecture, which has been adopted by the industry for DDR4 LRDIMM. The Company was also one of the first to bring NAND flash memory (“NAND flash”) to the memory channel with its NVvault non-volatile dual in-line memory modules (“NVDIMM”) using software-intensive controllers and merging dynamic random access memory integrated circuits (“DRAM ICs” or “DRAM”) and NAND flash to solve data bottleneck and data retention challenges encountered in high-performance computing environments. The Company recently introduced a new generation of storage class memory products called HybriDIMM to address the growing need for real-time analytics in Big Data applications, in-memory databases, high performance computing and advanced data storage solutions. The Company also resells NAND flash, DRAM products and other component products to end-customers that are not reached in the distribution models of the component manufacturers, including storage customers, appliance customers, system builders and cloud and datacenter customers.

Due to the ground-breaking product development of its engineering teams, Netlist has built a robust portfolio of over 100 issued and pending U.S. and foreign patents, many seminal, in the areas of hybrid memory, storage class memory, rank multiplication and load reduction. Since its inception, the Company has dedicated substantial resources to the development, protection and enforcement of technology innovations it believes are essential to its business. The Company’s early pioneering work in these areas has been broadly adopted in industry-standard registered dual in-line memory module (“RDIMM”) LRDIMM and NVDIMM. Netlist’s objective is to continue to innovate in its field and invest further in its intellectual property portfolio, with the goal of monetizing its intellectual property through a combination of product sales and licensing, royalty or other revenue-producing arrangements, which may result from joint development or similar partnerships or defense of the Company’s patents through enforcement actions against parties it believes are infringing them.

Netlist was incorporated in June 2000 and is headquartered in Irvine, California. The Company has established a manufacturing facility in the People’s Republic of China (“PRC”), which became operational in July 2007.

Liquidity

The Company incurred net losses of $13.4 million and $11.2 million for the fiscal years ended December 30, 2017 and December 31, 2016, respectively. The Company has historically financed its operations primarily with proceeds from issuances of equity and debt securities and revenues generated from operations, including product sales and a non-recurring engineering ("NRE") fee from its Joint Development and License Agreement ("JDLA") with Samsung Electronics Co., Ltd. ("Samsung"), discussed below. The Company has also funded its operations with a revolving line of credit and term loans under a bank credit facility, a funding arrangement for costs associated with certain of its legal proceedings and, to a lesser extent, equipment leasing arrangements (see Notes 4, 5 and 7).

On November 12, 2015, the Company entered into the JDLA with Samsung, pursuant to which the Company and Samsung agreed to work together to jointly develop new storage class memory technologies, including a standardized product interface for NVDIMM-P memory modules, in order to facilitate broad industry adoption of this new technology. In connection with the JDLA, the Company received an $8.0 million NRE fee from Samsung for the joint development and gross proceeds of $15.0 million for its issuance of a Senior Secured Convertible Note ("SVIC Note") and Stock Purchase Warrant ("SVIC Warrant") to SVIC No. 28 New Technology Business Investment L.L.P., an affiliate of Samsung Venture Investment Co. ("SVIC") (see Note 5).

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NETLIST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 30, 2017

On September 23, 2016, the Company completed an underwritten public offering (the "2016 Offering"), pursuant to which it sold 9,200,000 shares of its common stock at a price to the public of $1.25 per share. The net proceeds to the Company from the 2016 Offering were $10.3 million, after deducting underwriting discounts and commissions and offering expenses paid by the Company.

On August 22, 2017, the Company completed an underwritten public offering (the "2017 Offering"), pursuant to which it sold 8,500,000 shares of its common stock at a price to the public of $0.60 per share. The net proceeds to the Company from the 2017 Offering were $4.4 million, after deducting underwriting discounts and commissions and offering expenses paid by the Company.

On November 14, 2017, the Company entered into an At Market Issuance Sales Agreement (the "Sales Agreement") with B. Riley FBR, Inc. (the "Agent") to sell shares of the Company's common stock, with aggregate gross proceeds of up to $9.0 million, from time to time, through an "at-the-market" equity offering program under which the Agent will act as sales agent (the "ATM Program") (see Note 8). As of December 30, 2017, the Company had sold 8,894,222 shares of its common stock in the ATM Program for net proceeds of $2.8 million, after deducting sales commissions and other offering expenses paid by the Company. In addition, subsequent to our fiscal year end through March 26, 2018 the Company sold 6,101,312 shares of its common stock for approximate net proceeds of $1.8 million, after deducting sales commissions and other offering expenses paid by the Company.

Inadequate working capital would have a material adverse effect on the Company's business and operations and could cause the Company to fail to execute its business plan, fail to take advantage of future opportunities or fail to respond to competitive pressures or customer requirements. A lack of sufficient funding may also require the Company to significantly modify its business model and/or reduce or cease its operations, which could include implementing cost-cutting measures or delaying, scaling back or eliminating some or all of its ongoing and planned investments in corporate infrastructure, research and development projects, business development initiatives and sales and marketing activities, among other activities. While the Company's estimates of its operating revenues and expenses and working capital requirements could be incorrect and the Company may use its cash resources faster than it anticipates, management believes the Company's existing cash balance, together with cash provided by the Company's operations and borrowing availability under a bank credit facility (see Note 4) and funds raised through the ATM, will be sufficient to meet the Company's anticipated cash needs for at least the next 12 months.

Note 2—Summary of Significant Accounting Policies

Basis of Presentation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP").

Principles of Consolidation

The consolidated financial statements include the accounts of Netlist, Inc. and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Fiscal Year

The Company operates under a 52 or 53 week fiscal year ending on the Saturday closest to December 31. The 2017 and 2016 fiscal years ended on December 30, 2017 and December 31, 2016, respectively, and consisted of 52 weeks.

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NETLIST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 30, 2017

Use of Estimates

The preparation of the accompanying consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of net revenues and expenses during the reporting period. By their nature, these estimates and assumptions are subject to an inherent degree of uncertainty. The Company bases its estimates and assumptions on its historical experience, knowledge of current conditions and the Company's belief of what could occur in the future considering available information. The Company reviews its estimates and assumptions on an ongoing basis. Actual results may differ materially from these estimates, which may result in material adverse effects on the Company's consolidated operating results and financial position.

The Company believes the following critical accounting policies involve its more significant assumptions and estimates used in the preparation of the accompanying consolidated financial statements: provisions for uncollectible receivables and sales returns; warranty liability; valuation of inventories; fair value of financial instruments; recoverability of long-lived assets; valuation of stock-based transactions; estimates for completion of NRE and other revenue milestones and the realization of deferred tax assets. The Company bases its estimates on historical experience, knowledge of current conditions and the Company's belief of what could occur in the future considering available information. The Company reviews its estimates on an ongoing basis. Actual results may differ materially from these estimates which may result in material adverse effects on the Company's operating results and financial position.

Revenue Recognition

The Company generates revenue from sales of products and performance of engineering services.

Net Product Revenues

Net product revenues consist primarily of resales of NAND flash, DRAM products and other component products to end-customers that are not reached in the distribution models of the component manufacturers, including storage customers, appliance customers, system builders and cloud and datacenter customers, as well as sales of high-performance modular memory subsystems primarily to original equipment manufacturers (“OEMs”) in the server, high-performance computing and communications markets.

The Company recognizes revenues in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 605. Accordingly, the Company recognizes revenues when there is persuasive evidence that an arrangement exists, product delivery and acceptance have occurred, the sales price is fixed or determinable, and collectability of the resulting receivable is reasonably assured.

The Company generally uses customer purchase orders and/or contracts as evidence of an arrangement. Delivery occurs when goods are shipped for customers with shipping point terms and upon receipt for customers with destination terms, at which time title and risk of loss transfer to the customer. Shipping documents are used to verify delivery and customer acceptance. The Company assesses whether the sales price is fixed or determinable based on the payment terms associated with the transaction and whether the sales price is subject to refund. Customers are generally allowed limited rights of return for up to 30 days, except for sales of excess component inventories, which contain no right-of-return privileges. Estimated returns are provided for at the time of sale based on historical experience or specific identification of an event necessitating a reserve. The Company offers a standard product warranty to customers of its memory subsystem products and has no other post-shipment obligations. The Company assesses collectability based on the creditworthiness of the customer as determined by credit checks and evaluations, as well as the customer’s payment history.

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NETLIST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 30, 2017

All amounts billed to customers related to shipping and handling are classified as net product revenues, while all costs incurred by the Company for shipping and handling are classified as cost of sales.

Engineering Services

From time-to-time, the Company provides engineering services to its customers. The Company recognizes revenue from these services when all of the following conditions are met: (1) evidence existed of an arrangement with the customer, typically consisting of a purchase order or contract; (2) the Company’s services were performed and risk of loss passed to the customer; (3) the Company completed all of the necessary terms of the contract; (4) the amount of revenue to which the Company was entitled was fixed or determinable; and (5) the Company believed it was probable that it would be able to collect the amount due from the customer. To the extent one or more of these conditions has not been satisfied, the Company defers recognition of revenue.

Deferred Revenue

From time-to-time, the Company receives pre-payments from its customers related to future services. Engineering development fee revenues, including NRE fees, are deferred and recognized ratably over the period the engineering work is completed.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash and short-term investments with original maturities of three months or less.

Restricted Cash

Restricted cash consists of cash to secure standby letters of credit. Restricted cash was $2.8 million as of December 30, 2017 and related to three standby letters of credit, and restricted cash was $3.1 million as of December 31, 2016 and related to two standby letters of credit.

Fair Value of Financial Instruments

The Company follows ASC Topic 820 to account for the fair value of certain assets and liabilities. ASC Topic 820 defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. ASC Topic 820 emphasizes that fair value is a market-based measurement, not an entity-specific measurement. Therefore, a fair value measurement should be determined based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, ASC Topic 820 establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within Levels 1 and 2 of the hierarchy) and the reporting entity's own assumptions about market participant assumptions (unobservable inputs classified within Level 3 of the hierarchy).

Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access. An active market is defined as a market in which transactions for the assets or liabilities occur with sufficient frequency and volume to provide pricing information on an ongoing basis. Level 2 inputs are inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs may include quoted prices for similar assets and liabilities in active markets, as well as inputs that are observable for the asset or liability (other than quoted prices), such as interest rates, foreign exchange rates and yield curves that are observable at commonly quoted intervals. Level 3 inputs are unobservable inputs for the asset or

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NETLIST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 30, 2017

liability, which are typically based on an entity's own assumptions, as there is little, if any, related market activity. In instances where the determination of the fair value measurement is based on inputs from different levels of the fair value hierarchy, the level in the fair value hierarchy within which the entire fair value measurement falls is based on the lowest level input that is significant to the fair value measurement in its entirety. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability.

The Company's financial instruments consist principally of cash and cash equivalents, restricted cash, accounts receivable, accounts payable, accrued expenses, revolving line of credit and convertible promissory note. The Company considers the carrying values of cash and cash equivalents, restricted cash, accounts receivable, accounts payable and accrued expenses to approximate the fair value for these financial instruments based upon an evaluation of the underlying characteristics, market data and because of the short period of time between origination of the instruments and their expected realization. The fair value of the Company's revolving line of credit and convertible promissory note is determined using current applicable rates for similar instruments as of the balance sheet date and an assessment of the credit rating of the Company. The carrying value of the Company's revolving line of credit at December 30, 2017 approximates fair value because the Company's interest rate yield is near current market rates for comparable debt instruments. The fair value of the Company's convertible promissory note was estimated using a discounted cash flow analysis using borrowing rates available to the Company for debt instruments with similar terms and maturities. The Company has determined that the valuation of its convertible promissory note is classified in Level 2 of the fair value hierarchy. The carrying value and estimated fair value of the convertible promissory note as of December 30, 2017 were $14.1 million and $12.3 million, respectively. The carrying value and estimated fair value of the convertible promissory note as of December 31, 2016 were $13.9 million and $12.2 million, respectively.

Allowance for Doubtful Accounts

The Company performs credit evaluations of its customers' financial condition and limits the amount of credit extended to its customers as deemed necessary, but generally requires no collateral. The Company evaluates the collectability of accounts receivable based on a combination of factors. In cases where the Company is aware of circumstances that may impair a specific customer's ability to meet its financial obligations subsequent to the original sale, the Company will record an allowance against amounts due, and thereby reduce the net recognized receivable to the amount the Company reasonably believes will be collected. For all other customers, the Company records allowances for doubtful accounts based primarily on the length of time the receivables are past due based on the terms of the originating transaction, the current business environment, and its historical experience. Uncollectible accounts are charged against the allowance for doubtful accounts when all cost-effective commercial means of collection have been exhausted. Generally, the Company's credit losses have been within expectations and the provisions established.

However, the Company cannot guarantee that it will continue to experience credit loss rates similar to those experienced in the past.

The Company’s accounts receivable are generally highly concentrated among a small number of customers, and a significant change in the liquidity or financial position of one of these customers could have a material adverse effect on the collectability of the Company’s accounts receivable, liquidity and future operating results.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist principally of cash and cash equivalents, and accounts receivable.

The Company invests its cash equivalents primarily in money market mutual funds. Cash equivalents are maintained with high quality institutions, the composition and maturities of which are regularly monitored by management. At times, deposits held with financial institutions may exceed the amount of insurance provided by the Federal Deposit Insurance Corporation and the Securities Investor Protection Corporation.

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NETLIST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 30, 2017

The Company's trade accounts receivable are primarily derived from sales to OEMs in the server, high-performance computing and communications markets, as well as from sales to storage customers, appliance customers, system builders and cloud and datacenter customers. The Company performs credit evaluations of its customers' financial condition and limits the amount of credit extended when deemed necessary, but generally requires no collateral. The Company believes the concentration of credit risk in its trade receivables is moderated by its credit evaluation process, relatively short collection terms, a high level of credit worthiness of its customers (see Note 10), foreign credit insurance, and letters of credit issued in its favor. Reserves are maintained for potential credit losses, and such losses historically have not been significant and have been within management's expectations.

Inventories

Inventories are valued at the lower of actual cost to purchase or manufacture the inventory or the net realizable value of the inventory. Cost is determined on an average cost basis which approximates actual cost on a first-in, first-out basis and includes raw materials, labor and manufacturing overhead. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. At each balance sheet date, the Company evaluates its ending inventory quantities on hand and on order and records a provision for excess quantities and obsolescence. Among other factors, the Company considers historical demand and forecasted demand in relation to inventory on hand, competitiveness of product offerings, market conditions and product life cycles when determining obsolescence and net realizable value. In addition, the Company considers changes in the market value of components in determining the net realizable value of its inventory. Once established, lower of cost or net realizable value write-downs are considered permanent adjustments to the cost basis of the excess or obsolete inventories.

Property and Equipment

Property and equipment are recorded at cost and depreciated on a straight-line basis over their estimated useful lives, which generally range from three to seven years. Leasehold improvements are recorded at cost and amortized on a straight-line basis over the shorter of their estimated useful lives or the remaining lease term. Expenditures for repairs and maintenance are expensed as incurred. Upon retirement or sale, the cost and related accumulated depreciation and amortization of disposed assets are removed from the accounts and any resulting gain or loss is included in other income, net.

Debt Issuance Costs, Debt Discount and Detachable Debt-Related Warrants

Costs incurred to issue debt are deferred and recorded as a reduction to the debt balance in the accompanying consolidated balance sheets. The Company amortizes debt issuance costs over the expected term of the related debt using the effective interest method. Debt discounts relate to the relative fair value of warrants issued in conjunction with the debt and are also recorded as a reduction to the debt balance and accreted over the expected term of the debt to interest expense using the effective interest method.

Impairment of Long-Lived Assets

The Company evaluates the recoverability of the carrying value of long-lived assets held and used by the Company in its operations for impairment on at least an annual basis or whenever events or changes in circumstances indicate that their carrying value may not be recoverable. When such factors and circumstances exist, the Company compares the projected undiscounted future net cash flows associated with the related asset or group of assets over their estimated useful lives against their respective carrying amount. These projected future cash flows may vary significantly over time as a result of increased competition, changes in technology, fluctuations in demand, consolidation of the Company’s customers and reductions in average sales prices. If the carrying value is determined not to be recoverable

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NETLIST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 30, 2017

from future operating cash flows, the asset is deemed impaired and an impairment loss is recognized to the extent the carrying value exceeds the estimated fair value of the asset. The fair value of the asset or asset group is based on market value when available, or when unavailable, on discounted expected cash flows. The Company’s management believes there is no impairment of long-lived assets as of December 30, 2017. However, market conditions could change or demand for products the Company sells could decrease, which could result in future impairment of long-lived assets.

Warranty Liability

The Company offers product warranties generally ranging from one to three years, depending on the product and negotiated terms of any purchase agreements with its customers. Such warranties require the Company to repair or replace defective product returned to the Company during the warranty period at no cost to the customer. Warranties are not offered on sales of component products. The Company records an estimate for warranty related costs at the time of sale based on its historical and estimated future product return rates and expected repair or replacement costs (see Note 3). While such costs have historically been within management’s expectations and the provisions established, unexpected changes in failure rates could have a material adverse impact on the Company, requiring additional warranty reserves and could adversely affect the Company’s gross profit and gross margins.

Stock-Based Compensation

The Company accounts for equity issuances to non-employees in accordance with FASB ASC Topic 505. All transactions in which goods or services are the consideration received for the issuance of equity instruments are accounted for based on the fair value of the consideration received or the fair value of the equity instrument issued, whichever is more reliably measurable. The measurement date used to determine the estimated fair value of the equity instrument issued is the earlier of the date on which the third-party performance is complete or the date on which it is probable that performance will occur.

In accordance with FASB ASC Topic 718, employee and director stock-based compensation expense recognized during the period is based on the value of the portion of stock-based payment awards that is ultimately expected to vest during the period. Given that stock-based compensation expense recognized in the accompanying consolidated statements of operations is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures.

The Company estimates its forfeitures at the time of grant and revises such estimates, if necessary, in subsequent periods if actual forfeitures differ from those estimates. The Company's estimated average forfeiture rates are based on historical forfeiture experience and estimated future forfeitures.

The estimated fair value of common stock option awards to employees and directors is calculated using the Black-Scholes option pricing model. The Black-Scholes model requires subjective assumptions regarding future stock price volatility and expected time to exercise, along with assumptions about the risk-free interest rate and expected dividends, all of which affect the estimated fair values of the Company's common stock option awards. The expected term of options granted is calculated as the weighted-average of the vesting period and the contractual expiration date of the option. This calculation is in accordance with FASB ASC Topic 718, as amended by certain Securities and Exchange Commission guidance providing for a safe harbor method in instances where the vesting and exercise terms of options granted meet certain conditions and where limited historical exercise data is available. The expected volatility is based on the historical volatility of the Company's common stock. The risk-free rate selected to value any particular grant is based on the U.S. Treasury rate that corresponds to the expected term of the grant effective as of the date of the grant. The expected dividend assumption is based on the Company's history and management's expectation regarding dividend payouts. Compensation expense for common stock option awards with graded vesting schedules is recognized on a straight-line basis over the requisite service period for the last separately vesting portion of the award, provided that the accumulated cost recognized as of any date at least equals the value of the vested portion of the award.

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NETLIST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 30, 2017

If there are any modifications or cancellations of the underlying vested or unvested stock-based awards, the Company may be required to accelerate, increase or cancel any remaining unearned stock-based compensation expense, or record additional expense for vested stock-based awards. Future stock-based compensation expense and unearned stock- based compensation may increase to the extent that the Company grants additional stock options or other stock-based awards.

Income Taxes

Deferred tax assets and liabilities are recognized to reflect the estimated future tax effects, calculated at currently effective tax rates, of future deductible or taxable amounts attributable to events that have been recognized on a cumulative basis in the accompanying consolidated financial statements. A valuation allowance related to a net deferred tax asset is recorded when it is more likely than not that some portion of the deferred tax asset will not be realized. Deferred tax liabilities, deferred tax assets and valuation allowances are classified as non-current in the accompanying consolidated balance sheets.

FASB ASC Topic 740 prescribes a recognition threshold and measurement requirement for the financial statement recognition of a tax position that has been taken or is expected to be taken on a tax return and also provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. Under FASB ASC Topic 740 the Company may only recognize or continue to recognize tax positions that meet a “more likely than not” threshold.

The application of tax laws and regulations is subject to legal and factual interpretation, judgment and uncertainty. Tax laws and regulations may change as a result of changes in fiscal policy, changes in legislation, the evolution of regulations and court rulings. Therefore, the actual liability for U.S. or foreign taxes may be materially different from the Company’s estimates, which could require the Company to record additional tax liabilities or to reduce previously recorded tax liabilities, as applicable.

Contingent Legal Expenses

Contingent legal fees are expensed in the consolidated statements of operations in the period that the related revenues are recognized. In instances where there are no recoveries from potential infringers, no contingent legal fees are paid; however, the Company may be liable for certain out of pocket legal costs incurred pursuant to the underlying legal services agreement.

Research and Development Expenses

Research and development expenditures are expensed in the period incurred.

Interest Expense

Interest expense consists primarily of interest associated with the Company's debt instruments, including fees related to the term loans, accretion of debt discounts and amortization of debt issuance costs. The Company recognizes the accretion of debt discounts and the amortization of interest costs using the effective interest method.

Foreign Currency Remeasurement

The functional currency of the Company's foreign subsidiaries is the U.S. dollar. Local currency financial statements are remeasured into U.S. dollars at the exchange rate in effect as of the balance sheet date for monetary assets and liabilities and the historical exchange rate for nonmonetary assets and liabilities. Expenses are remeasured using the average exchange rate for the period, except items related to nonmonetary assets and liabilities, which are remeasured

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NETLIST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 30, 2017

using historical exchange rates. All remeasurement gains and losses are included in determining net loss. Transaction gains and losses were not significant in 2017 or 2016.

Net Loss Per Share

Basic net loss per share is calculated by dividing net loss by the weighted-average common shares outstanding during the period. Diluted net loss per share is calculated by dividing the net loss by the weighted-average shares and dilutive potential common shares outstanding during the period. Dilutive potential shares consist of dilutive shares issuable upon the exercise or vesting of outstanding stock options and warrants, respectively, computed using the treasury stock method and shares issuable upon conversion of the SVIC Note (see Note 5). In periods of losses, basic and diluted loss per share are the same, as the effect of stock options on loss per share is anti-dilutive.

Business Risks and Uncertainties

The Company's results of operations, liquidity and financial condition are exposed to a number of risks and uncertainties. See the discussion in Item 1A. Risk Factors of the Annual Report on Form 10-K in which these consolidated financial statements are included (the "Annual Report") for more information.

Recently Adopted Accounting Standards

In July 2015, the FASB issued Accounting Standards Update ("ASU") No. 2015-11, Simplifying the Measurement of Inventory ("ASU 2015-11"), which requires entities to measure inventory at the lower of cost or net realizable value. Current guidance requires inventory to be measured at the lower of cost or market, with market defined as replacement cost, net realizable value, or net realizable value less a normal profit margin. This ASU simplifies the subsequent measurement of inventory by replacing the lower of cost or market test with a lower of cost or net realizable value test. The Company adopted this guidance in the first quarter of 2017 and there was no material impact on its consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-09, Compensation-Stock Compensation (Topic 718) Improvements to Employee Share-Based Payment Accounting ("ASU 2016-09"), which is intended to simplify several aspects of the accounting for share-based payment transactions, including the accounting for income taxes, forfeitures, statutory tax withholding requirements, classification of awards as either equity or liabilities, and classification on the statement of cash flows. ASU 2016-09 is effective for fiscal years beginning after December 15, 2016, including interim periods. The Company adopted this guidance in the first quarter of 2017 and elected to continue to estimate forfeitures expected to occur to determine the amount of compensation cost to be recognized in each period. As a result, there was no material impact on its consolidated financial statements.

Recent Accounting Pronouncements

In May 2014, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers ("ASU 2014-09"), which was subsequently amended by ASUs 2015-14, 2016-08, 2016-10, 2016-12, and 2016-20. ASU 2014-09, as amended, supersedes the revenue recognition requirements in ASC Topic 605, Revenue Recognition, and creates a new FASB ASC Topic 606 ("ASC 606"). FASB ASC 606, implements a five-step process for customer contract revenue recognition that focuses on transfer of control, as opposed to transfer of risk and rewards. ASC 606 also requires enhanced disclosures regarding the nature, amount, timing and uncertainty of revenues and cash flows from contracts with customers. Other major provisions include the capitalization and amortization of certain contract costs, ensuring the time value of money is considered in the transaction price, and allowing estimates of variable consideration to be recognized before contingencies are resolved in certain circumstances. Entities can transition to the standard either retrospectively or as a cumulative-effect adjustment as of the date of adoption. ASC 606 is effective for public entities for annual periods beginning after December 15, 2017 (fiscal year 2018 for the Company), and interim periods within

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the year of adoption. The Company will adopt these updates beginning with the first quarter of its fiscal year 2018 using the modified retrospective transition approach in which the cumulative effect of initially applying ASC 606 will be recognized at the date of initial application, January 1, 2018.

The Company has completed their analysis on the adoption of ASU 2014-09 and has determined the adoption will not have a material impact on the recognition of revenue. However, ASU 2014-09 requires enhanced disclosures about the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers, which we fully expect to disclose in connection with our 10Q filing for the first quarter of 2018. We are in the process of implementing appropriate changes to our processes, systems and controls to support revenue recognition and the expanded qualitative and quantitative disclosures required under the new standard.

In February 2016, the FASB issued ASU No. 2016-02, Leases ("ASU 2016-02"). Under ASU 2016-02, lessees will be required to recognize the following for all leases (with the exception of short-term leases) at the commencement date: a lease liability, which is a lessee's obligation to make lease payments arising from a lease, measured on a discounted basis; and a right-of-use asset, which is an asset that represents the lessee's right to use, or control the use of, a specified asset for the lease term. ASU 2016-02 is effective for fiscal years beginning after December 15, 2018 (fiscal year 2019 for the Company), including interim periods within those fiscal years. Early application is permitted. Lessees must apply a modified retrospective transition approach for leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements. The modified retrospective approach would not require any transition accounting for leases that expired before the earliest comparative period presented. Lessees may not apply a full retrospective transition approach. The Company is currently evaluating the impact of adopting ASU 2016-02 on its consolidated financial statements and disclosures.

In August 2016, the FASB issued ASU No. 2016-15, Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments ("ASU 2016-15"), which is intended to reduce the existing diversity in practice in how certain cash receipts and cash payments are classified in the statement of cash flows. ASU 2016-15 is effective for fiscal years beginning after December 15, 2017 (fiscal year 2018 for the Company), including interim periods within those fiscal years with early adoption permitted, provided that all of the amendments are adopted in the same period. The Company is currently evaluating the impact of adopting ASU 2016-15 on its consolidated financial statements and disclosures.

In October 2016, the FASB issued ASU No. 2016-16, Income Taxes (Topic 740), Intra-Entity Transfers of Assets Other Than Inventory ("ASU 2016-16"), which requires entities to recognize the income tax consequences of an

intra-entity transfer of an asset other than inventory when the transfer occurs. This amends current U.S. GAAP which prohibits recognition of current and deferred income taxes for all types of intra-entity asset transfers until the asset has been sold to an outside party. ASU 2016-16 is effective for fiscal years beginning after December 15, 2017 (fiscal year 2018 for the Company), including interim periods therein with early application permitted. Upon adoption, the Company must apply a modified retrospective transition approach through a cumulative-effect adjustment to retained earnings as of the beginning of the period of adoption. The Company is currently evaluating the impact of this new standard on its consolidated financial statements and disclosures, as well as its planned adoption date.

In November 2016, the FASB issued ASU No. 2016-18, Statement of Cash Flows (Topic 230), Restricted Cash (“ASU 2016-18”), which enhances and clarifies the guidance on the classification and presentation of restricted cash in the statement of cash flows. ASU 2016-18 is effective for fiscal periods beginning after December 15, 2018 (fiscal year 2019 for the Company), including interim periods therein with early application permitted. The Company is currently evaluating the impact of this standard on its consolidated financial statements and disclosures.

In May 2017, the FASB issued ASU No. 2017-09, Scope of Modification Accounting, which amends ASC Topic 718, Compensation – Stock Compensation (“ASU 2017-09”). The ASU includes provisions intended to (1) provide clarity and (2) reduce diversity in practice and reduce cost and complexity when calculating stock compensation,

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on a change to the terms and conditions of a share-based award. ASU 2017-09 is effective for public business entities for annual reporting periods, and interim periods within those annual periods, beginning after December 15, 2017. The Company will adopt in the first quarter of its fiscal year 2018. Based on the work completed to date, management anticipates the adoption of ASU No. 2017-09 will not have a material impact on its consolidated financial statements and disclosures.

Note 3—Supplemental Financial Information

Inventories

Inventories consisted of the following as of the dates presented:

	December 30, 2017	December 31, 2016
	(in thousands)	
Raw materials	$ 768	$ 884
Work in process	88	47
Finished goods	3,249	2,229
	$ 4,105	$ 3,160

Property and Equipment

Property and equipment consisted of the following as of the dates presented:

	Estimated Useful Lives	December 30, 2017	December 31, 2016
	(dollars in thousands)		
Machinery and equipment	3 - 7 yrs.	$ 8,823	$ 8,941
Leasehold improvements	*	878	878
Furniture and fixtures	5 yrs.	375	375
Computer equipment and software	3 - 7 yrs.	4,017	4,045
		14,093	14,239
Less accumulated depreciation and amortization		(13,634)	(13,594)
		$ 459	$ 645

*Estimated useful life is generally seven years, or the remaining lease term, whichever is shorter.

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Warranty Liability

The following table summarizes activity related to warranty liability in the periods presented:

	Year Ended December 30, 2017	December 31, 2016
	(in thousands)	
Beginning balance	$ 89	$ 122
Estimated cost of warranty claims charged to cost of sales	221	49
Cost of actual warranty claims	(158)	(82)
Ending balance	152	89
Less current portion	(91)	(53)
Long-term warranty liability	$ 61	$ 36

The allowance for warranty liability expected to be incurred within one year is included as a component of accrued expenses and other current liabilities in the accompanying consolidated balance sheets. The allowance for warranty liability expected to be incurred after one year is classified as long-term warranty liability in the accompanying consolidated balance sheets.

Computation of Net Loss Per Share

The following table sets forth the computation of basic and diluted net loss per share, including the numerator and denominator used in the calculation of basic and diluted net loss per share, for the periods presented:

	Year Ended December 30, 2017	December 31, 2016
Basic and diluted net loss per share:		
Numerator: Net loss	$ (13,420)	$ (11,231)
Denominator: Weighted-average common shares outstanding, basic and diluted	65,513	53,784
Basic and diluted net loss per share	$ (0.20)	$ (0.21)

The table below sets forth potentially dilutive common share equivalents, consisting of shares issuable upon the exercise or vesting of outstanding stock options, and the exercise of warrants, computed using the treasury stock method, and shares issuable upon conversion of the SVIC Note (see Note 5) using the "if converted" method. These potential common shares have been excluded from the diluted net loss per share calculations above as their effect would be anti-dilutive for the periods presented:

	Year Ended December 30, 2017	December 31, 2016
	(in thousands)	
Common share equivalents	12,855	12,883

The above common share equivalents would have been included in the calculation of diluted net loss per share had the Company reported net income for the periods presented.

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Cash Flow Information

The following table sets forth supplemental disclosures of cash flow information and non-cash financing activities for the periods presented:

	Year Ended	
	December 30, 2017	December 31, 2016
	(in thousands)	
Supplemental disclosure of cash flow information:		
Cash paid during the year for:		
Interest	$ 61	$ 131
Income taxes	$ 4	$ -
Supplemental disclosure of non-cash financing activities:		
Debt financing of insurance	$ 220	$ 264
Acquisition of equipment through capital lease	$ -	$ 179

Note 4—Credit Agreements

SVB Credit Agreement

On October 31, 2009, the Company and Silicon Valley Bank (“SVB”) entered into a credit agreement (as amended, the “SVB Credit Agreement”). Pursuant to the terms of the SVB Credit Agreement, the Company is eligible to borrow, in a revolving line of credit, up to the lesser of (i) 80% of its eligible accounts receivable, or (ii) $5.0 million, subject to certain adjustments as set forth in the SVB Credit Agreement. The SVB Credit Agreement requires letters of credit to be secured by cash, which is classified as restricted cash in the accompanying consolidated balance sheets. As of December 30, 2017 and December 31, 2016, (i) letters of credit were outstanding in the amount of $2.8 million and $3.1 million, respectively, (ii) the Company had outstanding borrowings of $2.0 million and $0.7 million, respectively, and (iii) availability under the revolving line of credit was $0.1 million and $0.8 million, respectively.

On January 29, 2016, the Company and SVB entered into an amendment to the SVB Credit Agreement to, among other things, adjust the rate at which advances under the SVB Credit Agreement accrue interest to the Wall Street Journal "prime rate" plus 2.75% (prior to such amendment, advances accrued interest at a rate equal to SVB's most recently announced "prime rate" plus 2.75%).

On March 27, 2017, the Company and SVB entered into another amendment to the SVB Credit Agreement to, among other things, (i) extend the maturity date of advances under the SVB Credit Agreement to April 1, 2018, (ii) modify the Company's financial covenants under the SVB Credit Agreement to remove all prior financial standards and replace them with a liquidity ratio standard, (iii) remove or amend certain termination, anniversary and unused facility fees payable by the Company under the SVB Credit Agreement, and (iv) make certain other administrative changes. On April 12, 2017, the Company and SVB entered into a further amendment to the SVB Credit Agreement to, among other things, obtain SVB's consent in connection with the Company's rights agreement with Computershare Trust Company, N.A., as rights agent (see Note 8), and make certain administrative changes in connection with the Company's funding arrangement with TR Global Funding V, LLC, an affiliate of TRGP Capital Management, LLC ("TRGP") (see Note 7). On March 20, 2018, the Company and SVB entered into another amendment to the SVB Credit Agreement to among other things, (i) extend the maturity date of advances under the SVB Credit Agreement to March 31, 2019 and (ii) revise certain inventory reporting requirements under the SVB Credit Agreement.

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For all periods before April 20, 2017, all obligations under the SVB Credit Agreement were secured by a first priority security interest in the Company's tangible and intangible assets, other than its patent portfolio, which was subject to a first priority security interest held by SVIC (see Note 5). Certain of these lien priorities were modified in April and May 2017 in connection with the Company's establishment of a funding arrangement with TRGP for certain of the Company's litigation expenses in connection with certain of its legal proceedings against SK Hynix Inc., a South Korean memory semiconductor supplier ("SK hynix"). On May 3, 2017, TRGP entered into an intercreditor agreement with each of SVIC and SVB, and on April 20, 2017 SVIC and SVB entered into an intercreditor agreement with each other (such intercreditor agreements, collectively, the "Intercreditor Agreements"). Pursuant to the terms of the Intercreditor Agreements, SVB's security interests in the Company's assets have been modified as follows: SVB has a first priority security interest in all of the Company's tangible and intangible assets other than its patent portfolio and its claims underlying and any proceeds it may receive from the SK hynix proceedings; a second priority security interest in the Company's patent portfolio other than the patents that are the subject of the SK hynix proceedings; and a third priority security interest in the Company's patents that are the subject of the SK hynix proceedings. See Note 7 for more information about the funding arrangement with TRGP, the Intercreditor Agreements and the Company's legal proceedings against SK hynix.

The SVB Credit Agreement subjects the Company to certain affirmative and negative covenants, including financial covenants with respect to the Company's liquidity and restrictions on the payment of dividends. As of December 30, 2017, the Company was in compliance with its covenants under the SVB Credit Agreement.

Note 5— Debt

The Company's debt consisted of the following as of the dates presented:

	December 30, 2017	December 31, 2016
	(in thousands)	
Convertible promissory note, SVIC, net of debt discount of $868 and $1,084 in 2017 and 2016, respectively	$ 14,132	$ 13,916
Accrued interest on convertible promissory note with SVIC	634	335
Notes payable and capital lease obligation	-	151
	$ 14,766	$ 14,402

Less current portion	-	(151)
	$ 14,766	$ 14,251

On November 18, 2015, in connection with entering into the JDLA with Samsung, the Company sold to SVIC the SVIC Note and the SVIC Warrant. The SVIC Note has an original principal amount of $15.0 million, accrues interest at a rate of 2.0% per year, is due and payable in full on December 31, 2021, and is convertible into shares of the Company’s common stock at a conversion price of $1.25 per share, subject to certain adjustments, on the maturity date of the SVIC Note. Upon a change of control of the Company prior to the maturity date of the SVIC Note, the SVIC Note may, at the Company’s option, be assumed by the surviving entity or be redeemed upon the consummation of such change of control for the principal and accrued but unpaid interest as of the redemption date. The SVIC Warrant grants SVIC a right to purchase 2,000,000 shares of the Company’s common stock at an exercise price of $0.30 per share, subject to certain adjustments, is only exercisable in the event the Company exercises its right to redeem the SVIC Note prior to its maturity date, and expires on December 31, 2025.

The SVIC Warrant was valued at $1,165,000, based on its relative fair value, and was recorded as a debt discount. The Company also recorded $154,000 of debt issuance costs as a debt discount for professional services fees rendered in connection with the transaction. These amounts are being amortized over the term of the SVIC Note using the effective interest method. For the fiscal years ended December 30, 2017 and December 31, 2016, the Company

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amortized $216,000 and $217,000 respectively, to interest expense in the accompanying consolidated statements of operations.

In connection with the SVIC Note, SVIC was granted a first priority security interest in the Company's patent portfolio and a second priority security interest in all of the Company's other tangible and intangible assets. Upon issuance of the SVIC Note, the Company, SVB and SVIC entered into an Intercreditor Agreement pursuant to which SVB and SVIC agreed to their relative security interests in the Company's assets. In May 2017, SVIC, SVB and TRGP entered into additional Intercreditor Agreements to modify certain of these lien priorities (see Note 7). Additionally, upon issuance of the SVIC Note and the SVIC Warrant, the Company and SVIC entered into a Registration Rights Agreement pursuant to which the Company is obligated to register with the SEC, upon demand by SVIC, the shares of the Company's common stock issuable upon conversion of the SVIC Note or upon exercise of the SVIC Warrant.

The SVIC Note subjects the Company to certain affirmative and negative operating covenants. As of December 30, 2017, the Company was in compliance with its covenants under the SVIC Note.

Capital Lease and Notes Payable

The Company had purchased computer equipment through a capital lease. As of December 30, 2017, the lease was repaid in full.

As of December 30, 2017, maturities of debt, including amortization of debt discount and debt issuance costs, and accrued interest were as follows:

Fiscal Year	(in thousands)
2018	$ -
2019	-

2020	-
2021	15,634
Total payments on long-term debt	15,634
Less debt discount and debt issuance costs	(868)
Long-term debt	$ 14,766

Interest expense, including amortization of debt discounts and debt issuance costs, net of interest income, was as follows during the periods presented:

	Year Ended December 31, 2017	December 31, 2016
	(in thousands)	
Interest expense:		
SVB	$ 46	$ 48
SVIC	515	523
Others	20	23
	581	594
Interest income	(17)	(16)
	$ 564	$ 578

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Note 6—Income Taxes

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company’s deferred tax assets and liabilities are as follows:

Year Ended

	December 30, 2017	December 31, 2016
Deferred tax assets:	(in thousands)	
Reserves and allowances	$ 843	$ 1,570
State taxes, net of federal income tax benefit	-	1
Depreciation and amortization	56	146
Other accruals	152	226
Compensatory stock options and rights	1,216	1,996
Basis difference in warrant value	9	-
Other	31	51
Tax credit carryforwards	4,169	3,906
Operating loss carryforward	23,475	35,424
Foreign operating loss carryforward	851	1,192
Total deferred tax assets	30,802	44,512
Deferred tax liabilities:		
Prepaid expenses	(36)	(76)
Basis difference in warrant value	-	(73)
Total deferred tax liabilities	(36)	(149)
Subtotal	30,766	44,363
Valuation allowance	(30,766)	(44,363)
	$ -	$ -

The Company evaluates whether a valuation allowance should be established against its deferred tax assets based on the consideration of all available evidence using a “more likely than not” standard. In making such judgments,

significant weight is given to evidence that can be objectively verified. As of December 30, 2017 and December 31, 2016, a valuation allowance of $30.8 million and $44.4 million, respectively, has been provided based on the Company's assessment that it is more likely than not that sufficient taxable income will not be generated to realize the tax benefits of the temporary differences. The valuation allowance decreased by $13.6 million and increased by $4.7 million during the years ended December 30, 2017 and December 31, 2016, respectively. The decrease in the year ended December 30, 2017 primarily relates to the revaluing of the Company's deferred tax assets due to the change in U.S. federal tax law discussed below, and the increase in the year ended December 31, 2016 primarily relates to the increase in the Company's net operating loss carryforward.

On December 27, 2017, new U.S. federal tax legislation was enacted that, among other things, lowers the corporate tax rate from 35% to 21%. In addition to applying the new lower corporate tax rate in 2018 and thereafter to any taxable income the Company may record, the legislation affects the way the Company can use and carry forward net operating losses previously accumulated, and has resulted in a revaluation of the Company's deferred tax assets and liabilities recorded on the accompanying consolidated balance sheet. Because the Company's existing deferred tax assets are currently offset by a full valuation allowance, these tax law changes have had no net impact on the accompanying consolidated balance sheet. However, if and when the Company becomes profitable, it would receive a reduced benefit from its deferred tax assets. As a result, the impact of the new tax law on the Company was a reduction in its deferred tax assets and corresponding valuation allowance of $14.7 million.

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As of December 30, 2017, the Company had (i) $104.0 million of federal net operating loss carryforwards, which begin to expire in 2024, (ii) $60.0 million of state net operating loss carryforwards, which begin to expire in 2018, ($2.0 million of the Company's state net operating losses expired in the year ended December 30, 2017), (iii) federal tax credit carryforwards of $2.0 million, which begin to expire in 2026, and (iv) state tax credit carryforwards of $2.2 million, which do not expire. In addition, as of December 30, 2017, the Company had $3.3 million of operating loss carryforwards in the PRC and Taiwan, and during the year ended December 30, 2017, $0.5 million of the Company's net operating loss carryforwards in the PRC and Taiwan expired in the year ended December 30, 2017. Utilization of the net operating losses and tax credit carryforwards is subject to an annual limitation due to the ownership percentage change limitations provided by Section 382 of the Internal Revenue Code and similar state and foreign law provisions. These annual limitations may result in the expiration of the net operating loss and tax credit carryforwards before utilization. As of December 30, 2017, the Company had not completed the determination of the amount subject to these annual limitations.

As a result of the Company's adoption of ASU 2016-09, the accounting for excess tax benefits to be recognized in additional paid-in capital and tax deficiencies recognized either in the income tax provision or in additional paid-in capital has been eliminated. The Company's deferred tax assets as of December 30, 2017 did not include any excess tax benefits from employee stock option exercises, which are a component of the federal and state net operating loss carryforwards, and on a go-forward basis, any excess tax benefits will be recognized as a component of income tax expense.

For financial reporting purposes, the Company's loss before provision for income taxes included the following components for the periods presented:

	Year Ended December 30, 2017	December 31, 2016
	(in thousands)	
United States	$ (12,871)	$ (10,606)
Foreign	(543)	(620)
	$ (13,414)	$ (11,226)

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 30, 2017

The Company's income tax provision consisted of the following for the periods presented:

	Year Ended December 30, 2017	December 31, 2016
	(in thousands)	
Current:		
Federal	$ -	$ -
State	6	5
Total current	6	5
Deferred:		
Federal	10,678	(3,349)
State	2,577	(1,607)
Foreign	342	288
Change in valuation allowance	(13,597)	4,668
Total deferred	-	-
Income tax provision	$ 6	$ 5

A reconciliation of income taxes computed by applying the statutory U.S. income tax rate to the Company's loss before income taxes to the income tax provision is as follows:

	Year Ended December 30, 2017		December 31, 2016	
U.S. federal statutory tax	34	%	34	%
Valuation allowance	(31)		(29)	
Loss from foreign subsidiary	(1)		(2)	
Other	(2)		(3)	
Effective income tax provision rate	-	%	-	%

The Company files tax returns with federal, state and foreign jurisdictions. The Company is no longer subject to Internal Revenue Service (“IRS”) or state examinations for periods prior to 2012, although certain carryforward attributes that were generated prior to 2012 may still be adjusted by the IRS.

The Company classifies accrued interest and penalties as part of the accrued tax liability in its provision for income taxes. For the years ended December 30, 2017 and December 31, 2016, the Company did not recognize any interest or penalties related to unrecognized tax benefits.

The Company’s recognizes interest and/or penalties related to income tax matters in income tax expense. As of December 30, 2017 and December 31, 2016, the Company had no accrued interest and penalties related to uncertain tax matters.

As of December 30, 2017, the Company had no uncertain tax positions that would be reduced as a result of a lapse of the applicable statute of limitations.

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Note 7—Commitments and Contingencies

Leases

The Company leases certain of its facilities and equipment under non cancelable operating leases that expire at various dates through 2019. Rental expense, net for the fiscal years ending December 30, 2017 and December 31, 2016 was $530,000 and $482,000, respectively.

A summary of future minimum payments under operating lease commitments as of December 30, 2017 is as follows (in thousands):

Fiscal Year	Operating Leases
2018	$ 313
2019	92
Total minimum lease payments	$ 405

Contingent Legal Expenses

The Company may retain the services of law firms that specialize in patent licensing and enforcement and patent law in connection with its licensing and enforcement activities. These law firms may be retained on a contingent fee basis whereby such law firms are paid on a scaled percentage of any negotiated fee, settlements or judgments awarded based on how and when the fees, settlements or judgments are obtained.

TRGP Agreement and Related Intercreditor Agreements

On May 3, 2017, the Company and TRGP entered into an investment agreement (the "TRGP Agreement"), which generally provides that TRGP will directly fund the costs incurred by or on behalf of the Company in connection with certain of its legal proceedings against SK hynix (see "Litigation and Patent Reexaminations" in this Note 7 below), including costs incurred since January 1, 2017 and costs to be incurred in the future in the Company's first action in the U.S. International Trade Commission ("ITC") and its U.S. district court proceedings, but excluding the Company's second ITC action and its proceedings in international courts (all such funded costs, collectively, the "Funded Costs"). In exchange for such funding, the Company has agreed that, if the Company recovers any proceeds in connection with the funded SK hynix proceedings, it will pay to TRGP the amount of the Funded Costs paid by TRGP plus an escalating premium based on when any such proceeds are recovered, such that the premium will equal a specified low-to-mid double-digit percentage of the amount of the Funded Costs and such percentage will increase by a specified low double-digit amount each quarter after a specified date until any such proceeds are recovered. In addition, pursuant to the terms of a separate security agreement between the Company and TRGP dated May 3, 2017 (the "Security Agreement"), the Company has granted to TRGP (i) a first priority lien on, and security in, the claims underlying the funded SK hynix proceedings and any proceeds that may be received by the Company in connection with these proceedings, and (ii) a second priority lien on, and security in, the Company's patents that are the subject of the funded SK hynix proceedings.

The TRGP Agreement does not impose financial covenants on the Company. Termination events under the TRGP Agreement include, among others, any failure by the Company to make payments to TRGP thereunder upon receipt of recoveries in the SK hynix proceedings; the occurrence of certain bankruptcy events; certain breaches by the Company of its covenants under the TRGP Agreement or the related Security Agreement; and the occurrence of a change of control of the Company. If any such termination event occurs, subject to certain cure periods for certain termination events, TRGP would have the right to terminate its obligations under the TRGP Agreement, including its

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obligation to make any further payments of Funded Costs after the termination date. In the event of any such termination by TRGP, the Company would continue to be obligated to pay TRGP the portion of any proceeds the Company may recover in connection with the SK hynix proceedings that TRGP would have been entitled to receive absent such termination, as described above, and TRGP may also be entitled to seek additional remedies pursuant to the dispute resolution provisions of the TRGP Agreement.

In connection with the TRGP Agreement, in May 2017, TRGP, SVIC and SVB entered into the Intercreditor Agreements. Pursuant to the terms of the Intercreditor Agreements, TRGP, SVB and SVIC have agreed to their relative security interest priorities in the Company’s assets, such that: (i) TRGP has a first priority security interest in the Company’s claims underlying the funded SK hynix proceedings and any proceeds that may be received by the Company in connection with these proceedings, and a second priority security interest in the Company’s patents that are the subject of the funded SK hynix proceedings, (ii) SVIC has a first priority security interest in the Company’s complete patent portfolio and a second priority security interest in all of the Company’s other tangible and intangible assets (other than the Company’s claims underlying and any proceeds it may receive from the SK hynix proceedings funded under the TRGP Agreement), and (iii) SVB has a first priority security interest in all of the Company’s tangible and intangible assets other than its patent portfolio and its claims underlying and any proceeds it may receive from the SK hynix proceedings funded under the TRGP Agreement, a second priority security interest in the Company’s patent portfolio other than the patents that are the subject of the SK hynix proceedings funded under the TRGP Agreement, and a third priority security interest in the Company’s patents that are the subject of the SK hynix proceedings funded under the TRGP Agreement. The Company consented and agreed to the terms of each of the Intercreditor Agreements.

Legal expenses incurred by the Company but paid by TRGP pursuant to the terms of the TRGP Agreement are excluded from the Company’s consolidated financial statements in each period in which the TRGP Agreement remains in effect. In the fiscal year ended December 30, 2017, the Company excluded legal expenses of $10.2 million as a result of TRGP’s payment of these expenses under the TRGP Agreement. Any settlement or other cash proceeds the Company may recover in the future in connection with the funded SK hynix proceedings would be reduced by the aggregate amount of legal expenses excluded by the Company as a result of TRGP’s payment of these expenses under the TRGP Agreement, plus the premium amount due to TRGP under the terms of the TRGP Agreement at the time of any such recovery.

Litigation and Patent Reexaminations

The Company owns numerous patents and continues to seek to grow and strengthen its patent portfolio, which covers various aspects of the Company's innovations and includes various claim scopes. The Company plans to pursue avenues to monetize its intellectual property portfolio, in which it would generate revenue by selling or licensing its technology, and it intends to vigorously enforce its patent rights against alleged infringers of such rights. The Company dedicates substantial resources to protecting and enforcing its intellectual property rights, including with patent infringement proceedings it files against third parties and defense of its patents against challenges made by way of reexamination and review proceedings at the U.S. Patent and Trademark Office ("USPTO") and Patent Trial and Appeal Board ("PTAB"). The Company expects these activities to continue for the foreseeable future, with no guarantee that any ongoing or future patent protection or litigation activities will be successful, or that the Company will be able to monetize its intellectual property portfolio. The Company is also subject to litigation based on claims that it has infringed on the intellectual property rights of others.

Any litigation, regardless of its outcome, is inherently uncertain, involves a significant dedication of resources, including time and capital, and diverts management's attention from our other activities. As a result, any current or future infringement claims or patent challenges by or against third parties, whether or not eventually decided in the Company's favor or settled, could materially adversely affect the Company's business, financial condition and results of operations. Additionally, the outcome of pending or future litigation and related patent reviews and reexaminations, as well as any delay in their resolution, could affect the Company's ability to continue to sell its products, protect against

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competition in the current and expected markets for its products or license or otherwise monetize its intellectual property rights in the future.

Google Litigation

On December 4, 2009, the Company filed a patent infringement lawsuit against Google, Inc. ("Google") in the U.S. District Court for the Northern District of California (the "Northern District Court"), seeking damages and injunctive relief based on Google's alleged infringement of the Company's U.S. Patent No. 7,619,912 (the "'912 patent"), which relates generally to technologies to implement rank multiplication. In February 2010, Google answered the Company's complaint and asserted counterclaims against the Company seeking a declaration that the patent is invalid and not infringed, and claiming that the Company committed fraud, negligent misrepresentation and breach of contract based on the Company's activities in the Joint Electron Device Engineering Council ("JEDEC") standard-setting organization. The counterclaim seeks unspecified compensatory damages. Accruals have not been recorded for loss contingencies related to Google's counterclaim because it is not probable that a loss has been incurred and the amount of any such loss cannot be reasonably estimated. In October 2010, Google requested and was later granted an Inter Partes Reexamination of the '912 patent by the USPTO. The reexamination proceedings are described below. In connection with the reexamination request, the Northern District Court granted the Company's and Google's joint request to stay the '912 patent infringement lawsuit against Google until the completion of the reexamination proceedings.

Inphi Litigation

On September 22, 2009, the Company filed a patent infringement lawsuit against Inphi Corporation ("Inphi") in the U.S. District Court for the Central District of California (the "Central District Court"). The complaint, as amended, alleges that Inphi is contributorily infringing and actively inducing the infringement of U.S. patents owned by the Company, including the '912 patent, U.S. Patent No. 7,532,537 (the "'537 patent"), which relates generally to memory modules with load isolation and memory domain translation capabilities, and U.S. Patent No. 7,636,274 (the "'274 patent"), which is related to the '537 patent and relates generally to load isolation and memory domain translation technologies. The Company is seeking damages and injunctive relief based on Inphi's use of the Company's patented technology. Inphi denied infringement and claimed that the three patents are invalid. In June 2010, Inphi requested and was later granted Inter Partes Reexaminations of the '912, '537 and '274 patents by the USPTO. The reexamination proceedings are described below (except for the reexamination proceeding related to the '537 patent, which have concluded with the confirmation of all of the claims of such patent). In connection with the reexamination requests, Inphi filed a motion to stay the patent infringement lawsuit with the Central District Court until completion of the reexamination

proceedings, which was granted.

‘912 Patent Reexamination

As noted above, in April 2010, June 2010 and October 2010, Google and Inphi submitted requests for an Inter Partes Reexamination of the ‘912 patent by the USPTO, claiming that the ‘912 patent is invalid and requesting that the USPTO reject the patent’s claims and cancel the patent. Additionally, in October 2010, Smart Modular, Inc. (“Smart Modular”) submitted another such reexamination request. On January 18, 2011, the USPTO granted such reexamination requests, and in February 2011, the USPTO merged the Inphi, Google and Smart Modular ‘912 patent reexaminations into a single proceeding. On March 21, 2014, the USPTO issued an Action Closing Prosecution (“ACP”), an office action that states the USPTO examiner’s position on patentability and closes further prosecution, and on June 18, 2014 the USPTO issued a Right of Appeal Notice (“RAN”), a notice that triggers the rights of the involved parties to file a notice of appeal to the ACP, each of which confirmed the patentability of 92 of the ‘912 patent’s claims and rejected the patent’s 11 other claims. The parties involved filed various notices of appeal, responses and requests, and on November 24, 2015, the PTAB held a hearing on such appeals. On May 31, 2016, the PTAB issued a decision affirming certain of the examiner’s decisions and reversing others. On February 9, 2017, the PTAB granted the Company’s request to reopen

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prosecution before the USPTO examiner and remanded the consolidated proceeding to the examiner to consider the patentability of certain of the pending claims in view of the PTAB's May 31, 2016 decision and comments from the parties. On October 3, 2017, the examiner issued a determination as to the patentability of certain of the pending claims, which were found to be unpatentable. The proceeding will now return to the PTAB for reconsideration and issuance of a new decision. Accruals have not been recorded for loss contingencies related to the '912 patent reexamination proceedings because it is not probable that a loss has been incurred and the amount of any such loss cannot be reasonably estimated.

'627 Patent Reexamination

In September 2011, Smart Modular submitted a request for an Inter Partes Reexamination by the USPTO of the Company's U.S. Patent No. 7,864,627 (the "'627 patent"), related to the '912 patent, claiming that the '627 patent is invalid and requesting that the USPTO reject the patent's claims and cancel the patent. On November 16, 2011, the request was granted. On March 27, 2014 and June 27, 2014, the USPTO issued an ACP and a RAN, respectively, each of which rejected all of the '627 patent's claims. The parties involved filed various notices of appeal, responses and requests, and on November 24, 2015, the PTAB held a hearing on such appeals. On May 31, 2016, the PTAB issued a decision affirming the decisions of the examiner. On February 9, 2017, the PTAB granted the Company's request to reopen prosecution before the USPTO examiner and remanded the proceeding to the examiner to consider the patentability of certain of the pending claims in view of the PTAB's May 31, 2016 decision and comments from the parties. On October 2, 2017, the examiner issued a determination as to the patentability of the pending claims, which were found to be unpatentable. The proceeding will now return to the PTAB for reconsideration and issuance of a new decision. Accruals have not been recorded for loss contingencies related to the '627 patent reexamination proceedings because it is not probable that a loss has been incurred and the amount of any such loss cannot be reasonably estimated.

'274 Patent Reexamination

As noted above, in April 2010 and June 2010, Inphi submitted requests for an Inter Partes Reexamination of the '274 patent by the USPTO. On August 27, 2010, the request was granted. In March 2012 and June 2012, the USPTO issued an ACP and a RAN, respectively, each of which confirmed the patentability of many of the '274 patent's claims. The parties involved filed various notices of appeal, responses and requests, and on November 20, 2013, the PTAB held a hearing on such appeals. On January 16, 2014, the PTAB issued a decision affirming the examiner in part, but reversing the examiner on new grounds and rejecting all of the patent's claims. On September 11, 2015, the USPTO

examiner issued a determination rejecting the amended claims. On January 23, 2017, the USPTO granted-in-part the Company's petition to enter comments in support of its positions in the proceeding. On May 9, 2017, the PTAB issued a decision on appeal affirming the rejection of all claims. Netlist requested rehearing of the PTAB's decision on June 6, 2017. The PTAB denied the rehearing request on August 8, 2017. On October 6, 2017, Netlist appealed the decision to the Court of Appeals for the Federal Circuit. Accruals have not been recorded for loss contingencies related to the '274 patent reexamination proceedings because it is not probable that a loss has been incurred and the amount of any such loss cannot be reasonably estimated.

Smart Modular '295 Patent Litigation and Reexamination

On September 13, 2012, Smart Modular, Inc. ("Smart Modular") filed a patent infringement lawsuit against the Company in the U.S. District Court for the Eastern District of California (the "Eastern District Court"). The complaint alleges that the Company willfully infringes and actively induces the infringement of certain claims of U.S. Patent No. 8,250,295 ("the '295 patent") issued to Smart Modular and seeks damages and injunctive relief. The Company answered Smart Modular's complaint in October 2012, denying infringement of the '295 patent, asserting that the '295 patent is invalid and unenforceable, and asserting counterclaims against Smart Modular. Accruals have not been recorded for loss contingencies related to Smart Modular's complaint because it is not probable that a loss has been incurred and the amount of any such loss cannot be reasonably estimated.

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On December 7, 2012, the USPTO granted the Company's request for the reexamination of the '295 patent. On April 29, 2014, the USPTO examiner issued an ACP confirming some claims and rejecting others, and on August 4, 2015, the examiner issued a RAN confirming all pending claims. On September 4, 2015, the Company appealed to the PTAB. The parties involved filed various notices of appeal, responses and requests, and on September 22, 2016, the PTAB held a hearing on such appeals. On November 14, 2016, the PTAB issued a decision reversing the examiner and rejected all of the pending claims. On January 23, 2017, Smart Modular filed a request to reopen prosecution. The parties had the opportunity present evidence and arguments and the examiner issued a determination on May 8, 2017, which found all pending claims to be unpatentable. On December 12, 2017, the PTAB agreed with the examiner and found all pending claims to be unpatentable. Smart Modular appealed the PTAB's decision to the Court of Appeals for the Federal Circuit. On March 28, 2018, the Eastern District Court stayed the proceedings related to the '295 patent.

Smart Modular and SanDisk Litigation

On July 1 and August 23, 2013, the Company filed complaints against Smart Modular, Smart Storage Systems (which was subsequently acquired by SanDisk Corporation ("SanDisk")), Smart Worldwide Holdings ("Smart Worldwide") and Diablo Technologies ("Diablo") in the Central District Court, seeking, among other things, damages and other relief for alleged infringement of several of the Company's patents by the defendants based on the manufacture and sale of the ULLtraDIMM memory module, alleged antitrust violations by Smart Modular and Smart Worldwide, and alleged trade secret misappropriation and trademark infringement by Diablo. The trade secret misappropriation and trademark infringement claims against Diablo were fully adjudicated on August 17, 2016 and are no longer pending.

On August 23, 2013, Smart Modular and Diablo each filed a complaint in the San Francisco Division of the Northern District Court seeking declaratory judgment of non-infringement and invalidity of the patents asserted in the Company's complaint. Based on various motions filed by the parties, on November 26, 2013, the Central District Court severed and transferred the patent claims related to the ULLtraDIMM memory module to the Northern District Court.

On February 12, 2014, the Northern District Court granted the parties' joint stipulation dismissing Smart Modular without prejudice. Between June 18, 2014 and August 23, 2014, SanDisk, Diablo, and Smart Modular filed numerous petitions in the USPTO requesting Inter Partes Review of the Company's asserted patents. All of the reviews associated with U.S. Patent Nos. 8,516,187; 8,301,833; 8,516,185 have been resolved in the Company's favor and are no longer pending. The reviews associated with U.S. Patent Nos. 8,001,434; 8,359,501; 7,881,150; and 8,081,536 have concluded before the PTAB and the parties have appealed the decisions in these reviews to the Court of Appeals

for the Federal Circuit and are awaiting final decisions. On April 9, 2015, the Northern District Court stayed the infringement proceedings as to the Company's patents asserted against the ULLtraDIMM pending resolution of the patent review decisions on appeal.

SK Hynix Litigation

On September 1, 2016, the Company filed legal proceedings for patent infringement against SK hynix in the ITC (the "First ITC Action") and the Central District Court. These proceedings are based on the alleged infringement by SK hynix's RDIMM and LRDIMM enterprise memory products of six of the Company's U.S. patents. On October 31, 2017, the Company filed additional legal proceedings for patent infringement against SK hynix in the ITC (the "Second ITC Action") based on the alleged infringement by SK hynix's RDIMM and LRDIMM products of two additional U.S. patents owned by the Company. In all of the ITC proceedings, the Company has requested exclusion orders that direct U.S. Customs and Border Protection to stop allegedly infringing SK hynix RDIMM and LRDIMM products from entering the United States. In the Central District Court proceedings, the Company is primarily seeking damages.

On October 3, 2016, the ITC instituted an investigation of the trade practices of SK hynix and certain of its subsidiaries in connection with the First ITC Action, and held a hearing on the merits of the investigation from May 8,

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2017 until May 11, 2017. On November 14, 2017, the ITC issued a final initial determination for the First ITC Action, finding no infringement of the asserted patents and no violation of Section 337 of the Tariff Act, and on January 16, 2018, the ITC issued a final determination for the First ITC Action, affirming the findings of no infringement and no violation and terminating the investigation. The Company is considering its options for appeal.

On January 11, 2018, the ITC set a 19-month target date of July 3, 2019 for an investigation related to the Second ITC Action, with a final initial determination for the Second ITC Action being filed no later than March 1, 2019. Based on this target date, the ITC scheduled a hearing on the merits of the investigation related to the Second ITC Action to begin on November 9, 2018 and conclude on November 19, 2018.

Between December 30, 2016 and January 20, 2017, SK hynix filed numerous petitions in the USPTO requesting Inter Partes Review of certain of the Company's patents, including the patents asserted in the First ITC Action and the Central District Court proceedings, the last of which is scheduled to conclude no later than July 2018. Between December 19, 2017 and February 7, 2018, SK hynix filed additional petitions in the USPTO requesting Inter Partes Review of the patents asserted in the Second ITC Action. The PTAB will determine whether to institute the requested reviews no later than August, 2018.

On July 17, 2017, the Central District Court granted in part SK hynix's request to stay the infringement proceedings pending further order of the court.

On July 11, 2017, the Company filed legal proceedings for patent infringement against SK hynix and certain of its distributors in the courts of Germany and the PRC based on the alleged infringement by SK hynix's LRDIMM products of certain of the Company's patents in those jurisdictions. On January 25, 2018, the court in Germany held a preliminary hearing and set a trial date of December 6, 2018. The court in the PRC has not yet issued a schedule for the proceedings in that jurisdiction. In December 2017, SK hynix filed petitions challenging the validity of the patents asserted by the Company in Germany and the PRC.

Morgan Joseph Litigation

On March 31, 2016, Morgan Joseph Triartisan LLC ("Morgan Joseph") filed a complaint in the Supreme Court of the State of New York against the Company and certain of its officers for breach of contract and related causes of action. The complaint alleged that the Company refused to honor its payment obligations under a written agreement with Morgan Joseph related to the provision of financial advisory and investment banking services. Morgan Joseph was seeking compensatory damages in the amount of $1,012,500, plus punitive damages in an amount not less than $1 million, together with pre-judgment interest, costs, and fees.

On September 15, 2016, the Company filed a motion to dismiss Morgan Joseph's complaint for failure to state a claim. On February 15, 2017, the court granted the Company's motion to dismiss as to all causes of action brought by Morgan Joseph, and the matter is now closed.

Other Contingent Obligations

In the ordinary course of its business, the Company has made certain indemnities, commitments and guarantees pursuant to which it may be required to make payments in relation to certain transactions. These include, among others: (i) intellectual property indemnities to the Company's customers and licensees in connection with the use, sale and/or license of Company products; (ii) indemnities to vendors and service providers pertaining to claims based on the Company's negligence or willful misconduct; (iii) indemnities involving the accuracy of representations and warranties in certain contracts; (iv) indemnities to directors and officers of the Company to the maximum extent permitted under the laws of the State of Delaware; (v) indemnities to TRGP, SVIC and SVB pertaining to all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with transactions contemplated by the

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applicable investment or loan documents, as applicable; and (vi) indemnities or other claims related to certain real estate leases, under which the Company may be required to indemnify property owners for environmental and other liabilities or may face other claims arising from the Company's use of the applicable premises. The duration of these indemnities, commitments and guarantees varies and, in certain cases, may be indefinite. The majority of these indemnities, commitments and guarantees do not provide for any limitation of the maximum potential for future payments the Company could be obligated to make. Historically, the Company has not been obligated to make significant payments as a result of these obligations, and no liabilities have been recorded for these indemnities, commitments and guarantees in the accompanying consolidated balance sheets.

Note 8—Stockholders' Equity

Serial Preferred Stock

The Company's authorized capital stock includes 10,000,000 shares of serial preferred stock, with a par value of $0.001 per share. No shares of preferred stock were outstanding at December 30, 2017 or December 31, 2016.

On April 17, 2017, the Company entered into a rights agreement (the "Rights Agreement") with Computershare Trust Company, N.A., as rights agent. In connection with the adoption of the Rights Agreement and pursuant to its terms, the Company's board of directors authorized and declared a dividend of one right (each, a "Right") for each outstanding share of the Company's common stock to stockholders of record at the close of business on May 18, 2017 (the "Record Date"), and authorized the issuance of one Right for each share of the Company's common stock issued by the Company (except as otherwise provided in the Rights Agreement) between the Record Date and the Distribution Date (as defined below).

Each Right entitles the registered holder, subject to the terms of the Rights Agreement, to purchase from the Company, when exercisable and subject to adjustment, one unit consisting of one one-thousandth of a share (a "Unit") of Series A Preferred Stock of the Company (the "Preferred Stock"), at a purchase price of $6.56 per Unit, subject to adjustment. Subject to the provisions of the Rights Agreement, including certain exceptions specified therein, a distribution date for the Rights (the "Distribution Date") will occur upon the earlier of (i) 10 business days following a

public announcement that a person or group of affiliated or associated persons (an “Acquiring Person”) has acquired or otherwise obtained beneficial ownership of 15% or more of the then outstanding shares of the Company’s common stock, and (ii) 10 business days (or such later date as may be determined by the Company’s board of directors) following the commencement of a tender offer or exchange offer that would result in a person or group becoming an Acquiring Person. The Rights are not exercisable until the Distribution Date and, unless earlier redeemed or exchanged by the Company pursuant to the terms of the Rights Agreement, will expire on the earlier of (i) the close of business on April 17, 2018, the first anniversary of the adoption of the Rights Agreement, and (ii) the date of any settlement, adjudication, dismissal with prejudice, abandonment by the Company or other conclusive and final resolution of the Company’s legal proceedings against SK hynix (see Note 7).

In connection with the adoption of the Rights Agreement, the Company’s board of directors approved a Certificate of Designation of the Series A Preferred Stock (the “Certificate of Designation”) designating 1,000,000 shares of the Company’s serial preferred stock as Series A Preferred Stock and setting forth the rights, preferences and limitations of the Preferred Stock. The Company filed the Certificate of Designation with the Secretary of State of the State of Delaware on April 17, 2017.

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Common Stock

On May 31, 2017, the Company's stockholders approved an amendment to the Company's Restated Certificate of Incorporation to increase the number of shares of the Company's common stock that it is authorized for issuance from 90,000,000 to 150,000,000.

On September 23, 2016, the Company completed an underwritten public offering (the "2016 Offering"), pursuant to which it sold 9,200,000 shares of its common stock at a price to the public of $1.25 per share. The net proceeds to the Company from the 2016 Offering were $10.3 million, after deducting underwriting discounts and commissions and offering expenses paid by the Company.

On August 22, 2017, the Company completed an underwritten public offering (the "2017 Offering"), pursuant to which it sold 8,500,000 shares of its common stock at a price to the public of $0.60 per share. The net proceeds to the Company from the 2017 Offering were $4.4 million, after deducting underwriting discounts and commissions and offering expenses paid by the Company.

On November 14, 2017, the Company entered into an At Market Issuance Sales Agreement (the "Sales Agreement") with B. Riley FBR, Inc. (the "Agent") to sell shares of the Company's common stock, with aggregate gross proceeds of up to $9.0 million, from time to time, through an "at-the-market" equity offering program under which the Agent will act as sales agent (the "ATM Program"). Under the Sales Agreement, the Company will set the parameters for the sale of shares, including the number of shares to be issued, the time period during which sales are requested to be made, limitation on the number of shares that may be sold in any one trading day and any minimum price below which sales may not be made. The Sales Agreement provides that the Agent will be entitled to compensation for its services in an amount equal to 3% of the gross proceeds from the sale of shares sold under the Sales Agreement. The Company has no obligation to sell any shares under the Sales Agreement and may suspend solicitation and offers under the Sales Agreement. As of December 30, 2017, the Company sold 8,894,222 shares of its common stock in the ATM Program for net proceeds of $2.8 million, after deducting sales commissions and other offering expenses paid by the Company. In addition, subsequent to our fiscal year end through March 26, 2018 the Company sold 6,101,312 shares of its common stock for approximate net proceeds of $1.8 million, after deducting sales commissions and other offering expenses paid by the Company.

Stock-Based Compensation

The Company has stock-based compensation awards outstanding pursuant to its Amended and Restated 2006 Equity Incentive Plan, as re-approved by the Company's stockholders on June 8, 2016 (the "Amended 2006 Plan"), under which a variety of stock-based awards, including stock options, may be granted to employees and non-employee service providers of the Company. In addition to awards granted pursuant to the Amended 2006 Plan, the Company periodically grants equity-based awards outside the Amended 2006 Plan to certain new hires as an inducement to enter into employment with the Company.

Subject to certain adjustments, as of December 30, 2017, the Company was authorized to issue a maximum of 11,405,566 shares of its common stock pursuant to awards granted under the Amended 2006 Plan. Pursuant to the terms of the Amended 2006 Plan, the maximum number of shares of common stock subject to the plan automatically increased on the first day of each calendar year from January 1, 2007 through January 1, 2016, by the lesser of (i) 5.0% of the number of shares of common stock issued and outstanding as of the first day of the applicable calendar year, and (ii) 1,200,000 shares of common stock, subject to adjustment for certain corporate actions. Beginning January 1, 2017, the automatic annual increase to the number of shares of common stock that may be issued pursuant to awards granted under the Amended 2006 Plan is equal to the lesser of (i) 2.5% of the number of shares of common stock issued and outstanding as of the first day of the applicable calendar year, and (ii) 1,200,000 shares of common stock, subject to

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adjustment for certain corporate actions. As of December 30, 2017, the Company had 1,082,880 shares of common stock available for issuance pursuant to future awards to be granted under the Amended 2006 Plan. Stock options granted under the Amended 2006 Plan generally vest at a rate of at least 25% per year over four years and expire 10 years from the date of grant.

The following table summarizes the Company's stock option activity during the periods presented:

	Stock Options Outstanding			
	Number of Shares (in thousands)	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life (in years)	Aggregate Intrinsic Value (in thousands)
Options outstanding - January 2, 2016	8,944	$ 1.98		
Options granted	1,530	1.10		
Options exercised	(293)	0.70		
Options cancelled	(1,383)	4.69		
Options outstanding - December 31, 2016	8,798	1.46		
Options granted	1,455	0.99		
Options exercised	(267)	0.68		
Options cancelled	(1,241)	1.77		
Options outstanding - December 30, 2017	8,745	$ 1.39	6.1	$ 0.1
Options exercisable - December 30, 2017	6,185	$ 1.56	5.2	$ 0.1
Options exercisable and expected to vest - December 30, 2017	8,447	$ 1.40	6.0	$ 0.1

The following table summarizes information about stock options outstanding and exercisable at December 30, 2017:

Stock Options Outstanding	Stock Options Exercisable

Exercise Price Range	Number of shares (in thousands)	Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price	Number of shares (in thousands)	Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price
$0.20 - $1.00	3,914	6.6	$ 0.73	2,673	5.9	$ 0.73
$1.01 - $2.00	2,619	7.5	$ 1.33	1,324	6.3	$ 1.48
$2.01 - $3.00	1,507	3.4	$ 2.17	1,483	3.3	$ 2.17
$3.01 - $5.00	705	3.9	$ 3.60	705	3.9	$ 3.60
	8,745	6.1	$ 1.39	6,185	5.2	$ 1.56

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The following table presents the assumptions used to calculate the weighted-average grant date fair value of stock options granted by the Company in the periods presented:

	Year Ended	
	December 30, 2017	December 31, 2016
Expected term (in years)	6.5	6.1
Expected volatility	87 %	113 %
Risk-free interest rate	2.05 %	1.50 %
Expected dividends	$ -	$ -
Weighted-average grant date fair value per share	$ 0.73	$ 0.89
Grant date fair value of options vested (in thousands)	$ 1,206	$ 1,352
Intrinsic value of options exercised (in thousands)	$ 89	$ 241

As of December 30, 2017, the amount of unearned stock-based compensation estimated to be expensed from 2018 through 2020 related to unvested stock options is approximately $1.3 million, net of estimated forfeitures. The weighted-average period over which the unearned stock-based compensation is expected to be recognized is approximately 2.2 years. If there are any modifications or cancellations of the underlying unvested awards, the Company may be required to accelerate, increase or cancel any remaining unearned stock-based compensation expense or calculate and record additional expense. Future stock-based compensation expense and unearned stock-based compensation expense will increase to the extent the Company grants additional stock options or other stock-based awards.

Warrants

In November 2015, concurrently with the issuance of the SVIC Note (see Note 5), the Company issued to SVIC the SVIC Warrant. The relative fair value of the SVIC Warrant was $1,165,000, which was recorded as a debt discount.

In November 2015, in connection with the termination of the Company's former loan agreement with Fortress Credit Opportunities I LLP ("Fortress") and a monetization letter agreement with Drawbridge Special Opportunities Fund LP ("Drawbridge"), the Company issued to an affiliate of Fortress a new ten-year warrant to purchase up to 1,000,000

shares of the Company's common stock at an exercise price of $0.47 per share (the "Fortress Warrant") and amended the exercise price per share of a previously issued to seven-year warrant to purchase an aggregate of 1,648,351 shares of the Company's common stock from $1.00 per share to $0.47 per share (the "Drawbridge Warrant"). The Fortress Warrant and the amended Drawbridge Warrant were valued using the Black-Scholes option pricing model, which computed an estimated fair value of $624,000 for the Fortress Warrant and an estimated incremental fair value of $129,000 for the amended Drawbridge Warrant.

In November 2015, the Company issued warrants to purchase up to of 300,000 and 60,000 shares of the Company's stock at an exercise price of $0.64 and $0.45 per share, respectively, to two different law firms as partial consideration for legal services rendered (each, a "Law Firm Warrant"). The Law Firm Warrants were valued at $185,000 and $49,000, respectively, based on their estimated fair values using the Black-Scholes option pricing model.

On April 4, 2016, the Drawbridge Warrant was exercised in part on a cashless basis, pursuant to which 1,000,000 shares subject to the warrant were exercised in exchange for the Company's issuance of an aggregate of 674,300 shares of its common stock. On August 29, 2016, the portion of the Drawbridge Warrant that remained outstanding was exercised in part on a cashless basis, pursuant to which the remaining 648,351 shares subject to the warrant were exercised in exchange for the Company's issuance of an aggregate of 465,555 shares of its common stock.

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On November 22, 2016, the Fortress Warrant was exercised in full on a cashless basis, pursuant to which all 1,000,000 shares subject to the warrant were exercised in exchange for the Company's issuance of an aggregate of 605,599 shares of its common stock.

On December 22, 2016, one of the Law Firm Warrants, to purchase up to 60,000 shares of the Company's common stock, was exercised in full on a cash basis, pursuant to which the Company received gross proceeds of $27,000.

The following table summarizes the Company's warrant activity during the periods presented:

	Number of Shares (in thousands)	Weighted Average Exercise Price
Warrants outstanding - January 2, 2016	7,633	$ 0.59
Warrant granted	-	-
Warrants exercised	(2,709)	0.47
Warrants outstanding - December 31, 2016	4,924	$ 0.66
Warrant granted	-	-
Warrants exercised	-	-
Warrants outstanding - December 30, 2017	4,924	$ 0.66

Note 9—401(k) Plan

The Company sponsors a 401(k) defined contribution retirement savings plan. Employees are eligible to participate in this plan if they are employed full-time and have reached 21 years of age. Participants may make pre-tax contributions to the plan subject to a statutorily prescribed annual limit. Each participant is fully vested in his or her contributions and investment earnings. The Company may make matching contributions on the contributions of a participant on a

discretionary basis. The Company adopted a limited matching contribution policy in 2012 and, pursuant to this policy, made $100,000 and $123,000 in matching contributions to participants in this plan in the years ended December 30, 2017 and December 31, 2016, respectively.

Note 10—Major Customers, Suppliers and Products

The Company's product sales have historically been concentrated in a small number of customers. The following table sets forth the percentage of the Company's net product revenues made to customers that each comprise 10% or more of the Company's net product revenues in the periods presented:

	Year Ended December 30, 2017	December 31, 2016
Customer A	* %	16 %

* less than 10% of total net product sales

The Company's accounts receivable are concentrated with three customers at December 30, 2017, representing approximately 15%, 13% and 12% of aggregate gross receivables, respectively. At December 31, 2016, two customers represented approximately 27% and 11% of aggregate gross receivables, respectively. The loss of any of the Company's significant customers or a reduction in sales to or difficulties collecting payments from any of these customers could

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significantly reduce the Company's net product revenues and adversely affect its operating results. The Company tries to mitigate risks associated with foreign receivables by purchasing comprehensive foreign credit insurance.

The Company resells certain component products to end-customers that are not reached in the distribution models of the component manufacturers, including storage customers, appliance customers, system builders and cloud and datacenter customers. Historically, the Company has obtained the majority of the component products it resells from Samsung. In the years ended December 30, 2017 and December 31, 2016, resales of these products represented approximately 85% and 66%, respectively, of the Company's net product revenues.

The Company's purchases are typically concentrated in a small number of suppliers. The following table sets forth the percentage of the Company's purchases made from suppliers that each comprise 10% or more of the Company's total purchases in the periods presented:

	Year Ended December 30, 2017		December 31, 2016	
Supplier A	60	%	73	%
Supplier B	10	%	*	

* Less than 10% of purchases during the period

While the Company believes alternative suppliers may be available, its dependence on a small number of suppliers and the lack of any guaranteed sources for the essential components of its products and the components it resells exposes the Company to several risks, including the inability to obtain an adequate supply of these components, increases in their costs, delivery delays and poor quality. If the Company is not able to obtain these components in the amounts needed on a timely basis and at commercially reasonable prices, it may not be able to develop or introduce new products, it may experience significant increases in its cost of sales if it is forced to procure components from alternative suppliers and is not able to negotiate favorable terms with these suppliers, it may experience interruptions or failures in the delivery of its products, or it may be forced to cease sales of products dependent on the components or resales of the components it resells to customers directly. The occurrence of any of these risks could have a material

adverse effect on the Company.

Note 11—Segment and Geographic Information

The Company operates in one reportable segment, which is the design, manufacture and sale of high-performance memory subsystems for the server, high-performance computing and communications markets and component products purchased for the purpose of resale. The Company evaluates financial performance on a Company-wide basis.

To date, a majority of the Company's international sales relate to shipments of products to its U.S. customers' international manufacturing sites or third party hubs. Net product revenues derived from shipments to international destinations, primarily to Hong Kong (including foreign subsidiaries of customers that are headquartered in the United States), represented approximately 67% and 26% of the Company's net product revenues in 2017 and 2016, respectively. All of the Company's net product revenues to date have been denominated in U.S. dollars.

As of December 30, 2017 and December 31, 2016, approximately $0.07 million and $0.06 million, respectively, of the Company's long-lived assets, net of depreciation and amortization, were located outside the United States, primarily in the PRC. Substantially all other long-lived assets were located in the United States.

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Note 12—Subsequent Events

The Company has evaluated subsequent events through the filing date of this Annual Report on Form 10-K and determined that no subsequent events have occurred that would require recognition in the consolidated financial statements or disclosures in the notes thereto other than as discussed in the accompanying notes.

Note 13—Quarterly Summary (Unaudited)

The following tables set forth the Company's quarterly consolidated statements of operations data for the eight quarters ended December 30, 2017. In the opinion of management, this quarterly data has been prepared on the same basis as the accompanying audited consolidated financial statements. See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations of the Annual Report for descriptions of the effects of any extraordinary, unusual or infrequently occurring items recognized in any of the periods covered by this quarterly data. The results of operations for any one quarter are not indicative of the results to be expected in the current period or any future period.

Each of the Company's quarters in its 2017 and 2016 fiscal year was comprised of 13 weeks. Quarterly computations of per share amounts are made independently and, as a result, the sum of per share amounts for the four quarters in any one fiscal year may not add to the per share amount for such fiscal year.

	Three Months Ended			
	December 30, 2017	September 30, 2017	July 1, 2017	April 1, 2017
	(in thousands, except per share data)			
Net product revenues	$ 8,482	$ 9,010	$ 11,404	$ 9,426
Cost of sales	8,075	8,285	10,760	8,746
Gross profit	407	725	644	680
Operating expenses:				

Research and development	1,089	1,159	1,487	1,496
Intellectual property legal fees	575	749	915	466
Selling, general and administrative	1,729	1,780	1,951	1,914
Total operating expenses	3,393	3,688	4,353	3,876
Operating loss	(2,986)	(2,963)	(3,709)	(3,196)
Other expense, net:				
Interest expense, net	(143)	(135)	(138)	(148)
Other income, net	2	-	-	2
Total other expense, net	(141)	(135)	(138)	(146)
Loss before provision for income taxes	(3,127)	(3,098)	(3,847)	(3,342)
Provision for income taxes	6	-	-	-
Net loss	$ (3,133)	$ (3,098)	$ (3,847)	$ (3,342)
Net loss per common share:				
Basic and diluted	$ (0.04)	$ (0.05)	$ (0.06)	$ (0.05)
Weighted-average common shares outstanding:				
Basic and diluted	72,882	65,644	61,844	61,681

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December 30, 2017

	Three Months Ended			
	December 31, 2016	October 1, 2016	July 2, 2016	April 2, 2016
	(in thousands, except per share data)			
Net product revenues	$ 5,538	$ 2,589	$ 3,500	$ 1,171
NRE revenue	-	-	3,428	3,429
Total net revenues	5,538	2,589	6,928	4,600
Cost of sales	5,263	2,580	3,267	1,149
Gross profit	275	9	3,661	3,451
Operating expenses:				
Research and development	1,347	1,463	1,831	1,646
Intellectual property legal fees	855	409	1,023	823
Selling, general and administrative	2,211	2,398	2,159	2,265
Total operating expenses	4,413	4,270	5,013	4,734
Operating loss	(4,138)	(4,261)	(1,352)	(1,283)
Other income (expense), net:				
Interest expense, net	(150)	(159)	(132)	(137)
Other income (expense), net	369	19	(10)	8
Total other income (expense), net	219	(140)	(142)	(129)
Loss before provision for income taxes	(3,919)	(4,401)	(1,494)	(1,412)
Provision for income taxes	4	-	-	1
Net loss	$ (3,923)	$ (4,401)	$ (1,494)	$ (1,413)
Net loss per common share:				
Basic and diluted	$ (0.06)	$ (0.08)	$ (0.03)	$ (0.03)
Weighted-average common shares outstanding:				
Basic and diluted	61,233	52,454	51,080	50,365