Net Element, Inc.
Form S-1
October 26, 2017

**As filed with the Securities and Exchange Commission on October 26, 2017**

**File No. 333-__________**

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

**FORM S-1**

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

**NET ELEMENT, INC.**

(Exact name of registrant as specified in its charter)

| | | |
|---|---|---|
| **Delaware** | **5045** | **90-1025599** |
| (State or other jurisdiction of incorporation or organization) | (Primary Standard Industrial Classification Code Number) | (I.R.S. Employer Identification No.) |

**3363 NE 163rd St., Suite 705**
**North Miami Beach, Florida 33160**
**(305) 507-8808**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Jonathan New**

**Chief Financial Officer**

**Net Element, Inc.**
**3363 NE 163rd St., Suite 705**
**North Miami Beach, Florida 33160**
**(305) 507-8808**

(Name, address, including zip code, and telephone number,
including area code, of agent for service)

with a copy to:

**Serge Pavluk, Esq.**

**Snell & Wilmer L.L.P.**

**600 Anton Blvd, Suite 1400**

**Costa Mesa, California 92626**

**Telephone: (714) 427-7000**

**Facsimile: (714) 427-7799**

**Approximate date of commencement of proposed sale to the public:** From time to time after this Registration Statement becomes effective.

If the only securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ¨

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ¨

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ¨

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company” and "emerging growth company" in Rule 12b-2 of the Exchange Act.

| | | | |
|---|---|---|---|
| Large accelerated filer ¨ | Accelerated filer ¨ | Non-accelerated filer ¨ (Do not check if a smaller reporting company) | Smaller reporting company x<br>Emerging growth company ¨ |

| Title of Each Class of Securities to be Registered | Amount to be Registered | | Proposed Maximum Offering Price Per Security | | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee | |
|---|---|---|---|---|---|---|---|
| Common Stock, par value $0.0001 per share | 654,929 | (1) | $5.51 | (2) | $3,608,658.04 | $ 449.28 | (3) |

(1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of common stock which become issuable by reason of any stock dividend, stock split or other similar transaction effected without the receipt of consideration that results in an increase in the number of the outstanding shares of common stock of the Registrant.

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) under the Securities Act, based upon the average of the high and low prices of the common stock on the NASDAQ Capital Market on October 24, 2017. Under a common stock purchase agreement, Cobblestone Capital Partners, LLC has agreed to purchase up to $10,000,000 of shares of the Registrant’s common stock, and the Registrant previously issued to Cobblestone Capital Partners, LLC as a commitment fee such number of shares of the Registrant’s common stock that would have a value equivalent to $200,000 calculated using the average of volume weighted average price for the Registrant’s common stock during the 3 trading days period immediately preceding the date of issuance of such shares.

**The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until this registration statement shall become effective on such date as the Securities and Exchange Commission (the "Commission"), acting pursuant to said Section 8(a), may determine.**

**The information in this prospectus is not complete and may be changed. The selling stockholder may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities, and the selling stockholder is not soliciting offers to buy these securities, in any state where the offer or sale of these securities is not permitted.**

**SUBJECT TO COMPLETION, DATED OCTOBER 26, 2017**

**PRELIMINARY PROSPECTUS**

**NET ELEMENT, INC.**

654,929 Shares

Common Stock

This prospectus relates to the sale of up to 654,929 shares of common stock of Net Element, Inc., a Delaware corporation ("us", "we", "our", "Net Element", or the "Company"), by Cobblestone Capital Partners, LLC. Cobblestone Capita Partners, LLC is also referred to in this prospectus as the selling stockholder. The prices at which the selling stockholder may sell the shares will be determined by the prevailing market price for the shares or in negotiated transactions. We will not receive proceeds from the sale of the shares by the selling stockholder. However, we may receive proceeds of up to $10 million from the sale of our common stock to the selling stockholder, pursuant to a common stock purchase agreement entered into with the selling stockholder on July 5, 2017, once the registration statement, of which this prospectus is a part, is declared effective.

The selling stockholder is an "underwriter" within the meaning of the Securities Act of 1933, as amended (the "Securities Act"). We will pay the expenses of registering these shares, but all selling and other expenses incurred by the selling stockholder will be paid by the selling stockholder.

Our common stock is listed on the Nasdaq Capital Market under the ticker symbol "NETE." On October 25, 2017, the last reported sale price per share of our common stock was $5.12 per share.

You should read this prospectus and any prospectus supplement, together with additional information described under the headings "Incorporation of Certain Documents by Reference" and "Where You Can Find More Information," carefully before you invest in any of our securities.

**Investing in our securities involves a high degree of risk. See "Risk Factors" on page 6 of this prospectus.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

The date of this prospectus is October 26, 2017

**Table of Contents**

**ABOUT THIS PROSPECTUS**

You should rely only on the information contained or incorporated by reference in this prospectus and any prospectus supplement or issuer free writing prospectus relating to the offering of our common stock by the selling stockholder. No one has been authorized to provide you with information that is different from that contained or incorporated by reference in this prospectus, any accompanying prospectus supplement and any related issuer free writing prospectus in connection with the offering described herein and therein, and, if given or made, such information or representations must not be relied upon as having been authorized by us. Neither this prospectus nor any prospectus supplement nor any related issuer free writing prospectus shall constitute an offer to sell or a solicitation of an offer to buy offered securities in any jurisdiction in which it is unlawful for such person to make such an offering or solicitation.

You should read the entire prospectus and any prospectus supplement and any related issuer free writing prospectus, as well as the documents incorporated by reference into this prospectus or any prospectus supplement or any related issuer free writing prospectus, before making an investment decision. Neither the delivery of this prospectus or any prospectus supplement or any issuer free writing prospectus nor any sale made hereunder shall under any circumstances imply that the information contained or incorporated by reference herein or in any prospectus supplement or issuer free writing prospectus is correct as of any date subsequent to the date hereof or of such prospectus supplement or issuer free writing prospectus, as applicable. You should assume that the information appearing in this prospectus, any prospectus supplement or any document incorporated by reference is accurate only as of the date of the applicable documents, regardless of the time of delivery of this prospectus or any sale of securities. Our business, financial condition, results of operations and prospects may have changed since that date.

## PROSPECTUS SUMMARY

*This summary highlights certain information about us, this offering and selected information contained in the prospectus. This summary is not complete and does not contain all of the information that you should consider before deciding whether to invest in our common stock. For a more complete understanding of our company and this offering, we encourage you to read and consider the more detailed information in the prospectus, including "Risk Factors" and the financial statements and related notes. Unless we specify otherwise, all references in this prospectus to "Net Element," "we," "our," "us" and "our company" refer to NET ELEMENT, INC.*

*Unless otherwise indicated all historical and pro forma common stock and per share data in this prospectus have been retroactively restated to the earliest period presented to account for the 1-for-10 reverse stock split that became effective on October 5, 2017.*

### Information About the Company

***Background and Business***

### Company Overview

Net Element is a global financial technology and value-added solutions group that supports companies in accepting electronic payments in an omni-channel environment that spans across point-of-sale ("POS"), e-commerce and mobile devices. The Company operates in three segments as a provider of North America Transaction Solutions, Mobile Payment Solutions and Online Payment Solutions.

We enable merchants of all sizes to accept and process over 100 different payment options in more than 40 currencies, including credit, debit and prepaid payments. We also provide merchants with value-added services and technologies including integrated payment technologies, POS solutions, security solutions, fraud management, information solutions and analytical tools.

We provide a range of solutions to our clients across the value chain of commerce-enabling services and technologies. We create our value-added solutions from a suite of proprietary technology products which includes cloud-based applications, processing services, security offerings, and customer support programs that we configure to meet our clients' individual needs.

We provide additional services including:

- POS solutions and other adjacent business services throughout the United States provided by TOT Payments doing business as ***Unified Payments***;
- Proprietary cloud-based POS platform for the hospitality industry and small to medium sized businesses ("SMB") merchants through ***Aptito*** and ***Restoactive***;
- Proprietary integrated, global e-commerce and mobile payments processing platform and fraud management system through ***PayOnline***;
- Integrated payment processing solutions to the travel industry, which includes integrations with various Global Distribution Systems ("GDS") such as Amadeus®, Galileo®, Sabre®, additional geo filters and passenger name record (PNR) through Pay-Travel service offered by ***PayOnline***;
- PayNet Solutions – universal payment platform provided by ***PayOnline*** (software-as-a-service ("SaaS") and White Label models). Providing an opportunity for top clients of ***PayOnline*** to develop their own independent business solutions.
- Integrated direct-carrier, mobile operator billing solution for small ticket content providers and merchants throughout selected international markets provided by ***Digital Provider***.

We have operations and offices located within the United States ("U.S.") (domestic) and outside of the U.S. (international) where sales, customer service and/or administrative personnel are based. Through U.S. based subsidiaries, we generate revenues from transactional services, valued-added payment services and technologies for SMBs. Through wholly owned subsidiaries, we operate internationally with a focus on transactional services, mobile payment transactions, online payment transactions, value-added payment services and technologies in selected international markets.

Our business is characterized by transaction related fees, multi-year contracts, and a diverse client base which allows us to grow alongside our clients. Our multi-year contracts allow us to achieve a high level of recurring revenues. While the contracts typically do not specify fixed revenues to be realized thereunder, they do provide a framework for revenues to be generated based on volume of services provided during the contract's term.

In August 2017, we substantially reorganized the business of Digital Provider and consolidated its operations into PayOnline and TOT Group Russia. We currently are not generating revenues from new content, and we continue to explore partnership opportunities that can monetize our relationships and contracts with mobile operators.

**Our Corporate Organization**

Our Company was formed in 2010 and incorporated as a Cayman Islands exempted company with limited liability under the name Cazador Acquisition Corporation Ltd. ("Cazador"). Cazador was a blank check company incorporated for the purpose of effecting a merger; share capital exchange; asset acquisition; share purchase; reorganization or similar business combination with one or more operating businesses or assets. In 2012, Cazador completed a merger (the "Merger") with Net Element, Inc., a Delaware corporation ("Pre-Merger Net Element"), which was a company with businesses in the online media and mobile commerce payment processing markets. Immediately prior to the effectiveness of the Merger, the Company (then known as Cazador) changed its jurisdiction of incorporation by discontinuing as an exempted company in the Cayman Islands and continuing and domesticating as a corporation incorporated under the laws of the State of Delaware. Effective upon consummation of the Merger, (i) Pre-Merger Net Element was merged with and into the Company, resulting in Pre-Merger Net Element ceasing to exist and the Company continuing as the surviving company in the Merger, and (ii) the Company changed its name to Net Element International, Inc. In 2013, the Company divested its non-core entertainment assets. In December 2013, the Company changed its name to Net Element, Inc. We entered the mobile payments business through the launch of Tot Money (renamed Digital Provider in 2015) in Russia in 2012. We entered the financial technology and value-added transactional service business through the acquisitions of Unified Payments in April 2013 and Aptito in June 2013. We entered the online payment business with our acquisition of PayOnline in May 2015.

***Additional Information***

Our principal office is located at 3363 NE 163rd Street, Suite 705, North Miami Beach, Florida 33160, and our main telephone number is (305) 507-8808. Our website address is www.netelement.com. The information on our website is not a part of, and should not be construed as being incorporated by reference into, this prospectus.

**The Offering**

| | |
|---|---|
| **Common stock being offered by the selling stockholder** | Up to 654,929 shares |
| **Common stock outstanding** | 2,465,551 (as of October 24, 2017) |
| **Use of proceeds** | The selling stockholder will receive all of the proceeds from the sale of the shares offered for sale by it under this prospectus. We will not receive proceeds from the sale of the shares by the selling stockholder. However, we may receive up to $10 million in proceeds from the sale of our common stock to the selling stockholder under the common stock purchase agreement described below. Any proceeds from the selling stockholder that we receive under the purchase agreement are expected be used for working capital and general corporate purposes. |
| **Nasdaq Capital Market Symbol** | NETE |
| **Risk Factors** | Investing in our securities involves a high degree of risk. You should carefully review and consider the "Risk Factors" section of this prospectus for a discussion of factors to consider before deciding to invest in shares of our common stock. |

**Purchase Agreement with Cobblestone Capital**

On July 5, 2017, we entered into a common stock purchase agreement (referred to in this prospectus as the "Purchase Agreement"), with Cobblestone Capital Partners, LLC (referred to in this prospectus as "Cobblestone Capital" or the "selling stockholder"), which provides that, upon the terms and subject to the conditions and limitations set forth therein, Cobblestone Capital is committed to purchase up to an aggregate of $10 million of our shares of common stock over the approximately 30-month term of the Purchase Agreement.

In consideration for entering into the Purchase Agreement, upon the earlier of (i) on or 1 business day after the Securities and Exchange Commission has declared effective the registration statement of which this prospectus is a part or (ii) six months after the date of the Purchase Agreement, we were obligated to issue to Cobblestone Capital as a commitment fee such number of shares of our common stock that would have a value equivalent to $200,000 calculated using the average of volume weighted average price for our common stock during the 3 trading days period immediately preceding the date of issuance of such shares (referred to in this prospectus as the "Commitment Shares"). Accordingly, we previously issued to Cobblestone Capital the Commitment Shares pursuant to the registration statement on Form S-1 initially filed on July 17, 2017 that became effective on August 2, 2017 (File No. 333-219324) (the "Prior Registration Statement").

Concurrently with entering into the Purchase Agreement, we also entered into a registration rights agreement with Cobblestone Capital (referred to in this prospectus as the "Registration Rights Agreement"), in which we agreed to file one or more registration statements, including the registration statement of which this prospectus is a part, as permissible and necessary to register under the Securities Act of 1933, as amended, or the Securities Act, the sale of the shares of our common stock that have been and may be issued to Cobblestone Capital under the Purchase Agreement.

As of October 24, 2017, there were 2,465,551 shares of our common stock outstanding (1,964,787 shares held by non-affiliates) excluding the 654,929 shares offered that will be issued or may be issuable to Cobblestone Capital pursuant to the Purchase Agreement. If all of such 654,929 shares of our common stock offered hereby were issued and outstanding as of the date hereof, such shares would represent 20.99% of the total common stock outstanding or 33.33% of the non-affiliate shares of common stock outstanding as of the date hereof. The number of shares of our common stock ultimately offered for sale by Cobblestone Capital is dependent upon the number of shares purchased by Cobblestone Capital under the Purchase Agreement.

Pursuant to the Purchase Agreement and the Registration Rights Agreement, we are registering 654,929 shares of our common stock under the Securities Act, which includes the shares of common stock which we may issue to Cobblestone Capital after this registration statement is declared effective under the Securities Act. All 654,929 shares of common stock are being offered pursuant to this prospectus.

Prior to filing this Registration Statement, we registered and issued to Cobblestone Capital 476,023 shares (as adjusted for the Company's reverse stock split dated October 5, 2017) of common stock pursuant to the Prior Registration Statement, which included the Commitment Shares that we were obligated to issue to Cobblestone Capital promptly after the Securities and Exchange Commission has declared effective the Prior Registration Statement. All of the shares of common stock registered under the Prior Registration Statement were sold prior to filing of this registration statement.

After the Securities and Exchange Commission has declared effective the registration statement of which this prospectus is a part, on any trading day on which the consolidated closing bid price of our common stock established by the Nasdaq Capital Market exceeds $0.25, we have the right, in our sole discretion, to present Cobblestone Capital with a purchase notice (each, a "Purchase Notice"), directing Cobblestone Capital (as principal) to purchase up to 20,000 shares (as adjusted for the Company's reverse stock split dated October 5, 2017) of our common stock per trading day, provided that the aggregate price of such purchase shall not exceed $1 million per trading day, up to $10 million of our common stock in the aggregate at a per share price (the "Purchase Price") calculated by reference to the prevailing market price of our common stock (as more specifically described below).

The number of shares for each Regular Purchase may be increased to up to 75,000 shares (as adjusted for the Company's reverse stock split dated October 5, 2017) if the consolidated closing bid price of our common stock established by the Nasdaq Capital Market is not below $0.50 per share on the date of the applicable Purchase Notice and to up to 100,000 shares (as adjusted for the Company's reverse stock split dated October 5, 2017) if the consolidated closing bid price of our common stock established by the Nasdaq Capital Market is not below $1.00 per share on the date of the applicable Purchase Notice. The number of shares for each Regular Purchase may be decreased by 50% in the event the Company is delisted from the Nasdaq Capital Market.

The Purchase Price of such shares is equal to the lesser of (i) the consolidated closing bid price of our common stock established by the Nasdaq Capital Market on the purchase date; or (ii) the arithmetic average of the three lowest consolidated closing bid price of our common stock established by the Nasdaq Capital Market during the ten consecutive trading days ending on the trading day immediately preceding the purchase date.

In addition, on any date on which we submit a Purchase Notice to Cobblestone Capital and the consolidated closing bid price of our common stock established by the Nasdaq Capital Market is equal to or greater than $0.25 per share of Common Stock, we also have the right, in our sole discretion, to present Cobblestone Capital with a volume-weighted average price purchase notice (each, a "VWAP Purchase Notice") directing Cobblestone Capital to purchase on the next trading day (the "VWAP Purchase Date") an amount of stock to not exceed the lesser of (i) two times the maximum number of shares allowed to be sold for a Regular Purchase with applicable consolidated closing bid price of our common stock established by the Nasdaq Capital Market or (ii) 20% of the trading volume of the Common Stock on the business day following VWAP Purchase Notice. The purchase price per share pursuant to such VWAP Purchase Notice (the "VWAP Purchase Price") is the lesser of (i) the consolidated closing bid price of our common stock established by the Nasdaq Capital Market on the VWAP Purchase Date; or (ii) 95% of volume weighted average price for the Common Stock on the VWAP Purchase Date.

The Purchase Price and VWAP Purchase Price will be adjusted for any reorganization, recapitalization, non-cash dividend, stock split, reverse stock split, or other similar transaction occurring during the period(s) used to compute the Purchase Price and VWAP Purchase Price.

The Purchase Agreement provides that the Company and Cobblestone Capital shall not effect any sales under the Purchase Agreement on any purchase date where the consolidated closing bid price of our common stock established by the Nasdaq Capital Market is less than $0.25 per share (the "Floor Price").

The Purchase Agreement provides that the total number of shares of common stock that may be issued under Purchase Agreement, including the Commitment Shares, will be limited to such number of shares of our common stock (the "Exchange Cap"), which equals 19.99% of our outstanding shares of common stock as of the date of the Purchase Agreement, unless stockholder approval is obtained to issue more than such 19.99%. Such stockholders' approval was obtained by the Company On October 3, 2017. Accordingly, the Exchange Cap does not apply. In no event will we be required or permitted to issue any shares of our common stock under the Purchase Agreement if such issuance would violate the rules or regulations of the Nasdaq Capital Market.

We will not issue any shares of our common stock under Purchase Agreement if such shares proposed to be issued and sold, when aggregated with all other shares of our common stock then owned beneficially (as calculated pursuant to Section 13(d) of the Exchange Act and Rule 13d-3 promulgated thereunder) by Cobblestone Capital and its affiliates would result in the beneficial ownership by Cobblestone Capital and its affiliates of more than 9.99% of the then issued and outstanding shares of our common stock.

There are no trading volume requirements or restrictions under the Purchase Agreement, and we will control the timing and amount of any sales of our common stock to Cobblestone Capital. Cobblestone Capital has no right to require any sales by us, but is obligated to make purchases from us as we direct in accordance with the Purchase Agreement.

There are no limitations on use of proceeds, financial or business covenants, rights of first refusal, participation rights, penalties or liquidated damages in the Purchase Agreement. Cobblestone Capital may not assign its rights or obligations under the Purchase Agreement.

There are no restrictions on future fundings other than the Company agreed that during the lesser of (i) 30 months from the date of the Purchase Agreement or (ii) the period when Cobblestone Capital still owns the shares of Common Stock issued to Cobblestone Capital under the Purchase Agreement, the Company will not issue without consent of Cobblestone Capital any floating conversion rate or variable priced securities convertible into Common Stock if such convertible securities shall have no floor price associated therewith (excluding any at-the-market offerings with a registered broker-dealer).

The Purchase Agreement may be terminated by us at any time, at our discretion, without any penalty or cost to us.

**RISK FACTORS**

***You should carefully consider the following information about risks, as well as those risk factors set forth in our most recent Annual Report on Form 10-K on file with the Commission, which are incorporated by reference in this prospectus, together with the other information contained in this prospectus, before making an investment in our common stock. If any of the circumstances or events described below actually arises or occurs, our business, results of operations, cash flows and financial condition could be harmed. In any such case, the market price of our common stock could decline, and you may lose all or part of your investment.***

**We will need to raise substantial additional capital in the future to fund our operations and we may be unable to raise such funds when needed and on acceptable terms.**

The extent to which we utilize the Purchase Agreement with Cobblestone Capital as a source of funding will depend on a number of factors, including the prevailing market price of our common stock, the volume of trading in our common stock and the extent to which we are able to secure funds from other sources. The number of shares that we may sell to Cobblestone Capital under the Purchase Agreement on any given day and during the term of the agreement is limited. See "The Cobblestone Capital Transaction" section of this prospectus for additional information. Additionally, we and Cobblestone Capital may not effect any sales of shares of our common stock under the Purchase Agreement during the continuance of an event of default or on any trading day that the consolidated closing bid price of our common stock established by the Nasdaq Capital Market is less than $0.25 per share. Even if we are able to access the full $10 million under the Purchase Agreement, we will still need additional capital to fully implement our business, operating and development plans.

**The sale of our common stock to Cobblestone Capital may cause substantial dilution to our existing stockholders and the sale of the shares of common stock acquired by Cobblestone Capital could cause the price of our common stock to decline.**

We are registering for sale 654,929 shares of our common stock that we may sell to Cobblestone Capital under the Purchase Agreement. It is anticipated that shares registered in this offering will be sold over a period of up to approximately 26 months from the date of this prospectus. The number of shares ultimately offered for sale by Cobblestone Capital under this prospectus is dependent upon the number of shares we elect to sell to Cobblestone Capital under the Purchase Agreement. Depending upon market liquidity at the time, sales of shares of our common stock under the Purchase Agreement may cause the trading price of our common stock to decline.

Cobblestone Capital may ultimately purchase all, some or none of the $7,635,643 of common stock that is the subject of this prospectus. Cobblestone Capital may sell all, some or none of our shares that it holds or comes to hold under the Purchase Agreement. Sales by Cobblestone Capital of shares acquired pursuant to the Purchase Agreement under the registration statement, of which this prospectus is a part, may result in dilution to the interests of other holders of our common stock. The sale of a substantial number of shares of our common stock by Cobblestone Capital in this offering, or anticipation of such sales, could make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise wish to effect sales. However, we have the right to control the timing and amount of sales of our shares to Cobblestone Capital, and the Purchase Agreement may be terminated by us at any time at our discretion without any penalty or cost to us.

**INFORMATION CONCERNING FORWARD-LOOKING STATEMENTS**

This prospectus, including the documents incorporated by reference herein, contains statements that do not directly or exclusively relate to historical facts. Such statements are "forward-looking statements." You can typically identify forward-looking statements by the use of forward-looking words, such as "may," "will," "could," "project," "believe," "anticip "expect," "estimate," "continue," "potential," "plan," "forecast" and other similar words. These include, but are not limited to, statements relating to our future financial and operating results, plans, objectives, expectations and intentions and other statements that are not historical facts. These statements represent our intentions, plans, expectations, assumptions and beliefs about future events and are subject to risks, uncertainties and other factors. Many of these factors are outside of our control and could cause actual results to differ materially from the results expressed or implied by these forward-looking statements. In addition to the risk factors described under "Risk Factors" beginning on page 5 of this prospectus, these factors include:

- the impact of any new or changed laws, regulations, card network rules or other industry standards affecting our business, including the U.S. government decision to impose sanctions or other legal restrictions that may restrict our ability to do business in Russia;
- the impact of any significant chargeback liability and liability for merchant or customer fraud, which we may not be able to accurately anticipate and/or collect;
- our ability to secure or successfully migrate merchant portfolios to new bank sponsors if current sponsorships are terminated;
- our and our bank sponsors' ability to adhere to the standards of the Visa® and MasterCard® payment card associations;
- our reliance on third-party processors and service providers;
- our dependence on independent sales groups ("ISGs") that do not serve us exclusively to introduce us to new merchant accounts;
- our ability to pass along increases in interchange costs and other costs to our merchants;
- our ability to protect against unauthorized disclosure of merchant and cardholder data, whether through breach of our computer systems or otherwise;
- the effect of the loss of key personnel on our relationships with ISGs, card associations, bank sponsors and our other service providers;
- the effects of increased competition, which could adversely impact our financial performance;
- the impact of any increase in attrition due to an increase in closed merchant accounts and/or a decrease in merchant charge volume that we cannot anticipate or offset with new accounts;
- the effect of adverse business conditions on our merchants;
- our ability to adopt technology to meet changing industry and customer needs or trends;
- the impact of any decline in the use of credit cards as a payment mechanism for consumers or adverse developments with respect to the credit card industry in general;
- the impact of any adverse conditions in industries in which we obtain a substantial amount of our bankcard processing volume;
- the impact of seasonality on our operating results;
- the impact of any failure in our systems due to factors beyond our control;

7

- the impact of any material breaches in the security of third-party processing systems we use;
- the impact of any new and potential governmental regulations designed to protect or limit access to consumer information;
- the impact on our profitability if we are required to pay federal, state or local taxes on transaction processing;
- the impact on our growth and profitability if the markets for the services that we offer fail to expand or if such markets contract;
- our ability (or inability) to continue as a going concern;
- the willingness of the Company's majority stockholders, and/or other affiliates of the Company, to continue investing in the Company's business to fund working capital requirements;
- the Company's ability (or inability) to obtain additional financing in sufficient amounts or on acceptable terms when needed;
- the impact on our operating results or liquidity in the event of an unfavorable outcome on legal proceedings and claims which arise in the ordinary course;
- the impact on our operating results as a result of impairment of our goodwill and intangible assets;
- our material weaknesses in internal control over financial reporting and our ability to maintain effective controls over financial reporting in the future; and
- the other factors identified in the "Risk Factors" section of this prospectus.

Forward-looking statements are based on our current expectations about future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, these expectations may not be achieved. We are under no duty to update any of the forward-looking statements after the date of this prospectus to conform those statements to actual results. In evaluating these statements, you should consider various factors, including the risks outlined in the section entitled "Risk Factors" beginning on page 6 of this prospectus.

The COBBLESTONE CAPITAL Transaction

**General**

On July 5, 2017, we entered into the Purchase Agreement which provides that, upon the terms and subject to the conditions and limitations set forth therein, Cobblestone Capital is committed to purchase up to an aggregate of $10 million of our shares of common stock over the term of the Purchase Agreement. In consideration for entering into the Purchase Agreement, we previously issued to Cobblestone Capital the Commitment Shares pursuant to the registration statement on Form S-1 initially filed on July 17, 2017 that became effective on August 2, 2017 (File No. 333-219324) (the "Prior Registration Statement"). Concurrently with entering into the Purchase Agreement, we also entered into the Registration Rights Agreement, in which we agreed to file one or more registration statements as permissible and necessary to register under the Securities Act, the sale of the shares of our common stock that have been and may be issued to Cobblestone Capital under the Purchase Agreement.

8

As of October 24, 2017, there were 2,465,551 shares of our common stock outstanding (1,964,787 shares held by non-affiliates) excluding the 654,929 shares offered that may be issuable to Cobblestone Capital pursuant to the Purchase Agreement. If all of such 654,929 shares of our common stock offered hereby were issued and outstanding as of the date hereof, such shares would represent 20.99% of the total common stock outstanding or 33.33% of the non-affiliate shares of common stock outstanding as of the date hereof. The number of shares of our common stock ultimately offered for sale by Cobblestone Capital is dependent upon the number of shares purchased by Cobblestone Capital under the Purchase Agreement.

Pursuant to the Purchase Agreement and the Registration Rights Agreement, we are registering 654,929 shares of our common stock under the Securities Act, which shares we may issue to Cobblestone Capital after this registration statement is declared effective under the Securities Act. All 654,929 shares of common stock are being offered pursuant to this prospectus. Under the Purchase Agreement, we have the right but not the obligation to issue more than the 654,929 shares of common stock included in this prospectus to Cobblestone Capital. As of the date hereof, we do not have any plans or intent to issue to Cobblestone Capital any shares of common stock in addition to the 654,929 shares of common stock offered hereby.

After the Securities and Exchange Commission has declared effective the registration statement of which this prospectus is a part, on any trading day on which the consolidated closing bid price of our common stock established by the Nasdaq Capital Market is not less than $0.25 per share, we have the right, in our sole discretion, to present Cobblestone Capital with a Purchase Notice, directing Cobblestone Capital (as principal) to purchase up to 20,000 shares (as adjusted for the reverse stock split dated October 25, 2017) of our common stock per business day, up to $10 million of our common stock in the aggregate at a Purchase Price calculated by reference to the prevailing market price of our common stock over the preceding 10-business day period (as more specifically described below); however, no sale pursuant to a Purchase Notice may exceed $1 million per trading day.

The number of shares for each Regular Purchase may be increased to up to 75,000 shares (as adjusted for the reverse stock split dated October 25, 2017) if the consolidated closing bid price of our common stock established by the Nasdaq Capital Market is not below $0.50 per share on the date of the applicable Purchase Notice and to up to 100,000 shares if the consolidated closing bid price of our common stock established by the Nasdaq Capital Market is not below $1.00 per share on the date of the applicable Purchase Notice. The number of shares for each Regular Purchase may be decreased by 50% in the event the Company is delisted from the Nasdaq Capital Market.

In addition, on any date on which we submit a Purchase Notice to Cobblestone Capital and our stock price is not less than $0.25 per share, we also have the right, in our sole discretion, to present Cobblestone Capital with a VWAP Purchase Notice directing Cobblestone Capital to purchase on the VWAP Purchase Date an amount of stock to not exceed the lesser of (i) two times the maximum number of shares allowed to be sold for a Regular Purchase with applicable consolidated closing bid price of our common stock established by the Nasdaq Capital Market or (ii) 20% of the trading volume of the Common Stock on the business day following VWAP Purchase Notice. The VWAP Purchase Price is the lesser of (i) the consolidated closing bid price of our common stock established by the Nasdaq

Capital Market on the VWAP Purchase Date; or (ii) 95% of volume weighted average price for the Common Stock on the VWAP Purchase Date.

The Purchase Price and VWAP Purchase Price will be adjusted for any reorganization, recapitalization, non-cash dividend, stock split, reverse stock split, or other similar transaction occurring during the period(s) used to compute the Purchase Price and VWAP Purchase Price. The Company may deliver multiple Purchase Notices and VWAP Purchase Notices to Cobblestone Capital from time to time during the term of the Purchase Agreement, so long as the most recent purchase has been completed.

The Purchase Agreement provides that the Company and Cobblestone Capital shall not effect any sales under the Purchase Agreement on any purchase date where the consolidated closing bid price of our common stock established by the Nasdaq Capital Market is less than the Floor Price. There are no trading volume requirements or restrictions under the Purchase Agreement, and we will control the timing and amount of any sales of our common stock to Cobblestone Capital. Cobblestone Capital has no right to require any sales by us, but is obligated to make purchases from us as we direct in accordance with the Purchase Agreement.

The Purchase Agreement provides that the total number of shares of common stock that may be issued under Purchase Agreement, including the Commitment Shares, will be limited to the Exchange Cap, which equals 19.99% of our outstanding shares of our common stock as of the date of the Purchase Agreement, unless stockholder approval is obtained to issue more than such 19.99%. Such stockholder's approval was obtained by the Company on October 3, 2017. Accordingly, the Exchange Cap does not apply. In no event will we be required or permitted to issue any shares of our common stock under the Purchase Agreement if such issuance would violate the rules or regulations of the Nasdaq Capital Market.

Further, we will not issue any shares of our common stock under Purchase Agreement if such shares proposed to be issued and sold, when aggregated with all other shares of our common stock then owned beneficially (as calculated pursuant to Section 13(d) of the Exchange Act and Rule 13d-3 promulgated thereunder) by Cobblestone Capital and its affiliates would result in the beneficial ownership by Cobblestone Capital and its affiliates of more than 9.99% of the then issued and outstanding shares of our common stock.

There are no limitations on use of proceeds, financial or business covenants, rights of first refusal, participation rights, penalties or liquidated damages in the Purchase Agreement. Cobblestone Capital may not assign its rights or obligations under the Purchase Agreement. The Purchase Agreement may be terminated by us at any time, at our discretion, without any penalty or cost to us.

There are no restrictions on future fundings other than the Company agreed that during the lesser of (i) 30 months from the date of the Purchase Agreement or (ii) the period when Cobblestone Capital still owns the shares of Common Stock issued to Cobblestone Capital under the Purchase Agreement, the Company will not issue without consent of Cobblestone Capital any floating conversion rate or variable priced securities convertible into Common Stock if such convertible securities shall have no floor price associated therewith (excluding any at-the-market offerings with a registered broker-dealer).

**Purchase Of Shares Under The Common Stock Purchase Agreement**

Under the common stock Purchase Agreement, on any trading day selected by us on which the consolidated closing bid price of our common stock established by the Nasdaq Capital Market exceeds $0.25 per share, we may direct Cobblestone Capital to purchase up to 20,000 shares (as adjusted for the reverse stock split dated October 25, 2017) of our common stock per trading day. The Purchase Price of such shares is equal to the lesser of:

- the consolidated closing bid price of our common stock established by the Nasdaq Capital Market on the purchase date; or
- the arithmetic average of the three lowest consolidated closing bid price of our common stock established by the Nasdaq Capital Market during the ten consecutive trading days ending on the trading day immediately preceding the purchase date.

In addition, on any date on which we submit a Purchase Notice to Cobblestone Capital and our stock price is not less than $0.25 per share, we also have the right, in our sole discretion, to present Cobblestone Capital with a VWAP Purchase Notice directing Cobblestone Capital to purchase on the VWAP Purchase Date an amount of stock to not exceed the lesser of (i) two times the maximum number of shares allowed to be sold for a Regular Purchase with applicable consolidated closing bid price of our common stock established by the Nasdaq Capital Market or (ii) 20% of the trading volume of the Common Stock on the business day following VWAP Purchase Notice.

The VWAP Purchase Price is the lesser of

- the consolidated closing bid price of our common stock established by the Nasdaq Capital Market on the VWAP Purchase Date; or

- 95% of volume weighted average price for the Common Stock on the VWAP Purchase Date

The Purchase Price and VWAP Purchase Price will be adjusted for any reorganization, recapitalization, non-cash dividend, stock split, reverse stock split, or other similar transaction occurring during the period(s) used to compute the Purchase Price and VWAP Purchase Price. The Company may deliver multiple Purchase Notices and VWAP Purchase Notices to Cobblestone Capital from time to time during the term of the Purchase Agreement, so long as the most recent purchase has been completed.

**Minimum Share Price**

Under the Purchase Agreement, we and Cobblestone Capital may not effect any sales of shares of our common stock under the Purchase Agreement on any trading day that the consolidated closing bid price of our common stock established by the Nasdaq Capital Market is less than $0.25 per share.

**Events of Default**

We may not require and Cobblestone Capital will not be obligated or permitted to purchase any shares of our common stock under the Purchase Agreement so long as any of the following events of default occurs:

- the effectiveness of any registration statement that is required to be maintained effective pursuant to the terms of the Registration Rights Agreement between us and Cobblestone Capital lapses for any reason (including, without limitation, the issuance of a stop order) or is unavailable to Cobblestone Capital for sale of our shares of common stock, and such lapse or unavailability continues for a period of ten consecutive business days or for more than an aggregate of thirty business days in any 365-day period, which is not in connection with a post-effective amendment to any such registration statement; in connection with any post-effective amendment to such registration statement that is required to be declared effective by the Commission such lapse or unavailability may continue for a period of no more than 60 consecutive business days (extended for up to an additional 30 business days if we receive a comment letter from the Commission in connection therewith);

- the suspension our common stock from trading for a period of one trading day;

- the delisting of our common stock from our principal market, provided our common stock is not immediately thereafter trading on the New York Stock Exchange, the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market, the OTB Bulletin Board or the OTCQB marketplace or OTCQX marketplace of the OTC Markets Group;

- any breach by us of the representations or warranties or covenants contained in the Purchase Agreement or any related agreements which could have a material adverse effect on us, subject to a cure period of 20 business days;

- if we commence a voluntary insolvency or bankruptcy proceedings under bankruptcy law, consent to the entry of an order for relief against us in an involuntary case, consent to the appointment of a custodian of the Company or for all or substantially all of our and our subsidiaries' property, or make a general assignment for the benefit of our creditors;

- a court of competent jurisdiction enters an order or decree under any bankruptcy law that is for relief against us in an involuntary case, appoints a custodian of the Company or for all or substantially all of its and its subsidiaries' property, or orders the liquidation of the Company; or

- we cease for more than one business day to be eligible, through our transfer agent, to issue and transfer shares of our common stock electronically to third parties via the DTC FAST Program of DTC's DWAC system.

**Our Termination Rights**

The Purchase Agreement may be terminated by us at any time, at our discretion, without any penalty or cost to us.

**Cobblestone Capital Termination Right**

Cobblestone Capital may, by delivering a prior five business days' notice to the Company, terminate the Purchase Agreement upon the occurrence of any of the following events of default:

- if we commence a voluntary insolvency or bankruptcy proceedings under bankruptcy law, consent to the entry of an order for relief against us in an involuntary case, consent to the appointment of a custodian of the Company or for all or substantially all of our and our subsidiaries' property, or make a general assignment for the benefit of our creditors; or

- a court of competent jurisdiction enters an order or decree under any bankruptcy law that is for relief against us in an involuntary case, appoints a custodian of the Company or for all or substantially all of its and its subsidiaries' property, or orders the liquidation of the Company.

**No Short-Selling or Hedging by Cobblestone Capital**

Cobblestone Capital has agreed that neither it nor any of its agents, representatives and affiliates shall engage in any direct or indirect short-selling or hedging of our common stock during any time prior to the termination of the Purchase Agreement.

**Effect of Performance of the Purchase Agreement on Our Stockholders**

The Purchase Agreement does not limit the ability of Cobblestone Capital to sell any or all of the 654,929 shares registered in this offering. It is anticipated that shares registered in this offering will be sold over a period of up to approximately 26 months from the date of this prospectus. The sale by Cobblestone Capital of a significant amount of shares registered in this offering at any given time could cause the market price of our common stock to decline and/or to be highly volatile. Cobblestone Capital may ultimately purchase all, some or none of the 654,929 shares of common stock not yet issued but registered in this offering. After it has acquired such shares, it may sell all, some or none of such shares. Therefore, sales to Cobblestone Capital by us pursuant to the Purchase Agreement also may result in substantial dilution to the interests of other holders of our common stock. However, we have the right to control the timing and amount of any sales of our shares to Cobblestone Capital and the Purchase Agreement may be terminated by us at any time at our discretion without any penalty or cost to us.

**Percentage of Outstanding Shares After Giving Effect to the Purchased Shares Issued to Cobblestone Capital**

In connection with entering into the Purchase Agreement, we authorized the sale to Cobblestone Capital of up to $10 million of our shares of common stock. In addition to 432,546 shares (as adjusted for the reverse stock split dated October 25, 2017) (exclusive of the Commitment Shares) that we previously sold to Cobblestone Capital pursuant to the Prior Registration Statement, we currently estimate that we will sell to Cobblestone Capital additional 654,929 shares included in this offering. Subject to any required approval by our board of directors, we have the right but not the obligation to issue more than the 654,929 shares included in this prospectus to Cobblestone Capital under the Purchase Agreement. In the event we elect to issue (in addition to 432,546 shares (exclusive of the Commitment Shares) that we previously issued and sold to Cobblestone Capital pursuant to the Prior Registration Statement) more than 654,929 shares under the Purchase Agreement, we will be required to file a new registration statement and have it declared effective by the SEC. The number of shares ultimately offered for sale by Cobblestone Capital in this offering is dependent upon the number of shares purchased by Cobblestone Capital under the Purchase Agreement. The following table sets forth the number and percentage of outstanding shares to be held by Cobblestone Capital after giving effect to the sale of shares of common stock issued to Cobblestone Capital at varying purchase prices:

| Assumed Average Purchase Price | Proceeds from the Sale of Shares to Cobblestone Capital Under the Purchase Agreement Registered in this Offering | Number of Shares to be Issued in this Offering at the Assumed Average Purchase Price (1) | Percentage of Outstanding Shares After Giving Effect to the Purchased Shares Issued to Cobblestone Capital (2) |
|---|---|---|---|
| $5.58 | $3,654,503.06 | 656,929 | 20.99% |
| $6.00 | $3,654,503.06 | 609,084 | 19.81% |
| $7.00 | $3,654,503.06 | 522,072 | 17.47% |
| $8.50 | $3,654,503.06 | 456,813 | 15.63% |
| $9.00 | $3,654,503.06 | 406,056 | 14.14% |
| $10.00 | $3,654,503.06 | 365,450 | 12.91% |

(1) We will not issue any shares of our common stock under Purchase Agreement if such shares proposed to be issued and sold, when aggregated with all other shares of our common stock then owned beneficially (as calculated pursuant to Section 13(d) of the Exchange Act and Rule 13d-3 promulgated thereunder) by Cobblestone Capital and its affiliates would result in the beneficial ownership by Cobblestone Capital and its affiliates of more than 9.99% of the then issued and outstanding shares of our common stock.

(2) The denominator is based on 2,465,551 shares outstanding as of October 24, 2017 plus the number of shares set forth in the adjacent column which we would have sold to Cobblestone Capital. The numerator is based on the number of shares which we may issue to Cobblestone Capital under the Purchase Agreement (that are the subject of this offering) at the corresponding assumed purchase price set forth in the adjacent column.

USE OF PROCEEDS

The selling stockholder will receive all of the proceeds from the sale of the shares offered for sale by it under this prospectus. We will not receive proceeds from the sale of the shares by the selling stockholder. However, we may receive up to remaining $7,635,643 in proceeds from the sale of our common stock to the selling stockholder under the Purchase Agreement described above. Any proceeds from the selling stockholder that we receive under the Purchase Agreement are expected be used for working capital and general corporate purposes.

**DILUTION**

The sale of our common stock to the selling stockholder pursuant to the Purchase Agreement will have a dilutive impact on our stockholders. As a result, our net income per share, if any, would decrease in future periods and the market price of our common stock could decline. In addition, the lower our stock price is at the time we exercise our right to sell shares, the more shares of our common stock we will have to issue pursuant to the Purchase Agreement and our existing stockholders would experience greater dilution.

Our historical net tangible book value of common stock as of June 30, 2017 was approximately negative $10.9 million, or $4.456.11 per share of common stock. Historical net tangible book value per share represents the amount of our total assets excluding any intangible asset that cannot be sold separately from all other assets of the business, less total liabilities, divided by the total number of shares of common stock outstanding at that date.

13

After giving effect to the sale and issuance of 654,929 shares of common stock at an assumed offering price of $5.51 per share, and after deducting estimated offering expenses payable by us, our pro forma net tangible book value as of June 30, 2017 would have been approximately $(7.7) million, or $(3.12) per share of common stock. This represents an immediate increase in pro forma net tangible book value of $2.98 per share to our existing stockholders and an immediate dilution in pro forma net tangible book value of $8.63 per share to investors participating in this offering.

The shares sold in this offering, if any, may be sold from time to time at various prices.

This information is supplied for illustrative purposes only.

The calculations set forth above are based on the number of shares of common stock outstanding as of June 30, 2017 and assume no exercise of any outstanding options or warrant. To the extent that options or warrants are exercised, there will be further dilution to new investors.

## SELLING Stockholder

The selling stockholder may from time to time offer and sell any or all of the shares of our common stock set forth below pursuant to this prospectus. When we refer to the "selling stockholder" in this prospectus, we mean the entity listed in the table below and its successors.

The following table sets forth, as of the date of this prospectus, the name of the selling stockholder for whom we are registering shares for sale to the public, the number of shares of common stock beneficially owned by the selling stockholder prior to this offering, the total number of shares of common stock that the selling stockholder may offer pursuant to this prospectus and the number of shares of common stock that the selling stockholder will beneficially own after this offering. Except as noted below, the selling stockholder does not have, or within the past three years has not had, any material relationship with us or any of our predecessors or affiliates and the selling stockholder is not or was not affiliated with registered broker-dealers.

Based on the information provided to us by the selling stockholder, assuming that the selling stockholder sells all of the shares of our common stock beneficially owned by it that have been registered by us and does not acquire any additional shares during the offering, the selling stockholder will not own any shares other than those appearing in the column entitled "Beneficial Ownership After This Offering." We cannot advise you as to whether the selling stockholder will in fact sell any or all of such shares of common stock. In addition, the selling stockholder may have sold, transferred or otherwise disposed of, or may sell, transfer or otherwise dispose of, at any time and from time to time, the shares of our common stock in transactions exempt from the registration requirements of the Securities Act of 1933, as amended, after the date on which it provided the information set forth in the table below.

| Name | Shares of Common Stock Owned Prior to this Offering | Shares of Common Stock Being Offered | Beneficial Ownership After this Offering (1) | |
|---|---|---|---|---|
| | | | **Number of Shares** | %(2) |
| Cobblestone Capital Partners, LLC (3) | - | 654,929 | - | - |

(1) Assumes the sale of all shares of common stock registered pursuant to this prospectus, although the selling stockholder is under no obligation known to us to sell any shares of common stock at this time.

(2) Based on 2,465,551 shares of common stock outstanding on October 24, 2017.

(3) Dahlia Harman is the Managing Member of Cobblestone Capital. Dahlia Harman may be deemed to be a beneficial owner of common stock held by Cobblestone Capital. Dahlia Harman disclaims beneficial ownership of the common stock held by Cobblestone Capital.

14

Plan of Distribution

The common stock offered by this prospectus is being offered by Cobblestone Capital, the selling stockholder. The common stock may be sold or distributed from time to time by the selling stockholder directly to one or more purchasers or through brokers, dealers, or underwriters who may act solely as agents at market prices prevailing at the time of sale, at prices related to the prevailing market prices, at negotiated prices, or at fixed prices, which may be changed. The sale of the common stock offered by this prospectus may be effected in one or more of the following methods:

- ordinary brokers' transactions;
- transactions involving cross or block trades;
- through brokers, dealers, or underwriters who may act solely as agents;
- "at the market" into an existing market for the common stock;
- in other ways not involving market makers or established business markets, including direct sales to purchasers or sales effected through agents;
- in privately negotiated transactions; or
- any combination of the foregoing.

In order to comply with the securities laws of certain states, if applicable, the shares may be sold only through registered or licensed brokers or dealers. In addition, in certain states, the shares may not be sold unless they have been registered or qualified for sale in the state or an exemption from the registration or qualification requirement is available and complied with.

Brokers, dealers, underwriters, or agents participating in the distribution of the shares as agents may receive compensation in the form of commissions, discounts, or concessions from the selling stockholder and/or purchasers of the common stock for whom the broker-dealers may act as agent. Cobblestone Capital has informed us that each such broker-dealer will receive commissions from Cobblestone Capital which will not exceed customary brokerage commissions.

Cobblestone Capital is an "underwriter" within the meaning of the Securities Act.

Neither we nor Cobblestone Capital can presently estimate the amount of compensation that any agent will receive. We know of no existing arrangements between Cobblestone Capital, any other shareholder, broker, dealer, underwriter, or agent relating to the sale or distribution of the shares offered by this prospectus. At the time a particular offer of shares is made, a prospectus supplement, if required, will be distributed that will set forth the names of any agents, underwriters, or dealers and any compensation from the selling stockholder, and any other required information. Pursuant to a requirement of the Financial Industry Regulatory Authority, or FINRA, the maximum commission or discount and other compensation to be received by any FINRA member or independent broker-dealer shall not be greater than eight percent (8%) of the gross proceeds received by us for the sale of any securities being registered pursuant to Rule 415 under the Securities Act.

We will pay all of the expenses incident to the registration, offering, and sale of the shares to the public other than commissions or discounts of underwriters, broker-dealers, or agents. We have agreed to indemnify Cobblestone Capital and certain other persons against certain liabilities in connection with the offering of shares of common stock offered hereby, including liabilities arising under the Securities Act or, if such indemnity is unavailable, to contribute amounts required to be paid in respect of such liabilities. Cobblestone Capital has agreed to indemnify us against liabilities under the Securities Act that may arise from certain written information furnished to us by Cobblestone Capital specifically for use in this prospectus or, if such indemnity is unavailable, to contribute amounts required to be paid in respect of such liabilities.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers, and controlling persons, we have been advised that in the opinion of the Commission this indemnification is against public policy as expressed in the Securities Act and is therefore, unenforceable.

Cobblestone Capital and its affiliates have agreed not to engage in any direct or indirect short selling or hedging of our common stock during the term of the Purchase Agreement.

We have advised Cobblestone Capital that while it is engaged in a distribution of the shares included in this prospectus it is required to comply with Regulation M promulgated under the Securities Exchange Act of 1934, as amended. With certain exceptions, Regulation M precludes the selling stockholder, any affiliated purchasers, and any broker-dealer or other person who participates in the distribution from bidding for or purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of the distribution until the entire distribution is complete. Regulation M also prohibits any bids or purchases made in order to stabilize the price of a security in connection with the distribution of that security. All of the foregoing may affect the marketability of the shares offered hereby this prospectus.

We may suspend the sale of shares by Cobblestone Capital pursuant to this prospectus for certain periods of time for certain reasons, including if the prospectus is required to be supplemented or amended to include additional material information.

This offering will terminate on the date that all shares offered by this prospectus have been sold by Cobblestone Capital.

**DESCRIPTION OF CAPITAL STOCK**

*The following information describes our common stock, as well as provisions of our certificate of incorporation and bylaws. This description is only a summary. You should also refer to our certificate of incorporation and bylaws, both as filed with the Commission as exhibits to our registration statement, of which this prospectus forms a part.*

***Common Stock***

We are authorized to issue up to 100,000,000 shares of common stock, par value $0.0001 per share. As of October 24, 2017, approximately 2,465,551 shares of common stock were outstanding. All outstanding shares of our common stock are fully paid and non-assessable.

Each holder of our common stock is entitled to a pro rata share of cash distributions made to our stockholders, including dividend payments. The holders of our common stock are entitled to receive dividends when, as and if declared by our board of directors from funds legally available therefore. Cash dividends will be paid at the sole discretion of our board of directors.

The holders of our common stock are entitled to one vote for each share of record on all matters to be voted on by our stockholders. There is no cumulative voting with respect to the election of our directors or any other matter. Therefore, the holders of more than 50% of the shares of our common stock voting for the election of our directors can elect all of our directors.

In the event of our liquidation, dissolution or winding up, the holders of our common stock are entitled to share ratably in all assets remaining available for distribution to them after payment of our liabilities and after provision has been made for each class of stock, if any, having any preference in relation to our common stock.

Holders of our common stock have no conversion, preemptive or other subscription rights, and there are no redemption provisions applicable to our common stock.

**Summary of Certain Provisions of Certificate of Incorporation and Bylaws**

Our certificate of incorporation and bylaws, as applicable, among other things, (1) provide our board with the ability to alter the bylaws without stockholder approval, and (2) provide that vacancies on our board of directors may be filled by a majority of directors in office. These provisions, while designed to reduce vulnerability to an unsolicited acquisition proposal, and to discourage certain tactics used in proxy fights, may negatively impact a third-party's decision to acquire us even if it would be beneficial to our stockholders.

**Anti-Takeover Effects of Delaware Law and Certificate of Incorporation and Bylaws**

We are subject to the Delaware anti-takeover laws regulating corporate takeovers, including Section 203 of the Delaware General Corporation Law ("DGCL"). These anti-takeover laws prevent Delaware corporations from engaging in a merger or sale of more than 10% of its assets with any stockholder, including all affiliates and associates of the stockholder, who owns 15% or more of the corporation's outstanding voting stock, for three years following the date that the stockholder acquired 15% or more of the corporation's assets unless:

- the board of directors approved the transaction in which the stockholder acquired 15% or more of the corporation's assets;

- after the transaction in which the stockholder acquired 15% or more of the corporation's assets, the stockholder owned at least 85% of the corporation's outstanding voting stock, excluding shares owned by directors, officers and employee stock plans in which employee participants do not have the right to determine confidentially whether shares held under the plan will be tendered in a tender or exchange offer; or

- on or after this date, the merger or sale is approved by the board of directors and the holders of at least two-thirds (2/3) of the outstanding voting stock that is not owned by the stockholder.

A Delaware corporation may opt out of the Delaware anti-takeover laws if its certificate of incorporation or bylaws so provides. We have not opted out of the provisions of the anti-takeover laws. As such, these laws could prohibit or delay mergers or other takeover or change of control of us and may discourage attempts by other companies to acquire us even if it would be beneficial to stockholders.

**Transfer Agent and Registrar**

We have appointed Continental Stock Transfer & Trust Company, 17 Battery Place, 8th Floor, New York, NY 10004 as our transfer agent and registrar.

**Listing**

Our common stock is listed on the NASDAQ Capital Market under the symbol “NETE”.

## LEGAL MATTERS

The validity of the issuance of the common stock offered by this prospectus will be passed upon for us by Snell & Wilmer L.L.P., Costa Mesa, California.

## EXPERTS

Daszkal Bolton LLP, independent registered public accounting firm, has audited our financial statements as of, and for the years ended, December 31, 2016 and 2015, included in our Annual Reports on Form 10-K/A for the years ended December 31, 2016 and December 31, 2015, as set forth in their reports, which are incorporated by reference in this prospectus. Our financial statements are incorporated by reference in reliance on Daszkal Bolton LLP's reports, given on their authority as experts in accounting and auditing.

## WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. We have also filed a registration statement on Form S-1, including exhibits, under the Securities Act with respect to the securities offered by this prospectus. This prospectus is part of the registration statement, but does not contain all of the information included in the registration statement or the exhibits. You may read and copy the registration statement and any other document that we file with the Commission at the Commission's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the Commission at 1-800-SEC-0330 for further information on the Public Reference Room. Our Commission filings are also available to the public on the internet at a website maintained by the Commission located at http://www.sec.gov.

## INFORMATION INCORPORATED BY REFERENCE

The Commission allows us to "incorporate by reference" information into this document. This means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be a part of this document, except for any information superseded by information that is included directly in this document or incorporated by reference subsequent to the date of this document.

This prospectus incorporates by reference the documents listed below and any future filings (including the filings after the date of the first registration statement which this prospectus is a part of and prior to effectiveness of such registration statement) that we make with the Commission under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act (other than current reports on Form 8-K furnished under Item 2.02 or Item 7.01 and exhibits filed on such form that are related to such items), until all the securities offered under this prospectus are sold or the offering is otherwise terminated.

The information incorporated by reference is an important part of this prospectus. Any statement in a document incorporated by reference into this prospectus will be deemed to be modified or superseded to the extent a statement contained in (1) this prospectus or (2) any other subsequently filed document that is incorporated by reference into this prospectus modifies or supersedes such statement

- Our Annual Report on Form 10-K for the fiscal year ended December 31, 2016, as filed with the Commission on March 31, 2017, and Annual Report on Form 10-K/A for the fiscal year ended December 31, 2016, as filed with the Commission on October 19, 2017;
- Our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2017, as filed with the Commission on May 15, 2017, and June 30, 2017, as filed with the Commission on August 14, 2017, and Quarterly Reports on Form 10-Q/A for the quarters ended March 31, 2017, as filed with the Commission on October 19, 2017, and June 30, 2017, as filed with the Commission on October 19, 2017;

- Our Current Reports on Form 8-K filed with the Commission on January 20, 2017, January 27, 2017, February 10, 2017, March 3, 2017, March 8, 2017, March 17, 2017, March 24, 2017, April 3, 2017 (only with respect to Item 9.01), April 28, 2017, May 15, 2017 (only with respect to Item 9.01), May 23, 2017, May 25, 2017, June 9, 2017, July 3, 2017, July 6, 2017, July 7, 2017, August 2, 2017, August 4, 2017, August 14, 2017, August 21, 2017, September 1, 2017, September 29, 2017, October 4, 2017, and October 20, 2017, and Current Report on Form 8-K/A, as filed with the Commission on March 22, 2017;
- Our Proxy Statement on Schedule 14A, as filed with the Commission on August 10, 2017; and
- The descriptions of our Common Stock contained in our Registration Statement on Form 8-A, filed with the Commission on September 28, 2010 and amended on October 2, 2012, and any other amendment or report filed for the purposes of updating such descriptions.

Documents incorporated by reference are available from the Commission as described above or from us without charge, excluding any exhibits to those documents unless the exhibit is specifically incorporated by reference as an exhibit in this document. You can obtain documents incorporated by reference in this document by requesting them in writing or by telephone at the following address:

Net Element, Inc.

3363 NE 163rd St., Suite 705

North Miami Beach, Florida 33160

(305) 507-8808

Attention: Chief Financial Officer

19

**NET ELEMENT, INC.**

654,929 Shares

Common Stock

October 26, 2017

20

**PART II**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 13. Other Expenses of Issuance and Distribution.**

The following table sets forth the expenses to be borne by the Registrant in connection with the issuance and distribution of the securities registered hereby. Other than the Commission registration fee, all of the amounts below are estimates.

| | |
|---|---|
| Commission registration fee | $449.28 |
| Accounting fees and expenses | $5,000.00 |
| Legal fees and expenses | $30,000.00 |
| Financial printing and miscellaneous expenses | $5,000.00 |
| Transfer Agent fees | $1,500.00 |
| Total | $41,949.28 |

**Item 14. Indemnification of Directors and Officers.**

Section 102 of the Delaware General Corporation Law (the "DGCL") allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of the DGCL or obtained an improper personal benefit.

Under Section 145 of the DGCL, we can indemnify our directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act of 1933, as amended (the "Securities Act"). Our certificate of incorporation provides that, pursuant to the DGCL, our directors shall not be liable for monetary damages for breach of the directors' fiduciary duty of care to us and our stockholders. This provision in the certificate of incorporation does not eliminate the duty of care, and in appropriate circumstances equitable remedies such as injunctive or other forms of non-monetary relief will remain available under the DGCL. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to us or our stockholders, for acts or omissions not in good faith or involving intentional misconduct or knowing violations of the law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under the DGCL. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws.

Section 174 of the DGCL provides, among other things, that a director who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption may be held liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time, may avoid liability by causing his or her dissent to such actions to be entered in the books containing minutes of the meetings of our board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

In addition, our directors and officers are covered under directors' and officers' liability insurance policies maintained by us, subject to the limits of the policies, insuring such persons against various liabilities.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that, in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

**Item 15. Recent Sales of Unregistered Securities.**

The numbers of shares of Common Stock set forth in this item 15 are adjusted to reflect a 10-1 reverse stock split on October 5, 2017.

On September 4, 2013, the Company entered into a letter agreement, dated as of August 28, 2013 (the "Exchange Agreement"), with Oleg Firer, Steven Wolberg, Georgia Notes 18 LLC and Vladimir Sadovskiy, pursuant to which the Company has agreed, subject to approval of the Company's shareholders, to issue such number of shares of common stock of the Company equal to 10% of the Company's issued and outstanding common stock as of the date of issuance of such shares in exchange for the Company's acquisition of the outstanding 10% minority interest in the Company's 90%-owned subsidiary, TOT Group, Inc. Pursuant to the Exchange Agreement, the Company agreed to purchase (i) from Oleg Firer 4,500 shares of common stock of TOT Group, representing 4.5% of TOT Group's outstanding shares of common stock, in exchange for the issuance to Mr. Firer of such number of shares of common stock of the Company equal to 4.5% of the Company's issued and outstanding common stock as of the date of issuance of such shares, (ii) from Steven Wolberg 2,000 shares of common stock of TOT Group, representing 2% of TOT Group's outstanding shares of common stock, in exchange for the issuance to Mr. Wolberg of such number of shares of common stock of the Company equal to 2% of the Company's issued and outstanding common stock as of the date of issuance of such shares, (iii) from Georgia Notes 18 LLC 3,000 shares of common stock of TOT Group, representing 3% of TOT Group's outstanding shares of common stock, in exchange for the issuance to Georgia Notes 18 LLC of such number of shares of common stock of the Company equal to 3% of the Company's issued and outstanding common stock as of the date of issuance of such shares and (iv) from Vladimir Sadovskiy 500 shares of common stock of TOT Group, representing 0.5% of TOT Group's outstanding shares of common stock, in exchange for the issuance to Mr. Sadovskiy of such number of shares of common stock of the Company equal to 0.5% of the Company's issued and outstanding common stock as of the date of issuance of such shares. Upon the approval of such issuance by the Company’s shareholders, the Company issued aggregate 31,359 restricted shares of the Company's common stock to Oleg Firer, Steven Wolberg, Georgia Notes 18 LLC and Vladimir Sadovskiy in reliance upon the exemption from registration pursuant to Section 4(a)(2) of the Securities Act.

On June 30, 2014, the Company issued 1,000 restricted shares of the Company's common stock to MBF Merchant Capital, LLC (“MBF”) as consideration for the restructuring of the note payable by the Company to MBF in May 2014. Such shares were issued by the Company in reliance upon the exemption from registration pursuant to Section 4(a)(2) of the Securities Act.

On June 30, 2014, in reliance upon the exemption from registration pursuant to Section 4(a)(2) of the Securities Act, the Company issued 3,231 restricted shares of the Company's common stock to Oleg Firer, Steven Wolberg, Georgia Notes 18, LLC and Vladimir Sadovskiy pursuant to Amendment No. 1 between the Company, Oleg Firer, Steven Wolberg, Georgia Notes 18, LLC and Vladimir Sadovskiy, which amended the Exchange Agreement (see Note 4 of the accompanying notes to unaudited condensed consolidated financial statements), as additional consideration for the Company's purchase (i) from Oleg Firer 4,500 shares of common stock of TOT Group, (ii) from Steven Wolberg 2,000 shares of common stock of TOT Group, (iii) from Georgia Notes 18 LLC 3,000 shares of common stock of TOT Group, and (iv) from Vladimir Sadovskiy 500 shares of common stock of TOT Group.

On July 15, 2014, we issued 11,409 restricted shares of the Company's common stock to K 1 Holding Limited pursuant to the Letter Agreement, dated December 5, 2013, among the Company, TGR Capital, LLC and K 1 Holding Limited. We issued such shares in reliance upon the exemption from registration pursuant to Section 4(a)(2) of the Securities Act.

On June 30, 2014, the entire principal amount of that certain Secured Convertible Senior Promissory Note in the principal amount of Eleven Million Two Hundred Thousand Dollars ($11,200,000.00) issued on April 21, 2014 by the Company in favor of Cayman Invest S.A. was converted into 55,692 shares of common stock constituting 15% of the then outstanding shares of common stock the Company. We issued such restricted shares of the Company's common stock on September 12, 2014 in reliance upon the exemption from registration pursuant to Section 4(a)(2) of the Securities Act.

On September 15, 2014, we entered into a Master Exchange Agreement, (the "Master Exchange Agreement") with Crede CG III, Ltd., an exempted company incorporated under the laws of Bermuda ("Crede"). Prior to entering into the Master Exchange Agreement, Crede acquired two existing promissory notes that had been previously issued by the Company, one with $2,343,500 principal amount outstanding plus interest due to Capital Sources of New York and the other with $13,533,360 principal amount outstanding plus interest due to Georgia Notes 18, LLC. Pursuant to the Master Exchange Agreement, Crede was entitled to exchange these promissory notes for such number of shares of the Company's common stock, par value $0.0001 per share ("Common Stock"), as determined under the Master Exchange Agreement based upon 80% of the volume-weighted average trading price of the Common Stock for a specified period of time (up to 90 trading days) subsequent to each exchange (the "True-Up Period"). The initial number of shares of Common Stock issuable upon exchange was determined by dividing (i) 125% of the principal and interest under the promissory note(s) to be exchanged, as well as any other amounts owed by the Company to Crede with respect to such promissory note(s) to be exchanged by (ii) an "exchange price" determined as the closing bid price of the Common Stock on the date of the applicable exchange (provided, however, that the Master Exchange Agreement provides that the "exchange price" for the initial exchange (described further below) is $57.0), in each case subject to adjustments over the True-Up Period following the exchange as set forth in the Exchange Agreement. Crede exchanged the entire amount of both promissory notes on September 15, 2014. The "exchange price" for this initial exchange was $57.0. Accordingly, on September 15, 2014, the Company exchanged 125% of the principal and interest under both promissory notes into 34,818 shares of Common Stock. As this number of shares was subject to adjustments over the True-Up Period following this exchange, the Company issued to Crede an additional 23,212 shares to finalize the transaction. The entire 58,030 issued shares was calculated at the end of the True-Up Period to by dividing the aggregate amount of the promissory notes by 80% of the volume-weighted average trading price of the Common Stock during the True-Up Period. Such shares of restricted common stock of the Company were issued to Crede in reliance upon Section 3(a)(9) of the Securities Act exemption from the registration requirements under the Securities Act.

On April 30, 2015, the Company entered into a Securities Purchase Agreement with certain qualified institutional investors and certain institutional accredited investors (the "Investors") providing for the issuance by the Company of (i) senior convertible notes of the Company in the aggregate principal amount of $5,000,000 (the "Notes") convertible (upon conversion, amortization, payment of interest, and as part of the make-whole amount, or otherwise) into shares of the Company's Common Stock and (ii) warrants (the "Warrants") exercisable to purchase such number of shares of Common Stock that equal 88% of the shares of Common Stock underlying the Notes. The Notes and the Warrants were issued to the Note Investors in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act and Rule 506(b) of Regulation D as promulgated by the Commission under the Securities Act.

On December 1, 2015, the Company and the Investors parties to those certain two letter agreements, each dated August 4, 2015 and filed as Exhibits 10.1 and 10.2 to the Current Report on Form 8-K filed with the Commission on August 4, 2015 (collectively, the "Letter Agreements") entered into amendments to the Letter Agreements (collectively, the "Amendments"). Pursuant to the Amendments, on December 3, 2015 all of the Warrants previously issued by the Company to the Investors were terminated and cancelled in exchange for 25,000 in the aggregate of shares of the Company's Common Stock issued to the Investors in reliance upon Section 3(a)(9) of the Securities Act exemption from the registration requirements under the Securities Act.

After the execution of the PayOnline Acquisition Agreement, TOT Group Europe, Ltd. and TOT Group Russia LLC, each a subsidiary of the Company, the Company issued to the sellers of PayOnline 47,683 shares of restricted common stock at the price of $75.5 per share on May 27, 2015 as part of the first installment payment under the PayOnline Acquisition Agreement, 4,257 shares of restricted common stock at the price of $17.4 per share on January 22, 2016 as part of the second installment payment under the PayOnline Acquisition Agreement, 22,865 shares of restricted common stock at the price of $27.0 per share on April 22, 2016 as part of the third installment payment under the PayOnline Acquisition Agreement, 13,083 shares of restricted common stock at the price of $8.299 per share on March 16, 2017 pursuant to the Second Amendment to the PayOnline Acquisition Agreement, and 30,759 shares of restricted common stock to one of the merchants of PayOnline at the price of $8.2 per share on July 19, 2017 pursuant to First Amendment to the PayOnline Acquisition Agreement. Such shares of restricted common stock of the Company were issued to the Sellers in reliance upon Section 4(a)(2) of the Securities Act exemption from the registration requirements under the Securities Act.

On September 11, 2015, the Company entered into a Letter Agreement (as modified by that certain Additional Letter Agreement dated October 7, 2015, the “Investment Agreement”) with certain accredited investors listed on the signature pages attached to the Agreement providing for the issuance by the Company to the Investors of 113,572 restricted shares of the Company’s common stock in the aggregate (the “Restricted Shares”) and options to purchase 113,572 restricted shares of the Company’s common stock in the aggregate on the terms set forth in each investor’s Option to Purchase Shares of Restricted Common Stock (the “Restricted Options”). Some of the investors were Star Equities LLC, Kenges Rakishev, William Healy and Steven Wolberg. Oleg Firer is a managing member of Start Equities LLC and is also Chief Executive Officer and a director of the Company, Mr. Rakishev and Mr. Healy are directors of the Company, and Mr. Wolberg is Chief Legal Officer and Secretary of the Company. The Restricted Shares purchase price was $14.0 per share. The Restricted Shares and the Restricted Options, including the restricted shares of common stock issuable upon exercise of the Restricted Options, were issued to the Funding Investors in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act after the Company obtained the approval of such issuance from the Company’s shareholders.

On December 3, 2015, in reliance on applicable exemption from the securities laws registration requirements and subject to the Company shareholders’ approval for purposes of compliance with the Nasdaq Rule 5635(c), the Committee approved and authorized the issuance of (1) to Oleg Firer, Chief Executive Officer of the Company, 57,918 restricted shares of the Company common stock (subject to Rule 144 of the 1933 Securities Act, as amended), in lieu of and in satisfaction of accrued and unpaid compensation due to him in the amount of $1,042,509 and 37,500 restricted shares of the Company’s common stock as a performance bonus, and (2) to Steven Wolberg, Chief Legal Office of the Company, 10,000 restricted shares of the Company’s common stock as a performance bonus. The Company’s shareholders approved all such issuances at the 2016 Annual Meeting of Stockholders held on June 13, 2016 and all such issuances have been issued.

On January 21, 2016, the Company entered into a Second Additional Letter Agreement, as amended by that Amendment No. 1, dated April 14, 2016 (the “Second Additional Agreement”) with Kenges Rakishev, an accredited investor (the “Investor”). The Second Additional Agreement further modified the terms of the Letter Agreement, dated September 11, 2015, as modified by that certain Additional Letter Agreement dated October 7, 2015, with certain accredited investors listed on the signature pages attached to that Letter Agreement (collectively, the “Original Agreement”). Mr. Rakishev is a director of the Company. The Second Additional Agreement provided for the second and final round of $910,000 equity financing to the Company contemplated by the Original Agreement in consideration for the issuance by the Company to the Investor of (i) 46,643 restricted shares of the Company’s common stock (the “Restricted Shares”) based on $19.51 per share, equal to the closing trading price of the Company Common Stock reported on The NASDAQ Capital Market on January 20, 2016, the trading date immediately preceding the date when the Investor and the Company committed to the transactions contemplated in the Second Additional Agreement; and (ii) options to purchase 46,643 restricted shares of the Company’s common stock on the terms set forth in the Investor’s Form of Option to Purchase Shares of Restricted Common Stock (the “Restricted Options”). The Company’s shareholders approved all such issuances at the 2016 Annual Meeting of Stockholders held on June 13, 2016, and such restricted shares and restricted options were issued to Mr. Rakishev in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act (and the shares of common stock issuable, subject to compliance with Rule 144 under the Securities Act, upon exercise of the restricted options, were issued to Mr. Rakishev in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act).

On May 2, 2016, the Company entered into a Master Exchange Agreement (the "Master Exchange Agreement") with Crede CG III, Ltd., an exempted company incorporated under the laws of Bermuda ("Crede"). Prior to entering into the Master Exchange Agreement, Crede agreed to acquire three existing promissory notes that had been previously issued by the Company, of up to $3,965,000 in principal amount outstanding plus interest due to RBL Capital Group, LLC. Pursuant to the Master Exchange Agreement, the Company has the right, at any time prior to December 31, 2016, to request Crede, and Crede agreed upon each such request, to exchange these promissory notes in tranches on the dates when the Company instructs Crede, for such number of shares of the Company's Common Stock as determined under the Master Exchange Agreement based upon the lower of (A) the closing bid price of Common Stock on the date of the applicable exchange notice and (B) (x) the average of the 3 lowest daily dollar volume-weighted average prices (VWAPs) of Common Stock during the 7 trading days immediately preceding the date of the applicable notice less (y) 12% of such average of the 3 lowest daily VWAPs of Common Stock. All such determinations will be appropriately adjusted for any stock split, stock dividend, reverse stock split, stock combination or other similar transaction during any measuring period. Each such tranche to be $100,000 unless otherwise agreed to by the Company and Crede. Such shares of restricted common stock of the Company are issuable to Crede under an exemption from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), in reliance upon Section 3(a)(9) of the Securities Act.

On May 2, 2016, the Company opted to exchange the first tranche in the aggregate amount of $281,142.47 for 9,786 shares of Common Stock based on the "exchange price" of $28.73 per share for this first tranche. On May 11, 2016, the Company opted to exchange the second tranche in the aggregate amount of $250,000 for 9,175 shares of the Company common stock based on the "exchange price" of $27.25 per share. On May 17, 2016, the Company opted to exchange the third tranche in the aggregate amount of $170,633.33 for 6,641 shares of the Company common stock based on the "exchange price" of $25.70 per share. On June 9, 2016, the Company opted to exchange the fourth tranche in the aggregate amount of $200,000 for 9,903 shares of the Company common stock based on the "exchange price" of $20.197 per share. On June 24, 2016, the Company opted to exchange the fifth tranche in the aggregate amount of $100,000 for 5,767 shares of the Company common stock based on the "exchange price" of $17.342 per share. On July 1, 2016, the Company opted to exchange the sixth tranche in the aggregate amount of $100,000 for 6,260 shares of the Company common stock based on the "exchange price" of $15.976 per share. On July 8, 2016, the Company opted to exchange the seventh tranche in the aggregate amount of $200,000 for 12,522 shares of the Company common stock based on the "exchange price" of $15.972 per share. On July 22, 2016, the Company opted to exchange the eighth tranche in the aggregate amount of $300,000 for 16,461 shares of the Company common stock based on the "exchange price" of $18.226 per share. On August 4, 2016, the Company opted to exchange a tranche in the aggregate amount of $100,000 for 5,280 shares of the Company common stock based on the "exchange price" of $18.943 per share. On August 9, 2016, the Company opted to exchange a tranche in the aggregate amount of $200,000 for 10,495 shares of the Company common stock based on the "exchange price" of $19.058 per share. On August 15, 2016, the Company opted to exchange a tranche in the aggregate amount of $200,000 for 10,362 shares of the Company common stock based on the "exchange price" of $19.302 per share. On August 31, 2016, the Company opted to exchange a tranche in the aggregate amount of $200,000 for 15,655 shares of the Company common stock based on the "exchange price" of $12.776 per share. On September 9, 2016, the Company opted to exchange a tranche in the aggregate amount of $100,000 for 9,014 shares of the Company common stock based on the "exchange price" of $11.094 per share. On September 16, 2016, the Company opted to exchange a tranche in the aggregate amount of $200,000 for 19,418 shares of the Company common stock based on the "exchange price" of $10.3 per share. On November 8, 2016, the Company opted to exchange a tranche in the aggregate amount of $100,000 for 9,804 shares of the Company common stock based on the "exchange price" of $10.2 per share. On November 14, 2016, the Company opted to exchange a tranche in the aggregate amount of $100,000 for 9,804 shares of the Company common stock based on the "exchange price" of $10.2 per share. On March 26, 2017, the Company opted to exchange a tranche in the aggregate amount of $75,000 for 10,236 shares of the Company common stock based on the "exchange price" of $7.328 per share. On May 24, 2017, the Company opted to exchange a tranche in the aggregate amount of $150,000 for 23,088 shares of the Company common stock based on the "exchange price" of $6.497 per share. On July 27, 2017, the Company opted to exchange a tranche in the aggregate amount of $105,969 for 26,771 shares of the Company common stock based on the "exchange price" of $3.958 per share.

On July 6, 2016, the Company entered into a common stock purchase agreement (the "ESOUSA Purchase Agreement") with ESOUSA HOLDINGS, LLC, a New York limited liability company ("ESOUSA"), pursuant to which, ESOUSA committed to purchase up to an aggregate of $10 million of shares of the Company's common stock over the 30-month term of the ESOUSA Purchase Agreement at a per share price equal to the lesser of (i) the consolidated closing bid price of the Company's common stock established by the Nasdaq Capital Market on the purchase date; or (ii) the arithmetic average of the 3 lowest consolidated closing bid prices for the Company's common stock during the 10 consecutive trading days ending on the trading day immediately preceding the purchase date. The issuance of the shares of common stock to ESOUSA under the Purchase Agreement was exempt from registration under the Securities Act, pursuant to the exemption for transactions by an issuer not involving any public offering under Section 4(a)(2) of the Securities Act. After entering into the ESOUSA Purchase Agreement, the Company registered the sale of 279,467 shares of the Company’s common stock that was issued to ESOUSA under the Purchase Agreement. The total number of shares of common stock that may be issued under ESOUSA Purchase Agreement, including the commitment shares to ESOUSA, was limited to 236,272 shares of Company common stock, which equals 19.99% of our outstanding shares of common stock as of the date of the ESOUSA Purchase Agreement. Total 236,272 shares of Common Stock was issued under the ESOUSA Purchase Agreement.

On August 1, 2016, the Company issued 9,570 restricted shares of the Company common stock (subject to Rule 144 of the 1933 Securities Act, as amended), to Wayne Orkin in satisfaction of an agreement entered into between the Company and Mr. Orkin. Such shares of restricted common stock of the Company were issued in reliance upon Section 4(a)(2) of the Securities Act exemption from the registration requirements under the Securities Act.

On July 5, 2017, we entered into the Purchase Agreement (as defined and as described in this Registration Statement) with Cobblestone Capital, which provides that, upon the terms and subject to the conditions and limitations set forth therein, Cobblestone Capital is committed to purchase up to an aggregate of $10 million of our shares of common stock over the approximately 30-month term of the Purchase Agreement at a per share price equal to the lesser of (i) the consolidated closing bid price of the Company's common stock established by the Nasdaq Capital Market on the purchase date; or (ii) the arithmetic average of the 3 lowest consolidated closing bid prices for the Company's common stock during the 10 consecutive trading days ending on the trading day immediately preceding the purchase date. The issuance of the shares of common stock to Cobblestone Capital under the Purchase Agreement was exempt from registration under the Securities Act, pursuant to the exemption for transactions by an issuer not involving any public offering under Section 4(a)(2) of the Securities Act. After entering into the Purchase Agreement, the Company registered the resale of 476,023 shares of the Company's common stock that was issued to Cobblestone Capital under the Purchase Agreement. All such registered for resale 476,023 shares of Common Stock were issued under the Purchase Agreement pursuant to the Prior Registration Statement.

On October 3, 2017, our stockholders approved at our 2017 annual meeting the issuance by the Company of 47,139 restricted shares of Common Stock to the Company's Chief Executive Officer, Oleg Firer as a performance bonus. Such shares of restricted common stock of the Company were issued in reliance upon Section 4(a)(2) of the Securities Act exemption from the registration requirements under the Securities Act.

On October 20, 2017, the Company exchanged the entire outstanding amount of $374,253.13 (including the principal amount of $348,083.32 and accrued and unpaid interest) under the promissory note issued by the Company on March 1, 2017 to Start Equities LLC into 67,312 restricted shares of Common Stock of the Company based on such shares' Consolidated Closing Bid Price on The NASDAQ Stock Market on the date of the Exchange Agreement, or $5.56 per share. The issuance of the shares of our Common Stock to Start Equities LLC was exempt from registration pursuant to the exemption under Section 3(a)(9) of the Securities Act.

**Item 16. Exhibits.**

| Exhibit No. | Description of Exhibit |
|---|---|
| 2.1 | Agreement and Plan of Merger, dated as of June 12, 2012, by and between Cazador Acquisition Corporation Ltd. and Net Element, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Commission on June 12, 2012) |
| 2.2 | Contribution Agreement, dated April 16, 2013, among Net Element International, Inc., Unified Payments, LLC, TOT Group, Inc., Oleg Firer, and Georgia Notes 18 LLC (incorporated by reference to Exhibit 2.1 to |

| | |
|---|---|
| | the Company's Current Report on Form 8-K filed with the Commission on April 17, 2013. |
| 2.3 | Term Sheet, dated May 20, 2013, among TOT Group, Inc., Net Element International, Inc. and Aptito.com, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Commission on May 22, 2013) |
| 2.4 | Asset Purchase Agreement, dated June 18, 2013, between Aptito, LLC and Aptito.com, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Commission on June 24, 2013) |

II-6

| | |
|---|---|
| 2.5 | Contribution Agreement, dated September 25, 2013, among T1T Lab, LLC, Net Element International, Inc. and T1T Group, LLC (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Commission on September 25, 2013) |
| 2.6 | Assignment of Membership Interest, dated February 11, 2014, among T1T Group, LLC, Net Element, Inc., and T1T LAB, LLC (incorporated by reference to Exhibit 2.7 to the Company's Annual Report on Form 10-K filed with the Commission on April 15, 2014) |
| 2.7 | Binding Offer Letter, dated March 16, 2015, among TOT Group Europe Ltd., Maglenta Enterprises Inc. and Champfremont Holding Ltd. (incorporated by reference to Exhibit 2.1 to Net Element's Current Report on Form 8-K/A filed with the Commission on March 20, 2015) |
| 3.1 | Certificate of Corporate Domestication of Cazador, filed with the Secretary of State of the State of Delaware on October 2, 2012 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on October 5, 2012) |
| 3.2 | Amended and Restated Certificate of Incorporation of Net Element International, Inc., a Delaware corporation, filed with the Secretary of State of the State of Delaware on October 2, 2012 (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed with the Commission on October 5, 2012) |
| 3.3 | Amended and Restated Bylaws of Net Element International, Inc., a Delaware corporation (incorporated by reference to Exhibit 3.3 to the Company's Current Report on Form 8-K filed with the Commission on October 5, 2012) |
| 3.4 | Certificate of Merger, filed with the Secretary of State of the State of Delaware on October 2, 2012 (incorporated by reference to Exhibit 3.4 to the Company's Current Report on Form 8-K filed with the Commission on October 5, 2012) |
| 3.5 | Certificate of Amendment to Amended and Restated Certificate of Incorporation, dated December 5, 2013, changing the Company's name from Net Element International, Inc. to Net Element, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on December 6, 2013) |
| 3.6 | Certificate of Amendment to Amended and Restated Certificate of Incorporation, to increase authorized common stock to 200 million shares (incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K filed with the Commission on December 17, 2014) |
| 3.7 | Certificate of Designations, Preferences and Rights of Series A Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K filed with the Commission on May 1, 2015) |
| 3.8 | Certificate of Amendment to Amended and Restated Certificate of Incorporation, dated June 15, 2015, to increase authorized common stock to 300 million shares (incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K filed with the Commission on June 16, 2015) |
| 3.9 | Amendment No. 1 to the Bylaws of the Company, dated June 15, 2015 (incorporated by reference to Exhibit 3.2 of the Company's Current Report on Form 8-K filed with the Commission on June 16, 2015) |

| | |
|---|---|
| 3.10 | Amendment No. 2 to the Bylaws of the Company, dated July 10, 2015 (incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K filed with the Commission on July 10, 2015) |
| 3.11 | Certificate of Amendment to Amended and Restated Certificate of Incorporation, as amended, of the Company (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on May 24, 2016) |
| 3.12 | Certificate of Amendment to Amended and Restated Certificate of Incorporation of the Company, dated June 15, 2016, to increase authorized common stock to 400 million shares (incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K filed with the Commission on June 16, 2016) |
| 3.13 | Certificate of Amendment to Amended and Restated Certificate of Incorporation, as amended, of Net Element, Inc. (incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K filed with the Commission on October 4, 2017) |
| 4.1 | Specimen Common Stock Certificate of Net Element International, Inc. (incorporated by reference to Exhibit 4.2 to the Registration Statement on Form S-4 filed by the Company with the Commission on August 31, 2012) |
| 4.2 | Warrant Certificate of Cazador Acquisition Corporation Ltd. (incorporated by reference to Exhibit 4.3 to the Registration Statement on Form F-1 filed by the Company with the Commission on September 3, 2010) |
| 4.3 | Registration Rights Agreement by and between Cazador Acquisition Corporation Ltd., Cazador Sub Holdings Ltd. and Others (incorporated by reference to Exhibit 10.5 to the Registration Statement, as amended, on Form F-1/A filed by the Company with the Commission on October 6, 2010) |
| 4.4 | Warrant Agreement by and between Cazador Acquisition Corporation Ltd. and Continental Stock Transfer & Trust Company (incorporated by reference to Exhibit 4.4 to the Registration Statement, as amended, on Form F-1/A filed by the Company with the Commission on October 6, 2010) |
| 4.5 | Secured Convertible Senior Promissory Note dated April 21, 2014 between the Company and Cayman Invest, S.A. (incorporated by reference to Exhibit 4.1 to Net Element's Current Report on Form 8-K filed with the Commission on April 22, 2014) |
| 4.6 | Form of Amended and Restated Restricted Options to Purchase Shares of Restricted Common Stock (incorporated by reference to Exhibit 4.1 to Net Element's Current Report on Form 8-K filed with the Commission on October 7, 2015) |
| 4.7 | Form of Option to Kenges Rakishev to Purchase Shares of Restricted Common Stock (incorporated by reference to Exhibit 4.1 to Net Element's Current Report on Form 8-K filed with the Commission on January 22, 2016) |
| 4.8 | Registration Rights Agreement, dated as of July 6, 2016, between the Company and ESOUSA Holdings, LLC (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Commission on July 12, 2016) |
| 4.9 | Registration Rights Agreement, dated as of July 5, 2017, between the Company and Cobblestone Capital Partners LLC (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Commission on July 7, 2017) |

| | |
|---|---|
| 5.1* | Opinion of Snell & Wilmer L.L.P. |
| 10.1 | Form of Indemnification Agreement (incorporated by reference to Exhibit 10.9 to the Registration Statement on Form F-1 filed by the Company with the Commission on September 3, 2010) |
| 10.2 | Memorandum of Understanding, dated March 23, 2012, by and between Cazador Acquisition Corporation Ltd. and Cazador Sub-Holdings Ltd. (incorporated by reference to Exhibit 10.10 to the Company's Annual Report on Form 10-K for the year ended December 31, 2011, filed with the Commission on March 30, 2012) |
| 10.3 | Membership Interest Purchase Agreement (Motorsport) dated as of February 1, 2011 between Enerfund, LLC and the Company (incorporated by reference to Exhibit 10.29 to the Company's Transition Report on Form 10-KT/A filed with the Commission on February 3, 2011) |
| 10.4 | Joint Venture Agreement, dated April 6, 2012, between Net Element, Inc. and Igor Yakovlevich Krutoy (incorporated by reference to Exhibit 10.1 to Net Element's Current Report on Form 8-K filed with the Commission on April 12, 2012) |
| 10.5 | Loan Agreement, dated July 4, 2012, between OOO Sat-Moscow and OOO Net Element Russia (incorporated by reference to Exhibit 10.1 to Net Element's Current Report on Form 8-K filed with the Commission on July 10, 2012) |
| 10.6 | Credit Agreement, dated August 17, 2012, between Alpha-Bank and OOO TOT Money (incorporated by reference to Exhibit 10.1 to Net Element's Current Report on Form 8-K filed with the Commission on August 23, 2012) |
| 10.7 | Agreement of Property Rights Pledge, dated August 17, 2012, between Alpha-Bank and OOO TOT Money (incorporated by reference to Exhibit 10.2 to Net Element's Current Report on Form 8-K filed with the Commission on August 23, 2012) |
| 10.8 | General Agreement No. TR-0672 on General Conditions of Financing against Assignment of Monetary Claim (Factoring) within Russia, dated September 19, 2012, between Alpha-Bank and OOO TOT Money (including related supplementary agreements) (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on October 10, 2012) |
| 10.9 | Supplemental Agreements dated September 19, 2012, which amend the General Agreement No. TR-0672 on General Conditions of Financing against Assignment of Monetary Claim (Factoring) within Russia, dated September 19, 2012, between Alpha-Bank and OOO TOT Money (incorporated by reference to Exhibit 10.22 to the Company's Annual Report on Form 10-K filed with the Commission on April 12, 2013) |
| 10.10# | Management and Consulting Services Agreement, dated October 24, 2012, between Bond Street Management LLC and Net Element International Inc. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on October 30, 2012) |
| 10.11 | Agreement on transfer of rights and obligations, dated July 1, 2012, among Mobile Telesystems OJSC, OOO RM-Invest and OOO TOT Money, with respect to Contract No. D0811373, dated July 1, 2008, between Mobile Telesystems OJSC and OOO RM-Invest (Net Element International, Inc. is requesting confidential treatment of certain information which has been omitted from this Agreement. The omitted information has been separately filed with the SEC.) (incorporated by reference to Exhibit 10.33 to the Company's Current Report on Form 8-K filed with the Commission on November 19, 2012) |

| | |
|---|---|
| 10.12 | Contract No. D0811373, dated July 1, 2008, between Mobile Telesystems OJSC and OOO RM-Invest (including material supplementary agreements related thereto) (Net Element International, Inc. is requesting confidential treatment of certain information which has been omitted from Contract No. D0811373 and certain of the material supplementary agreements related thereto. The omitted information has been separately filed with the SEC.) (incorporated by reference to Exhibit 10.34 to the Company's Current Report on Form 8-K filed with the Commission on November 19, 2012) |
| 10.13 | Contract No. CPA-86, dated September 1, 2012, between OJSC Megafon and OOO TOT Money (Net Element International, Inc. is requesting confidential treatment of certain information which has been omitted from Contract No. CPA-86. The omitted information has been separately filed with the SEC.) (incorporated by reference to Exhibit 10.35 to the Company's Current Report on Form 8-K filed with the Commission on November 19, 2012) |
| 10.14 | Contract No. 0382, dated September 20, 2012, between OJSC VimpelCom and OOO TOT Money (including Supplementary Agreement No. 1 thereto) (Net Element International, Inc. is requesting confidential treatment of certain information which has been omitted from Contract No. 0382 and Supplementary Agreement No. 1 thereto. The omitted information has been separately filed with the SEC.) (incorporated by reference to Exhibit 10.36 to the Company's Current Report on Form 8-K filed with the Commission on November 19, 2012) |
| 10.15 | Loan Agreement, dated November 26, 2012, between Net Element International, Inc. and Infratont Equities Inc. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on November 30, 2012) |
| 10.16 | Term Sheet, dated March 8, 2013, between Unified Payments, LLC and Net Element International, Inc. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on March 12, 2013) |
| 10.17 | Loan Agreement, dated March 8, 2013, among Net Element International, Inc., Unified Payments, LLC, Oleg Firer and Georgia Notes 18 LLC (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Commission on March 12, 2013) |
| 10.18 | Form of Secured Revolving Note made by Unified Payments, LLC and payable to Net Element International, Inc. (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the Commission on March 12, 2013) |
| 10.19 | Non-Recourse Guaranty, dated March 8, 2013, by Oleg Firer and Georgia Notes 18 LLC for the benefit of Net Element International, Inc. (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed with the Commission on March 12, 2013) |
| 10.20 | Pledge Agreement, dated March 8, 2013, among Oleg Firer, Georgia Notes 18 LLC and Net Element International, Inc. (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed with the Commission on March 12, 2013) |
| 10.21 | Loan Agreement, dated July 12, 2012, between OOO TOT Money and OOO RM Invest, as amended on July 30, 2012, August 17, 2012 and February 25, 2013 (incorporated by reference to Exhibit 10.34 to the Company's Annual Report on Form 10-K filed with the Commission on April 12, 2013) |

| | |
|---|---|
| 10.22 | Termination Agreement for Management and Consulting Agreement, dated April 15, 2013, between Net Element International, Inc. and Bond Street Management LLC (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on April 17, 2013) |
| 10.23 | Form of Indemnification Agreement for executive officers, entered into between Net Element International, Inc. and each of Jonathan New, Dmitry Kozko, and Francesco Piovanetti (incorporated by reference to Exhibit 10.8 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2013, filed with the Commission on May 15, 2013) |
| 10.24 | Contract No. CPA/ML-17, dated March 1, 2013, between ZAO MegaLabs and OOO TOT Money (incorporated by reference to Exhibit 10.9 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2013, filed with the Commission on May 15, 2013) (Net Element, Inc. is requesting confidential treatment of certain information which has been omitted from Contract No. CPA/ML-17. The omitted information has been separately filed with the Commission.) |
| 10.25 | Commercial Lease, dated May 1, 2013, between BGC LLC and Net Element International, Inc. (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2013, filed with the Commission on August 19, 2013) |
| 10.26 | Promissory Note, dated May 13, 2013, in the original principal amount of $2 million made by Net Element International, Inc. and payable to K1 Holding Limited (incorporated by reference to Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2013, filed with the Commission on August 19, 2013) |
| 10.27 | Letter Agreement, dated January 14, 2013, among OOO TOT Money, Tcahai Hairullaevich Katcaev and Varwood Holdings Limited (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2013, filed with the Commission on August 19, 2013) |
| 10.28 | Letter Agreement, dated July 1, 2013, among OOO TOT Money, OOO NETE, Net Element International, Inc. and Tcahai Hairullaevich Katcaev (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2013, filed with the Commission on August 19, 2013) |
| 10.29 | Settlement, Separation Agreement and General Release, dated May 10, 2013, between Net Element International, Inc. and Curtis Wolfe (incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2013, filed with the Commission on August 19, 2013) |
| 10.30 | Letter Agreement, dated August 28, 2013, among Net Element International, Inc., Oleg Firer, Steven Wolberg, Vladimir Sadovskiy, Georgia Notes 18, LLC, Kenges Rakishev and Mike Zoi (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on September 10, 2013) |
| 10.31 | Services Agreement, dated December 5, 2013, between Net Element International, Inc. an K 1 Holding Limited (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on December 6, 2013) |
| 10.32 | Letter Agreement, dated December 5, 2013, among TGR Capital, LLC, Net Element International, Inc. and K 1 Holding Limited (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Commission on December 6, 2013) |

| | |
|---|---|
| 10.33 | Form of Incentive Stock Option Award Agreement Under the Net Element, Inc. 2013 Equity Incentive Plan (incorporated by reference to Exhibit 10.33 to the Company’s Annual Report on Form 10-K filed with the Commission on March 30, 2015) |
| 10.34 | Form of Non-Qualified Stock Option Award Agreement Under the Net Element, Inc. 2013 Equity Incentive Plan (incorporated by reference to Exhibit 10.34 to the Company’s Annual Report on Form 10-K filed with the Commission on March 30, 2015) |
| 10.35 | Form of Restricted Share Award Agreement Under the Net Element, Inc. 2013 Equity Incentive Plan (incorporated by reference to Exhibit 10.35 to the Company’s Annual Report on Form 10-K filed with the Commission on March 30, 2015) |
| 10.36 | Assignment of Membership Interest, dated February 11, 2014, between Net Element, Inc. and T1T Group, LLC (incorporated by reference to Exhibit 10.1 to Net Element’s Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2014, filed with the Commission on May 15, 2014) |
| 10.37 | Loan and Security Agreement, dated June 30, 2014, among RBL Capital Group, LLC, as lender, and TOT Group, Inc., TOT Payments, LLC, TOT BPS, LLC, TOT FBS, LLC, Process Pink, LLC, TOT HPS, LLC and TOT New Edge, LLC, as co-borrowers (incorporated by reference to Exhibit 10.1 to Net Element’s Current Report on Form 8-K filed with the Commission on July 2, 2014) |
| 10.38 | Amendment No. 1 effective June 30, 2014 between the Company and Oleg Firer, Steven Wolberg, Georgia Notes 18, LLC and Vladimir Sadovskiy (incorporated by reference to Exhibit 10.2 to Net Element’s Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2014, filed with the Commission on August 14, 2014) |
| 10.39 | Master Exchange Agreement, dated as of September 15, 2014 between the Company and Crede CG III, Ltd. (incorporated by reference to Exhibit 10.1 to Net Element’s Current Report on Form 8-K filed with the Commission on September 15, 2014) |
| 10.40 | Supplement Agreement No. 14, dated May 21, 2014 (but executed by OOO TOT Money on September 17, 2014), to the General Agreement No. TR-0672 on General Conditions of Financing against Assignment of Receivables (Factoring) within Russia, dated September 19, 2012, between JSC Alpha-Bank and OOO TOT Money (incorporated by reference to Exhibit 10.1 to Net Element’s Current Report on Form 8-K filed with the Commission on September 24, 2014) |
| 10.41 | Supplement Agreement No. 15, dated September 17, 2014, to the General Agreement No. TR-0672 on General Conditions of Financing against Assignment of Receivables (Factoring) within Russia, dated September 19, 2012, between JSC Alpha-Bank and OOO TOT Money (incorporated by reference to Exhibit 10.2 to Net Element’s Current Report on Form 8-K filed with the Commission on September 24, 2014) |
| 10.42 | General Agreement No. 09969-HP on General Conditions of Factoring Services under “Liquidity” Program, dated as of November 5, 2014, between Bank Otkritie Financial Corporation and TOT Money Limited Liability Company (incorporated by reference to Exhibit 10.1 to Net Element’s Current Report on Form 8-K filed with the Commission on November 19, 2014) |
| 10.43 | Additional Agreement on Factoring Services under “Finance” Program to General Agreement on General Conditions of Factoring Services under “Liquidity” Program No. 09969-HP as of November 5, 2014 (incorporated by reference to Exhibit 10.2 to Net Element’s Current Report on Form 8-K filed with the Commission on November 19, 2014) |

| | |
|---|---|
| 10.44 | Equity Distribution Agreement between the Company and Revere Securities, LLC (incorporated by reference to Exhibit 10.1 to Net Element's Current Report on Form 8-K filed with the Commission on January 28, 2015) |
| 10.45 | Securities Purchase Agreement (Series A Preferred Stock) among the Company and the investors party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on May 1, 2015) |
| 10.46 | Voting Agreement (related to Series A Preferred Stock sale) among the Company and the stockholders party thereto (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Commission on May 1, 2015) |
| 10.47 | Form of Lock-Up Agreement (related to Series A Preferred Stock transaction) (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the Commission on May 1, 2015) |
| 10.48 | Securities Purchase Agreement (Senior Convertible Notes and Warrants) among the Company and the investors party thereto (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K/A filed with the Commission on July 17, 2015) |
| 10.49 | Registration Rights Agreement among the Company and the investors party thereto (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed with the Commission on May 1, 2015) |
| 10.50 | Form of Lock-Up Agreement (related to Senior Convertible Notes and Warrants transaction) (incorporated by reference to Exhibit 10.6 to the Company's Current Report on Form 8-K filed with the Commission on May 1, 2015) |
| 10.51 | Form of Voting Agreement (related to Senior Convertible Notes and Warrants transaction) among the Company and the stockholders thereto (incorporated by reference to Exhibit 10.7 to the Company's Current Report on Form 8-K filed with the Commission on May 1, 2015) |
| 10.52 | Acquisition Agreement, dated May 20, 2015, among TOT Group Europe Ltd., OT Group Russia LLC, Maglenta Enterprises Inc. and Champfremont Holding Ltd., Polimore Capital Limited, Brosword Holding Limited and other Target Companies listed in Exhibit B thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on May 27, 2015) |
| 10.53 | Escrow Agreement, dated May 20, 2015, among TOT Group Europe Ltd., OT Group Russia LLC, Maglenta Enterprises Inc., Champfremont Holding Ltd. and Reznick Law, PLLC (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Commission on May 27, 2015) |
| 10.54 | Guaranty, dated May 20, 2015, among Net Element, Inc., Maglenta Enterprises Inc. and Champfremont Holding Ltd. (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the Commission on May 27, 2015) |
| 10.55 | Guaranty, dated May 20, 2015, by Lacerta Management Ltd in favor of TOT Group Europe Ltd., and OT Group Russia LLC (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-Kfiled with the Commission on May 27, 2015) |

| | |
|---|---|
| 10.56 | Letter Agreement, dated August 4, 2015, by and among the Company and the investors listed on the signature pages attached thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on August 4, 2015) |
| 10.57 | Letter Agreement, dated August 4, 2015, by and among the Company and the investors listed on the signature pages attached thereto (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Commission on August 4, 2015) |
| 10.58 | Letter Agreement, dated as of September 11, 2015, among the Company and the investors listed on the signature pages attached thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on September 16, 2015) |
| 10.59 | Additional Letter Agreement among the Company and the investors listed on the signature pages attached thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on October 7, 2015) |
| 10.60 | Amendment to Letter Agreement dated August 4, 2015, dated December 1, 2015, by and among the Company and the investors listed on the signature pages attached thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on December 2, 2015) |
| 10.61 | Amendment to Letter Agreement dated August 4, 2015, dated December 1, 2015, by and among the Company and the investors listed on the signature pages attached thereto (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Commission on December 2, 2015) |
| 10.62 | Second Additional Letter Agreement among the Company and Kenges Rakishev (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 22, 2016) |
| 10.63 | Amendment No. 1, dated April 14, 2016, to Second Additional Letter Agreement, dated as of January 21, 2016, between the Company and Kenges Rakishev (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on April 15, 2016) |
| 10.64 | Letter Agreement between the Company and RBL Capital Group, LLC, dated April 28, 2016 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on April 28, 2016) |
| 10.65 | Master Exchange Agreement, dated as of May 2, 2016, between the Company and Crede CG III, Ltd. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on May 3, 2016) |
| 10.66 | Amendment to the Master Exchange Agreement, dated as of May 2, 2016 between the Company and Crede CG III, Ltd. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on March 8, 2017) |
| 10.67 | Amendment No. 1, dated as of May 2, 2016, to the Loan and Security Agreement among TOT Group, Inc., TOT Payments, LC, TOT BPS, LLC, TOT FBS, LLC, Process Pink, LLC, TOT HPS, LLC, TOT New Edge, LLC and RBL Capital Group, LLC (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on May 4, 2016) |

| | |
|---|---|
| 10.68# | 2013 Equity Incentive Plan approved on December 5, 2013 (incorporated by reference to Appendix “A” to the Company’s Definitive Proxy Statement on Schedule 14A filed with the Commission on November 4, 2013) |
| 10.69# | Amendment to 2013 Equity Incentive Plan approved on December 9, 2014 (incorporated by reference to Appendix “B” to the Company’s Definitive Proxy Statement on Schedule 14A filed with the Commission on October 31, 2014) |
| 10.70# | Amendment to 2013 Equity Incentive Plan approved on June 15, 2016 (incorporated by reference to Appendix “B” to the Company’s Definitive Proxy Statement on Schedule 14A filed with the Commission on April 25, 2016) |
| 10.71 | Common Stock Purchase Agreement, dated as of July 6, 2016, between the Company and ESOUSA Holdings, LLC (incorporated by reference to Exhibit 10.1 to the Company’s Current Report on Form 8-K filed with the Commission on July 12, 2016) |
| 10.72 | Binding Letter of Intent, dated as of July 21, 2016, among the Company, PayStar, Inc. and Nexcharge, Inc. (incorporated by reference to Exhibit 10.1 to the Company’s Current Report on Form 8-K filed with the Commission on July 21, 2016) |
| 10.73 | Settlement Agreement Amendment among Net Element, Inc., TOT Group Europe, Ltd., TOT Group Russia LLC, Maglenta Enterprises Inc. and Champfremont Holding Ltd. (incorporated by reference to Exhibit 10.1 of the Company’s Current Report on Form 8-K filed with the Commission on October 31, 2016) |
| 10.74 | Amendment to the Acquisition Agreement among Net Element, Inc., TOT Group Europe, Ltd., TOT Group Russia LLC, Maglenta Enterprises Inc., Champfremont Holding Ltd. and the Target Companies parties thereto (incorporated by reference to Exhibit 10.2 of the Company’s Current Report on Form 8-K filed with the Commission on October 31, 2016) |
| 10.75 | Second Amendment to the Acquisition Agreement among Net Element, Inc., TOT Group Europe, Ltd., TOT Group Russia LLC, Maglenta Enterprises Inc., Champfremont Holding Ltd. and the Target Companies parties thereto (incorporated by reference to Exhibit 10.1 of the Company’s Current Report on Form 8-K filed with the Commission on March 17, 2017) |
| 10.76 | Promissory Note, dated March 1, 2017, in the original principal amount of $348,083.32 made by the Company and payable to Star Equities LLC (incorporated by reference to Exhibit 10.1 to the Company’s Current Report on Form 8-K filed with the Commission on March 3, 2017) |
| 10.77 | Amendment to Commercial Lease, dated September 12, 2016, between BGC LLC and Net Element International, Inc. (incorporated by reference to Exhibit 10.77 of the Company’s Annual Report on Form 10-K filed with the Commission on March 31, 2017) |
| 10.78 | Second Amendment to Commercial Lease, dated November 16, 2016, between BGC LLC and Net Element International, Inc. (incorporated by reference to Exhibit 10.78 of the Company’s Annual Report on Form 10-K filed with the Commission on March 31, 2017) |
| 10.79 | Corporate Guaranty, dated March 23, 2017, by Net Element, Inc. in favor of Cynergy Data, LLC (incorporated by reference to Exhibit 10.1 of the Company’s Current Report on Form 8-K filed with the Commission on March 24, 2017) |

| | |
|---|---|
| 10.80 | Amendment to Master Exchange Agreement, dated as of March 3, 2017, between the Company and Crede CG III, Ltd. (incorporated by reference to Exhibit 10.1 to the Company’s Current Report on Form 8-K filed with the Commission on March 8, 2017) |
| 10.81 | Loan Agreement, dated as of May 18, 2017, among Priority Payment Systems LLC, as lender, and TOT Payments, LLC, TOT New Edge, LLC, Process Pink, LLC and TOT FBS, LLC, as co-borrowers (incorporated by reference to Exhibit 10.1 to the Company’s Current Report on Form 8-K filed with the Commission on May 23, 2017) |
| 10.82 | Promissory Note, dated May 18, 2017, by TOT Payments, LLC, TOT New Edge, LLC, Process Pink, LLC and TOT FBS, LLC in favor of Priority Payment Systems LLC (incorporated by reference to Exhibit 10.2 to the Company’s Current Report on Form 8-K filed with the Commission on May 23, 2017) |
| 10.83 | Security Agreement, dated as of May 18, 2017, by TOT Payments, LLC, TOT New Edge, LLC, Process Pink, LLC and TOT FBS, LLC in favor of Priority Payment Systems LLC, as secured party (incorporated by reference to Exhibit 10.3 to the Company’s Current Report on Form 8-K filed with the Commission on May 23, 2017) |
| 10.84 | Corporate Guaranty, dated March 17, 2017, by Net Element, Inc. in favor of Priority Payment Systems LLC (incorporated by reference to Exhibit 10.4 to the Company’s Current Report on Form 8-K filed with the Commission on May 23, 2017) |
| 10.85 | Amendment of Settlement Agreement among Net Element, Inc., Maglenta Enterprises Inc. and Champfremont Holding Ltd. (accepted and agreed to by TOT Group Europe, Ltd., TOT Group Russia LLC) (incorporated by reference to Exhibit 10.1 of the Company’s Current Report on Form 8-K filed with the Commission on May 25, 2017) |
| 10.86 | Amendment to Loan Agreement, dated as of June 27, 2017, among Priority Payment Systems LLC, as lender, and TOT Payments, LLC, TOT New Edge, LLC, Process Pink, LLC and TOT FBS, LLC, as co-borrowers (incorporated by reference to Exhibit 10.1 of the Company’s Current Report on Form 8-K filed with the Commission on July 3, 2017) |
| 10.87 | Common Stock Purchase Agreement, dated as of July 5, 2017, between the Company and Cobblestone Capital Partners LLC (incorporated by reference to Exhibit 10.1 of the Company’s Current Report on Form 8-K filed with the Commission on July 7, 2017) |
| 10.88 | Amendment to 2013 Equity Incentive Plan approved on June 15, 2016 (incorporated by reference to Appendix “B” to the Company’s Definitive Proxy Statement on Schedule 14A filed with the Commission on August 10, 2017) |
| 10.89 | Lease, effective August 9, 2017, between the Company and Golden Star Investments Corp. (incorporated by reference to Exhibit 10.8 of the Company’s Quarterly Report on Form 10-Q filed with the Commission on August 14, 2017) |
| 10.90 | Promissory Note, dated August 29, 2017, by TOT Group, Inc. in favor of MBF Merchant Capital, LLC (incorporated by reference to Exhibit 10.1 of the Company’s Current Report on Form 8-K filed with the Commission on September 1, 2017) |

| | |
|---|---|
| 10.91 | Letter Agreement, dated as of October 20, 2017, between Net Element, Inc. and Star Equities LLC (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K filed with the Commission on October 20, 2017) |
| 16.1 | Letter regarding change in certifying accountant from Daszkal Bolton LLP to the Securities and Exchange Commission, dated November 21, 2012 (incorporated by reference to Exhibit 16.1 to the Company's Current Report on Form 8-K filed with the Commission on November 26, 2012) |
| 21.1 | List of Subsidiaries (incorporated by reference to Exhibit 21.1 to the Company's Annual Report on Form 10-K filed with the Commission on March 31, 2017) |
| 23.1* | Consent of Independent Registered Public Accounting Firm (Daszkal Bolton LLP) |
| 23.2* | Consent of Snell & Wilmer L.L.P. (including in Exhibit 5.1) |
| 24.1 | Power of Attorney (included on signature page) |

# Indicates management contract or compensatory plan or arrangement.

* Filed herewith.

**Item 17. Undertakings.**

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (a)(1)(i), (ii), and (iii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, if the Registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided*, *however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(5) That, for the purpose of determining liability of the Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant’s annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan’s annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(e) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions set forth or described in Item 15 of this registration statement, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-1 and has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in Miami, Florida on October 26, 2017.

**NET ELEMENT, INC.**

By: /s/ Jonathan New
Name: Jonathan New
Title: Chief Financial Officer

**POWER OF ATTORNEY**

The officers and directors of Net Element, Inc. whose signatures appear below, hereby constitute and appoint Jonathan New and Oleg Firer, and each of them severally, their true and lawful attorney-in-fact and agent, with full power of substitution, with power to act alone, to sign and execute on behalf of the undersigned any and all amendments to this Registration Statement on Form S-1, including post-effective amendments and any Registration Statement filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the "Securities Act"), and each of the undersigned does hereby ratify and confirm all that said attorney-in-fact and agent, or his substitutes, shall do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement on Form S-1 has been signed by the following persons in the capacities and on the dates indicated.

| **Signature** | **Title** | **Date** |
|---|---|---|
| /s/ Oleg Firer<br>Oleg Firer | Chief Executive Officer and Director<br>(Principal Executive Officer) | October 26, 2017 |
| /s/ Jonathan New<br>Jonathan New | Chief Financial Officer<br>(Principal Financial Officer; Principal Accounting Officer) | October 26, 2017 |

| | | |
|---|---|---|
| /s/ Kenges Rakishev<br>Kenges Rakishev | Director | October 26, 2017 |
| /s/ Howard Ash<br>Howard Ash | Director | October 26, 2017 |
| /s/ James Caan<br>James Caan | Director | October 26, 2017 |
| /s/ Drew Freeman<br>Drew Freeman | Director | October 26, 2017 |

lign:left;font-size:8pt;">Table of Contents

customers to seek alternative investments that promise higher returns or demand higher returns from our solar power systems, which could reduce our revenue and gross margin and adversely affect our operating results. Our interest expense would increase to the extent interest rates rise in connection with our variable interest rate borrowings. In addition, lower interest rates have an adverse impact on our interest income. See also "Item 7A. Quantitative and Qualitative Disclosures About Market Risk" and "Risks Related to Our Sales Channels—The execution of our growth strategy is dependent upon the continued availability of third-party financing arrangements for our solar power plants, our residential lease program and our customers, and is affected by general economic conditions."

We depend on third-party contract manufacturers to assemble a portion of our solar cells into solar panels and any failure to obtain sufficient assembly and test capacity could significantly delay our ability to ship our solar panels and damage our customer relationships.

We outsource a portion of module manufacturing to contract manufacturers in the United States and China. As a result of outsourcing this final step in our production, we face several significant risks, including limited control over assembly and testing capacity, delivery schedules, quality assurance, manufacturing yields and production costs. If the operations of our third-party contract manufacturers were disrupted or their financial stability impaired, or if they were unable or unwilling to devote capacity to our solar panels in a timely manner, our business could suffer as we might be unable to produce finished solar panels on a timely basis. We also risk customer delays resulting from an inability to move module production to an alternate provider or to complete production internationally, and it may not be possible to obtain sufficient capacity or comparable production costs at another facility in a timely manner. In addition, migrating our design methodology to third-party contract manufacturers or to a captive panel assembly facility could involve increased costs, resources and development time, and utilizing additional third-party contract manufacturers could expose us to further risk of losing control over our intellectual property and the quality of our solar panels. Any reduction in the supply of solar panels could impair our revenue by significantly delaying our ability to ship products and potentially damage our relationships with new and existing customers, any of which could have a material and adverse effect on our financial condition and results of operation.

While we believe we currently have effective internal control over financial reporting, we may identify a material weakness in our internal control over financial reporting that could cause investors to lose confidence in the reliability of our financial statements and result in a decrease in the value of our common stock.

Our management is responsible for maintaining internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with U.S. GAAP. Management concluded that as of the end of each of fiscal 2014, 2013, and 2012, our internal control over financial reporting and our disclosure controls and procedures were effective.

We need to continuously maintain our internal control processes and systems and adapt them as our business grows and changes. This process is expensive, time-consuming and requires significant management attention. We cannot be certain that our internal control measures will continue to provide adequate control over our financial processes and reporting and ensure compliance with Section 404 of the Sarbanes-Oxley Act. Furthermore, as we grow our business or acquire other businesses, our internal controls may become more complex and we may require significantly more resources to ensure they remain effective. Failure to implement required new or improved controls, or difficulties encountered in their implementation, either in our existing business or in businesses that we may acquire, could harm our operating results or cause us to fail to meet our reporting obligations. If we or our independent registered public accounting firm identify material weaknesses in our internal controls, the disclosure of that fact, even if quickly remedied, may cause investors to lose confidence in our financial statements and the trading price of our common stock may decline.

Remediation of a material weakness could require us to incur significant expense and if we fail to remedy any material weakness, our financial statements may be inaccurate, our ability to report our financial results on a timely and accurate basis may be adversely affected, our access to the capital markets may be restricted, the trading price of our common stock may decline, and we may be subject to sanctions or investigation by regulatory authorities, including the SEC or The Nasdaq Global Select Market. We may also be required to restate our financial statements from prior periods.

Our agreements with Cypress Semiconductor Corporation ("Cypress") require us to indemnify Cypress for certain tax liabilities. These indemnification obligations and related contractual restrictions may limit our ability to pursue certain business initiatives.

On October 6, 2005, while a subsidiary of Cypress, our former parent company, we entered into a tax sharing agreement with Cypress providing for each party's obligations concerning various tax liabilities. The tax sharing agreement is structured such that Cypress would pay all federal, state, local and foreign taxes that are calculated on a consolidated or combined basis

Table of Contents

while we were a member of Cypress's consolidated or combined group for federal, state, local and foreign tax purposes. Our portion of tax liabilities or benefits was determined based upon our separate return tax liability as defined under the tax sharing agreement. These tax liabilities or benefits were based on a pro forma calculation as if we were filing a separate income tax return in each jurisdiction, rather than on a combined or consolidated basis, subject to adjustments as set forth in the tax sharing agreement.

On June 6, 2006, we ceased to be a member of Cypress's consolidated group for federal income tax purposes and certain state income tax purposes. On September 29, 2008, we ceased to be a member of Cypress's combined group for all state income tax purposes. To the extent that we become entitled to utilize our separate portion of any tax credit or loss carryforwards existing as of such date, we will distribute to Cypress the tax effect, estimated to be 40% for federal and state income tax purposes, of the amount of such tax loss carryforwards so utilized, and the amount of any credit carryforwards so utilized. We will distribute these amounts to Cypress in cash or in our shares, at Cypress's option. During fiscal 2013, we recorded an estimated $3.3 million of liabilities due under this arrangement and the actual amount payable to Cypress based upon filing of the 2013 California tax return was approximately $0.2 million. Related to fiscal 2014, we recorded an estimated liability to Cypress of $0.7 million. As of December 28, 2014, we have a potential future liability of approximately $3.7 million.

We are jointly and severally liable for any tax liability during all periods in which we were deemed to be a member of the Cypress consolidated or combined group. Accordingly, although the tax sharing agreement allocates tax liabilities between Cypress and all its consolidated subsidiaries, for any period in which we were included in Cypress's consolidated or combined group, we could be liable in the event that any federal or state tax liability was incurred, but not discharged, by any other member of the group.

We will continue to be jointly and severally liable to Cypress until the statute of limitations runs or all appeal options are exercised for all years in which we joined in the filing of tax returns with Cypress. If Cypress experiences adjustments to their tax liability pursuant to tax examinations, we may incur an incremental liability.

We would also be liable to Cypress for taxes that might arise from the distribution by Cypress of our former class B common stock to Cypress's stockholders on September 29, 2008, or "spin-off." In connection with Cypress's spin-off of our former class B common stock, we and Cypress, on August 12, 2008, entered into an amendment to our tax sharing agreement ("Amended Tax Sharing Agreement") to address certain transactions that may affect the tax treatment of the spin-off and certain other matters.

Subject to certain caveats, Cypress obtained a ruling from the IRS to the effect that the distribution by Cypress of our former class B common stock to Cypress's stockholders qualified as a tax-free distribution under Section 355 of the Internal Revenue Code ("Code"). Despite such ruling, the distribution may nonetheless be taxable to Cypress under Section 355(e) of the Code if 50% or more of the voting power or value of our stock was or is later acquired as part of a plan or series of related transactions that included the distribution of our stock. The Amended Tax Sharing Agreement requires us to indemnify Cypress for any liability incurred as a result of issuances or dispositions of our stock after the distribution, other than liability attributable to certain dispositions of our stock by Cypress, that cause Cypress's distribution of shares of our stock to its stockholders to be taxable to Cypress under Section 355(e) of the Code.

Under the Amended Tax Sharing Agreement, we also agreed that, until October 29, 2010, we would not effect a conversion of any or all of our former class B common stock to former class A common stock or any similar recapitalization transaction or series of related transactions (a "Recapitalization"). On November 16, 2011, we reclassified our former class A common stock and class B common stock into a single class of common stock. In the event this reclassification does result in the spin-off being treated as taxable, we could face substantial liabilities as a result of our obligations under the Amended Tax Sharing Agreement.

Any future agreements with Total S.A. regarding tax indemnification and certain tax liabilities may adversely affect our financial position.

We currently believe that we will not join in tax filings on a consolidated, combined or unitary basis with Total S.A. Accordingly, no tax sharing arrangement is currently in place. If we and Total join in a tax filing in the future, a tax sharing agreement will be required, which would allocate the tax liabilities among the parties and may adversely affect our financial position.

Our headquarters and manufacturing facilities, as well as the facilities of certain subcontractors and suppliers, are located in regions that are subject to earthquakes, floods, and other natural disasters, and climate change and climate change regulation could have an adverse effect on our operations.

Table of Contents

Our headquarters and research and development operations are located in California, and our manufacturing facilities are located in the Philippines, France, South Africa and Mexico. The facilities of our joint venture for manufacturing are located in Malaysia. Any significant earthquake, flood or other natural disaster in these countries or countries where our suppliers are located could materially disrupt our management operations and/or our production capabilities, and could result in our experiencing a significant delay in delivery, or substantial shortage, of our products and services.

In addition, legislators, regulators, and non-governmental organizations, as well as companies in many business sectors, are considering ways to reduce green-house gas emissions. Further regulation could be forthcoming at the federal or state level with respect to green-house gas emissions. Such regulation or similar regulations in other countries could result in regulatory or product standard requirements for our global business, including our manufacturing operations. Furthermore, the potential physical impacts of climate change on our operations may include changes in weather patterns (including floods, tsunamis, drought and rainfall levels), water availability, storm patterns and intensities, and temperature levels. These potential physical effects may adversely affect the cost, production, sales and financial performance of our operations.

We could be adversely affected by any violations of the U.S. FCPA and foreign anti-bribery laws.

The U.S. FCPA generally prohibits companies and their intermediaries from making improper payments to non-U.S. government officials for the purpose of obtaining or retaining business. Other countries in which we operate also have anti-bribery laws, some of which prohibit improper payments to government and non-government persons and entities. Our policies mandate compliance with these anti-bribery laws. We continue to acquire businesses outside of the United States and operate in many parts of the world that have experienced governmental corruption to some degree and, in certain circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. In addition, due to the level of regulation in our industry, our entry into new jurisdictions through internal growth or acquisitions requires substantial government contact where norms can differ from U.S. standards. While we implement policies and procedures and conduct training designed to facilitate compliance with these anti-bribery laws, thereby mitigating the risk of violations of such laws, our employees, subcontractors and agents may take actions in violation of our policies and anti-bribery laws. Any such violation, even if prohibited by our policies, could subject us to criminal or civil penalties or other sanctions, which could have a material adverse effect on our business, financial condition, cash flows and reputation.

We sell our solar products to agencies of the U.S. government, and as a result, we are subject to a number of procurement rules and regulations, and our business could be adversely affected by an audit by the U.S. government if it were to identify errors or a failure to comply with regulations.

We have sold and continue to sell our solar power systems to various U.S. government agencies. In connection with these contracts, we must comply with and are affected by laws and regulations relating to the award, administration, and performance of U.S. government contracts, which may impose added costs on our business. We are expected to perform in compliance with a vast array of federal laws and regulations, including, without limitation, the Federal Acquisition Regulation, the Truth in Negotiations Act, the Federal False Claims Act, the Anti-Kickback Act of 1986, the Trade Agreements Act, the Buy American Act, the Procurement Integrity Act, and the Davis Bacon Act. A violation of specific laws and regulations, even if prohibited by our policies, could result in the imposition of fines and penalties, reductions of the value of our contracts, contract modifications or termination, or suspension or debarment from government contracting for a period of time.

In some instances, these laws and regulations impose terms or rights that are more favorable to the government than those typically available to commercial parties in negotiated transactions. For example, the U.S. government may terminate any of our government contracts either at its convenience or for default based on performance. A termination arising out of our default may expose us to liability and have a material adverse effect on our ability to compete for future contracts.

U.S. government agencies may audit and investigate government contractors. These agencies review a contractor's performance under its contracts, cost structure, and compliance with applicable laws, regulations, and standards. If an audit or investigation uncovers improper or illegal activities, we may be subject to civil or criminal penalties and administrative sanctions, including termination of contracts, forfeiture of profits, suspension of payments, fines, and suspension or prohibition from doing business with the U.S. government. In addition, we could suffer reputational harm if allegations of impropriety were made against us.

Compliance with environmental regulations can be expensive, and noncompliance with these regulations may result in adverse publicity and potentially significant monetary damages and fines.

Table of Contents

We are required to comply with all foreign, U.S. federal, state and local laws and regulations regarding pollution control and protection of the environment. In addition, under some statutes and regulations, a government agency, or other parties, may seek recovery and response costs from operators of property where releases of hazardous substances have occurred or are ongoing, even if the operator was not responsible for such release or otherwise at fault. We use, generate and discharge toxic, volatile and otherwise hazardous chemicals and wastes in our research and development and manufacturing activities. Any failure by us to control the use of, or to restrict adequately the discharge of, hazardous substances could subject us to potentially significant monetary damages and fines or suspensions in our business operations. In addition, if more stringent laws and regulations are adopted in the future, the costs of compliance with these new laws and regulations could be substantial. To date such laws and regulations have not had a significant impact on our operations, and we believe that we have all necessary permits to conduct operations as they are presently conducted. If we fail to comply with present or future environmental laws and regulations, however, we may be required to pay substantial fines, suspend production or cease operations.

In addition, new U.S. legislation includes disclosure requirements regarding the use of "conflict" minerals mined from the Democratic Republic of Congo and adjoining countries and procedures regarding a manufacturer's efforts to prevent the sourcing of such "conflict" minerals. The implementation of these requirements could affect the sourcing and availability of minerals used in the manufacture of solar products. As a result, there may only be a limited pool of suppliers who provide conflict free minerals, and we cannot be certain that we will be able to obtain products in sufficient quantities or at competitive prices. Also, since our supply chain is complex, we may face reputational challenges with our customers and other stakeholders if we are unable to sufficiently verify the origins for all minerals used in our products.

Our success depends on the continuing contributions of our key personnel.

We rely heavily on the services of our key executive officers and the loss of services of any principal member of our management team could adversely affect our operations. In addition, we anticipate that we will need to hire a number of highly skilled technical, manufacturing, sales, marketing, administrative and accounting personnel. Due to the current economic environment, we have conducted several restructurings, which may negatively affect our ability to execute our strategy and business model. The competition for qualified personnel is intense in our industry. We may not be successful in attracting and retaining sufficient numbers of qualified personnel to support our anticipated growth. We cannot guarantee that any employee will remain employed with us for any definite period of time since all of our employees, including our key executive officers, serve at-will and may terminate their employment at any time for any reason.

Our insurance for certain indemnities we have made to our officers and directors may be inadequate, and potential claims could materially and negatively impact our financial condition and results of operations.

Pursuant to our certificate of incorporation, by-laws and certain indemnification agreements, we indemnify our officers and directors for certain liabilities that may arise in the course of their service to us. Although we currently maintain directors and officers liability insurance for certain potential third-party claims for which we are legally or financially unable to indemnify them, such insurance may be inadequate to cover certain claims. In addition, in previous years, we have primarily self-insured with respect to potential third-party claims. If we were required to pay a significant amount on account of these liabilities for which we self-insured, our business, financial condition and results of operations could be materially harmed.

Risks Related to Our Intellectual Property

We depend on our intellectual property, and we may face intellectual property infringement claims that could be time-consuming and costly to defend and could result in the loss of significant rights.

From time to time, we, our respective customers, or third parties with whom we work may receive letters, including letters from various industry participants, alleging infringement of their patents. At present, we face a third-party complaint alleging patent infringement which was filed, but not served, against SolarBridge Technology LLC. our wholly owned subsidiary, in October 2014. Additionally, we are required by contract to indemnify some of our customers and our third-party intellectual property providers for certain costs and damages of patent infringement in circumstances where our products are a factor creating the customer's or these third-party providers' infringement liability. This practice may subject us to significant indemnification claims by our customers and our third-party providers. We cannot assure investors that indemnification claims will not be made or that these claims will not harm our business, operating results or financial condition. Intellectual property litigation is very expensive and time-consuming and could divert management's attention from our business and could have a material adverse effect on our business, operating results or financial condition. If there is a successful claim of infringement against us, our customers or our third-party intellectual property providers, we may be required to pay substantial damages to the party claiming infringement, stop selling products or using technology that contains the allegedly infringing intellectual property, or enter into royalty or license agreements that may not be available on acceptable terms, if at all. Parties making infringement claims may also be able to bring an action before the International Trade Commission that could result in an order stopping the importation into the United States of our solar products. Any of these judgments could materially damage our business. We may have to develop non-infringing technology, and our failure in doing so or in obtaining licenses to the proprietary rights on a timely basis could have a material adverse effect on our business.

We have filed, and may continue to file, claims against other parties for infringing our intellectual property that may be very costly and may not be resolved in our favor.

To protect our intellectual property rights and to maintain our competitive advantage, we have filed and may continue to file suits against parties who we believe infringe our intellectual property. Intellectual property litigation is expensive and time consuming and could divert management's attention from our business and could have a material adverse effect on our business, operating results or financial condition, and our enforcement efforts may not be successful. In addition, the validity of our patents may be challenged in such litigation. Our participation in intellectual property enforcement actions may negatively impact our financial results.

We rely substantially upon trade secret laws and contractual restrictions to protect our proprietary rights, and, if these rights are not sufficiently protected, our ability to compete and generate revenue could suffer.

We seek to protect our proprietary manufacturing processes, documentation and other written materials primarily under trade secret and copyright laws. We also typically require employees, consultants, and third parties such as our vendors and customers, with access to our proprietary information to execute confidentiality agreements. The steps taken by us to protect our proprietary information may not be adequate to prevent misappropriation of our technology. Our systems may be subject to intrusions, security breaches, or targeted theft of our trade secrets. In addition, our proprietary rights may not be adequately protected because:

- people may not be deterred from misappropriating our technologies despite the existence of laws or contracts prohibiting it;
- policing unauthorized use of our intellectual property may be difficult, expensive and time-consuming, the remedy obtained may be inadequate to restore protection of our intellectual property, and moreover, we may be unable to determine the extent of any unauthorized use;
- the laws of other countries in which we market our solar products, such as some countries in the Asia/Pacific region, may offer little or no protection for our proprietary technologies; and
- reports we file in connection with government-sponsored research contracts are generally available to the public and third parties may obtain some aspects of our sensitive confidential information.

Reverse engineering, unauthorized copying or other misappropriation of our proprietary technologies could enable third parties to benefit from our technologies without compensating us for doing so. We also have formed the joint venture to manufacture our solar cells at AUOSP, and formed a joint venture company with partners in China to commercialize our C7 Tracker technology. Our joint ventures or our partners may not be deterred from misappropriating our proprietary technologies despite contractual and other legal restrictions. Legal protection in countries where our joint ventures are located may not be robust and enforcement by us of our intellectual property rights may be difficult. As a result, our joint ventures or our partners could directly compete with our business. Any such activities or any other inabilities to adequately protect our proprietary rights could harm our ability to compete, to generate revenue and to grow our business.

We may not obtain sufficient patent protection on the technology embodied in the solar products we currently manufacture and market, which could harm our competitive position and increase our expenses.

Although we substantially rely on trade secret laws and contractual restrictions to protect the technology in the solar products we currently manufacture and market, our success and ability to compete in the future may also depend to a significant degree upon obtaining patent protection for our proprietary technology. We currently own multiple patents and patent applications which cover aspects of the technology in the solar cells and mounting systems that we currently manufacture and market. Material patents that relate to our systems products and services primarily relate to our rooftop mounting products and ground-mounted tracking products. We intend to continue to seek patent protection for those aspects of our technology, designs, and methodologies and processes that we believe provide significant competitive advantages.

Table of Contents

Our patent applications may not result in issued patents, and even if they result in issued patents, the patents may not have claims of the scope we seek or we may have to refile patent applications due to newly discovered prior art. In addition, any issued patents may be challenged, invalidated, or declared unenforceable, or even if we obtain an award of damages for infringement by a third party, such award could prove insufficient to compensate for all damages incurred as a result of such infringement.

The earliest term of any issued patents would be 20 years from their earliest priority date and if our applications are pending for a long time period, we may have a correspondingly shorter term for any patent that may issue. Our present and future patents may provide only limited protection for our technology and may be insufficient to provide competitive advantages to us. For example, competitors could develop similar or more advantageous technologies on their own or design around our patents. Also, patent protection in certain foreign countries may not be available or may be limited in scope and any patents obtained may not be readily enforceable because of insufficient judicial effectiveness, making it difficult for us to aggressively protect our intellectual property from misuse or infringement by other companies in these countries. Our inability to obtain and enforce our intellectual property rights in some countries may harm our business. In addition, given the costs of obtaining patent protection, we may choose not to protect certain innovations that later turn out to be important.

We may not be able to prevent others from using the term SunPower or similar terms in connection with their solar power products which could adversely affect the market recognition of our name and our revenue.

"SunPower" and the "SunPower" logo are our registered trademark in certain countries, including the United States, for uses that include solar cells and solar panels. We are seeking registration of the "SunPower" trademark in other countries but we may not be successful in some of these jurisdictions. We hold registered trademarks for SunPower®, SunPower Electric®, Maxeon®, Oasis®, PowerGuard®, PowerLight®, Serengeti®, and SunTile®, in certain countries, including the United States. We have not registered, and may not be able to register, these trademarks in other key countries. In the foreign jurisdictions where we are unable to obtain or have not tried to obtain registrations, others may be able to sell their products using trademarks compromising or incorporating "SunPower," or a variation thereof, or our other chosen brands, which could lead to customer confusion. In addition, if there are jurisdictions where another proprietor has already established trademark rights in marks containing "SunPower," or our other chosen brands, we may face trademark disputes and may have to market our products with other trademarks or without our trademarks, which may undermine our marketing efforts. We may encounter trademark disputes with companies using marks which are confusingly similar to the SunPower mark, or our other marks, which if not resolved favorably, could cause our branding efforts to suffer. In addition, we may have difficulty in establishing strong brand recognition with consumers if others use similar marks for similar products.

Our past and possible future reliance on government programs to partially fund our research and development programs could impair our ability to commercialize our solar power products and services.

Government funding of some of our research and development efforts imposed certain restrictions on our ability to commercialize results and could grant commercialization rights to the government. In some funding awards, the government is entitled to intellectual property rights arising from the related research. Such rights include a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention developed under an award throughout the world by or on behalf of the government. Other rights include the right to require us to grant a license to the developed technology or products to a third party or, in some cases, if we refuse, the government may grant the license itself, if the government determines that action is necessary because we fail to achieve practical application of the technology, because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations, or to give the United States industry preference. Accepting government funding can also require that manufacturing of products developed with federal funding be conducted in the United States.

We may be subject to information technology system failures or network disruptions that could damage our business operations, financial conditions, or reputation.

We may be subject to information technology system failures and network disruptions. These may be caused by natural disasters, accidents, power disruptions, telecommunications failures, acts of terrorism or war, computer viruses, physical or electronic break-ins, or similar events or disruptions. System redundancy may be ineffective or inadequate, and our disaster recovery planning may not be sufficient for all eventualities. Such failures or disruptions could result in delayed or canceled orders. System failures and disruptions could also impede the manufacturing and shipping of products, delivery of online services, transactions processing, and financial reporting.

We may be subject to breaches of our information technology systems, which could lead to disclosure of our internal information, or could damage our reputation or relationships with dealers and customers, or could disrupt access to our online services. Such breaches could subject us to significant reputational, financial, legal, and operational consequences.

Our business requires us to use and store customer, employee, and business partner personally identifiable information ("PII"). This may include names, addresses, phone numbers, email addresses, contact preferences, tax identification numbers, and payment account information. Malicious attacks to gain access to PII affect many companies across various industries, including ours.

We use encryption and authentication technologies to secure the transmission and storage of data. These security measures may be compromised as a result of third-party security breaches, employee error, malfeasance, faulty password management, or other irregularity, and result in persons obtaining unauthorized access to our data. Third parties may attempt to fraudulently induce employees or customers into disclosing passwords or other sensitive information, which may in turn be used to access our information technology systems.

We devote resources to network security, data encryption, and other security measures to protect our systems and data, but these security measures cannot provide absolute security. Because the techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently and may be difficult to detect for long periods of time, we may be unable to anticipate these techniques or implement adequate preventative measures. In addition, hardware, software, or applications we develop or procure from third parties may contain defects in design or manufacture or other problems that could unexpectedly compromise information security. Unauthorized parties may also attempt to gain access to our systems or facilities through fraud, trickery or other forms of deceiving our team members, contractors and temporary staff. If we experience a significant data security breach or fail to detect and appropriately respond to a significant data security breach, we could be exposed to a risk of loss, litigation and possible liability, or government enforcement actions, any of which could detrimentally affect our business, results of operations, and financial condition.

PII may also be shared with contractors and third-party providers to conduct our business. Although such contractors and third-party providers typically implement encryption and authentication technologies to secure the transmission and storage of data, those third-party providers may experience a significant data security breach of the shared PII.

Our business is subject to a variety of U.S. and international laws, rules, policies and other obligations regarding privacy, data protection, and other matters.

We are subject to federal, state and international laws relating to the collection, use, retention, security and transfer of PII. In many cases, these laws apply not only to third-party transactions, but also to transfers of information between one company and its subsidiaries, and among the subsidiaries and other parties with which we have commercial relations. The introduction of new products or expansion of our activities in certain jurisdictions may subject us to additional laws and regulations. In addition, foreign data protection, privacy, and other laws and regulations can be more restrictive than those in the United States. These U.S. federal and state and foreign laws and regulations, which can be enforced by private parties or government entities, are constantly evolving and can be subject to significant change. In addition, the application and interpretation of these laws and regulations are often uncertain, particularly in the new and rapidly evolving industry in which we operate, and may be interpreted and applied inconsistently from country to country and inconsistently with our current policies and practices. These existing and proposed laws and regulations can be costly to comply with and can delay or impede the development of new products, result in negative publicity, increase our operating costs, require significant management time and attention, and subject us to inquiries or investigations, claims or other remedies, including fines or demands that we modify or cease existing business practices.

A failure by us, our suppliers or other parties with whom we do business to comply with a posted privacy policies or with other federal, state or international privacy-related or data protection laws and regulations could result in proceedings against us by governmental entities or others, which could have a detrimental effect on our business, results of operations and financial condition.

Risks Related to Our Debt and Equity Securities

Our debentures are effectively subordinated to our existing and any future secured indebtedness and structurally subordinated to existing and future liabilities and other indebtedness of our current and any future subsidiaries.

Our debentures are general, unsecured obligations and rank equally in right of payment with all of our existing and any future unsubordinated, unsecured indebtedness. Our debentures are effectively subordinated to our existing and any future secured indebtedness we may have, including for example, our $250.0 million revolving credit facility with Credit Agricole and our $47.5 million in principal amount of outstanding debt owed to International Finance Corporation, to the extent of the value of the assets securing such indebtedness, and structurally subordinated to our existing and any future liabilities and other indebtedness of our subsidiaries. These liabilities may include indebtedness, trade payables, guarantees, lease obligations and letter of credit obligations. Our debentures do not restrict us or our current or any future subsidiaries from incurring indebtedness, including senior secured indebtedness, in the future, nor do they limit the amount of indebtedness we can issue that is equal in right of payment.

Recent regulatory actions may adversely affect the trading price and liquidity of our debentures.

We believe that many investors in our debentures employ, or will seek to employ, a convertible arbitrage strategy with respect to our debentures. Investors that employ a convertible arbitrage strategy with respect to convertible debt instruments typically implement that strategy by selling short the common stock underlying the convertible debt instruments and dynamically adjusting their short position while they hold the debt instruments. Investors may also implement this strategy by entering into swaps on the common stock underlying the convertible debt instruments in lieu of or in addition to short selling the common stock. As a result, any specific rules regulating equity swaps or short selling of securities or other governmental action that interferes with the ability of market participants to effect short sales or equity swaps with respect to our common stock could adversely affect the ability of investors in our debentures to conduct the convertible arbitrage strategy that we believe they employ, or will seek to employ, with respect to our debentures. This could, in turn, adversely affect the trading price and liquidity of our debentures.

The SEC and other regulatory and self-regulatory authorities have implemented various rules and may adopt additional rules in the future that may impact those engaging in short selling activity involving equity securities (including our common stock). In particular, Rule 201 of SEC Regulation SHO generally restricts short selling when the price of a "covered security" triggers a "circuit breaker" by falling 10% or more from the security's closing price as of the end of regular trading hours on the prior day. If this circuit breaker is triggered, short sale orders can be displayed or executed for the remainder of that day and the following day only if the order price is above the then-current national best bid, subject to certain limited exceptions. Because our common stock is a "covered security", these Rule 201 restrictions, if triggered, may interfere with the ability of investors in our debentures to effect short sales in our common stock and conduct a convertible arbitrage strategy.

In addition, during 2013 the SEC approved two proposals submitted by the national securities exchanges and the Financial Industry Regulatory Authority, Inc. ("FINRA") concerning extraordinary market volatility that may impact the ability of investors to effect a convertible arbitrage strategy. One initiative is the "Limit Up-Limit Down" plan, which requires securities exchanges, alternative trading systems, broker-dealers and other trading centers to establish policies and procedures that prevent the execution of trades or the display of bids or offers outside of specified price bands. If the bid or offer quotations for a security are at the far limit of the price band for more than 15 seconds, trading in that security will be subject to a five-minute trading pause. The Limit Up-Limit Down plan became effective, on a one-year pilot basis, on April 8, 2013 and was later extended through October 23, 2015.

The second initiative revised existing stock exchange and FINRA rules that establish the market-wide circuit breaker system. The market-wide circuit breaker system provides for specified market-wide halts in trading of stock for certain periods following specified market declines. The recent changes lowered the percentage-decline thresholds for triggering a market-wide trading halt and shortened the amount of time that trading is halted. Market declines under the new system are measured based on a decline in the S&P 500 Index compared to the prior day's closing value rather than a decline in the Dow Jones Industrial Average compared to the prior quarterly closing value. The changes to the market-wide circuit breaker system became effective, on a one-year pilot basis, on April 8, 2013 and were later extended through October 23, 2015. The potential restrictions on trading imposed by the Limit Up-Limit Down plan and the market-wide circuit breaker system may interfere with the ability of investors in our debentures to effect short sales in our common stock and conduct a convertible arbitrage strategy.

The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, on July 21, 2010 also introduced regulatory uncertainty that may impact trading activities relevant to our debentures. As a result of this legislation, certain interest rate swaps and credit default swaps are currently required to be cleared through regulated clearinghouses. Certain other swaps and security-based swaps are likely going to be required to be cleared through regulated clearinghouses in the future. In addition, certain swaps and security-based swaps will be required to be traded on exchanges or comparable trading facilities. Furthermore, swap dealers, security-based swap dealers, major swap participants and major security-based swap participants will be required to comply with margin and capital requirements. In addition, certain market participants are required to comply with public reporting requirements to provide transaction and pricing data on both cleared and uncleared swaps. Public reporting requirements will also apply with respect to security-based swaps in the future. These requirements could adversely affect the ability of investors in our debentures to maintain a convertible arbitrage strategy with respect to our debentures (including increasing the costs incurred by such investors in implementing such strategy). This could, in turn, adversely affect the trading price and liquidity of our debentures. Although some of the implementing rules have been adopted and are currently effective, we cannot predict how the SEC and other regulators will ultimately implement the legislation or the magnitude of the effect that this legislation will have on the trading price or liquidity of our debentures.

Although the direction and magnitude of the effect that the amendments to Regulation SHO, FINRA and securities exchange rule changes and/or implementation of the Dodd-Frank Act may have on the trading price and the liquidity of our debentures will depend on a variety of factors, many of which cannot be determined at this time, past regulatory actions have had a significant impact on the trading prices and liquidity of convertible debentures. For example, between July 2008 and September 2008, the SEC issued a series of emergency orders placing restrictions on the short sale of the common stock of certain financial services companies. The orders made the convertible arbitrage strategy that many convertible debentures employ difficult to execute and adversely affected both the liquidity and trading price of convertible debentures issued by many of the financial services companies subject to the prohibition. Any governmental action that similarly restricts the ability of investors in our debentures to effect short sales of our common stock, including the amendments to Regulation SHO, FINRA and exchange rule changes and the implementation of the Dodd-Frank Act, could similarly adversely affect the trading price and the liquidity of our debentures.

Total's majority ownership of our common stock may adversely affect the liquidity and value of our common stock.

As of December 28, 2014, Total owned approximately 60% of our outstanding common stock. Pursuant to the Affiliation Agreement between us and Total, the Board of Directors of SunPower includes five designees from Total, giving Total majority control of our Board. As a result, subject to the restrictions in the Affiliation Agreement, Total possesses significant influence and control over our affairs. Our non-Total stockholders have reduced ownership and voting interest in our company and, as a result, have less influence over the management and policies of our company than they exercised prior to Total's tender offer. As long as Total controls us, the ability of our other stockholders to influence matters requiring stockholder approval is limited. Total's stock ownership and relationships with members of our Board of Directors could have the effect of preventing minority stockholders from exercising significant control over our affairs, delaying or preventing a future change in control, impeding a merger, consolidation, takeover or other business combination or discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of us, limiting our financing options. These factors in turn could adversely affect the market price of our common stock or prevent our stockholders from realizing a premium over the market price of our common stock. The Affiliation Agreement limits Total and any member of the Total affiliated companies ("Total Group") from effecting, seeking, or entering into discussions with any third party regarding any transaction that would result in the Total Group beneficially owning our shares in excess of certain thresholds during a standstill period. The Affiliation Agreement also imposes certain limitations on the Total Group's ability to seek to affect a tender offer or merger to acquire 100% of our outstanding voting power. Such provisions may not be successful in preventing the Total Group from engaging in transactions which further increase their ownership and negatively impact the price of our common stock. See also "—Risks Related to Our Liquidity—We may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations and make adequate capital investments as planned due to the general economic environment and the continued market pressure driving down the average selling prices of our solar power products, among other factors." Finally, the market for our common stock has become less liquid and more thinly traded as a result of the Total tender offer. The lower number of shares available to be traded could result in greater volatility in the price of our common stock and affect our ability to raise capital on favorable terms in the capital markets.

Conversion of our outstanding 0.75% debentures, 0.875% debentures, our warrants related to our outstanding 4.50% debentures, and future substantial issuances or dispositions of our common stock or other securities, could dilute ownership and earnings per share or cause the market price of our stock to decrease.

To the extent we issue common stock upon conversion of our outstanding 0.75% or 0.875% debentures, the conversion of some or all of such debentures will dilute the ownership interests of existing stockholders, including holders who had previously converted their debentures. Any sales in the public market of the common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. Sales of our common stock in the public market or sales of any of our other securities could dilute ownership and earnings per share, and even the perception that such sales could occur could cause the market prices of our common stock to decline. In addition, the existence of our outstanding debentures may encourage short selling of our common stock by market participants who expect that the conversion of the debentures could depress the prices of our common stock.

We issued warrants to affiliates of the underwriters of our 4.50% debentures, which are exercisable for a total of approximately 11.1 million shares of our common stock. The warrants, together with certain convertible hedge transactions, are

Table of Contents

meant to reduce our exposure upon potential conversion of our 4.50%. If the market price of our common stock exceeds the respective exercise prices of the warrants, such warrants will have a dilutive effect on our earnings per share, and could dilute the ownership interests for existing stockholders if exercised.

The price of our common stock, and therefore of our outstanding 0.75%, 0.875% and 4.50% debentures, may fluctuate significantly.

Our common stock has experienced extreme price and volume fluctuations. The trading price of our common stock could be subject to further wide fluctuations due to many factors, including the factors discussed in this risk factors section. In addition, the stock market in general, and the Nasdaq Global Select Market and the securities of technology companies and solar companies in particular, have experienced severe price and volume fluctuations. These trading prices and valuations, including our own market valuation and those of companies in our industry generally, may not be sustainable. These broad market and industry factors may decrease the market price of our common stock, regardless of our actual operating performance. Because the 0.75%, 0.875% and 4.50% debentures are convertible into our common stock (and/or cash equivalent to the value of our common stock), volatility or depressed prices of our common stock could have a similar effect on the trading price of these debentures.

Delaware law and our certificate of incorporation and by-laws contain anti-takeover provisions, our outstanding 0.75%, 0.875% and 4.50% debentures provide for a right to convert upon certain events, and our Board of Directors entered into a rights agreement and declared a rights dividend, any of which could delay or discourage takeover attempts that stockholders may consider favorable.

Provisions in our restated certificate of incorporation and by-laws may have the effect of delaying or preventing a change of control or changes in our management. These provisions include the following:

- the right of the Board of Directors to elect a director to fill a vacancy created by the expansion of the Board of Directors;
- the prohibition of cumulative voting in the election of directors, which would otherwise allow less than a majority of stockholders to elect director candidates;
- the requirement for advance notice for nominations for election to the Board of Directors or for proposing matters that can be acted upon at a stockholders' meeting;
- the ability of the Board of Directors to issue, without stockholder approval, up to 10.0 million shares of preferred stock with terms set by the Board of Directors, which rights could be senior to those of common stock;
- our Board of Directors is divided into three classes of directors, with the classes to be as nearly equal in number as possible;
- stockholders may not call special meetings of the stockholders, except by Total under limited circumstances; and
- our Board of Directors is able to alter our by-laws without obtaining stockholder approval.

Certain provisions of our outstanding debentures could make it more difficult or more expensive for a third party to acquire us. Upon the occurrence of certain transactions constituting a fundamental change, including an entity becoming the beneficial owner of 75% of our voting stock (such as Total), holders of our outstanding debentures will have the right, at their option, to require us to repurchase, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest on the debentures, all or a portion of their debentures. We may also be required to issue additional shares of our common stock upon conversion of such debentures in the event of certain fundamental changes. In addition, we entered into a Rights Agreement with Computershare Trust Company, N.A., commonly referred to as a "poison pill," which could delay or discourage takeover attempts that stockholders may consider favorable.

Table of Contents

ITEM 1B: UNRESOLVED STAFF COMMENTS

None.

ITEM 2: PROPERTIES

The table below presents details for each of our principal properties:

| Facility | Location | Approximate Square Footage | Held | Lease Term |
|---|---|---|---|---|
| Solar cell manufacturing facility[1, 2] | Philippines | 215,000 | Owned | n/a |
| Solar cell manufacturing facility[1] | Philippines | 344,000 | Owned | n/a |
| Solar module assembly facility[1] | Philippines | 175,000 | Owned | n/a |
| Solar module assembly facility | Mexico | 320,000 | Leased | 2021 |
| Solar module assembly facilities | France | 11,600 | Leased | 2018 |
| Corporate headquarters | California, U.S. | 129,000 | Leased | 2021 |
| European headquarters | Switzerland | 3,929 | Leased | 2017 |
| Global support offices | California, U.S. | 142,000 | Leased | 2023 |
| Global support offices | Texas, U.S. | 69,000 | Leased | 2019 |
| Global support offices | France | 27,345 | Leased | 2023 |

1 The lease for the underlying land expires in May 2048 and is renewable for an additional 25 years.

2 This building will serve as an additional solar cell manufacturing facility with a planned annual capacity of 350 MW and is expected to be fully operational by in fiscal 2016, with initial production expected during fiscal 2015.

As of December 28, 2014, our principal properties include operating solar cell manufacturing facilities with a combined total annual capacity of over 1.5 GW and solar module assembly facilities with a combined total annual capacity of approximately 1.7 GW. For more information about our manufacturing capacity, including relationships with third-party contract manufacturers and our joint venture, AUOSP, see "Item 1. Business."

We do not identify or allocate assets by business segment. For more information on property, plant and equipment by country, see "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 5. Balance Sheet Components."

ITEM 3. LEGAL PROCEEDINGS

Derivative Litigation

Derivative actions purporting to be brought on the Company's behalf were filed in state and federal courts against several of the Company's current and former officers and directors. The actions arose from the Audit Committee's investigation announcement on November 16, 2009 regarding certain unsubstantiated accounting entries. The California state derivative cases were consolidated as In re SunPower Corp. S'holder Derivative Litig., Lead Case No. 1-09-CV-158522 (Santa Clara Sup. Ct.), and co-lead counsel for plaintiffs were appointed. The complaints asserted state-law claims for breach of fiduciary duty, abuse of control, unjust enrichment, gross mismanagement, and waste of corporate assets. Plaintiffs filed a consolidated amended complaint on March 5, 2012. The federal derivative complaints were consolidated as In re SunPower Corp. S'holder Derivative Litig., Master File No. CV-09-05731-RS (N.D. Cal.), and lead plaintiffs and co-lead counsel were appointed on January 4, 2010. The federal complaints asserted state-law claims for breach of fiduciary duty, waste of corporate assets, and unjust enrichment, and seek an unspecified amount of damages. Plaintiffs filed a consolidated complaint on May 13, 2011. A Delaware state derivative case, Brenner v. Albrecht, et al., C.A. No. 6514-VCP (Del Ch.), was filed on May 23, 2011 in the Delaware Court of Chancery. The complaint asserted state-law claims for breach of fiduciary duty and contribution and indemnification, and sought an unspecified amount of damages. On December 19, 2013, the parties executed a stipulated settlement agreement, providing that all claims against all defendants would be released and dismissed with prejudice, and that the Company would not oppose a request by the plaintiffs' counsel for an award of attorneys' fees up to $1 million, one half of which would be paid from the proceeds of directors and officers liability insurance. At a hearing on August 22, 2014, the Superior Court of California for Santa Clara County entered an order providing for final approval of the stipulated settlement and dismissing that action with prejudice. On September 9, 2014, the court in the consolidated federal derivative action dismissed that action with prejudice. Those dismissals are now final. On October 22, 2014, the Delaware Chancery Court entered an order dismissing the Delaware derivative action with prejudice.

Tax Benefit Indemnification Litigation

On March 19, 2014, we received notice that a lawsuit had been filed by NRG Solar LLC ("NRG") against SunPower Corporation, Systems, our wholly-owned subsidiary ("SunPower Systems"), in the Superior Court of Contra Costa County, California.  The complaint asserts that, according to the indemnification provisions in the contract pertaining to SunPower Systems' sale of a large California solar project to NRG, SunPower Systems owes NRG $75 million in connection with certain tax benefits associated with the project that were approved by the Treasury Department for an amount that was less than expected. We do not believe that the facts support NRG's claim under the operative indemnification provisions and intend to vigorously contest the claim. On May 5, 2014, SunPower Systems filed a demurrer to NRG's complaint.  The Court sustained the demurrer with leave to amend. NRG filed its amended complaint on September 3, 2014. SunPower Systems filed a demurrer to NRG's amended complaint, which the Court sustained, again, with leave to amend.  NRG filed its Second Amended Complaint on January 13, 2015.  SunPower Systems filed a demurrer to NRG's Second Amended Complaint, which is scheduled to be heard on March 12, 2015.  The case currently is pending and no trial date or case schedule has been set yet.

First Philec Arbitration

On January 28, 2015, an arbitral tribunal of the International Court of Arbitration of the International Chamber of Commerce declared a binding partial award in the matter of an arbitration between First Philippine Electric Corporation ("FPEC") and First Philippine Solar Corporation ("FPSC") against SunPower Philippines Manufacturing, Ltd. ("SPML"), our wholly-owned subsidiary. FPSC is a joint venture of FPEC and SPML for the purpose of slicing silicon wafers from ingots. SPML has not purchased any wafers from FPSC since the third quarter of 2012.

The tribunal found SPML in breach of its obligations under its supply agreement with FPSC, and in breach of its joint venture agreement with FPEC. The tribunal ordered that (i) SPML must purchase FPEC's interests in FPSC for an aggregate of $30.3 million, subject to adjustment to account for minority interests, and (ii) after completing the purchase of FPEC's controlling interest in FPSC, to pay FPSC damages in the amount of $25.2 million. SPML's purchase of FPEC's interests in FPSC and the subsequent damages payment to FPSC have been suspended pending the parties' agreement as to legal arrangements required to complete these transactions, but the transactions are presently scheduled to be completed in the second quarter of 2015.

As a result, as of the fourth quarter of fiscal 2014, we recorded an accrual of $63.0 million related to this case based on our best estimate of probable loss.

Other Litigation

We are a party to various other litigation matters and claims that arise from time to time in the ordinary course of our business. While we believe that the ultimate outcome of such matters will not have a material adverse effect on our business, their outcomes are not determinable and negative outcomes may adversely affect our financial position, liquidity or results of operations.

ITEM 4: MINE SAFETY DISCLOSURES

Not applicable.

45

Table of Contents

PART II

ITEM 5: MARKET FOR REGISTRANT’S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information

Our common stock is listed on the Nasdaq Global Select Market under the trading symbol "SPWR." During fiscal 2014 and 2013, the high and low trading prices of our common stock were as follows:

| | SPWR | |
|---|---|---|
| | High | Low |
| Fiscal Year 2014 | | |
| Fourth quarter | $35.64 | $23.06 |
| Third quarter | $40.98 | $32.92 |
| Second quarter | $41.06 | $26.53 |
| First quarter | $35.90 | $29.14 |
| Fiscal Year 2013 | | |
| Fourth quarter | $34.39 | $26.16 |
| Third quarter | $28.10 | $20.58 |
| Second quarter | $22.70 | $9.41 |
| First quarter | $13.39 | $5.62 |

As of February 17, 2015, there were approximately 1,603 record holders. A substantially greater number of holders are in "street name" or beneficial holders, whose shares are held of record by banks, brokers, and other financial institutions.

Dividends

We have never declared or paid any cash dividend on our common stock, and we do not currently intend to pay a cash dividend on our common stock in the foreseeable future. Certain of the Company's debt agreements place restrictions on the Company and its subsidiaries' ability to pay cash dividends. For more information on our common stock and dividend rights, see "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 14. Common Stock."

Issuer Purchases of Equity Securities

The following table sets forth all purchases made by or on behalf of us or any "affiliated purchaser," as defined in Rule 10b-18(a)(3) under the Exchange Act, of shares of our common stock during each of the indicated periods.

| Period | Total Number of Shares Purchased[1] | Average Price Paid Per Share | Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs | Maximum Number of Shares That May Yet Be Purchased Under the Publicly Announced Plans or Programs |
|---|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| September 29, 2014 through October 26, 2014 | 10,548 | $30.09 | — | — |
| October 27, 2014 through November 23, 2014 | 37,935 | $28.04 | — | — |
| November 24, 2014 through December 28, 2014 | 6,830 | $23.50 | — | — |
| | 55,313 | $27.87 | — | — |

1 The shares purchased represent shares surrendered to satisfy tax withholding obligations in connection with the vesting of restricted stock issued to employees.

Table of Contents

ITEM 6: SELECTED CONSOLIDATED FINANCIAL DATA

The following selected consolidated financial data should be read together with "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Item 8. Financial Statements and Supplementary Data" included elsewhere in this Annual Report on Form 10-K.

| (In thousands, except per share data) | Year Ended December 28, 2014 | December 29, 2013 | December 30, 2012 | January 1, 2012 | January 2, 2011 |
|---|---|---|---|---|---|
| Consolidated Statements of Operations Data | | | | | |
| Revenue | $3,027,265 | $2,507,203 | $2,417,501 | $2,374,376 | $2,219,230 |
| Gross margin | $625,127 | $491,072 | $246,398 | $226,218 | $509,893 |
| Operating income (loss) | $251,240 | $158,909 | $(287,708) | $(534,098) | $138,867 |
| Income (loss) from continuing operations before income taxes and equity in earnings (loss) of unconsolidated investees | $184,614 | $41,583 | $(329,663) | $(602,532) | $183,413 |
| Income (loss) from continuing operations per share of common stock: | | | | | |
| Basic | $1.91 | $0.79 | $(3.01) | $(6.28) | $1.74 |
| Diluted | $1.55 | $0.70 | $(3.01) | $(6.28) | $1.64 |

| (In thousands) | As of December 28, 2014 | December 29, 2013 | December 30, 2012 | January 1, 2012 | January 2, 2011 |
|---|---|---|---|---|---|
| Consolidated Balance Sheet Data | | | | | |
| Cash and cash equivalents | $956,175 | $762,511 | $457,487 | $725,618 | $605,420 |
| Working capital | $1,273,236 | $528,017 | $976,627 | $1,163,245 | $1,005,492 |
| Total assets | $4,357,182 | $3,898,690 | $3,340,948 | $3,519,130 | $3,379,331 |
| Long-term debt | $218,657 | $93,095 | $375,661 | $364,273 | $50,000 |
| Convertible debt, net of current portion | $700,079 | $300,079 | $438,629 | $423,268 | $591,923 |
| Total stockholders' equity | $1,534,174 | $1,116,153 | $993,352 | $1,274,725 | $1,657,434 |

Table of Contents

ITEM 7: MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Overview

We are a vertically integrated solar products and solutions company that designs, manufactures and delivers high-performance solar systems worldwide, serving as a one-stop shop for residential, commercial, and utility-scale power plant customers. Of all the solar cells available for the mass market, we believe our solar cells have the highest conversion efficiency, a measurement of the amount of sunlight converted by the solar cell into electricity.

Segments Overview

We manage resource allocations and measure performance among three regional segments: (i) the Americas Segment, (ii) the EMEA Segment, and (iii) the APAC Segment. The Americas Segment includes both North and South America. The EMEA Segment includes European countries, as well as the Middle East and Africa. The APAC Segment includes all Asia-Pacific countries.

Unit of Power

When referring to our solar power systems, our facilities' manufacturing capacity, and total sales, the unit of electricity in watts for kilowatts ("KW"), megawatts ("MW"), and gigawatts ("GW") is direct current ("dc").

Seasonal Trends

Our business is subject to industry-specific seasonal fluctuations including changes in weather patterns and economic incentives, among others. Sales have historically reflected these seasonal trends with the largest percentage of total revenues realized during the last two quarters of a fiscal year. The construction of solar power systems or installation of solar power components and related revenue may decline during cold winter months. In the United States, many customers make purchasing decisions towards the end of the year in order to take advantage of tax credits or for other budgetary reasons.

Fiscal Years

We have a 52-to-53-week fiscal year that ends on the Sunday closest to December 31. Accordingly, every fifth or sixth year will be a 53-week fiscal year. Fiscal years 2014, 2013 and 2012 are 52-week fiscal years. Fiscal 2014 ended on December 28, 2014, fiscal 2013 ended on December 29, 2013, and fiscal 2012 ended December 30, 2012. Fiscal 2015 will be a 53-week fiscal year and will end on January 3, 2016.

Components of Results of Operations

The following section describes certain line items in our Consolidated Statements of Operations:

Revenue

We recognize revenue from the following activities and transactions within our regional segments:

- Solar power components: the sale of panels and balance of system components, primarily to dealers, system integrators and distributors, in some cases on a multi-year, firm commitment basis.

- Solar power systems: the design, manufacture, and sale of high-performance rooftop and ground-mounted solar power systems under construction and development agreements.
- Residential leases: revenue recognized on systems under lease agreements with residential customers for terms of up to 20 years.
- Other: revenue related to our solar power services and solutions, such as post-installation systems monitoring and maintenance in connection with construction contracts and commercial power purchase agreements.

For a discussion of how and when we recognize revenue, see "—Critical Accounting Estimates—Revenue Recognition."

Table of Contents

Cost of Revenue

We generally recognize our cost of revenue in the same period that we recognize related revenue. Our cost of revenue fluctuates from period to period due to the mix of projects that we complete and the associated revenue that we recognize, particularly for construction contracts and large-scale development projects involving real estate. For a discussion of how and when we recognize revenue, see "—Critical Accounting Estimates—Revenue Recognition."

The cost of solar panels is the single largest cost element in our cost of revenue. Our cost of solar panels consists primarily of: (i) polysilicon, silicon ingots and wafers used in the production of solar cells; (ii) solar cells from our AUO SunPower Sdn. Bhd. ("AUOSP") joint venture; (iii) other materials and chemicals including glass, frame, and backing; and (iv) direct labor costs and assembly costs we pay to our third-party contract manufacturers. Other cost of revenue associated with the construction of solar power systems includes real estate, mounting systems, inverters, and construction subcontract and dealer costs. Other factors that contribute to our cost of revenue include salaries and personnel-related costs, depreciation, facilities related charges, and freight.

Gross Margin

Our gross margin each quarter is affected by a number of factors, including average selling prices for our solar power components, the types of projects in progress, the gross margins estimated for those projects in progress, our product mix, our actual manufacturing costs, the utilization rate of our solar cell manufacturing facilities, and actual overhead costs.

Research and Development

Research and development expense consists primarily of salaries and related personnel costs; depreciation of equipment; and the cost of solar panel materials, various prototyping materials, and services used for the development and testing of products. Research and development expense is reported net of contributions under collaborative arrangements.

Sales, General and Administrative

Sales, general and administrative expense consists primarily of salaries and related personnel costs, professional fees and other selling and marketing expenses.

Restructuring

Restructuring expense consists mainly of costs associated with our November 2014 reorganization plan aimed towards realigning resources consistently with SunPower's global strategy and improving overall operating efficiency and cost structure. Charges in connection with this plan are primarily related to severance benefits.

Remaining restructuring costs are related to plans effected in both fiscal 2012 and fiscal 2011. These restructuring activities were substantially complete as of December 28, 2014; however, we expect to continue to incur costs as we finalize previous estimates and actions in connection with these plans, primarily due to other costs, such as legal services.

Goodwill and Other Intangible Asset Impairment

Goodwill and other intangible asset impairment primarily consists of impairment of goodwill as a result of our 2012 annual impairment test as we determined the carrying value of certain reporting units exceeded their fair value. Additionally, during fiscal 2012 we determined the carrying value of certain intangible assets in Europe were no longer recoverable. There were no impacts on the results of operations related to goodwill and other intangible asset impairment for fiscal years 2013 and 2014.

Other Income (Expense), Net

Interest expense primarily relates to: (i) amortization expense recorded for warrants issued to Total in connection with the Liquidity Support Agreement executed in the first quarter of fiscal 2012; (ii) debt under our senior convertible debentures; (iii) fees for our outstanding letters of credit; and (iv) other outstanding bank and project debt.

Gain on share lending arrangement relates to recovery of claims related to unreturned shares under our former share lending arrangement with Lehman Brothers International (Europe) Limited ("LBIE") following their bankruptcy.

Other, net includes gains or losses on foreign exchange and derivatives as well as gains or losses related to sales and impairments of certain investments.

Income Taxes

Deferred tax assets and liabilities are recognized for temporary differences between financial statement and income tax bases of assets and liabilities. Valuation allowances are provided against deferred tax assets when management cannot conclude that it is more likely than not that some portion or all deferred tax assets will be realized.

We currently benefit from income tax holidays incentives in the Philippines in accordance with our registration with the Philippine Economic Zone Authority ("PEZA"). We have an auxiliary company ruling in Switzerland, where we sell our solar power products, which currently reduces our Swiss tax rate. For additional information see "Note 1. The Company and Summary of Significant Accounting Policies" and "Note 13. Income Taxes" under "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements."

For financial reporting purposes, during periods when we were a subsidiary of Cypress, income tax expense and deferred income tax balances were calculated as if we were a separate entity and had prepared our own separate tax return. Effective with the closing of our public offering of common stock in June 2006, we were no longer eligible to file federal and most state consolidated tax returns with Cypress. As of September 29, 2008, Cypress completed a spin-off of all of its shares of our former class B common stock to its shareholders, so we are no longer eligible to file any remaining state consolidated tax returns with Cypress. Under our tax sharing agreement with Cypress, we agreed to pay Cypress for any federal and state income tax credit or net operating loss carryforwards utilized in our federal and state tax returns in subsequent periods that originated while our results were included in Cypress's federal tax returns.

Equity in Earnings (Loss) of Unconsolidated Investees

Equity in earnings (loss) of unconsolidated investees represents our reportable share of earnings (loss) generated from entities in which we own an equity interest accounted for under the equity method.

Net Loss Attributable to Noncontrolling Interests and Redeemable Noncontrolling Interests

We have entered into facilities with third-party investors under which the parties invest in entities that hold SunPower solar power systems and leases with residential customers. We determined that we hold controlling interests in these less-than-wholly-owned entities and have fully consolidated these entities as a result. The investors were determined to hold noncontrolling interests, some of which are redeemable at the option of the noncontrolling interest holder. We apply the hypothetical liquidation value method in allocating recorded net income (loss) to each investor based on the change in the reporting period of the amount of net assets of the entity to which each investor would be entitled to under the governing contractual arrangements in a liquidation scenario.

Critical Accounting Estimates

We prepare our consolidated financial statements in conformity with U.S. generally accepted accounting principles, which requires management to make estimates and assumptions that affect the amounts of assets, liabilities, revenues, and expenses recorded in our financial statements. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions and conditions. In addition to our most critical estimates discussed below, we also have other key accounting policies that are less subjective and, therefore, judgments involved in their application would not have a material impact on our reported results of operations (See "Note 1. The Company and Summary of Significant Accounting Policies" under "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements").

Revenue Recognition

Solar Power Components

We sell our solar panels and balance of system components primarily to dealers, system integrators and distributors, and recognize revenue, net of accruals for estimated sales returns, when persuasive evidence of an arrangement exists, delivery of the product has occurred, title and risk of loss has passed to the customer, the sales price is fixed or determinable, collectability

Table of Contents

of the resulting receivable is reasonably assured and the risks and rewards of ownership have passed to the customer. Other than standard warranty obligations, there are no rights of return and there are no significant post-shipment obligations, including installation, training, or customer acceptance clauses, with any of our customers that could have an impact on revenue recognition. Our revenue recognition policy is consistent across all geographic areas.

Construction Contracts

Revenue is also composed of EPC projects which are governed by customer contracts that require us to deliver functioning solar power systems and are generally completed within three to twelve months from commencement of construction. Construction on large projects may be completed within eighteen to thirty six months, depending on the size and location. We recognize revenue from fixed-price construction contracts, that do not include land or land rights, using the percentage-of-completion method of accounting. Under this method, revenue arising from fixed price construction contracts is recognized as work is performed based on the percentage of incurred costs to estimated total forecasted costs.

Incurred costs used in our percentage-of-completion calculation include all direct material, labor and subcontract costs, and those indirect costs related to contract performance, such as indirect labor, supplies, and tools. Project material costs are included in incurred costs when the project materials have been installed by being permanently attached or fitted to the solar power system as required by the project’s engineering design.

In addition to an EPC deliverable, a limited number of arrangements also include multiple deliverables such as post-installation systems monitoring and maintenance. For contracts with separately priced monitoring and maintenance, we recognize revenue related to such separately priced elements over the contract period. For contracts including monitoring and maintenance not separately priced, we determined that post-installation systems monitoring and maintenance qualify as separate units of accounting. Such post-installation monitoring and maintenance are deferred at the time the contract is executed based on the best estimate of selling price on a standalone basis and are recognized to revenue over the contractual term. The remaining EPC revenue is recognized on a percentage-of-completion basis.

In addition, when arrangements include contingent revenue clauses, such as customer termination or put rights for non-performance, we defer the contingent revenue if there is a reasonable possibility that such rights or contingencies may be triggered. In certain limited cases, we could be required to buy-back a customer’s system at fair value on specified future dates if certain minimum performance thresholds are not met for periods of up to two years. To date, no such repurchase obligations have been triggered (see "Note 9. Commitments and Contingencies" under "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements").

Provisions for estimated losses on uncompleted contracts, if any, are recognized in the period in which the loss first becomes probable and reasonably estimable. Contracts may include profit incentives such as milestone bonuses. These profit incentives are included in the contract value when their realization is reasonably assured.

Development Projects

We develop and sell solar power plants which generally include the sale or lease of related real estate. Revenue recognition for these solar power plants require adherence to specific guidance for real estate sales, which provides that if we execute a sale of land in conjunction with an EPC contract requiring the future development of the property, we recognize revenue and the corresponding costs under the full accrual method when all of the following requirements are met: the sale is consummated, the buyer's initial and any continuing investments are adequate, the resulting receivables are not subject to subordination, the future costs to develop the property can be reasonably estimated and we have transferred the customary risk and rewards of ownership to the buyer. In general, a sale is consummated upon the execution of an agreement documenting the terms of the sale and receipt of a minimum initial payment by the buyer to substantiate the transfer of risk to the buyer. Depending on the value of the initial and continuing investment of the buyer, and provided the recovery of the costs of the solar power plant are assured if the buyer defaults, we may defer revenue and profit during construction by aligning our revenue recognition and release of deferred project costs to cost of sales with the receipt of payment from the buyer. At the time we have unconditionally received payment from the buyer, revenue is recognized and deferred project costs are released to cost of sales at the same rate of profit estimated throughout the construction of the project.

Residential Leases

We offer a solar lease program, in partnership with third-party financial institutions, which allows our residential customers to obtain SunPower systems under lease agreements for terms of up to 20 years. Leases are classified as either operating- or sales-type leases in accordance with the relevant accounting guidelines, which involve making a variety of estimates, including the fair value and residual value of leased solar power systems.

For those systems classified as sales-type leases, the net present value of the minimum lease payments, net of executory costs, is recognized as revenue when the lease is placed in service. This net present value as well as the net present value of the residual value of the lease at termination are recorded as receivables in our Consolidated Balance Sheets. The difference between the initial net amounts and the gross amounts are amortized to revenue over the lease term using the interest method. The residual values of our solar systems are determined at the inception of the lease by applying an estimated system fair value at the end of the lease term.

For those systems classified as operating leases, rental revenue is recognized, net of executory costs, on a straight-line basis over the term of the lease.

Allowance for Doubtful Accounts and Sales Returns

We maintain allowances for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. A considerable amount of judgment is required to assess the likelihood of the ultimate realization of accounts receivable. We make our estimates of the collectability of our accounts receivable by analyzing historical bad debts, specific customer creditworthiness and current economic trends.

In addition, at the time revenue is recognized from the sale of solar panels and balance of system components, we record estimates for sales returns which reduce revenue. These estimates are based on historical sales returns, analysis of credit memo data, among other known factors.

Warranty Reserves

We generally provide a warranty for our solar panels that we manufacture at certain levels of power output for 25 years. In addition, we pass through to customers long-term warranties from the original equipment manufacturers of certain system components, such as inverters. Warranties of 25 years from solar panel suppliers are standard in the solar industry, while certain system components carry warranty periods ranging from five to 20 years. In addition, we generally warrant our workmanship on installed systems for periods ranging up to 25 years and also provide system output performance warranties. We maintain reserves to cover the expected costs that could result from these warranties. Our expected costs are generally in the form of product replacement or repair. Warranty reserves are based on our best estimate of such costs and are recognized as a cost of revenue. We continuously monitor product returns for warranty failures and maintain a reserve for the related warranty expenses based on various factors including historical warranty claims, results of accelerated lab testing, field monitoring, vendor reliability estimates, and data on industry averages for similar products. Historically, warranty costs have been within management’s expectations.

Valuation of Inventories

Inventories are valued at the lower of cost or market value. We evaluate the recoverability of our inventories, including future purchase commitments under fixed-price long-term supply agreements, based on assumptions about expected demand and market conditions. Our assumption of expected demand is developed based on our analysis of bookings, sales backlog, sales pipeline, market forecast and competitive intelligence. Our assumption of expected demand is compared to available inventory, production capacity, future polysilicon purchase commitments, available third-party inventory and growth plans. Our factory production plans, which drive materials requirement planning, are established based on our assumptions of expected demand. We respond to reductions in expected demand by temporarily reducing manufacturing output and adjusting expected valuation assumptions as necessary. In addition, expected demand by geography has changed historically due to changes in the availability and size of government mandates and economic incentives.

We evaluate the terms of our long-term inventory purchase agreements with suppliers, including joint ventures, for the procurement of polysilicon, ingots, wafers, and solar cells and establish accruals for estimated losses on adverse purchase commitments as necessary, such as lower of cost or market value adjustments, forfeiture of advanced deposits and liquidated damages. Obligations related to non-cancellable purchase orders for inventories match current and forecasted sales orders that will consume these ordered materials and actual consumption of these ordered materials are compared to expected demand regularly. We anticipate total obligations related to long-term supply agreements for inventories will be recovered because quantities are less than management's expected demand for its solar power products. Other market conditions that could affect the realizable value of our inventories and are periodically evaluated by management include the aging of inventories on hand, historical inventory turnover ratio, anticipated sales price, new product development schedules, the effect new products might have on the sale of existing products, product obsolescence, customer concentrations, the current market price of polysilicon as compared to the price in our fixed-price arrangements, and product merchantability, among other factors. If, based on assumptions about expected demand and market conditions, we determine that the cost of inventories exceeds its estimated market value or inventory is excess or obsolete, we record a write-down or accrual, which may be material, equal to the difference between the cost of inventories and the estimated market value. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required that could negatively affect our gross margin and operating results. If actual market conditions are more favorable, we may have higher gross margin when products that have been previously written down are sold in the normal course of business.

Stock-Based Compensation

We provide stock-based awards to our employees, executive officers and directors through various equity compensation plans including our employee stock option and restricted stock plans. We measure and record compensation expense for all stock-based payment awards based on estimated fair values. The fair value of restricted stock awards and units is based on the market price of our common stock on the date of grant. We have not granted stock options since fiscal 2008. We are required under current accounting guidance to estimate forfeitures at the date of grant. Our estimate of forfeitures is based on our historical activity, which we believe is indicative of expected forfeitures. In subsequent periods if the actual rate of forfeitures differs from our estimate, the forfeiture rates are required to be revised, as necessary. Changes in the estimated forfeiture rates can have a significant effect on stock-based compensation expense since the effect of adjusting the rate is recognized in the period the forfeiture estimate is changed.

We also grant performance share units to executive officers and certain employees that require us to estimate expected achievement of performance targets over the performance period. This estimate involves judgment regarding future expectations of various financial performance measures. If there are changes in our estimate of the level of financial performance measures expected to be achieved, the related stock-based compensation expense may be significantly increased or reduced in the period that our estimate changes.

Variable Interest Entities ("VIE")

We regularly evaluate our relationships and involvement with unconsolidated VIEs, including our AUOSP joint venture and our other equity and cost method investments, to determine whether we have a controlling financial interest in them or have become the primary beneficiary, thereby requiring us to consolidate their financial results into our financial statements. In connection with the sale of the equity interests in the entities that hold solar power plants, we also consider whether we retain a variable interest in the entity sold, either through retaining a financial interest or by contractual means. If we determine that the entity sold is a VIE and that we hold a variable interest, we then evaluate whether we are the primary beneficiary. If we determine that we are the primary beneficiary, we will consolidate the VIE. The determination of whether we are the primary beneficiary is based upon whether we have the power to direct the activities that most directly impact the economic performance of the VIE and whether we absorb any losses or benefits that would be potentially significant to the VIE. To date, there have been no sales of entities holding solar power plants in which we have concluded that we are the primary beneficiary after the sale.

Accounting for Business Combinations

We record all acquired assets and liabilities, including goodwill, other intangible assets and in-process research and development, at fair value. The initial recording of goodwill, other intangible assets and in-process research and development requires certain estimates and assumptions concerning the determination of the fair values and useful lives. The judgments made in the context of the purchase price allocation can materially affect our future results of operations. Accordingly, for significant acquisitions, we obtain assistance from third-party valuation specialists. The valuations calculated from estimates are based on information available at the acquisition date. Goodwill is not amortized, but is subject to annual tests for impairment or more frequent tests if events or circumstances indicate it may be impaired. Other intangible assets are amortized over their estimated useful lives and are subject to impairment if events or circumstances indicate a possible inability to realize the carrying amount. For additional details see "Note 3. Business Combinations" and "Note 4. Goodwill and Other Intangible Assets" under "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements."

Valuation of Long-Lived Assets

Our long-lived assets include property, plant and equipment, solar power systems, and project assets. We evaluate our long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of such assets

Table of Contents

may not be recoverable. Factors considered important that could result in an impairment review include significant under-performance relative to expected historical or projected future operating results, significant changes in the manner of use of acquired assets and significant negative industry or economic trends. Our impairment evaluation of long-lived assets includes an analysis of estimated future undiscounted net cash flows expected to be generated by the assets over their remaining estimated useful lives. If our estimate of future undiscounted net cash flows is insufficient to recover the carrying value of the assets over the remaining estimated useful lives, we record an impairment loss in the amount by which the carrying value of the assets exceeds the fair value. Fair value is generally measured based on either quoted market prices, if available, or discounted cash flow analyses.

Fair Value of Financial Instruments

Certain of our financial assets and financial liabilities, including our cash and cash equivalents, foreign currency derivatives, and convertible debenture derivatives are carried at fair value in our Consolidated Financial Statements. Current accounting guidance provides a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the observable inputs be used when available:

- Level 1 — Valuations based on quoted prices in active markets for identical assets or liabilities that we have the ability to access. Since valuations are based on quoted prices that are readily and regularly available in an active market, valuation of these products does not entail a significant degree of judgment. Financial assets utilizing Level 1 inputs include money market funds.

- Level 2 — Measurements are inputs that are observable for assets or liabilities, either directly or indirectly, other than quoted prices included within Level 1. Financial assets utilizing Level 2 inputs include foreign currency option contracts, forward exchange contracts and convertible debenture derivatives. The selection of a particular technique to value a derivative depends upon the contractual term of, and specific risks inherent with, the instrument as well as the availability of pricing information in the market. We generally use similar techniques to value similar instruments. Valuation techniques utilize a variety of inputs, including contractual terms, market prices, yield curves, credit curves and measures of volatility. For derivatives that trade in liquid markets, such as generic forward and option contracts, inputs can generally be verified and selections do not involve significant management judgment.

- Level 3 — Prices or valuations that require management inputs that are both significant to the fair value measurement and unobservable. We did not have any assets and liabilities measured at fair value on a recurring basis requiring Level 3 inputs.

Valuation of Certain Convertible Debt

Convertible debt instruments that may be settled in cash upon conversion require recognition of both the liability and equity components in our Consolidated Financial Statements. The debt component is required to be recognized at the fair value of a similar debt instrument that does not have an associated equity component. The equity component is recognized as the difference between the proceeds from the issuance of the convertible debt and the fair value of the liability, after adjusting for the deferred tax impact. The accounting guidance also requires an accretion of the resulting debt discount over the expected life of the convertible debt.

Accounting for Income Taxes

Our global operations involve manufacturing, research and development, and selling and project development activities. Profit from non-U.S. activities is subject to local country taxation, but not subject to U.S. tax until repatriated to the United States. It is our intention to indefinitely reinvest these earnings outside the United States. We record a valuation allowance to reduce our U.S. and French deferred tax assets to the amount that is more likely than not to be realized. In assessing the need for a valuation allowance, we consider historical levels of income, expectations and risks associated with the estimates of future taxable income and ongoing prudent and feasible tax planning strategies. In the event we determine that we would be able to realize additional deferred tax assets in the future in excess of the net recorded amount, or if we subsequently determine that realization of an amount previously recorded is unlikely, we would record an adjustment to the deferred tax asset valuation allowance, which would change income tax in the period of adjustment. As of December 28, 2014, we believe there is insufficient evidence to realize additional deferred tax assets, although it is possible that a reversal of the valuation allowance, which could be material, could occur in a future period.

The calculation of tax liabilities involves dealing with uncertainties in the application of complex global tax regulations. We recognize potential liabilities for anticipated tax audit issues in the United States and other tax jurisdictions based on our

Table of Contents

estimate of whether, and the extent to which, additional taxes will be due. If payment of these amounts ultimately proves to be unnecessary, the reversal of the liabilities would result in tax benefits being recognized in the period in which we determine the liabilities are no longer necessary. If the estimate of tax liabilities proves to be less than the ultimate tax assessment, a further charge to expense would result. We accrue interest and penalties on tax contingencies which are classified as "Provision for income taxes" in our Consolidated Statements of Operations and are not considered material.

Pursuant to the Tax Sharing Agreement with Cypress, our former parent company, we are obligated to indemnify Cypress upon current utilization of carryforward tax attributes generated while we were part of the Cypress consolidated or combined group. Further, to the extent Cypress experiences any tax examination assessments attributable to our operations while part of the Cypress consolidated or combined group, Cypress will require an indemnification from us for those aspects of the assessment that relate to our operations. See also "Item 1A. Risk Factors—Risks Related to Our Operations—Our agreements with Cypress require us to indemnify Cypress for certain tax liabilities. These indemnification obligations and related contractual restrictions may limit our ability to pursue certain business initiatives."

In addition, foreign exchange gains (losses) may result from estimated tax liabilities which are expected to be realized in currencies other than the U.S. dollar.

Outlook

While remaining focused on our U.S. market, we plan to continue to expand our business in growing and sustainable markets, including Africa, Australia, China, Saudi Arabia, South America, and Turkey. Through our investment in Huaxia CPV (Inner Mongolia) Power Co., Ltd., with partners in China, we plan to manufacture and deploy our C7 Tracker systems in Inner Mongolia and other regions in China. We plan to expand our solar cell manufacturing capacity through the construction of a facility in the Philippines with a planned annual capacity of 350 MW once fully operational, which is expected to occur in fiscal 2016, with initial production expected during fiscal 2015.

We continue to improve our unique, differentiated solar cell and panel technology. Our new residential product line includes our SunPower X-Series Solar Panels with demonstrated average panel efficiencies exceeding 21.5%. We are focused on reducing the cost of our solar panels and systems and are working with our suppliers and partners along all steps of the value chain to reduce costs by improving manufacturing technologies and expanding economies of scale. We continue to emphasize improvement of our solar cell efficiency and LCOE and CCOE performance through enhancement of our existing products, development of new products and reduction of manufacturing cost and complexity in conjunction with our overall cost-control strategies. In fiscal 2014, we produced our first solar cells with over 25% efficiency in the lab and in fiscal 2015, we expect to reach production panel efficiencies of 23% using a simplified, lower cost manufacturing process.

We continue to see significant and increasing opportunities in technologies and capabilities adjacent to our core product offerings that can significantly reduce CCOE, including the integration of energy storage and energy management functionality into our systems, and have made investments to realize those opportunities, including our investment in Tendril Networks, our acquisition of SolarBridge Technologies, and our exclusive agreement with Sunverge Energy. We have licensed a data-driven ESM Platform to power the development of new Smart Energy applications designed to deliver personalized energy services to our customers. We have added advanced module-level control electronics to our portfolio of technology designed to enable longer series strings and significant balance of system components cost reductions in large arrays. We are developing next generation microinverters designed to eliminate the need to mount or assemble additional components on the roof or the side of a building and enable optimization and monitoring at the solar panel level to ensure maximum energy production by the solar system.

We also expect to make combined solar and distributed energy storage solutions broadly commercially available to certain customers in the United States and Australia in fiscal 2015 through an exclusive agreement to offer Sunverge SIS energy solutions comprising batteries, power electronics, and multiple energy inputs controlled by software in the cloud.

Projects Sold / Under Contract

The table below presents significant construction and development projects sold or under contract as of December 28, 2014:

Table of Contents

| Project | Location | Size (MW) | Third-Party Owner / Purchaser | Power Purchase Agreement(s) | Expected Completion of Revenue Recognition[3] |
|---|---|---|---|---|---|
| Solar Star Projects | California, USA | 748 | MidAmerican Energy Holdings Company | Southern California Edison | 2015 |
| Prieska Solar Project[1] | South Africa | 86 | Mulilo Prieska PV (RF) Proprietary Limited | Eskom Holdings Soc LTD | 2016 |
| Project Salvador[1] | Chile | 70 | Total S.A., Etrion Corporation, Solventus Energias Renovables | N/A[2] | 2015 |

1 We have entered into an EPC agreement and a long-term fixed price operations and maintenance ("O&M") agreement with the owners of the Prieska Solar Project and Project Salvador.
2 Electricity produced will be sold on the spot market.
3 Expected completion of revenue recognition assumes completion of construction in the stated fiscal year.

As of December 28, 2014, an aggregate of approximately $379 million of remaining revenue is expected to be recognized on projects reflected in the table above through the expected completion dates noted. Projects will be removed from the table above in the period in which substantially all of the revenue for such project has been recognized.

Projects with Executed Power Purchase Agreements - Not Sold / Not Under Contract

The table below presents significant construction and development projects with executed power purchase agreements, but not sold or under contract as of December 28, 2014:

| Project | Location | Size (MW) | Power Purchase Agreement(s) | Expected Completion of Revenue Recognition[1] |
|---|---|---|---|---|
| Quinto Solar Project | California | 135 | Southern California Edison | 2015 |
| Henrietta Solar Project | California | 128 | PG&E | 2016 |
| Hooper Solar Project | Colorado | 60 | Public Service Company of Colorado | 2016 |

1 Expected completion of revenue recognition assumes completion of construction and sale of the project in the stated fiscal year.

Our project pipeline extends beyond the projects represented in the tables above. Significant projects with development and milestone activities in progress will be excluded from the table above until an associated power purchase agreement has been executed.

Residential Leasing Program

In fiscal 2011, we launched our residential lease program with dealers in the United States, in partnership with third-party investors, which provides U.S. customers SunPower systems under 20-year lease agreements that include system maintenance and warranty coverage. SunPower residential lease customers have the option to purchase their leased solar systems upon the sale or transfer of their home. Our financing arrangements with third-party investors take various forms, including non-recourse financing arrangements with tax equity investors and non-recourse loan agreements. Leases are classified as either operating or sales-type leases in accordance with the relevant accounting guidelines. We plan to continue to expand the program, and are exploring opportunities to offer additional financial products to customers in the United States and in select international markets, certain of which may occur in fiscal 2015.

The program does not yet represent a material portion of our revenue. However, we may face additional material risks as the program expands, including our ability to obtain additional financing partners as well as our ability to collect finance and rent receivables. We believe that our concentration of credit risk is limited because of our large number of customers, credit

Table of Contents

quality of the customer base, small account balances for most of these customers, and customer geographic diversification. We have applied and will apply for the §48(c) solar commercial investment tax credit ("ITC") and Treasury Grant payments under Section 1603 of the American Recovery and Reinvestment Act (the "Cash Grant"), which are administered by the U.S. Internal Revenue Service ("IRS") and Treasury Department, respectively, for residential leases. We have structured the tax incentive applications, both in timing and amount, to be in accordance with the guidance provided by Treasury and IRS. If the amount or timing of the ITC or Cash Grant payments received in connection with the residential lease program varies from what we have projected, this may impact our revenues and margins and we may have to recognize losses, which may adversely impact our results of operations and cash flows. We make certain assumptions in accounting for the residential lease program, including, among others, the residual value of the leased systems. As the residential lease program grows, if the residual value of leased systems does not materialize as assumed, our results of operations would be adversely affected.

Results of Operations

Revenue

| | Fiscal Year | | | | | |
|---|---|---|---|---|---|---|
| (In thousands) | 2014 | % of total revenue | 2013 | % of total revenue | 2012 | % of total revenue |
| Americas | $2,323,441 | 77% | $1,676,472 | 67% | $1,696,348 | 70% |
| EMEA | 288,533 | 9% | 450,659 | 18% | 489,484 | 20% |
| APAC | 415,291 | 14% | 380,072 | 15% | 231,669 | 10% |
| Total revenue | $3,027,265 | | $2,507,203 | | $2,417,501 | |

Total Revenue: Our total revenue increased 21% during fiscal 2014 as compared to fiscal 2013 primarily due to timing of revenue recognition and significant progress on certain large-scale solar power systems involving real estate. During the fourth quarter of fiscal 2014, certain large-scale solar power systems involving real estate met the required criteria, as described in "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 1. The Company and Summary of Significant Accounting Policies," to recognize $429 million of incremental revenue under the full accrual method.

Our total revenue increased 4% during fiscal 2013 as compared to fiscal 2012 primarily due to an overall increase in components sales generally made under long-term supply agreements, and timing of revenue recognition on certain large-scale solar power systems involving real estate.

Concentrations: Sales outside the Americas Segment represented approximately 23% and 33% of total revenue recognized during fiscal 2014 and fiscal 2013, respectively. The increase in percentage of revenue within the Americas Segment was primarily driven by a significant increase in revenue due to timing of revenue recognition and significant progress on certain large-scale solar power systems involving real estate. The increase in percentage of revenue within the Americas Segment was also driven by lower revenue recognized within the EMEA Segment due to substantial completion of revenue recognition on certain utility-scale solar power systems, partially offset by an increase in component sales within the APAC Segment, primarily in Japan.

Sales outside the Americas Segment represented approximately 33% and 30% of total revenue recognized during fiscal 2013 and fiscal 2012, respectively. The decrease in percentage of sales within the Americas Segment was driven by additional component sales within the APAC Segment, primarily in Japan, as well as expanded business activities outside of Europe, including the Middle East and Africa.

The table below represents our significant customers that accounted for greater than 10 percent of total revenue in fiscal 2014, 2013, and 2012, respectively.

| Revenue | | Fiscal Year 2014 | | 2013 | | 2012 | |
|---|---|---|---|---|---|---|---|
| Significant Customers: | Business Segment | | | | | | |
| MidAmerican Energy Holdings Company | Americas | 49 | % | 25 | % | * | |
| NRG Solar, Inc. | Americas | * | | 17 | % | 35 | % |

Table of Contents

*denotes less than 10% during the period

Americas Revenue: Americas revenue increased 39% during fiscal 2014 as compared to fiscal 2013, primarily due to timing of revenue recognition and significant progress on certain large-scale solar power systems involving real estate. During the fourth quarter of fiscal 2014, certain large-scale solar power systems involving real estate met the required criteria, as described in "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 1. The Company and Summary of Significant Accounting Policies," to recognize $429 million of incremental revenue under the full accrual method.

Americas revenue decreased 1% during fiscal 2013 as compared to fiscal 2012 primarily as a result of lower volumes of component sales within the region and projects which were substantially completed during the period. The decrease was partially offset by an increase in revenue recognized on large-scale solar power systems involving real estate.

EMEA Revenue: EMEA revenue decreased 36% during fiscal 2014 as compared to fiscal 2013, primarily due to substantial completion of revenue recognition on certain utility-scale solar power systems.

EMEA revenue decreased 8% during fiscal 2013 as compared to fiscal 2012 due to lower component sales made through the global dealer network, partially offset by an increase in utility-scale solar projects and related revenue, including the sale of a 10 MW solar power system in Israel and revenue recognized on two solar power systems totaling 33 MW under construction in South Africa.

APAC Revenue: APAC revenue increased 9% during fiscal 2014 as compared to fiscal 2013 due to additional component sales made under long-term supply agreements, primarily in Japan, partially offset by lower average selling prices.

APAC revenue increased 64% in fiscal 2013 as compared to fiscal 2012 primarily a result of additional component sales in Japan made under long-term supply agreements, partially offset by declines in average selling prices.

Revenue recognized during fiscal 2014, 2013 and 2012 for each of the below categories was as follows:

| | Fiscal Year | | |
|---|---|---|---|
| Revenue by Significant Category (in thousands): | 2014 | 2013 | 2012 |
| Solar power components[1] | $943,652 | $917,960 | $985,436 |
| Solar power systems[2] | 1,896,696 | 1,399,972 | 1,318,269 |
| Residential leases[3] | 129,962 | 137,054 | 68,914 |
| Other revenue[4] | 56,955 | 52,217 | 44,882 |
| | $3,027,265 | $2,507,203 | $2,417,501 |

1 Solar power components represents direct sales of panels, balance of system components, and inverters to dealers, systems integrators, and residential, commercial, and utility customers in all regions.
2 Solar power systems represents revenue recognized in connection with our construction and development contracts.
3 Residential leases represents revenue recognized on solar power systems leased to customers under our solar lease program.
4 Other revenue includes revenue related to our solar power services and solutions, such as post-installation systems monitoring and maintenance and commercial power purchase agreements.

Solar Power Components: Revenue related to solar power components increased $25.7 million, or 3% in fiscal 2014 as compared to fiscal 2013 due to increased component sales in APAC, primarily in Japan. Revenue related to solar power components decreased $67.5 million or 7% in fiscal 2013 as compared to fiscal 2012 primarily due to lower sales in the EMEA Segment as a result of declines in European government incentives enacted during fiscal 2011, which negatively impacted demand and pricing within the region.

Solar Power Systems: Revenue related to our solar power systems increased $496.7 million, or 35% in fiscal 2014 as compared to 2013 primarily due to timing of revenue recognition and significant progress on certain large-scale solar power systems involving real estate. During the fourth quarter of fiscal 2014, certain large-scale solar power systems involving real estate met the required criteria, as described in "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 1. The Company and Summary of Significant Accounting Policies," to recognize $429 million of incremental revenue under the full accrual method.

Table of Contents

Revenue related to our solar power systems increased $81.7 million, or 6%, in fiscal 2013 as compared to fiscal 2012. The increase was primarily due to timing of revenue recognition on certain large-scale solar power systems involving real estate, partially offset by substantial completion of revenue recognition on other construction and development contracts during the period.

Residential Leases: Revenue recognized in connection with our residential lease program decreased $7.1 million, or 5% in fiscal 2014 as compared to fiscal 2013 primarily due to a decrease in the number of solar power systems placed in service that were accounted for as sales-type leases and was partially offset by an increase in rent and rebate revenue from operating leases.

Revenue recognized in connection with our residential lease program increased $68.1 million in fiscal 2013 as compared to fiscal 2012 which was attributable to additional leased solar power systems placed in service and additional facilities under which third-party investors hold noncontrolling interests in certain of our consolidated entities that hold SunPower solar power systems and leases with residential customers.

Cost of Revenue

| | Fiscal Year | | | | | |
|---|---|---|---|---|---|---|
| (In thousands) | 2014 | | 2013 | | 2012 | |
| Americas | $1,759,639 | | $1,299,701 | | $1,415,417 | |
| EMEA | 250,735 | | 419,416 | | 559,993 | |
| APAC | 391,764 | | 297,014 | | 195,693 | |
| Total cost of revenue | $2,402,138 | | $2,016,131 | | $2,171,103 | |
| Total cost of revenue as a percentage of revenue | 79 | % | 80 | % | 90 | % |
| Total gross margin percentage | 21 | % | 20 | % | 10 | % |

Total Cost of Revenue: Our total cost of revenue increased 19% in fiscal 2014 as compared to fiscal 2013 primarily as a result of the substantial completion of recognition of revenue and corresponding costs of certain large-scale solar power systems, in addition to a charge of $56.8 million recorded in the fourth quarter of fiscal 2014 in connection with a legal settlement related to First Philec, as described in "Item 3. Legal Proceedings," and a $52.0 million non-recurring gain in fiscal 2013 that was associated with the termination of a third-party supply contract.

Our total cost of revenue decreased 7% in fiscal 2013 as compared to fiscal 2012 as a result of, (i) an overall decrease in material and installation costs; (ii) a $52.0 million gain associated with the termination of a third-party supply contract in the third quarter of fiscal 2013; (iii) $13.9 million of accelerated depreciation; and (iv) $11.9 million of idle equipment impairment recorded during fiscal 2012 as described below. The decrease was partially offset by an overall increase in components sales and additional project construction and development activities.

Gross Margin

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012 |
| Americas | 24% | 22% | 17% |
| EMEA | 13% | 7% | (14)% |
| APAC | 6% | 22% | 16% |

Americas Gross Margin: Gross margin for our Americas Segment increased 2 percentage points during fiscal 2014 as compared to fiscal 2013 as a result of favorable margins on large utility-scale solar power systems recognized in fiscal 2014, including recognition of $145 million in incremental margin because we met the criteria to recognize revenue under the full accrual method, as described in "Item 8. Financial Statements and Supplementary Data—Notes to

Consolidated Financial Statements—Note 1. The Company and Summary of Significant Accounting Policies," for certain large-scale solar power systems involving real estate. The increase in fiscal 2014 gross margin was partially offset by a charge of $32.6 million recorded in the fourth quarter of fiscal 2014 in connection with a legal settlement related to First Philec, as described in "Item 3. Legal Proceedings," as well as a $25.6 million non-recurring gain in fiscal 2013 that was associated with the termination of a third-party supply contract. Gross margin in our Americas Segment increased 5 percentage points in fiscal 2013 as compared to

Table of Contents

fiscal 2012 primarily as a result of a $25.6 million non-recurring benefit in 2013 that was associated with the termination of a third-party supply contract.

EMEA Gross Margin: Gross margin for our EMEA Segment increased 6 percentage points in fiscal 2014 as compared to fiscal 2013 as a result of more favorable margins on ongoing solar power projects, increased activity in component sales within the region, and recoveries in average selling prices, partially offset by a charge of $6.1 million recorded in the fourth quarter of fiscal 2014 in connection with a legal settlement related to First Philec, as described in "Item 3. Legal Proceedings," as well as a $9.4 million non-recurring gain in fiscal 2013 that was associated with the termination of a third-party supply contract. Gross margin for our EMEA Segment increased 21 percentage points in fiscal 2013 as compared to fiscal 2012 as a result of increased activity in utility-scale solar projects within the region, as well as a $9.4 million gain associated with the termination of a third-party supply contract during fiscal 2013.

APAC Gross Margin: Gross margin for our APAC Segment decreased 16 percentage points during fiscal 2014 as compared to fiscal 2013 as a result of declines in average selling prices and an increase in the volume of components sold in fiscal 2014, primarily in Japan. The decrease in gross margin during fiscal 2014 is also the result of a charge of $18.1 million recorded in the fourth quarter of fiscal 2014 in connection with a legal settlement related to First Philec, as described in "Item 3. Legal Proceedings," as well as a $17.0 million non-recurring gain in fiscal 2013 that was associated with the termination of a third-party supply contract. Gross margin for our APAC Segment increased 6 percentage points during fiscal 2013 as compared to fiscal 2012 as a result of reductions in material and other costs at a rate greater than declines in average selling prices as well as a $17.0 million non-recurring gain associated with the termination of a third-party supply contract in fiscal 2013.

Research and Development ("R&D")

| | Fiscal Year | | | | | |
|---|---|---|---|---|---|---|
| (In thousands) | 2014 | | 2013 | | 2012 | |
| R&D | $73,343 | | $58,080 | | $63,456 | |
| As a percentage of revenue | 2 | % | 2 | % | 3 | % |

R&D expense increased $15.3 million, or 26%, in fiscal 2014 as compared to fiscal 2013 primarily due to a $10.3 million increase in labor costs as a result of additional headcount and salary related expenses, as well as an increase in other net expenses such as consulting and outside services supporting programs related to our next generation solar technology. These increases were partially offset by contributions under the R&D Agreement with Total.

R&D expense decreased $5.4 million, or 8%, in fiscal 2013 as compared to fiscal 2012 primarily due to (i) a $2.9 million decrease in labor costs; (ii) a $2.2 million charge recorded in fiscal 2012 related to an impairment of equipment recorded as a result of changes in the deployment plan for our next generation solar cell technology in one of our Fabs; and (iii) $1.7 million of contributions from Total received in fiscal 2013 in connection with projects under the R&D Agreement (See "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 2. Transactions with Total and Total S.A.").

Sales, General and Administrative ("SG&A")

| | Fiscal Year | | | | | |
|---|---|---|---|---|---|---|
| (In thousands) | 2014 | | 2013 | | 2012 | |
| SG&A | $288,321 | | $271,481 | | $310,246 | |
| As a percentage of revenue | 10 | % | 11 | % | 13 | % |

SG&A expense increased $16.8 million, or 6% during fiscal 2014 as compared to fiscal 2013 primarily due to an increase in marketing activities.

SG&A expense decreased $38.8 million, or 12%, during fiscal 2013 as compared to fiscal 2012 primarily as a result of our cost-control strategy implemented in response to the changes in the European market and the resulting restructuring activities in fiscal 2012 as well as a decrease in acquisition and integration costs that were incurred during fiscal 2012 as a result of our acquisition of Tenesol S.A. in January 2012. Additionally contributing to the decrease was a reduction in legal expenses as a result of the settlement of the securities class action lawsuit in the fourth quarter of fiscal 2012.

Table of Contents

Restructuring Charges

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012 |
| Restructuring charges | $12,223 | $2,602 | $100,823 |
| As a percentage of revenue | — % | — % | 4 % |

Restructuring charges during fiscal 2014 increased $9.6 million as compared to fiscal 2013 and were primarily related to severance charges associated with our November 2014 restructuring plan. Remaining restructuring charges are associated with legacy restructuring plans approved in fiscal 2012 and 2011.

Total restructuring charges decreased $98.2 million during fiscal 2013 as compared to fiscal 2012 due to the substantial completion of the activities associated with legacy restructuring plans approved in fiscal 2012 and 2011.

See "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 8. Restructuring" for further information regarding our restructuring plans.

Other Expense, Net

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012 |
| Interest income | $2,583 | $6,017 | $1,091 |
| Interest expense | (69,658) | (108,739) | (84,120) |
| Gain on share lending arrangement | — | — | 50,645 |
| Other, net | 449 | (14,604) | (9,571) |
| Other expense, net | $(66,626) | $(117,326) | $(41,955) |
| As a percentage of revenue | (2)% | (5)% | (2)% |

Other expense, net decreased $50.7 million or 43% in fiscal 2014 as compared to fiscal 2013 primarily driven by a decrease in interest expense due to the expiration of the Liquidity Support Agreement and the maturity of the 4.75% debentures due in April 2014, as well as favorable changes in the fair value of foreign currency derivatives and other net expenses. Other net expenses declined primarily as a result of charges, such as $4.9 million related to impairment of investments in unconsolidated investees, which occurred in fiscal 2013 and did not recur in fiscal 2014.

Other expense, net increased $75.4 million, or 180%, in fiscal 2013 as compared to fiscal 2012. The overall increase was primarily driven by (i) a $50.6 million gain recorded in the third quarter of fiscal 2012 related to the recovery of claims related to unreturned shares under our former share lending arrangement with Lehman Brothers International (Europe) Limited, which no similar gain was recorded in fiscal 2013; (ii) a $24.6 million increase in interest expense primarily due to additional non-cash interest expense as a result of amortization expense recorded for warrants issued to Total in connection with the Liquidity Support Agreement as well as additional long-term financing arrangements outstanding during the period; (iii) a $8.0 million net unfavorable change in the fair value of non-designated foreign currency derivatives; and (iv) $4.9 million in charges related to impairment of investments in unconsolidated investees, offset by a decrease in other net expenses of $12.7 million.

Income Taxes

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012 |
| Provision for income taxes | $(8,760) | $(11,905) | $(21,842) |
| As a percentage of revenue | — % | — % | (1)% |

In fiscal 2014, our income tax provision of $8.8 million on income before income taxes and equity in earnings of unconsolidated investees of $184.6 million, was primarily due to tax expense in profitable foreign jurisdictions, prior period provision to return adjustments in the United States and foreign jurisdictions, valuation allowance release from an acquisition in the current period, as well as minimum taxes and adjustments to unrecognized tax benefits.

Table of Contents

In fiscal 2013, our income tax provision of $11.9 million, on income before income taxes and equity in earnings of $41.6 million was due to tax on foreign income in certain jurisdictions where our operations were profitable, adjustments to unrecognized tax benefits, prior year return to provision adjustments and a valuation allowance recorded against a foreign deferred tax asset.

A material amount of our total revenue is generated from customers located outside of the United States, and a substantial portion of our assets and employees are located outside of the United States. United States income taxes and foreign withholding taxes have not been provided on the undistributed earnings of our non-United States subsidiaries as such earnings are intended to be indefinitely reinvested in operations outside the United States to the extent that such earnings have not been currently or previously subjected to taxation of the United States.

We record a valuation allowance to reduce our United States and France deferred tax assets to the amount that is more likely than not to be realized. In assessing the need for a valuation allowance, we consider historical levels of income, expectations and risks associated with the estimates of future taxable income and ongoing prudent and feasible tax planning strategies. In the event we determine that we would be able to realize additional deferred tax assets in the future in excess of the net recorded amount, or if we subsequently determine that realization of an amount previously recorded is unlikely, we would record an adjustment to the deferred tax asset valuation allowance, which would change income tax in the period of adjustment. As of December 28, 2014, we believe there is insufficient evidence to realize additional deferred tax assets in fiscal 2014.

Equity in Earnings (Loss) of Unconsolidated Investees

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012 |
| Equity in earnings (loss) of unconsolidated investees | $7,241 | $3,872 | $(515) |
| As a percentage of revenue | — % | — % | — % |

In fiscal 2014, 2013 and 2012, our equity in earnings (loss) of unconsolidated investees was a net gain of $7.2 million, $3.9 million and a net loss of $0.5 million, respectively, primarily due to increased activities at our AUOSP joint venture.

Net Income

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012 |
| Net income (loss) | $183,095 | $33,550 | $(352,020) |

Net income increased $149.5 million in fiscal 2014 as compared to fiscal 2013. The increase in net income was primarily driven by: (i) a $134.1 million increase in gross margin due to favorable margins on various large utility-scale solar power systems recognized coupled with an overall decrease in material and installation costs, and (ii) a $50.7 million decrease in Other expense, net due to lower interest expense primarily as a result of the expiration of the Liquidity Support Agreement during the first quarter of fiscal 2014, but was partially offset by (iii) a $56.8 million legal settlement related to First Philec, as described in "Item 3. Legal Proceedings," as well as (iv) a $41.7 million increase in operating expenses.

Net income increased $385.6 million and moved from a net loss to a net income position in fiscal 2013 over fiscal 2012. The increase in net income was primarily driven by: (i) a $244.7 million increase in gross margin due to favorable margins on various large utility-scale solar power systems recognized during fiscal 2013, including an overall decrease in material and installation costs, as well as a $52.0 million non-cash gain associated with the termination of a third-party supply contract in the third quarter of fiscal 2013; (ii) a $98.2 million decrease in restructuring expense due to the substantial completion of the activities associated with legacy restructuring plans approved in fiscal 2012 and 2011; (iii) $59.6 million of goodwill and other intangible asset impairment recorded in the third quarter of fiscal 2012; and (iv) a $44.1 million decrease in other operating expenses attributable to our cost-control strategy implemented in response to the changes in the European market and resulting restructuring activities. These increases were partially offset by a $50.6 million gain recorded in the third quarter of fiscal 2012 related to the recovery of claims related to unreturned shares under our former share lending arrangement with LBIE following their bankruptcy.

Information about other significant variances in our results of operations is described above.

Net Loss Attributable to Noncontrolling Interests and Redeemable Noncontrolling Interests

Table of Contents

| (In thousands) | Fiscal Year 2014 | 2013 | 2012 |
|---|---|---|---|
| Net loss attributable to noncontrolling interests and redeemable noncontrolling interests | $62,799 | $62,043 | $— |

We have entered into facilities with third-party investors under which the parties invest in entities that hold SunPower solar power systems and leases with residential customers. We determined that we hold controlling interests in these less-than-wholly-owned entities and have fully consolidated these entities as a result. We apply the hypothetical liquidation value method in allocating recorded net income (loss) to each investor based on the change in the reporting period, of the amount of net assets of the entity to which each investor would be entitled to under the governing contractual arrangements in a liquidation scenario.

In fiscal 2014 and 2013, we attributed $62.8 million and $62.0 million, respectively, of net losses primarily to the third-party investors as a result of allocating certain assets, including tax credits and accelerated tax depreciation benefits, to the investors. The $0.8 million increase in net loss attributable to noncontrolling interests and redeemable noncontrolling interests is primarily the result of additional leases placed in service under existing and new facilities executed with third-party investors in the period.

Table of Contents

Liquidity and Capital Resources

Cash Flows

A summary of the sources and uses of cash and cash equivalents is as follows:

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012 |
| Net cash provided by operating activities | $8,360 | $162,429 | $28,903 |
| Net cash used in investing activities | $(309,239) | $(153,178) | $(220,067) |
| Net cash provided by (used in) financing activities | $498,566 | $294,068 | $(75,708) |

Operating Activities

Net cash provided by operating activities in fiscal 2014 was $8.4 million and was primarily the result of: (i) a net income of $183.1 million; (ii) a $205.5 million decrease in prepaid expenses and other assets driven by a decline in deferred costs related to the Solar Star Projects; (iii) net non-cash charges of $186.0 million related to depreciation, non-cash interest charges, and stock based compensation; (iv) $45.8 million increase in accounts payable and other accrued liabilities; and (v) $21.7 million net increase in deferred income taxes and other liabilities. This was partially offset by: (i) $225.2 million decrease in billings in excess of costs and estimated earnings driven by a decline related to the Solar Star Projects; (ii) $155.3 million increase in costs and estimated earnings in excess of billings driven by an increase related to the Solar Star Projects; (iii) $94.3 million increase in long-term financing receivables related to our net investment in sales-type leases; (iv) $68.2 million increase in project assets primarily related to our Quinto Solar Energy project; (v) $26.3 million increase in advance payments made to suppliers; (vi) $31.5 million increase in accounts receivable; (vii) $23.5 million decrease in customer advances; and (viii) $9.4 million net change in other operating assets.

Net cash provided by operating activities in fiscal 2013 was $162.4 million and was primarily the result of: (i) a net income of $33.6 million; (ii) a $120.6 million increase in accounts payable and other accrued liabilities; (iii) a $83.1 million increase in billings in excess of costs and estimated earnings; and (iv) other net non-cash charges of $142.6 million primarily related to depreciation, non-cash interest charges, and stock based compensation, which includes a gain of $52.0 million on contract termination; and (v) other net changes in operating assets and liabilities of $4.1 million. This was partially offset by: (i) an increase of $107.5 million in long-term financing receivables, net related to our net investment in sales-type leases; (ii) a $28.3 million increase in inventory and project assets for construction of future and current projects primarily in North America; (iii) an increase in accounts receivable of $53.8 million; and (iv) an increase of $31.9 million in additional advance payments made to suppliers.

Net cash provided by operating activities in fiscal 2012 was $28.9 million and was primarily the result of: (i) a non-cash loss of $77.8 million on retirement of property, plant and equipment as primarily the result of our restructuring plan regarding Fab 1 consolidation and changes in the deployment plan for our next generation of solar cell technology; (ii) a $65.7 million increase in customer advance due to additional prepayments received from AUOSP; (iii) non-cash impairment charges totaling $59.6 million associated with goodwill and other intangible asset impairment in the third quarter of fiscal 2012; (iv) a $54.7 million increase in billings in excess of costs and estimated earnings related to contractual timing of system project billings; (v) other net changes in operating assets and liabilities of $126.5 million; and (vi) $207.3 million of other, net non-cash charges primarily attributable to depreciation and amortization, and stock based compensation. This was partially offset by (i) a net loss of $352.0 million; (ii) increases in prepaid expense and other assets of $73.7 million primarily related to deferred costs associated with several large utility-scale solar projects under construction in North America and deferred costs associated with solar power systems to be leased; (iii) an increase of $62.4 million in long-term financing receivables, net related to our net investment in sales-type leases; (iv) a $50.6 million gain in connection with our former share lending arrangement with LBIE which was classified as cash from financing activities (see below); and (v) an increase in project assets of $23.4 million for construction of future and current projects primarily in North America.

Investing Activities

Net cash used in investing activities in fiscal 2014 was $309.2 million, which included: (i) $166.9 million related to capital expenditures primarily related to the expansion of our solar cell manufacturing capacity and costs associated with solar power systems, leased and to be leased; (ii) $97.0 million paid for investments in unconsolidated investees driven by a $72.0 million equity contribution to AUOSP; (iii) $35.1 million paid for acquisitions; and (iv) a $11.6 million increase in restricted cash. This was partially offset by $1.4 million proceeds from maturities of marketable securities.

Net cash used in investing activities in fiscal 2013 was $153.2 million, which included: (i) $99.9 million in purchases of marketable securities; (ii) $97.2 million related to costs associated with solar power systems leased and to be leased; (iii) $34.1 million of capital expenditures primarily associated with improvements to our current generation solar cell manufacturing technology; (iv) $21.3 million related to costs associated with solar power systems under the financing method; and (v) $17.8 million paid for investments in unconsolidated investees. This was partially offset by (i) $100.9 million in proceeds from sales or maturities of marketable securities; (ii) $15.5 million of restricted cash released back to us due to expirations of fully cash-collateralized letters of credit under the September 2011 Letter of Credit Facility with Deutsche Bank Trust and transition of outstanding letters of credit into the August 2011 Deutsche Bank facility under which payment of obligations is uncollateralized and guaranteed by Total S.A; and (iii) $0.6 million in proceeds from the sale of equipment to a third-party.

Net cash used in investing activities in fiscal 2012 was $220.1 million, which included (i) $255.2 million related to capital expenditures primarily associated with improvements to our current generation solar cell manufacturing technology, leasehold improvements associated with our San Jose, California office, the build-out of our new solar panel assembly facility in Mexicali, Mexico, and costs associated with solar power systems leased and to be leased; (ii) a $13.8 million strategic equity investment in unconsolidated investees; and (iii) $1.4 million in purchases of marketable securities. This was partially offset by (i) $32.6 million of restricted cash released back to us due to expirations of fully cash-collateralized letters of credit under the September 2011 Letter of Credit Facility with Deutsche Bank Trust and transition of outstanding letters of credit into the August 2011 Deutsche Bank facility under which payment of obligations is guaranteed by Total S.A.; (ii) $17.4 million in proceeds from the sale of our equity interest in our Woongjin Energy joint venture on the open market; and (iii) $0.4 million in proceeds from the sale of equipment to a third-party.

Financing Activities

Net cash provided by financing activities in fiscal 2014 was $498.6 million, which included: (i) $395.3 million in net proceeds from the issuance of our 0.875% convertible debentures due 2021; (ii) $100.7 million of contributions from noncontrolling interests and redeemable noncontrolling interests related to the residential lease program; (iii) $81.9 million of proceeds from issuance of non-recourse debt financing to finance solar power systems and leases under our residential lease program; (iv) $61.5 million in proceeds from issuance of project loans; (v) $46.4 million in net proceeds from sale-leaseback financing arrangements; and (vi) $3.4 million in proceeds from exercise of stock options and excess tax benefit from stock-based compensation. This was partially offset by: (i) $57.5 million in purchases of stock for tax withholding obligations on vested restricted stock; (ii) $42.3 million cash paid to repurchase convertible debt; (iii) a $40.7 million assumption of a project loan by a customer; (iv) $17.1 million in repayments of bank loans, project loans and other debt; (v) $15.7 million of repayments of residential lease financing; (vi) a $12.2 million net payment to settle the 4.75% Bond Hedge and Warrant; and (vii) $5.1 million of distributions to noncontrolling interests and redeemable noncontrolling interests.

Net cash provided by financing activities in fiscal 2013 was $294.1 million, which included: (i) $296.3 million of proceeds, net of issuance costs, from the issuance of our 0.75% debentures during the second quarter of fiscal 2013 ("the 0.75% debentures due 2018"); (ii) $82.4 million from project loans; (iii) $96.4 million of financing proceeds associated with our residential lease program; (iv) $100.0 million of contributions from noncontrolling interests; and (v) $73.1 million of proceeds associated with sale leaseback financing arrangements. This was partially offset by: (i) $290.5 million repayments of our outstanding borrowings primarily under the Credit Agricole revolving credit facility, project loans and other debt; (ii) $34.9 million assumption of project loans by customers; (iii) $19.8 million in purchases of stock for tax withholding obligations on vested restricted stock; and (iv) 8.8 million in repayments of sale leaseback financing.

Net cash used in financing activities in fiscal 2012 was $75.7 million, which included: (i) $169.6 million of cash distributions in connection with the transfer of entities under common control; (ii) $198.6 million paid to fully repurchase the outstanding 1.25% convertible debentures; (iii) repayment of 154.1 million of our outstanding borrowings primarily under the Credit Agricole revolving credit facility; and (iv) $5.7 million in purchases of stock for tax withholding obligations on vested restricted stock. This was partially offset by (i) $163.6 million in proceeds from the sale of 18.6 million shares of our common stock to Total; (ii) drawdowns of $150.0 million under the Credit Agricole revolving credit facility; (iii) $50.6 million of proceeds from the recovery of a claim in connection with our former share lending arrangement with LBIE; (iv) $27.6 million from project loans; and (v) $60.4 million of financing proceeds associated with our residential lease program.

Debt and Credit Sources

Convertible Debentures

Table of Contents

As of December 28, 2014, an aggregate principal amount of $400.0 million of the 0.875% debentures due 2021 remained issued and outstanding. The 0.875% debentures due 2021 were issued on June 11, 2014. Interest on the 0.875% debentures due 2021 is payable on June 1 and December 1 of each year. Holders are able to exercise their right to convert the debentures at any time into shares of our common stock at an initial conversion price approximately equal to $48.76 per share, subject to adjustment in certain circumstances. If not earlier repurchased or converted, the 0.875% debentures due 2021 mature on June 1, 2021. Holders may require us to repurchase all or a portion of their 0.875% debentures due 2021, upon a fundamental change, as described in the related indenture, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. If we undergo a non-stock change of control fundamental change, as described in the related indenture, the 0.875% debentures due 2021 will be subject to redemption at our option, in whole but not in part, for a period of 30 calendar days following a repurchase date relating to the non-stock change of control fundamental change, at a cash redemption price equal to 100% of the principal amount plus accrued and unpaid interest. Otherwise, the 0.875% debentures due 2021 are not redeemable at our option prior to the maturity date. In the event of certain events of default, Wells Fargo Bank, National Association ("Wells Fargo"), the trustee, or the holders of a specified amount of then-outstanding 0.875% debentures due 2021 will have the right to declare all amounts then outstanding due and payable.

As of December 28, 2014, an aggregate principal amount of $300.0 million of the 0.75% debentures due 2018 remained issued and outstanding. The 0.75% debentures due 2018 were issued on May 29, 2013. Interest on the 0.75% debentures due 2018 is payable on June 1 and December 1 of each year. Holders are able to exercise their right to convert the debentures at any time into shares of our common stock at an initial conversion price equal to $24.95 per share. The applicable conversion rate may be subject to adjustment in certain circumstances. If not earlier converted, the 0.75% debentures due 2018 mature on June 1, 2018. Holders may require us to repurchase all or a portion of their 0.75% debentures due 2018, upon a fundamental change, as described in the related indenture, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. If we undergo a non-stock change of control fundamental change, as described in the related indenture, the 0.75% debentures due 2018 will be subject to redemption at our option, in whole but not in part, for a period of 30 calendar days following a repurchase date relating to the non-stock change of control fundamental change, at a cash redemption price equal to 100% of the principal amount plus accrued and unpaid interest. Otherwise, the 0.75% debentures due 2018 are not redeemable at our option prior to the maturity date. In the event of certain events of default, Wells Fargo, the trustee, or the holders of a specified amount of then-outstanding 0.75% debentures due 2018 will have the right to declare all amounts then outstanding due and payable.

As of December 28, 2014, an aggregate principal amount of $249.6 million of the 4.50% debentures due 2015 remained issued and outstanding. Interest on the 4.50% debentures is payable on March 15 and September 15 of each year. The 4.50% debentures mature on March 15, 2015. The 4.50% debentures are convertible only into cash, and not into shares of our common stock (or any other securities). As of December 28, 2014, the holders of the 4.50% debentures due 2015 have the right to convert the debentures at any time, based on an initial conversion price of $22.53 per share of our common stock. The conversion price will be subject to adjustment in certain events, such as distributions of dividends or stock splits. Upon conversion, we will deliver an amount of cash calculated by reference to the price of our common stock over the applicable observation period. We may not redeem the 4.50% debentures prior to maturity. Holders may also require us to repurchase all or a portion of their 4.50% debentures upon a fundamental change, as defined in the debenture agreement, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as our failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.50% debentures will have the right to declare all amounts then outstanding due and payable. Concurrent with the issuance of the 4.50% debentures, we entered into privately negotiated convertible debenture hedge transactions and warrant transactions (the "4.50% Warrants") which represent a call spread overlay with respect to the 4.50% debentures (the "CSO2015"), assuming full performance of the counterparties and 4.50%

Warrants strike prices in excess of the conversion price of the 4.50% debentures. Please see "Item 1A. Risk Factors—Risks Related to our Debt and Equity Securities—Conversion of our outstanding 0.75% debentures, 0.875% debentures, our warrants related to our outstanding 4.50% debentures, and future substantial issuances or dispositions of our common stock or other securities, could dilute ownership and earnings per share or cause the market price of our stock to decrease."

Mortgage Loan Agreement with IFC

On May 6, 2010, we entered into a mortgage loan agreement with IFC. Under the loan agreement, we borrowed $75.0 million and are required to repay the amount borrowed starting two years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. We are required to pay interest of LIBOR plus 3% per annum on outstanding borrowings; a front-end fee of 1% on the principal amount of borrowings at the time of borrowing; and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed. We may prepay all or a part of the outstanding principal, subject to a 1% prepayment premium. We have pledged certain assets as collateral supporting repayment obligations.

As of December 28, 2014, we had $47.5 million outstanding under the mortgage loan agreement. Additionally, in accordance with the terms of the mortgage loan agreement, we are required to establish a debt service reserve account which shall contain the amount, as determined by IFC, equal to the aggregate principal and interest due on the next succeeding interest payment date after such date. As of December 28, 2014, we had restricted cash and cash equivalents of $9.2 million related to the IFC debt service reserve.

Loan Agreement with California Enterprise Development Authority ("CEDA")

On December 29, 2010, we borrowed from CEDA the proceeds of the $30.0 million aggregate principal amount of CEDA's tax-exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (the "Bonds") maturing April 1, 2031 under a loan agreement with CEDA. Certain of our obligations under the loan agreement were contained in a promissory note dated December 29, 2010 issued by us to CEDA, which assigned the promissory note, along with all right, title and interest in the loan agreement, to Wells Fargo, as trustee, with respect to the Bonds for the benefit of the holders of the Bonds. The Bonds bear interest at a fixed-rate of 8.50% per annum.

As of December 28, 2014, the $30.0 million aggregate principal amount of the Bonds was classified as "Long-term debt" in our Consolidated Balance Sheets.

July 2013 Revolving Credit Facility with Credit Agricole

On July 3, 2013, we entered into a revolving credit agreement with Credit Agricole, as administrative agent, and certain financial institutions ("the July 2013 revolving credit facility"), under which we may borrow up to $250.0 million. On August 26, 2014, the Company entered into an amendment to the revolving credit facility that extends, among other things, the maturity date of the facility from July 3, 2016 to August 26, 2019 (the "Maturity Date"). Amounts borrowed may be repaid and reborrowed until the Maturity Date. The revolving credit facility allows us to request increases to the available capacity of the revolving credit facility to an aggregate of $300.0 million, subject to the satisfaction of certain conditions. The revolving credit facility includes representations, covenants, and events of default customary for financing transactions of this type. The revolving credit facility was entered into in conjunction with the delivery by Total S.A. of a guarantee of our obligations under the facility. On January 31, 2014, (i) our obligations under the revolving credit facility became secured by a pledge of certain accounts receivable and inventory, (ii) certain of our subsidiaries entered into guaranties of the revolving credit facility, and (iii) Total S.A.'s guarantee of our obligations under the revolving credit facility expired (collectively, the "Restructuring").

We are required to pay interest on outstanding borrowings under the facility and fees of (a) with respect to any LIBOR rate loan, an amount ranging from 1.50% to 2.00% (depending on our leverage ratio from time to time) plus the LIBOR rate divided by a percentage equal to one minus the stated maximum rate of all reserves required to be maintained against "Eurocurrency liabilities" as specified in Regulation D; (b) with respect to any alternate base rate loan, an amount ranging from 0.50% to 1.00% (depending on our leverage ratio from time to time) plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.50%, and (3) the one-month LIBOR rate plus 1%; and (c) a commitment fee ranging from 0.25% to 0.35% (depending on our leverage ratio from time to time) per annum on funds available for borrowing and not borrowed.

As of December 28, 2014, the Company had no outstanding borrowings under the revolving credit facility.

August 2011 Letter of Credit Facility with Deutsche Bank

On August 9, 2011, we entered into a letter of credit facility agreement with Deutsche Bank, as issuing bank and as administrative agent, and certain financial institutions. Payment of obligations under the letter of credit facility is guaranteed by Total S.A. pursuant to the Credit Support Agreement between us and Total S.A. The letter of credit facility provides for the issuance, upon our request, of letters of credit by the issuing banks thereunder in order to support certain of our obligations, in an aggregate amount not to exceed $878.0 million for the period from January 1, 2014 through December 31, 2014. Aggregate letter of credit amounts may be increased upon the agreement of the parties but, otherwise, may not exceed (i) $936.0 million for the period from January 1, 2015 through December 31, 2015, and (ii) $1.0 billion for the period from January 1, 2016 through June 28, 2016. Each letter of credit issued under the letter of credit facility must have an expiration date no later than the second anniversary of the issuance of that letter of credit, provided that up to 15% of the outstanding value of the letters of credit may have an expiration date of between two and three years from the date of issuance.

As of December 28, 2014, letters of credit issued under the August 2011 letter of credit facility with Deutsche Bank totaled $654.7 million.

Table of Contents

September 2011 Letter of Credit Facility with Deutsche Bank and Deutsche Bank Trust Company Americas (together, "Deutsche Bank Trust")

On September 27, 2011, we entered into a letter of credit facility with Deutsche Bank Trust which provides for the issuance, upon request by us, of letters of credit to support our obligations in an aggregate amount not to exceed $200.0 million. Each letter of credit issued under the facility is fully cash-collateralized and we have entered into a security agreement with Deutsche Bank Trust, granting them a security interest in a cash collateral account established for this purpose.

As of December 28, 2014 letters of credit issued under the Deutsche Bank Trust facility amounted to $1.6 million, which were fully collateralized with restricted cash as classified on the Consolidated Balance Sheets.

Project Debt

On October 17, 2014, we, through a wholly-owned subsidiary (the "Project Company"), entered into an approximately $377.0 million credit facility with Santander Bank, N.A., Mizuho Bank, Ltd. and Credit Agricole (the "Quinto Credit Facility") in connection with the planned construction of the approximately 135 MW Quinto Solar Energy Project, located in Merced County, California (the "Quinto Project").

The Quinto Credit Facility includes approximately $318.0 million in construction loan commitments and approximately $59.0 million in letter of credit commitments. Principal and accrued interest on the construction loans are convertible into term loans following the end of the construction period. The Quinto Credit Facility matures at the end of the seventh year following the term loan conversion, with semi-annual principal payments computed on a 19-year amortization schedule and a balloon payment at maturity. Generally, borrowings under the Quinto Credit Facility will bear interest of (a) with respect to any LIBOR rate loan, either 1.625% or 1.875% (until December 31, 2019 and on December 31, 2019 and thereafter, respectively) plus the LIBOR rate divided by a percentage equal to one minus the stated maximum rate of all reserves required to be maintained against "Eurocurrency Liabilities" as specified in Regulation D and (b) with respect to any alternate base rate loan, either 0.625% or 0.875% (until December 31, 2019 and on December 31, 2019 and thereafter, respectively) plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.50%, and (3) the one-month LIBOR rate plus 1%. In addition, a commitment fee of 0.50% per annum is charged on funds available for borrowing and not borrowed. All outstanding indebtedness under the Quinto Credit Facility may be voluntarily prepaid in whole or in part without premium or penalty, other than customary breakage costs. We have committed to invest approximately $139 million of equity in the Quinto Project Company, with such investments to be made over time in connection with the completion of project development milestones. The Quinto Credit Facility is secured by the assets of, and equity in, the Project Company, but is otherwise non-recourse to us and our affiliates. The Quinto Credit Facility contains certain affirmative and negative covenants that limit or restrict, subject to certain exceptions, the ability of the Project Company to do certain things including the incurrence of indebtedness or liens, payment of dividends, merging or consolidating, transactions with affiliates or changing the nature of its business.

Proceeds from the Quinto Credit Facility will be used primarily to fund the construction of the Quinto Project under a turnkey EPC agreement between the Project Company and SunPower Corporation, Systems, our wholly-owned subsidiary.

As of December 28, 2014 we had outstanding borrowings of $61.5 million under the Quinto Credit Facility.

Liquidity

As of December 28, 2014, we had unrestricted cash and cash equivalents of $956.2 million as compared to $762.5 million as of December 29, 2013. Our cash balances are held in numerous locations throughout the world and as of December 28, 2014, we had approximately $406.8 million held outside of the United States. This offshore cash is used to fund operations of our EMEA and APAC business units as well as non-U.S. manufacturing operations, which require local payment for product materials and other expenses. The amounts held outside of the United States represent the earnings of our foreign subsidiaries which, if repatriated to the United States under current law, would be subject to United States federal and state tax less applicable foreign tax credits. Repatriation of earnings that have not been subjected to U.S. or foreign withholding tax and that have been indefinitely reinvested outside the U.S. could result in additional United States federal income tax or foreign withholding tax payments in future years.

On July 5, 2010, we formed our AUOSP joint venture. Under the terms of the joint venture agreement, we and AU Optronics Singapore Pte. Ltd. ("AUO") each own 50% of AUOSP. We are each obligated to provide additional funding to AUOSP in the future. Under the joint venture agreement, each shareholder agreed to contribute additional amounts to the joint venture through 2014 amounting to $169.0 million, or such lesser amount as the parties may mutually agree (see the Contractual Obligations table below). However, AUOSP's $300 million secured loan facility in connection with Fab 3A

Table of Contents

includes a covenant that requires the joint venture partners to make certain minimum equity injections in the beginning of fiscal 2015. In addition, if AUOSP, or either shareholder requests additional equity financing to AUOSP, then the shareholders will each be required to make additional cash contributions of up to $50.0 million in the aggregate. See also "Part I. Item 1A. Risk Factors—Risks Related to Our Operations—If we experience interruptions in the operation of our solar cell production lines, or we are not successful in operating our joint venture AUOSP, our revenue and results of operations may be materially and adversely affected."

Our 4.50% debentures due 2015 are convertible into cash. Under the terms of the 4.50% Warrants, we sold to affiliates of certain of the initial purchasers of the 4.50% cash convertible debentures warrants to acquire, subject to anti-dilution adjustments, up to 11.1 million shares of our common stock. The bond hedge and warrants described in "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 11. Debt and Credit Sources" represent a call spread overlay with respect to the 4.50% debentures. Assuming full performance by the counterparties (and 4.50% Warrants strike prices in excess of the conversion price of the 4.50% debentures), the transactions effectively reduce our potential payout over the principal amount on the 4.50% debentures upon conversion of the 4.50% debentures.

We expect total capital expenditures related to purchases of property, plant and equipment in the range of $300 million to $350 million in fiscal 2015 in order to increase our manufacturing capacity, improve our current and next generation solar cell manufacturing technology, and other projects. In addition, we expect to invest a significant amount of capital to develop solar power systems and plants for sale to customers. The development of solar power plants can require long periods of time and substantial initial investments. Our efforts in this area may consist of all stages of development, including land acquisition, permitting, financing, construction, operation and the eventual sale of the projects. We often choose to bear the costs of such efforts prior to the final sale to a customer, which involves significant upfront investments of resources (including, for example, large transmission deposits or other payments, which may be non-refundable), land acquisition, permitting, legal and other costs, and in some cases the actual costs of constructing a project, in advance of the signing of PPAs and EPC contracts and the receipt of any revenue, much of which is not recognized for several additional months or years following contract signing. Any delays in disposition of one or more projects could have a negative impact on our liquidity.

Certain of our customers also require performance bonds issued by a bonding agency or letters of credit issued by financial institutions, which are returned to us upon satisfaction of contractual requirements. If there is a contractual dispute with the customer, the customer may withhold the security or make a draw under such security, which could have an adverse impact on our liquidity. Obtaining letters of credit may require adequate collateral. All letters of credit issued under our August 2011 Deutsche Bank facility are guaranteed by Total S.A. pursuant to the Credit Support Agreement. Our September 2011 letter of credit facility with Deutsche Bank Trust is fully collateralized by restricted cash, which reduces the amount of cash available for operations. As of December 28, 2014, letters of credit issued under the Deutsche Bank Trust facility amounted to $1.6 million which were fully collateralized with restricted cash on the Consolidated Balance Sheets.

In fiscal 2011, we launched our residential lease program with dealers in the United States, in partnership with a third-party financial institution, which allows customers to obtain SunPower systems under lease agreements up to 20 years, subject to financing availability. We have entered into facilities with financial institutions that will provide financing to support additional residential solar lease projects. Under the terms of certain programs we receive upfront payments for periods under which the third-party financial institution has agreed to assume collection risk for certain residential leases. Changes in the amount or timing of upfront payments received from the financial institutions may have an impact on our cash position within the next twelve months. The normal collection of monthly rent payments for leases placed in service is not expected to have a material impact on our cash position within the next twelve months. We have entered into facilities with third-party investors under which both parties will invest in entities that hold SunPower solar power systems and leases with residential customers. We determined that we hold a controlling interest in these less-than-wholly-owned entities and have fully consolidated these entities as a result (see "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 6. Leasing"). As of December 28, 2014, we have entered into a total of seven facilities with third-party investors and received $100.7 million in contributions from investors under the related facility agreements. Additionally, during fiscal 2014, we entered into two long-term non-recourse loans to finance solar power systems and leases under our residential lease program. The loans have a 17-year term. In fiscal 2014, we drew down $81.9 million of proceeds, net of issuance costs, under the loan agreements. As of December 28, 2014, the short-term and long-term balances of the loans were $1.5 million and $80.4 million, respectively. We are actively arranging additional third-party financing for our residential lease program; however, due to the general challenging credit markets we may be unable to arrange additional financing partners for our residential lease program in future periods, which could have a negative impact on our sales. In the unlikely event that we enter into a material number of additional leases without promptly obtaining corresponding third-party financing, our cash and working capital could be negatively impacted.

Table of Contents

We believe that our current cash, cash equivalents and cash expected to be generated from operations will be sufficient to meet our working capital and fund our committed capital expenditures over the next 12 months, including the development and construction of solar power systems and plants and repayment of our current indebtedness, including our 4.50% debentures due 2015 (described above). In addition, we have $250 million available to us under our revolving credit facility with Credit Agricole. However, there can be no assurance that our liquidity will be adequate over time. A significant portion of our revenue is generated from a limited number of customers and large projects and our inability to execute these projects, or to collect from these customers or for these projects, would have a significant negative impact on our business. Our capital expenditures and use of working capital may be greater than we expect if we decide to make additional investments in the development and construction of solar power plants and sales of power plants and associated cash proceeds are delayed, or if we decide to accelerate increases in our manufacturing capacity internally or through capital contributions to joint ventures. We require project financing in connection with the construction of solar power plants, which financing may not be available on terms acceptable to us. In addition, we could in the future make additional investments in our joint ventures or guarantee certain financial obligations of our joint ventures, which could reduce our cash flows, increase our indebtedness and expose us to the credit risk of our joint ventures. See also "Risks Related to Our Sales Channels—A limited number of customers and large projects are expected to continue to comprise a significant portion of our revenues and any decrease in revenue from these customers or projects, payments of liquidated damages, or an increase in related expenses, could have a material adverse effect on our business, results of operations and financial condition," and "Risks Related to Our Liquidity—We may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations and make adequate capital investments as planned due to the general economic environment and the continued market pressure driving down the average selling prices of our solar power products, among other factors." under the caption "Item 1A. Risk Factors."

As of December 28, 2014, an aggregate principal amount of $249.6 million of our 4.50% debentures due 2015 remain issued and outstanding and are classified as short-term debt on our Consolidated Balance Sheet. If utilized, we have $250.0 million available to us under our revolving credit facility with Credit Agricole and may request increases to the available capacity of the revolving credit facility to an aggregate of $300.0 million, subject to the satisfaction of certain conditions. Proceeds from our revolving credit facility with Credit Agricole may be used for general corporate purposes. However, there are no assurances that we will have sufficient available cash to repay our indebtedness or we will be able to refinance such indebtedness on similar terms to the expiring indebtedness. If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financing. The current economic environment, however, could limit our ability to raise capital by issuing new equity or debt securities on acceptable terms, and lenders may be unwilling to lend funds on acceptable terms that would be required to supplement cash flows to support operations. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders (and potential for further dilution upon the exercise of warrants or the conversion of convertible debt) and may not be available on favorable terms or at all, particularly in light of the current conditions in the financial and credit markets. Additional debt would result in increased expenses and would likely impose new restrictive covenants which may be similar or different than those restrictions contained in the covenants under our current loan agreements and debentures. In addition, financing arrangements, including project financing for our solar power plants and letters of credit facilities, may not be available to us, or may not be available in amounts or on terms acceptable to us.

Table of Contents

Contractual Obligations

The following table summarizes our contractual obligations as of December 28, 2014:

| | Payments Due by Fiscal Period | | | | |
|---|---|---|---|---|---|
| (In thousands) | Total | 2015 | 2016-2017 | 2018-2019 | Beyond 2019 |
| Convertible debt, including interest[1] | $982,341 | $257,870 | $11,500 | $307,944 | $405,027 |
| IFC mortgage loan, including interest[2] | 49,736 | 16,269 | 30,964 | 2,503 | — |
| CEDA loan, including interest[3] | 71,438 | 2,550 | 5,100 | 5,100 | 58,688 |
| Quinto credit facility, including interest | 72,033 | 1,646 | 8,963 | 6,516 | 54,908 |
| Other debt, including interest[4] | 152,901 | 7,882 | 15,866 | 15,791 | 113,362 |
| Future financing commitments[5] | 171,890 | 171,890 | — | — | — |
| Operating lease commitments[6] | 151,731 | 18,889 | 29,864 | 26,477 | 76,501 |
| Sale-leaseback financing[7] | 100,941 | 8,367 | 13,884 | 13,090 | 65,600 |
| Capital lease commitments[8] | 6,383 | 1,142 | 2,093 | 1,410 | 1,738 |
| Non-cancellable purchase orders[9] | 216,536 | 216,536 | — | — | — |
| Purchase commitments under agreements[10] | 1,645,494 | 381,925 | 740,846 | 357,876 | 164,847 |
| Total | $3,621,424 | $1,084,966 | $859,080 | $736,707 | $940,671 |

1 Convertible debt, including interest, relates to the aggregate of $949.7 million in outstanding principal amount of our senior convertible debentures on December 28, 2014. For the purpose of the table above, we assume that all holders of the outstanding debentures will hold the debentures through the date of maturity, and upon conversion, the values of the senior convertible debentures will be equal to the aggregate principal amount with no premiums.

2 IFC mortgage loan, including interest, relates to the $47.5 million borrowed as of December 28, 2014. Under the loan agreement, we are required to repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. We are required to pay interest of LIBOR plus 3% per annum on outstanding borrowings; a front-end fee of 1% on the principal amount of borrowings at the time of borrowing; and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed.

3 CEDA loan, including interest, relates to the proceeds of the $30.0 million aggregate principal amount of the Bonds. The Bonds mature on April 1, 2031 and bear interest at a fixed rate of 8.50% through maturity.

4 Other debt, including interest, primarily relates to non-recourse finance projects and solar power systems and leases under our residential lease program as described in "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 9. Commitments and Contingencies."

5 We and AUO agreed in the joint venture agreement to contribute additional amounts to AUOSP through 2014 amounting to $169.0 million by each shareholder, or such lesser amount as the parties may mutually agree. Further, in connection with a purchase agreement with a non-public company we will be required to provide additional financing to such party of up to $2.9 million, subject to certain conditions.

6 Operating lease commitments primarily relate to certain solar power systems leased from unaffiliated third parties over minimum lease terms of up to 20 years and various facility lease agreements.

7 Sale-leaseback financing relates to future minimum lease obligations for solar power systems under sale-leaseback arrangements which were determined to include integral equipment and accounted for under the financing method.

8

Capital lease commitments primarily relate to certain buildings, manufacturing and equipment under capital leases in Europe for terms of up to 12 years.

9 Non-cancellable purchase orders relate to purchases of raw materials for inventory and manufacturing equipment from a variety of vendors.

10 Purchase commitments under agreements relate to arrangements entered into with several suppliers, including joint ventures, for polysilicon, ingots, wafers, and Solar Renewable Energy Credits, among others. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years and there are certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that we terminate the arrangements. During fiscal 2014, we did not fulfill all of the purchase commitments we were otherwise obligated to take by December 31, 2014, as

specified in several related contracts with a supplier. On February 6, 2015, we received a notice from the supplier requesting payment for $56.1 million related to this shortfall. This amount has been included in the '2015' column in the above table and we have not recorded an accrual for this amount as of December 28, 2014, as we expect to satisfy the obligation via purchases of inventory in fiscal 2015, within the cure period specified in the contracts, and the amounts did not become due until after the end of fiscal 2014.

Liabilities Associated with Uncertain Tax Positions

Due to the complexity and uncertainty associated with our tax positions, we cannot make a reasonably reliable estimate of the period in which cash settlement will be made for our liabilities associated with uncertain tax positions in other long-term liabilities. Therefore, they have been excluded from the table above. As of December 28, 2014, total liabilities associated with uncertain tax positions were $31.8 million and are included in "Other long-term liabilities" in our Consolidated Balance Sheets as they are not expected to be paid within the next twelve months.

Off-Balance-Sheet Arrangements

As of December 28, 2014, we did not have any significant off-balance-sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K.

## ITEM 7A: QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK

### Foreign Currency Exchange Risk

Our exposure to movements in foreign currency exchange rates is primarily related to sales to European customers that are denominated in Euros. Revenue generated from European customers represented 9%, 18% and 20% of our total revenue in fiscal 2014, 2013 and 2012, respectively. A 10% change in the Euro exchange rate would have impacted our revenue by approximately $28.9 million, $45.1 million and $48.9 million in fiscal 2014, 2013, and 2012, respectively.

In the past, we have experienced an adverse impact on our revenue, gross margin and profitability as a result of foreign currency fluctuations. When foreign currencies appreciate against the U.S. dollar, inventories and expenses denominated in foreign currencies become more expensive. Strengthening of the Malaysian Ringgit against the U.S. dollar would increase AUOSP's liability under the facility agreement with the Malaysian government which in turn would negatively impact our equity in earnings (loss) of the unconsolidated investee. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar power products more expensive for international customers, thus potentially leading to a reduction in demand, our sales and profitability. Furthermore, many of our competitors are foreign companies that could benefit from such a currency fluctuation, making it more difficult for us to compete with those companies.

We currently conduct hedging activities which involve the use of option and forward currency contracts that are designed to address our exposure to changes in the foreign exchange rate between the U.S. dollar and other currencies. As of December 28, 2014, we had outstanding hedge option currency contracts and forward currency contracts with aggregate notional values of $26.6 million and $134.7 million, respectively. As of December 29, 2013, we held option and forward contracts totaling $115.3 million and $75.0 million, respectively, in notional value. Because we hedge some of our expected future foreign exchange exposure, if associated revenues do not materialize we could experience a reclassification of ineffective gains or losses into earnings. Such a reclassification could adversely impact our revenue, margins and results of operations. We cannot predict the impact of future exchange rate fluctuations on our business and operating results.

### Credit Risk

We have certain financial and derivative instruments that subject us to credit risk. These consist primarily of cash and cash equivalents, restricted cash and cash equivalents, investments, accounts receivable, notes receivable, advances to suppliers, foreign currency option contracts, foreign currency forward contracts, bond hedge and warrant transactions. We are exposed to credit losses in the event of nonperformance by the counterparties to our financial and derivative instruments. Our investment policy requires cash and cash equivalents, restricted cash and cash equivalents, and investments to be placed with high-quality financial institutions and limits the amount of credit risk from any one issuer. We additionally perform ongoing credit evaluations of our customers' financial condition whenever deemed necessary and generally do not require collateral.

We enter into agreements with vendors that specify future quantities and pricing of polysilicon to be supplied for periods up to 10 years. Under certain agreements, we are required to make prepayments to the vendors over the terms of the arrangements. As of December 28, 2014 and December 29, 2013, advances to suppliers totaled $409.7 million and $383.3 million, respectively. Two suppliers accounted for 82% and 17% of total advances to suppliers as of December 28, 2014, and 77% and 22% as of December 29, 2013.

We enter into foreign currency derivative contracts and convertible debenture hedge transactions with high-quality financial institutions and limit the amount of credit exposure to any single counterparty. The foreign currency derivative contracts are limited to a time period of 15 months or less. We regularly evaluate the credit standing of our counterparty financial institutions.

Interest Rate Risk

We are exposed to interest rate risk because many of our customers depend on debt financing to purchase our solar power systems. An increase in interest rates could make it difficult for our customers to obtain the financing necessary to purchase our solar power systems on favorable terms, or at all, and thus lower demand for our solar power products, reduce revenue and adversely impact our operating results. An increase in interest rates could lower a customer's return on investment in a system or make alternative investments more attractive relative to solar power systems, which, in each case, could cause our customers to seek alternative investments that promise higher returns or demand higher returns from our solar power systems, reduce gross margin and adversely impact our operating results. This risk is significant to our business because our sales model is highly sensitive to interest rate fluctuations and the availability of credit, and would be adversely affected by increases in interest rates or liquidity constraints.

Table of Contents

Our interest expense would increase to the extent interest rates rise in connection with our variable interest rate borrowings. As of December 28, 2014, the outstanding principal balance of our variable interest borrowings was $47.5 million. We do not believe that an immediate 10% increase in interest rates would have a material effect on our financial statements. In addition, lower interest rates would have an adverse impact on our interest income. Our investment portfolio primarily consists of $375.0 million in money market funds as of December 28, 2014 which exposes us to interest rate risk. Due to the relatively short-term nature of our investment portfolio, we do not believe that an immediate 10% increase in interest rates would have a material effect on the fair market value of our money market funds. Since we believe we have the ability to liquidate substantially all of this portfolio, we do not expect our operating results or cash flows to be materially affected to any significant degree by a sudden change in market interest rates on our investment portfolio.

Equity Price Risk Involving Minority Investments in Joint Ventures and Other Non-Public Companies

Our investments held in joint ventures and other non-public companies expose us to equity price risk. As of December 28, 2014 and December 29, 2013, investments of $210.9 million and $131.7 million, respectively, are accounted for using the equity method, and $32.3 million and $12.4 million, respectively, are accounted for using the cost method. These strategic investments in third parties are subject to risk of changes in market value, which if determined to be other-than-temporary, could result in realized impairment losses. We generally do not attempt to reduce or eliminate our market exposure in equity and cost method investments. We monitor these investments for impairment and record reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include the valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market prices and declines in operations of the issuer. There can be no assurance that our equity and cost method investments will not face risks of loss in the future.

Interest Rate Risk and Market Price Risk Involving Convertible Debt

The fair market value of our outstanding convertible debentures is subject to interest rate risk, market price risk and other factors due to the convertible feature of the debentures. The fair market value of the debentures will generally increase as interest rates fall and decrease as interest rates rise. In addition, the fair market value of the debentures will generally increase as the market price of our common stock increases and decrease as the market price of our common stock falls. The interest and market value changes affect the fair market value of the debentures, but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligations, except to the extent increases in the value of our common stock may provide the holders of our 4.50% debentures due 2015, and/or 0.75% debentures due 2027 the right to convert such debentures into cash in certain instances. The aggregate estimated fair value of our outstanding convertible debentures was $1,019.4 million as of December 28, 2014. The aggregate estimated fair value of our outstanding convertible debentures was $980.8 million as of December 29, 2013. Estimated fair values are based on quoted market prices as reported by an independent pricing source. A 10% increase in quoted market prices would increase the estimated fair value of our then-outstanding debentures to $1,121.4 million and $1,078.9 million as of December 28, 2014 and December 29, 2013, respectively, and a 10% decrease in the quoted market prices would decrease the estimated fair value of our then-outstanding debentures to $917.5 million and $882.7 million as of December 28, 2014 and December 29, 2013, respectively.

Table of Contents

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

SUNPOWER CORPORATION

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Table of Contents

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of SunPower Corporation

We have audited the accompanying consolidated balance sheets of SunPower Corporation as of December 28, 2014 and December 29, 2013, and the related consolidated statements of operations, comprehensive income, equity, and cash flows for each of the three years in the period ended December 28, 2014. These financial statements are the responsibility of the company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of SunPower Corporation at December 28, 2014 and December 29, 2013, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 28, 2014, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), SunPower Corporation's internal control over financial reporting as of December 28, 2014, based on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated February 24, 2015 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

San Jose, California
February 24, 2015

Table of Contents

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of SunPower Corporation

We have audited SunPower Corporation’s internal control over financial reporting as of December 28, 2014, based on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). SunPower Corporation’s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management’s Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the company’s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, SunPower Corporation maintained, in all material respects, effective internal control over financial reporting as of December 28, 2014, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the 2014 consolidated financial statements of SunPower Corporation and our report dated February 24, 2015 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

San Jose, California
February 24, 2015

77

Table of Contents

SunPower Corporation
Consolidated Balance Sheets
(In thousands, except share data)

| | December 28, 2014 | December 29, 2013 |
|---|---|---|
| Assets | | |
| Current assets: | | |
| Cash and cash equivalents | $956,175 | $762,511 |
| Restricted cash and cash equivalents, current portion | 18,541 | 13,926 |
| Accounts receivable, net[1] | 504,316 | 360,594 |
| Costs and estimated earnings in excess of billings[1] | 187,087 | 31,787 |
| Inventories | 208,573 | 245,575 |
| Advances to suppliers, current portion | 98,129 | 58,619 |
| Project assets - plants and land, current portion | 101,181 | 69,196 |
| Prepaid expenses and other current assets[1] | 328,845 | 646,270 |
| Total current assets | 2,402,847 | 2,188,478 |
| | | |
| Restricted cash and cash equivalents, net of current portion | 24,520 | 17,573 |
| Restricted long-term marketable securities | 7,158 | 8,892 |
| Property, plant and equipment, net | 585,344 | 533,387 |
| Solar power systems leased and to be leased, net | 390,913 | 345,504 |
| Project assets - plants and land, net of current portion | 15,475 | 6,411 |
| Advances to suppliers, net of current portion | 311,528 | 324,695 |
| Long-term financing receivables, net | 269,587 | 175,273 |
| Goodwill and other intangible assets, net | 37,981 | — |
| Other long-term assets[1] | 311,829 | 298,477 |
| Total assets | $4,357,182 | $3,898,690 |
| | | |
| Liabilities and Equity | | |
| Current liabilities: | | |
| Accounts payable[1] | $419,919 | $443,969 |
| Accrued liabilities | 331,034 | 358,157 |
| Billings in excess of costs and estimated earnings | 83,440 | 308,650 |
| Short-term debt | 18,105 | 56,912 |
| Convertible debt, current portion | 245,325 | 455,889 |
| Customer advances, current portion[1] | 31,788 | 36,883 |
| Total current liabilities | 1,129,611 | 1,660,460 |
| | | |
| Long-term debt | 218,657 | 93,095 |
| Convertible debt, net of current portion[1] | 700,079 | 300,079 |
| Customer advances, net of current portion[1] | 148,896 | 167,282 |
| Other long-term liabilities | 555,344 | 523,991 |
| Total liabilities | 2,752,587 | 2,744,907 |
| Commitments and contingencies (Note 9) | | |
| Redeemable noncontrolling interests in subsidiaries | 28,566 | — |
| Equity: | | |
| | — | — |

| | | |
|---|---|---|
| Preferred stock, $0.001 par value; 10,000,000 shares authorized; none issued and outstanding as of both December 28, 2014 and December 29, 2013 | | |
| Common stock, $0.001 par value, 367,500,000 shares authorized; 138,616,252 shares issued, and 131,466,777 outstanding as of December 28, 2014; 126,946,763 shares issued, and 121,535,913 outstanding as of December 29, 2013 | 131 | 122 |
| Additional paid-in capital | 2,219,581 | 1,980,778 |
| Accumulated deficit | (560,598) | (806,492) |
| Accumulated other comprehensive loss | (13,455) | (4,318) |
| Treasury stock, at cost; 7,149,475 shares of common stock as of December 28, 2014; 5,410,850 shares of common stock as of December 29, 2013 | (111,485) | (53,937) |
| Total stockholders' equity | 1,534,174 | 1,116,153 |
| Noncontrolling interests in subsidiaries | 41,855 | 37,630 |
| Total equity | 1,576,029 | 1,153,783 |
| Total liabilities and equity | $4,357,182 | $3,898,690 |

1 The Company has related-party balances for transactions made with Total and its affiliates as well as unconsolidated entities in which the Company has a direct equity investment. These related-party balances are recorded within the "Accounts Receivable, net," "Costs and estimated earnings in excess of billings," "Prepaid expenses and other current assets," "Other long-term assets," "Accounts payable," "Customer advances, current portion," "Convertible debt, net of current portion," and "Customer advances, net of current portion" financial statement line items in the Consolidated Balance Sheets (see Note 2, Note 7, Note 10, Note 11, and Note 12).

The accompanying notes are an integral part of these consolidated financial statements.

78

Table of Contents

SunPower Corporation
Consolidated Statements of Operations
(In thousands, except per share data)

| | Fiscal Year December 28, 2014 | December 29, 2013 | December 30, 2012 |
|---|---|---|---|
| Revenue | $3,027,265 | $2,507,203 | $2,417,501 |
| Cost of revenue | 2,402,138 | 2,016,131 | 2,171,103 |
| Gross margin | 625,127 | 491,072 | 246,398 |
| Operating expenses: | | | |
| Research and development | 73,343 | 58,080 | 63,456 |
| Sales, general and administrative | 288,321 | 271,481 | 310,246 |
| Restructuring charges | 12,223 | 2,602 | 100,823 |
| Goodwill and other intangible asset impairment | — | — | 59,581 |
| Total operating expenses | 373,887 | 332,163 | 534,106 |
| Operating income (loss) | 251,240 | 158,909 | (287,708) |
| Other income (expense), net: | | | |
| Interest income | 2,583 | 6,017 | 1,091 |
| Interest expense | (69,658) | (108,739) | (84,120) |
| Gain on share lending arrangement | — | — | 50,645 |
| Other, net | 449 | (14,604) | (9,571) |
| Other expense, net | (66,626) | (117,326) | (41,955) |
| Income (loss) before income taxes and equity in earnings (loss) of unconsolidated investees | 184,614 | 41,583 | (329,663) |
| Provision for income taxes | (8,760) | (11,905) | (21,842) |
| Equity in earnings (loss) of unconsolidated investees | 7,241 | 3,872 | (515) |
| Net income (loss) | 183,095 | 33,550 | (352,020) |
| Net loss attributable to noncontrolling interests and redeemable noncontrolling interests | 62,799 | 62,043 | — |
| Net income (loss) attributable to stockholders | $245,894 | $95,593 | $(352,020) |
| | | | |
| Net income (loss) per share attributable to stockholders: | | | |
| Basic | $1.91 | $0.79 | $(3.01) |
| Diluted | $1.55 | $0.70 | $(3.01) |
| Weighted-average shares: | | | |
| Basic | 128,635 | 120,819 | 117,093 |
| Diluted | 162,751 | 138,980 | 117,093 |

The accompanying notes are an integral part of these consolidated financial statements.

Table of Contents

SunPower Corporation
Consolidated Statements of Comprehensive Income (Loss)
(In thousands)

| | Fiscal Year December 28, 2014 | December 29, 2013 | December 30, 2012 |
|---|---|---|---|
| Net income (loss) | $183,095 | $33,550 | $(352,020) |
| Components of comprehensive income (loss): | | | |
| Translation adjustment | (4,946) | (1,447) | (959) |
| Net unrealized loss on derivatives (Note 12) | (638) | (562) | (10,716) |
| Net loss on long-term pension liability adjustment | (2,878) | — | — |
| Income taxes | (675) | 212 | 2,012 |
| Net change in accumulated other comprehensive loss | (9,137) | (1,797) | (9,663) |
| Total comprehensive income (loss) | 173,958 | 31,753 | (361,683) |
| Comprehensive loss attributable to noncontrolling interests and redeemable noncontrolling interests | 62,799 | 62,043 | — |
| Comprehensive income (loss) attributable to stockholders | $236,757 | $93,796 | $(361,683) |

The accompanying notes are an integral part of these consolidated financial statements.

Table of Contents

SunPower Corporation
Consolidated Statements of Equity
(In thousands)

| | Redeemable Noncontrolling Interests | Common Stock Shares | Common Stock Value | Additional Paid-in Capital | Treasury Stock | Accumulated Other Comprehensive Income (Loss) | Retained Earnings (Accumulated Deficit) | Total Stockholders' Equity | Noncontrolling Interests | Total E |
|---|---|---|---|---|---|---|---|---|---|---|
| Balances at January 1, 2012 | — | 100,476 | $100 | $1,845,965 | $(28,417) | $7,142 | $(550,065) | $1,274,725 | $— | $1,274, |
| Net loss | — | — | — | — | — | — | (352,020) | (352,020) | — | (352,02 |
| Other comprehensive loss | — | — | — | — | — | (9,663) | — | (9,663) | — | (9,663 |
| Issuance of common stock upon exercise of options | — | 20 | — | 52 | — | — | — | 52 | — | 52 |
| Issuance of restricted stock to employees, net of cancellations | — | 2,844 | 2 | (2) | — | — | — | — | — | — |
| Private offering of common stock, net of issuance costs | — | 18,600 | 19 | 163,596 | — | — | — | 163,615 | — | 163,615 |
| Cash distributions to Parent in connection with the transfer of entities under common control | — | — | — | (169,637) | — | — | — | (169,637) | — | (169,63 |
| Fair value of warrant issued | — | — | — | 50,327 | — | — | — | 50,327 | — | 50,327 |
| Returned shares from share lending agreement | — | (1,800) | (2) | — | 2 | — | — | — | — | — |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Stock-based compensation expense | — | — | — | 41,646 | — | — | — | 41,646 | — | 41,646 |
| Purchases of treasury stock | — | (906 ) | — | — | (5,693 ) | — | — | (5,693 ) | — | (5,693 |
| Balances at December 30, 2012 | — | 119,234 | $119 | $1,931,947 | $(34,108 ) | $(2,521 ) | $(902,085) | $993,352 | $— | $993,35 |
| Net income (loss) | — | — | — | — | — | — | 95,593 | 95,593 | (62,043 ) | 33,550 |
| Other comprehensive loss | — | — | — | — | — | (1,797 ) | — | (1,797 ) | — | (1,797 |
| Issuance of common stock upon exercise of options | — | 48 | — | 155 | — | — | — | 155 | — | 155 |
| Issuance of restricted stock to employees, net of cancellations | — | 3,583 | 3 | (3 ) | — | — | — | — | — | — |
| Stock-based compensation expense | — | — | — | 46,215 | — | — | — | 46,215 | — | 46,215 |
| Purchases of treasury stock | — | (1,329 ) | — | — | (19,829 ) | — | — | (19,829 ) | — | (19,829 |
| Tax benefit from convertible debt interest deduction | — | — | — | 1,408 | — | — | — | 1,408 | — | 1,408 |
| Tax benefit from stock-based compensation | — | — | — | 1,056 | — | — | — | 1,056 | — | 1,056 |
| Contributions from noncontrolling interests | — | — | — | — | — | — | — | — | 100,008 | 100,008 |
| Distributions to noncontrolling interests | — | — | — | — | — | — | — | — | (335 ) | (335 |
| Balances at December 29, 2013 | $— | 121,536 | $122 | $1,980,778 | $(53,937 ) | $(4,318 ) | $(806,492) | $1,116,153 | $37,630 | $1,153, |
| Net income (loss) | (27,089 ) | — | — | — | — | — | 245,894 | 245,894 | (35,710 ) | 210,184 |
| Other comprehensive income (loss) | — | — | — | — | — | (9,137 ) | — | (9,137 ) | — | (9,137 |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Issuance of common stock upon exercise of options | — | 106 | — | 1,052 | — | — | — | 1,052 | — | 1,052 |
| Issuance of restricted stock to employees, net of cancellations | — | 4,431 | 2 | (2) | — | — | — | — | — | — |
| Issuance of common stock upon conversion of convertible debt | — | 7,131 | 7 | 188,256 | — | — | — | 188,263 | — | 188,263 |
| Settlement of the 4.75% Bond hedge | — | — | — | 68,842 | — | — | — | 68,842 | — | 68,842 |
| Settlement of the 4.75% Warrants | — | — | — | (81,077) | — | — | — | (81,077) | — | (81,077 |
| Stock-based compensation expense | — | — | — | 55,592 | — | — | — | 55,592 | — | 55,592 |
| Tax benefit from convertible debt interest deduction | — | — | — | 3,761 | — | — | — | 3,761 | | 3,761 |
| Tax benefit from stock-based compensation | — | — | — | 2,379 | — | — | — | 2,379 | — | 2,379 |
| Contributions from noncontrolling interests and redeemable noncontrolling interests | 34,102 | — | — | — | — | — | — | — | 66,581 | 66,581 |
| Distributions to noncontrolling interests and redeemable noncontrolling interests | (2,438) | — | — | — | — | — | — | — | (2,655) | (2,655 |
| Purchases of treasury stock | — | (1,738) | — | — | (57,548) | — | — | (57,548) | — | (57,548 |
| Transfer of redeemable noncontrolling | 23,991 | — | — | — | — | — | — | — | (23,991) | (23,991 |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| interests | | | | | | | | | | |
| Balances at December 28, 2014 | $28,566 | 131,466 | $131 | $2,219,581 | $(111,485) | $(13,455) | $(560,598) | $1,534,174 | $41,855 | $1,576, |

The accompanying notes are an integral part of these consolidated financial statements.

81

Table of Contents

SunPower Corporation
Consolidated Statements of Cash Flows
(In thousands)

| | Fiscal Year December 28, 2014 | December 29, 2013 | December 30, 2012 |
|---|---|---|---|
| Cash flows from operating activities: | | | |
| Net income (loss) | $183,095 | $33,550 | $(352,020) |
| Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities: | | | |
| Depreciation and amortization | 108,795 | 98,191 | 117,770 |
| Stock-based compensation | 55,592 | 45,678 | 42,439 |
| Non-cash interest expense | 21,585 | 49,016 | 38,177 |
| Goodwill and other intangible asset impairment | — | — | 59,581 |
| Loss on retirement of property, plant and equipment | — | — | 77,807 |
| Gain from contract termination | — | (51,988) | — |
| Gain on share lending arrangement | — | — | (50,645) |
| Third-party inventories write-down | — | — | 8,869 |
| Equity in earnings of unconsolidated investees | (7,241) | (3,872) | 515 |
| Excess tax benefit from stock-based compensation | (2,379) | — | — |
| Deferred income taxes and other tax liabilities | 21,656 | 1,138 | (4,332) |
| Other, net | 1,591 | 4,396 | 3,841 |
| Changes in operating assets and liabilities, net of effect of acquisition: | | | |
| Accounts receivable | (31,505) | (53,756) | 11,522 |
| Costs and estimated earnings in excess of billings | (155,300) | 4,608 | 18,458 |
| Inventories | (1,247) | (6,243) | 28,324 |
| Project assets | (68,247) | (22,094) | (23,397) |
| Prepaid expenses and other assets | 205,545 | 39,123 | (73,706) |
| Long-term financing receivables, net | (94,314) | (107,531) | (62,415) |
| Advances to suppliers | (26,343) | (31,909) | (23,883) |
| Accounts payable and other accrued liabilities | 45,768 | 120,599 | 91,564 |
| Billings in excess of costs and estimated earnings | (225,210) | 83,100 | 54,723 |
| Customer advances | (23,481) | (39,577) | 65,711 |
| Net cash provided by operating activities | 8,360 | 162,429 | 28,903 |
| Cash flows from investing activities: | | | |
| Decrease (increase) in restricted cash and cash equivalents | (11,562) | 15,465 | 32,591 |
| Purchases of property, plant and equipment | (102,505) | (34,054) | (104,786) |
| Cash paid for solar power systems, leased and to be leased | (50,974) | (97,235) | (150,446) |
| Cash paid for solar power systems | (13,457) | (21,257) | — |
| Proceeds from sales or maturities of marketable securities | 1,380 | 100,947 | — |
| Proceeds from sale of equipment to third parties | — | 645 | 424 |
| Purchases of marketable securities | (30) | (99,928) | (1,436) |
| Cash paid for acquisitions, net of cash acquired | (35,078) | — | — |
| Cash received for sale of investment in unconsolidated investees | — | — | 17,403 |
| Cash paid for investments in unconsolidated investees | (97,013) | (17,761) | (13,817) |
| Net cash used in investing activities | (309,239) | (153,178) | (220,067) |
| Cash flows from financing activities: | | | |

| | | | |
|---|---|---|---|
| Proceeds from issuance of convertible debt, net of issuance costs | 395,275 | 296,283 | — |
| Cash paid for repurchase of convertible debt | (42,250) | — | (198,608) |
| Proceeds from settlement of 4.75% Bond Hedge | 68,842 | — | — |
| Payments to settle 4.75% Warrants | (81,077) | — | — |
| Proceeds from settlement of 4.50% Bond Hedge | 131 | — | — |
| Proceeds from issuance of non-recourse debt financing, net of issuance costs | 81,926 | — | — |
| Repayment of non-recourse debt financing | (244) | — | — |
| Proceeds from issuance of project loans, net of issuance costs | 61,537 | 82,394 | 27,617 |
| Assumption of project loan by customer | (40,672) | (34,850) | — |
| Repayment of bank loans, project loans and other debt | (17,073) | (290,486) | (154,078) |
| Proceeds from residential lease financing | — | 96,392 | 60,377 |
| Repayment of residential lease financing | (15,686) | — | — |
| Proceeds from sale-leaseback financing | 50,600 | 73,139 | — |
| Repayment of sale-leaseback financing | (4,216) | (8,804) | — |
| Contributions from noncontrolling interests and redeemable noncontrolling interests | 100,683 | 100,008 | — |
| Distributions to noncontrolling interests and redeemable noncontrolling interests | (5,093) | (335) | — |
| Proceeds from exercise of stock options | 1,052 | 156 | 51 |
| Excess tax benefit from stock-based compensation | 2,379 | — | — |
| Purchases of stock for tax withholding obligations on vested restricted stock | (57,548) | (19,829) | (5,691) |
| Proceeds from issuance of bank loans, net of issuance costs | — | — | 150,000 |
| Proceeds from private offering of common stock, net of issuance costs | — | — | 163,616 |
| Cash distributions to Parent in connection with the transfer of entities under common control | — | — | (169,637) |
| Proceeds from recovery of claim in connection with share lending arrangement | — | — | 50,645 |
| Net cash provided by (used in) financing activities | 498,566 | 294,068 | (75,708) |
| Effect of exchange rate changes on cash and cash equivalents | (4,023) | 1,705 | (1,259) |
| Net increase (decrease) in cash and cash equivalents | 193,664 | 305,024 | (268,131) |
| Cash and cash equivalents, beginning of period | 762,511 | 457,487 | 725,618 |
| Cash and cash equivalents, end of period | $956,175 | $762,511 | $457,487 |
| | | | |
| Non-cash transactions: | | | |
| Assignment of residential lease receivables to a third-party financial institution | $8,023 | $93,013 | $23,813 |
| Costs of solar power systems, leased and to be leased, sourced from existing inventory | $41,204 | $53,721 | $117,692 |
| Costs of solar power systems, leased and to be leased, funded by liabilities | $3,786 | $5,884 | $6,544 |
| Costs of solar power systems under sale-leaseback financing arrangements, sourced from project assets | $28,259 | $30,442 | $— |
| Property, plant and equipment acquisitions funded by liabilities | $11,461 | $5,288 | $6,408 |
| Issuance of warrants in connection with the Liquidity Support Agreement | $— | $— | $50,327 |
| Issuance of common stock upon conversion of convertible debt | $188,263 | $— | $— |
| Supplemental cash flow information: | | | |
| Cash paid for interest, net of amount capitalized | $39,857 | $46,026 | $40,621 |

| | | | |
|---|---|---|---|
| Cash paid for income taxes | $8,765 | $1,338 | $8,073 |

The accompanying notes are an integral part of these consolidated financial statements.

Table of Contents

Note 1. THE COMPANY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Company

SunPower Corporation (together with its subsidiaries, the "Company" or "SunPower") is a vertically integrated solar products and solutions company that designs, manufactures and delivers high-performance solar systems worldwide, serving as a one-stop shop for residential, commercial, and utility-scale power plant customers. SunPower Corporation is a majority owned subsidiary of Total Energies Nouvelles Activités USA ("Total"), a subsidiary of Total S.A. ("Total S.A.") (see Note 2).

The Company's President and Chief Executive Officer, as the chief operating decision maker ("CODM"), has organized the Company, manages resource allocations, and measures performance of the Company's activities among three regional segments: (i) the Americas Segment, (ii) the EMEA Segment, and (iii) the APAC Segment. The Americas Segment includes both North and South America. The EMEA Segment includes European countries, as well as the Middle East and Africa. The APAC Segment includes all Asia-Pacific countries.

Basis of Presentation and Preparation

Principles of Consolidation

The consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America ("United States" or "U.S.") and include the accounts of the Company, all of its subsidiaries and special purpose entities, as appropriate under consolidation accounting guidelines. Intercompany transactions and balances have been eliminated in consolidation. The assets of the special purpose entities that the Company sets up related to project financing for customers are not designed to be available to service the general liabilities and obligations of the Company in certain circumstances.

Reclassifications

Certain prior period balances have been reclassified to conform to the current period presentation in the Company's consolidated financial statements and the accompanying notes. Such reclassifications had no effect on previously reported results of operations or accumulated deficit.

Fiscal Years

The Company has a 52-to-53-week fiscal year that ends on the Sunday closest to December 31. Accordingly, every fifth or sixth year will be a 53-week fiscal year. Fiscal 2014, 2013 and 2012 were 52-week fiscal years. Fiscal 2014 ended on December 28, 2014, fiscal 2013 ended on December 29, 2013, and fiscal 2012 ended on December 30, 2012.

Management Estimates

The preparation of the consolidated financial statements in conformity with U.S. generally accepted accounting principles ("U.S. GAAP") requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Significant estimates in these consolidated financial statements include percentage-of-completion for construction projects; allowances for doubtful accounts receivable and sales returns; inventory and project asset write-downs; stock-based compensation; estimates for future cash flows and economic useful lives of property, plant and equipment, goodwill, valuations for business combinations, other intangible assets and other long-term assets; the fair value and residual value of leased solar power systems; fair value of financial instruments; valuation of contingencies and certain accrued liabilities such as accrued warranty; and income taxes and tax valuation allowances. Actual results could materially differ from those estimates.

Summary of Significant Accounting Policies

Fair Value of Financial Instruments

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The carrying values of cash and cash equivalents, accounts receivable, and accounts payable approximate their respective fair values due to their short-term maturities. Investments in available-for-sale securities are carried at fair value based on quoted market prices or estimated based on market conditions and risks existing at each balance sheet date. Derivative financial instruments are carried at fair value based on

Table of Contents

quoted market prices for financial instruments with similar characteristics. Unrealized gains and losses of the Company’s available-for-sale securities and the effective portion of derivative financial instruments are excluded from earnings and reported as a component of "Accumulated other comprehensive loss" in the Consolidated Balance Sheets. Additionally, the Company assesses whether an other-than-temporary impairment loss on its available-for-sale securities has occurred due to declines in fair value or other market conditions. Declines in fair value that are considered other-than-temporary and the ineffective portion of derivatives financial instruments are included in "Other, net" in the Consolidated Statements of Operations.

Comprehensive Income (Loss)

Comprehensive income (loss) is defined as the change in equity during a period from non-owner sources. The Company’s comprehensive income (loss) for each period presented is comprised of (i) the Company’s net income (loss); (ii) foreign currency translation adjustment of the Company’s foreign subsidiaries whose assets and liabilities are translated from their respective functional currencies at exchange rates in effect at the balance sheet date, and revenues and expenses are translated at average exchange rates prevailing during the applicable period; and (iii) changes in unrealized gains or losses, net of tax, for the effective portion of derivatives designated as cash flow hedges (see Note 12) and available-for-sale securities carried at their fair value.

Cash Equivalents

Highly liquid investments with original or remaining maturities of ninety days or less at the date of purchase are considered cash equivalents.

Cash in Restricted Accounts

The Company maintains cash and cash equivalents in restricted accounts pursuant to various letters of credit, surety bonds, loan agreements, and other agreements in the normal course of business. The Company also holds debt securities, consisting of Philippine government bonds, which are classified as "Restricted long-term marketable securities" on the Company's Consolidated Balance Sheets as they are maintained as collateral for present and future business transactions within the country (see Note 5).

Short-Term and Long-Term Investments

The Company invests in money market funds and debt securities. In general, investments with original maturities of greater than ninety days and remaining maturities of one year or less are classified as short-term investments, and investments with maturities of more than one year are classified as long-term investments. Investments with maturities beyond one year may be classified as short-term based on their highly liquid nature and because such investments represent the investment of cash that is available for current operations. Despite the long-term maturities, the Company has the ability and intent, if necessary, to liquidate any of these investments in order to meet the Company’s working capital needs within its normal operating cycles. The Company has classified these investments as available-for-sale securities.

Inventories

Inventories are valued at the lower of cost or market value. The Company evaluates the recoverability of its inventories, including purchase commitments under fixed-price long-term supply agreements, based on assumptions about expected demand and market conditions. The Company’s assumption of expected demand is developed based on its analysis of bookings, sales backlog, sales pipeline, market forecast, and competitive intelligence. The Company’s assumption of expected demand is compared to available inventory, production capacity, future polysilicon purchase commitments, available third-party inventory, and growth plans. The Company's factory production plans, which drive materials requirement planning, are established based on its assumptions of expected demand. The Company responds to reductions in expected demand by temporarily reducing manufacturing output and adjusting expected valuation assumptions as necessary. In addition, expected demand by geography has changed historically due to changes in the availability and size of government mandates and economic incentives.

The Company evaluates the terms of its long-term inventory purchase agreements with suppliers, including joint ventures, for the procurement of polysilicon, ingots, wafers, and solar cells and establishes accruals for estimated losses on adverse purchase commitments as necessary, such as lower of cost of market value adjustments, forfeiture of advanced deposits and liquidated damages. Obligations related to non-cancellable purchase orders for inventories match current and forecasted sales orders that will consume these ordered materials and actual consumption of these ordered materials are compared to

Table of Contents

expected demand regularly. The Company anticipates total obligations related to long-term supply agreements for inventories will be recovered because quantities are less than management's expected demand for its solar power products. Other market conditions that could affect the realizable value of the Company's inventories and are periodically evaluated by management include historical inventory turnover ratio, anticipated sales price, new product development schedules, the effect new products might have on the sale of existing products, product obsolescence, customer concentrations, the current market price of polysilicon as compared to the price in our fixed-price arrangements, and product merchantability, among other factors. If, based on assumptions about expected demand and market conditions, we determine that the cost of inventories exceeds its estimated market value or inventory is excess or obsolete, we record a write-down or accrual, which may be material, equal to the difference between the cost of inventories and the estimated market value. If actual market conditions are more favorable, the Company may have higher gross margin when products that have been previously written down are sold in the normal course of business (see Note 5).

Solar Power Systems Leased and to be Leased

Solar power systems leased to residential customers under operating leases are stated at cost, less accumulated depreciation and are amortized to their estimated residual value over the life of the lease term of up to 20 years.

Solar power systems to be leased represents systems that are under installation or which have not been interconnected, which will be depreciated as solar power systems leased to customers when the respective systems are completed, interconnected and subsequently leased to residential customers under operating leases.

Initial direct costs for operating leases are capitalized and amortized over the term of the related customer lease agreements.

Financing Receivables

Leases are classified as either operating or sales-type leases in accordance with the relevant accounting guidelines. Financing receivables are generated by solar power systems leased to residential customers under sales-type leases. Financing receivables represents gross minimum lease payments to be received from customers over a period commensurate with the remaining lease term of up to 20 years and the systems estimated residual value, net of unearned income and allowance for estimated losses. Initial direct costs for sales-type leases are recognized as cost of sales when the solar power systems are placed in service.

Due to the homogeneous nature of its leasing transactions, SunPower manages its financing receivables on an aggregate basis when assessing credit risk. SunPower also considers the credit risk profile for its lease customers to be homogeneous due to the criteria the Company uses to approve customers for its residential leasing program, which among other things, requires a minimum "fair" FICO credit quality. Accordingly, the Company does not regularly categorize its financing receivables by credit risk.

The Company recognizes an allowance for losses on financing receivables in an amount equal to the probable losses net of recoveries. SunPower maintains reserve percentages on past-due receivable aging buckets and bases such percentages on several factors, including consideration of historical credit losses and information derived from industry benchmarking. To date, the allowance for losses has not comprised a material portion of the Company’s financing receivables.

Property, Plant and Equipment

Property, plant and equipment are stated at cost, less accumulated depreciation. Depreciation, excluding solar power systems leased to residential customers and those associated with sale-leaseback transactions under the financing method, as described above, is computed using the straight-line method over the estimated useful lives of the assets as presented below. Solar power systems leased to residential customers and those associated with sale-leaseback transactions under the financing method are depreciated using the straight-line method to their estimated residual values over the lease terms of up to 20 years. Leasehold improvements are amortized over the shorter of the estimated useful lives of the assets or the remaining term of the lease. Repairs and maintenance costs are expensed as incurred.

Table of Contents

| | Useful Lives in Years |
|---|---|
| Buildings | 20 |
| Leasehold improvements | 1 to 20 |
| Manufacturing equipment | 8 to 15 |
| Computer equipment | 2 to 7 |
| Solar power systems | 30 |
| Furniture and fixtures | 3 to 5 |

Interest Capitalization

The interest cost associated with major development and construction projects is capitalized and included in the cost of the property, plant and equipment or project assets. Interest capitalization ceases once a project is substantially complete or no longer undergoing construction activities to prepare it for its intended use. When no debt is specifically identified as being incurred in connection with a construction project, the Company capitalizes interest on amounts expended on the project at the Company's weighted average cost of borrowed money.

Long-Lived Assets

The Company evaluates its long-lived assets, including property, plant and equipment and other intangible assets with finite lives, for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. Factors considered important that could result in an impairment review include significant under-performance relative to expected historical or projected future operating results, significant changes in the manner of use of acquired assets, and significant negative industry or economic trends. The Company's impairment evaluation of long-lived assets includes an analysis of estimated future undiscounted net cash flows expected to be generated by the assets over their remaining estimated useful lives. If the Company's estimate of future undiscounted net cash flows is insufficient to recover the carrying value of the assets over the remaining estimated useful lives, it records an impairment loss in the amount by which the carrying value of the assets exceeds the fair value. Fair value is generally measured based on either quoted market prices, if available, or discounted cash flow analysis.

Project Assets - Plant and Land

Project assets consist primarily of capitalized costs relating to solar power system projects in various stages of development that the Company incurs prior to the sale of the solar power system to a third-party. These costs include costs for land and costs for developing and constructing a solar power system. Development costs can include legal, consulting, permitting, and other similar costs. Once the Company enters into a definitive sales agreement, it reclassifies these project asset costs to deferred project costs within "Prepaid expenses and other current assets" in its Consolidated Balance Sheet until the Company has met the criteria to recognize the sale of the project asset or solar power project as revenue. The Company releases these project costs to cost of revenue as each respective project asset or solar power system is sold to a customer, since the project is constructed for a customer (matching the underlying revenue recognition method).

The Company reviews project assets for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. The Company considers the project commercially viable if it is anticipated to be sellable for a profit once it is either fully developed or fully constructed. The Company examines a number of factors to determine if the project will be profitable, including whether there are any environmental, ecological, permitting, or regulatory conditions that have changed for the project since the start of development. Such changes could cause the cost of the project to increase or the selling price of the project to decrease. Due to the development, construction, and sale timeframe of the Company's larger solar projects, it classifies project assets which are not expected to be sold within the next 12 months as "Project assets - plants and land, net of current portion" on the Consolidated Balance Sheets. Once specific milestones have been achieved, the Company determines if the sale of the project assets will occur within the next 12 months from a given balance sheet date and, if so, it then reclassifies the project assets as current.

Product Warranties

The Company generally warrants the performance of the solar panels that it manufactures at certain levels of power output for 25 years. In addition, the Company passes through to customers long-term warranties from the original equipment

Table of Contents

manufacturers ("OEMs") of certain system components, such as inverters. Warranties of 25 years from solar panel suppliers are standard in the solar industry, while certain system components carry warranty periods ranging from 5 to 20 years. In addition, the Company generally warrants its workmanship on installed systems for periods ranging up to 25 years and also provides system output performance warranties. The Company maintains reserves to cover the expected costs that could result from these warranties. The Company’s expected costs are generally in the form of product replacement or repair. Warranty reserves are based on the Company’s best estimate of such costs and are recognized as a cost of revenue. The Company continuously monitors product returns for warranty failures and maintains a reserve for the related warranty expenses based on various factors including historical warranty claims, results of accelerated lab testing, field monitoring, vendor reliability estimates, and data on industry averages for similar products. Historically, warranty costs have been within management’s expectations (see Note 9).

Revenue Recognition

Solar Power Components

The Company sells its solar panels and balance of system components primarily to dealers, system integrators and distributors, and recognizes revenue, net of accruals for estimated sales returns, when persuasive evidence of an arrangement exists, delivery of the product has occurred, title and risk of loss has passed to the customer, the sales price is fixed or determinable, collectability of the resulting receivable is reasonably assured, and the risks and rewards of ownership have passed to the customer. Other than standard warranty obligations, there are no rights of return and there are no significant post-shipment obligations, including installation, training or customer acceptance clauses with any of the Company's customers that could have an impact on revenue recognition. The Company's revenue recognition policy is consistent across all geographic areas.
The provision for estimated sales returns on product sales is recorded in the same period the related revenues are recorded. These estimates are based on historical sales returns, analysis of credit memo data, and other known factors. Actual returns could differ from these estimates.

Construction Contracts

Revenue is also composed of Engineering, Procurement and Construction ("EPC") projects which are governed by customer contracts that require the Company to deliver functioning solar power systems and are generally completed within three to twelve months from commencement of construction. Construction on large projects may be completed within eighteen to thirty-six months, depending on the size and location. The Company recognizes revenue from fixed price construction contracts, that do not include land or land rights, using the percentage-of-completion method of accounting. Under this method, revenue arising from fixed-price construction contracts is recognized as work is performed based on the percentage of incurred costs to estimated total forecasted costs.

Incurred costs used in the Company’s percentage-of-completion calculation include all direct material, labor and subcontract costs, and those indirect costs related to contract performance, such as indirect labor, supplies, and tools. Project material costs are included in incurred costs when the project materials have been installed by being permanently attached or fitted to the solar power system as required by the project’s engineering design.

In addition to an EPC deliverable, many arrangements also include multiple deliverables such as post-installation systems monitoring and maintenance. For contracts with separately priced monitoring and maintenance, the Company recognizes revenue related to such separately priced elements over the contract period. For contracts including monitoring and maintenance not separately priced, the Company determined that post-installation systems monitoring and maintenance qualify as separate units of accounting. Such post-installation monitoring and maintenance are deferred at the time the contract is executed based on the best estimate of selling price on a standalone basis and are recognized to revenue over the contractual term. The remaining EPC revenue is recognized on a percentage-of-completion basis.

In addition, when arrangements include contingent revenue clauses, such as customer termination or put rights for non-performance, the Company defers the contingent revenue if there is a reasonable possibility that such rights or contingencies may be triggered. In certain limited cases, the Company could be required to buy back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met for periods of up to two years. To date, no such repurchase obligations have been required.

Provisions for estimated losses on uncompleted contracts, if any, are recognized in the period in which the loss first becomes probable and reasonably estimable. Contracts may include profit incentives such as milestone bonuses. These profit incentives are included in the contract value when their realization is reasonably assured.

Table of Contents

Development Projects

The Company develops and sells solar power plants which generally include the sale or lease of related real estate. Revenue recognition for these solar power plants require adherence to specific guidance for real estate sales, which provides that if the Company executes a sale of land in connection with an EPC contract requiring the future development of the property, it recognizes revenue and the corresponding costs under the full accrual method when all of the following requirements are met: the sale is consummated, the buyer's initial and any continuing investments are adequate, the resulting receivables are not subject to subordination, the future costs to develop the property can be reasonably estimated and the Company has transferred the customary risk and rewards of ownership to the buyer. In general, a sale is consummated upon the execution of an agreement documenting the terms of the sale and receipt of a minimum initial payment by the buyer to substantiate the transfer of risk to the buyer. Depending on the value of the initial and continuing investment of the buyer, and provided the recovery of the costs of the solar power plant are reasonably assured if the buyer defaults, the Company may defer revenue and profit during construction by aligning its revenue recognition and release of deferred project costs to cost of sales with the receipt of payment from the buyer. At the time it has unconditionally received payment from the buyer, revenue is recognized and deferred project costs are released to cost of sales at the same rate of profit estimated throughout the construction of the project. The Company's revenue recognition methods for solar power plants not involving real estate are accounted for using the percentage-of-completion method.

Residential Leases

The Company offers a solar lease program, in partnership with third-party financial institutions, which allows its residential customers to obtain SunPower systems under lease agreements for terms of up to 20 years. Leases are classified as either operating or sales-type leases in accordance with the relevant accounting guidelines.

For those systems classified as sales-type leases, the net present value of the minimum lease payments, net of executory costs, is recognized as revenue when the lease is placed in service. This net present value as well as the net present value of the residual value of the lease at termination are recorded as financing receivables in the Consolidated Balance Sheets. The difference between the initial net amounts and the gross amounts are amortized to revenue over the lease term using the interest method. The residual values of our solar systems are determined at the inception of the lease applying an estimated system fair value at the end of the lease term.

For those systems classified as operating leases, rental revenue is recognized, net of executory costs, on a straight-line basis over the term of the lease.

Shipping and Handling Costs

The Company records costs related to shipping and handling in cost of revenue.

Stock-Based Compensation

The Company measures and records compensation expense for all stock-based payment awards based on estimated fair values. The Company provides stock-based awards to its employees, executive officers, and directors through various equity compensation plans including its employee stock option and restricted stock plans. The fair value of stock option awards is measured at the date of grant using a Black-Scholes option pricing model, and the fair value of restricted stock awards and units is based on the market price of the Company's common stock on the date of grant. The Company has not granted stock options since fiscal 2008.

The Company estimates forfeitures at the date of grant. The Company's estimate of forfeitures is based on its historical activity, which it believes is indicative of expected forfeitures. In subsequent periods if the actual rate of forfeitures differs from the Company's estimate, the forfeiture rates are required to be revised, as necessary. Changes in the estimated forfeiture rates can have a significant effect on stock-based compensation expense since the effect of adjusting the rate is recognized in the period the forfeiture estimate is changed.

The Company also grants performance share units to executive officers and certain employees that require it to estimate expected achievement of performance targets over the performance period. This estimate involves judgment regarding future expectations of various financial performance measures. If there are changes in the Company's estimate of the level of financial performance measures expected to be achieved, the related stock-based compensation expense may be significantly increased or reduced in the period that its estimate changes.

Table of Contents

Advertising Costs

Advertising costs are expensed as incurred. Advertising expense totaled approximately $11.9 million, $11.8 million and $9.2 million, in fiscal 2014, 2013, and 2012, respectively.

Research and Development Expense

Research and development expense consists primarily of salaries and related personnel costs, depreciation and the cost of solar cell and solar panel materials and services used for the development of products, including experiments and testing. All research and development costs are expensed as incurred. Research and development expense is reported net of contributions under the R&D Agreement with Total and contracts with governmental agencies because such contracts are considered collaborative arrangements.

Translation of Foreign Currency

The Company and certain of its subsidiaries use their respective local currency as their functional currency. Accordingly, foreign currency assets and liabilities are translated using exchange rates in effect at the end of the period. Foreign subsidiaries that use the U.S. dollar as their functional currency remeasure monetary assets and liabilities using exchange rates in effect at the end of the period. Non-monetary assets and liabilities are carried at their historical values.

The Company includes gains or losses from foreign currency transactions in "Other, net" in the Consolidated Statements of Operations with the other hedging activities described in Note 12.

Concentration of Credit Risk

The Company is exposed to credit losses in the event of nonperformance by the counterparties to its financial and derivative instruments. Financial and derivative instruments that potentially subject the Company to concentrations of credit risk are primarily cash and cash equivalents, restricted cash and cash equivalents, investments, accounts receivable, notes receivable, advances to suppliers, foreign currency option contracts, foreign currency forward contracts, bond hedge and warrant transactions, and purchased options. The Company’s investment policy requires cash and cash equivalents, restricted cash and cash equivalents, and investments to be placed with high-quality financial institutions and to limit the amount of credit risk from any one issuer. Similarly, the Company enters into foreign currency derivative contracts and convertible debenture hedge transactions with high-quality financial institutions and limits the amount of credit exposure to any one counterparty. The foreign currency derivative contracts are limited to a time period of less than 15 months, while the bond hedge and warrant transactions expire in fiscal 2015. The Company regularly evaluates the credit standing of its counterparty financial institutions.

The Company performs ongoing credit evaluations of its customers’ financial condition whenever deemed necessary and generally does not require collateral. The Company maintains an allowance for doubtful accounts based on the expected collectability of all accounts receivable, which takes into consideration an analysis of historical bad debts, specific customer creditworthiness and current economic trends. Qualified customers under our residential lease program are generally required to have a minimum credit score. We believe that our concentration of credit risk is limited because of our large number of customers, credit quality of the customer base, small account balances for most of these customers, and customer geographic diversification. One customer accounted for 57.8% as of December 28, 2014 and one customer accounted for 31% of accounts receivable as of December 29, 2013. In addition, one customer accounted for approximately 85% of the Company's "Costs and estimated earnings in excess of billings" balance as of

December 28, 2014 on the Consolidated Balance Sheets as compared to one customer that accounted for approximately 34% of the balance as of December 29, 2013.

The Company has entered into agreements with vendors that specify future quantities and pricing of polysilicon to be supplied for periods up to 10 years. Under certain agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements.

Income Taxes

Deferred tax assets and liabilities are recognized for temporary differences between financial statement and income tax bases of assets and liabilities. Valuation allowances are provided against deferred tax assets when management cannot conclude that it is more likely than not that some portion or all deferred tax assets will be realized.

Table of Contents

As applicable, interest and penalties on tax contingencies are included in "Provision for income taxes" in the Consolidated Statements of Operations and such amounts were not material for any periods presented. In addition, foreign exchange gains (losses) may result from estimated tax liabilities, which are expected to be settled in currencies other than the U.S. dollar.

Investments in Equity Interests

Investments in entities in which the Company can exercise significant influence, but does not own a majority equity interest or otherwise control, are accounted for under the equity method. The Company records its share of the results of these entities as "Equity in earnings (loss) of unconsolidated investees" on the Consolidated Statements of Operations. The Company monitors its investments for other-than-temporary impairment by considering factors such as current economic and market conditions and the operating performance of the entities and records reductions in carrying values when necessary. The fair value of privately held investments is estimated using the best available information as of the valuation date, including current earnings trends, undiscounted cash flows, and other company specific information, including recent financing rounds (see Notes 5 and 8).

Noncontrolling Interests

Noncontrolling interests represents the portion of net assets in consolidated subsidiaries that are not attributable, directly or indirectly, to the Company. Beginning in the first quarter of fiscal 2013, the Company has entered into facilities with third-party investors under which the investors are determined to hold noncontrolling interests in entities fully consolidated by the Company. The net assets of the shared entities are attributed to the controlling and noncontrolling interests based on the terms of the governing contractual arrangements. The Company further determined the hypothetical liquidation at book value method ("HLBV Method") to be the appropriate method for attributing net assets to the controlling and noncontrolling interests as this method most closely mirrors the economics of the governing contractual arrangements. Under the HLBV Method, the Company allocates recorded income (loss) to each investor based on the change, during the reporting period, of the amount of net assets each investor is entitled to under the governing contractual arrangements in a liquidation scenario.

Business Combinations

The Company records all acquired assets and liabilities, including goodwill, other intangible assets, and in-process research and development, at fair value. The initial recording of goodwill, other intangible assets, and in-process research and development requires certain estimates and assumptions concerning the determination of the fair values and useful lives. The judgments made in the context of the purchase price allocation can materially impact the Company's future results of operations. Accordingly, for significant acquisitions, the Company obtains assistance from third-party valuation specialists. The valuations calculated from estimates are based on information available at the acquisition date (see Notes 3 and 4). The Company charges acquisition related costs that are not part of the consideration to general and administrative expense as they are incurred. These costs typically include transaction and integration costs, such as legal, accounting, and other professional fees.

The Company initially records receipts of net assets or equity interests between entities under common control at their carrying amounts in the accounts of the transferring entity. Financial statements and financial information presented for prior years are retrospectively adjusted to effect the transfer as of the first date for which the entities were under common control. If the carrying amounts of the assets and liabilities transferred differ from the historical cost of the parent of the entities under common control then amounts recognized in the Company's financial statements reflect the transferred assets and liabilities at the historical cost of the parent of the entities under common control. Financial statements and financial information presented for prior years are also retrospectively adjusted to furnish comparative information as though the assets and liabilities had been transferred at that date.

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board ("FASB") issued a new revenue recognition standard based on the principle that revenue is recognized to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods and services. The new revenue recognition standard becomes effective for the Company in the first quarter of fiscal 2017 and is to be applied retrospectively using one of two prescribed methods. The Company is evaluating the application method and impact on its consolidated financial statements and disclosures.

Table of Contents

In February 2015, the FASB issued a new standard which modifies existing consolidation guidance for reporting organizations that are required to evaluate whether they should consolidate certain legal entities. The new consolidation guidance is effective for the Company in the first quarter of fiscal 2016 and requires either a retrospective or a modified retrospective approach to adoption. Early adoption is permitted. The Company is evaluating the available methods and the potential impact of this standard on its consolidated financial statements and disclosures.

Other than as described above, there has been no issued accounting guidance not yet adopted by the Company that it believes is material or potentially material to its consolidated financial statements.

Note 2. TRANSACTIONS WITH TOTAL AND TOTAL S.A.

In June 2011, Total completed a cash tender offer to acquire 60% of the Company's then outstanding shares of common stock at a price of $23.25 per share, for a total cost of approximately $1.4 billion. In December 2011, the Company entered into a Private Placement Agreement with Total, under which Total purchased, and the Company issued and sold, 18.6 million shares of the Company's common stock for a purchase price of $8.80 per share, thereby increasing Total's ownership to approximately 66% of the Company's outstanding common stock as of that date.

Credit Support Agreement

In fiscal 2011, the Company and Total S.A. entered into a Credit Support Agreement (the "Credit Support Agreement") under which Total S.A. agreed to enter into one or more guarantee agreements (each a "Guaranty") with banks providing letter of credit facilities to the Company. Total S.A. will guarantee the Company's obligation to reimburse the applicable issuing bank a draw on a letter of credit and pay interest thereon in accordance with the letter of credit facility between such bank and the Company. Under the Credit Support Agreement, the Company may also request that Total S.A. provide a Guaranty in support of the Company's payment obligations with respect to a letter of credit facility. The Company is required to pay Total S.A. a guarantee fee for each letter of credit that is the subject of a Guaranty under the Credit Support Agreement and was outstanding for all or part of the preceding calendar quarter.

The Credit Support Agreement will terminate following the fifth anniversary of the CSA Effective Date, after the later of the payment in full of all obligations thereunder and the termination or expiration of each Guaranty provided thereunder.

Affiliation Agreement

The Company and Total have entered into an Affiliation Agreement that governs the relationship between Total and the Company (the "Affiliation Agreement"). Until the expiration of a standstill period (the "Standstill Period"), and subject to certain exceptions, Total, Total S.A., any of their respective affiliates and certain other related parties (the "Total Group") may not effect, seek, or enter into discussions with any third-party regarding any transaction that would result in the Total Group beneficially owning shares of the Company in excess of certain thresholds, or request the Company or the Company's independent directors, officers or employees, to amend or waive any of the standstill restrictions applicable to the Total Group.

The Affiliation Agreement imposes certain limitations on the Total Group's ability to seek to effect a tender offer or merger to acquire 100% of the outstanding voting power of the Company and imposes certain limitations on the Total Group's ability to transfer 40% or more of outstanding shares or voting power of the Company to a single person or group that is not a direct or indirect subsidiary of Total S.A. During the Standstill Period, no member of the Total Group may, among other things, solicit proxies or become a participant in an election contest relating to the election of directors to the Company's Board of Directors.

The Affiliation Agreement provides Total with the right to maintain its percentage ownership in connection with any new securities issued by the Company, and Total may also purchase shares on the open market or in private transactions with disinterested stockholders, subject in each case to certain restrictions.

The Affiliation Agreement also imposes certain restrictions with respect to the Company's and its Board of Directors' ability to take certain actions, including specifying certain actions that require approval by the directors other than the directors appointed by Total and other actions that require stockholder approval by Total.

Research & Collaboration Agreement

Total and the Company have entered into a Research & Collaboration Agreement (the "R&D Agreement") that establishes a framework under which the parties engage in long-term research and development collaboration ("R&D

Collaboration"). The R&D Collaboration encompasses a number of different projects, with a focus on advancing the Company's technology position in the crystalline silicon domain, as well as ensuring the Company's industrial competitiveness. The R&D Agreement enables a joint committee to identify, plan and manage the R&D Collaboration.

Liquidity Support Agreement with Total S.A.

The Company was party to an agreement with a customer to construct the California Valley Solar Ranch, a solar park. Part of the debt financing necessary for the customer to pay for the construction of this solar park was provided by the Federal Financing Bank in reliance on a guarantee of repayment provided by the Department of Energy (the "DOE") under a loan guarantee program. In February 2012, the Company entered into a Liquidity Support Agreement with Total S.A. and the DOE, and a series of related agreements with Total S.A. and Total, under which Total S.A. agreed to provide the Company, or cause to be provided, additional liquidity under certain circumstances to a maximum amount of $600.0 million ("Liquidity Support Facility"). The Liquidity Support Facility was available until the completion of the solar park, which was completed in accordance with the terms of the relevant agreement in March 2014. Upon completion, the Liquidity Support Agreement was terminated. There were no outstanding guarantees or debt under the facility upon termination.

Compensation and Funding Agreement

In February 2012, the Company entered into a Compensation and Funding Agreement (the "Compensation and Funding Agreement") with Total S.A. which established the parameters for the terms of liquidity injections that may be required to be provided by Total S.A. to the Company from time to time. During the term of the Compensation and Funding Agreement, the Company is required to pay Total S.A. a guarantee fee in an amount equal to 2.75% per annum of the average amount of the Company's indebtedness that is guaranteed by Total S.A. pursuant to any guaranty issued in accordance with the terms of the Compensation and Funding Agreement during such quarter. Any payment obligations of the Company to Total S.A. under the Compensation and Funding Agreement that are not paid when due accrue interest until paid in full at a rate equal to 6-month U.S. LIBOR as in effect from time to time plus 5.00% per annum.

Upfront Warrant

In February 2012, the Company issued a warrant (the "Upfront Warrant") to Total S.A. to purchase 9,531,677 shares of the Company's common stock with an exercise price of $7.8685, subject to adjustment for customary anti-dilution and other events. The Upfront Warrant, governed by the Private Placement Agreement and the Compensation and Funding Agreement, is exercisable at any time for seven years after its issuance, provided that, so long as at least $25.0 million in aggregate of the Company's convertible debt remains outstanding, such exercise will not cause "any person," including Total S.A., to, directly or indirectly, including through one or more wholly-owned subsidiaries, become the "beneficial owner" (as such terms are defined in Rule 13d-3 and Rule 13d-5 under the Securities and Exchange Act of 1934, as amended), of more than 74.99% of the voting power of the Company's common stock at such time, a circumstance which would trigger the repurchase or conversion of the Company's existing convertible debt.

0.75% Debentures Due 2018

In May 2013, the Company issued $300.0 million in principal amount of its 0.75% senior convertible debentures due 2018 (the "0.75% debentures due 2018"). $200.0 million in aggregate principal amount of the 0.75% debentures due 2018 were acquired by Total. The 0.75% debentures due 2018 are convertible into shares of the Company's common stock at any time based on an initial conversion price equal to $24.95 per share, which provides Total the right to acquire up to 8,017,420 shares of the Company's common stock. The applicable conversion rate may adjust in certain circumstances, including a fundamental change, as described in the indenture governing the 0.75% debentures due 2018 (see Note 11).

0.875% Debentures Due 2021

In June 2014, the Company issued $400.0 million in principal amount of its 0.875% senior convertible debentures due 2021 (the "0.875% debentures due 2021"). An aggregate principal amount of $250.0 million of the 0.875% debentures due 2021 were acquired by Total. The 0.875% debentures due 2021 are convertible into shares of the Company's common stock at any time based on an initial conversion price equal to $48.76 per share, which provides Total the right to acquire up to 5,126,775 shares of the Company's common stock. The applicable conversion rate may adjust in certain circumstances, including a fundamental change, as described in the indenture governing the 0.875% debentures due 2021 (see Note 11).

Joint Projects with Total and its Affiliates:

Table of Contents

The Company enters into various engineering, procurement and construction ("EPC") and operations and maintenance ("O&M") agreements relating to solar projects, including EPC and O&M services agreements relating to projects owned or partially owned by Total and its affiliates. As of December 28, 2014, the Company had $14.0 million of "Costs and estimated earnings in excess of billings" and $1.3 million of "Accounts receivable, net" on its Consolidated Balance Sheets related to projects in which Total and its affiliates have a direct or indirect material interest.

Related-Party Transactions with Total and its Affiliates:

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012 |
| Revenue: | | | |
| EPC, O&M, and components revenue under joint projects | $151,566 | $— | $— |
| Research and development expense: | | | |
| Offsetting contributions received under R&D Agreement | $(1,612) | $(1,661) | $— |
| Interest expense: | | | |
| Guarantee fees incurred under Credit Support Agreement | $12,035 | $8,890 | $6,916 |
| Fees incurred under the Compensation and Funding Agreement | $1,200 | $5,533 | $4,952 |
| Interest expense incurred on the 0.75% debentures due 2018 | $1,604 | $883 | $— |
| Interest expense incurred on the 0.875% debentures due 2021 | $1,209 | $— | $— |

Note 3. BUSINESS COMBINATIONS

In fiscal 2014, the Company completed three acquisitions qualifying as business combinations for a total cash consideration of approximately $35.7 million, of which $21.2 million was attributed to goodwill, $17.4 million to intangible assets, and $2.9 million to net liabilities assumed. The composition of the intangible assets acquired is presented in Note 4. These acquisitions generally enhance the breadth and depth of our expertise in our technologies and our product offerings. The total goodwill of $21.2 million is primarily attributable to the synergies expected to arise after the acquisition. Goodwill is not expected to be deductible for tax purposes.

Pro forma results of operations for these acquisitions have not been presented as they are not material to the consolidated statements of operations, either individually or in aggregate. The actual results of operations of these acquisitions have been included in the Company's consolidated results of operations from the respective acquisition dates.

Note 4. GOODWILL AND OTHER INTANGIBLE ASSETS

Goodwill

The following table presents the changes in the carrying amount of goodwill under the Company's reportable business segments:

| (In thousands) | Americas | EMEA | APAC | Total |
|---|---|---|---|---|
| As of December 29, 2013 | $— | $— | $— | $— |
| Goodwill acquired | 21,221 | — | — | 21,221 |
| As of December 28, 2014 | $21,221 | $— | $— | $21,221 |

Based on the impairment test as of September 30, 2012, the Company determined that the carrying value of the Americas and EMEA reporting units exceeded their fair value. As a result, the Company performed the second step of the impairment analysis for the two reporting units discussed above. The Company's calculation of the implied fair value of goodwill included significant assumptions for, among others, the fair values of recognized assets and liabilities and of unrecognized intangible assets, all of which require significant judgment by management. The Company calculated that the implied fair value of goodwill for the two reporting units was zero and therefore recorded a goodwill impairment loss of $46.7 million for the year ended December 30, 2012. No goodwill impairment was recorded during the years ended December 28, 2014 and December 29, 2013.

Other Intangible Assets

Table of Contents

The following tables present details of the Company's acquired other intangible assets:

| (In thousands) | Gross | Accumulated Amortization | Net |
|---|---|---|---|
| As of December 28, 2014 | | | |
| Patents and purchased technology | $13,675 | $(615) | $13,060 |
| Purchased in-process research and development | 3,700 | — | 3,700 |
| | $17,375 | $(615) | $16,760 |

During the third quarter of fiscal 2012, the Company determined that the carrying value of certain intangible assets in Europe were no longer recoverable based on a discrete evaluation of the nature of the intangible assets, incorporating the effect of declines in regional operating results. As a result, the Company recognized an impairment loss of $12.8 million on its Consolidated Statement of Operations for the year ended December 30, 2012. Aggregate amortization expense for intangible assets totaled $0.6 million, $0.7 million and $9.1 million for fiscal 2014, 2013 and 2012, respectively.

As of December 28, 2014, the estimated future amortization expense related to intangible assets with finite useful lives is as follows:

| (In thousands) | Amount |
|---|---|
| Fiscal Year | |
| 2015 | $1,989 |
| 2016 | 1,989 |
| 2017 | 1,989 |
| 2018 | 1,989 |
| 2019 | 1,989 |
| Thereafter | 3,115 |
| | $13,060 |

Note 5. BALANCE SHEET COMPONENTS

| (In thousands) | As of December 28, 2014 | December 29, 2013 |
|---|---|---|
| Accounts receivable, net: | | |
| Accounts receivable, gross[1,2] | $523,613 | $389,152 |
| Less: allowance for doubtful accounts | (18,152) | (26,463) |
| Less: allowance for sales returns | (1,145) | (2,095) |
| | $504,316 | $360,594 |

1 Includes short-term financing receivables associated with solar power systems leased of $9.1 million and $4.4 million as of December 28, 2014 and December 29, 2013, respectively (see Note 6).

2 Includes short-term retainage of $213.0 million and $8.3 million as of December 28, 2014 and December 29, 2013, respectively. Retainage refers to the earned, but unbilled, portion of a construction and development project for which payment is deferred by the customer until certain contractual milestones are met.

| (In thousands) | Balance at Beginning of Period | Charges (Releases) to Expenses / Revenues | Deductions | Balance at End of Period |
|---|---|---|---|---|
| Allowance for doubtful accounts: | | | | |
| Year ended December 28, 2014 | $26,463 | $(1,023) | $(7,288) | $18,152 |
| Year ended December 29, 2013 | 26,773 | 8,258 | (8,568) | 26,463 |
| Year ended December 30, 2012 | 21,039 | 8,898 | (3,164) | 26,773 |
| Allowance for sales returns: | | | | |
| Year ended December 28, 2014 | 2,095 | (950) | — | 1,145 |
| Year ended December 29, 2013 | 5,054 | (2,959) | — | 2,095 |
| Year ended December 30, 2012 | 8,648 | (3,594) | — | 5,054 |
| Valuation allowance for deferred tax assets: | | | | |
| Year ended December 28, 2014 | 90,571 | 28,177 | — | 118,748 |
| Year ended December 29, 2013 | 182,322 | (91,751) | — | 90,571 |
| Year ended December 30, 2012 | 129,946 | 52,376 | — | 182,322 |

| (In thousands) | As of December 28, 2014 | December 29, 2013 |
|---|---|---|
| Inventories: | | |
| Raw materials | $46,848 | $51,905 |
| Work-in-process | 67,903 | 52,756 |
| Finished goods | 93,822 | 140,914 |
| | $208,573 | $245,575 |

| (In thousands) | As of December 28, 2014 | December 29, 2013 |
|---|---|---|
| Prepaid expenses and other current assets: | | |
| Deferred project costs | $64,784 | $275,389 |
| Bond hedge derivative | 51,951 | 110,477 |
| VAT receivables, current portion | 7,554 | 21,481 |
| Deferred costs for solar power systems to be leased | 22,537 | 23,429 |
| Derivative financial instruments | 7,018 | 4,642 |
| Other receivables | 79,927 | 112,062 |
| Other prepaid expenses | 47,448 | 28,629 |
| Other current assets | 47,626 | 70,161 |
| | $328,845 | $646,270 |

| (In thousands) | As of December 28, 2014 | December 29, 2013 |
|---|---|---|
| Project assets - plants and land: | | |
| Project assets — plants | $104,328 | $64,564 |
| Project assets — land | 12,328 | 11,043 |
| | $116,656 | $75,607 |
| Project assets - plants and land, current portion | $101,181 | $69,196 |

| | | |
|---|---|---|
| Project assets - plants and land, net of current portion | $15,475 | $6,411 |

Table of Contents

| (In thousands) | As of December 28, 2014 | December 29, 2013 |
|---|---|---|
| Property, plant and equipment, net: | | |
| Manufacturing equipment[3] | $554,124 | $538,616 |
| Land and buildings | 26,138 | 26,138 |
| Leasehold improvements | 236,867 | 229,846 |
| Solar power systems[4] | 124,848 | 82,036 |
| Computer equipment | 88,257 | 79,519 |
| Furniture and fixtures | 9,436 | 8,392 |
| Construction-in-process | 75,570 | 11,724 |
| | 1,115,240 | 976,271 |
| Less: accumulated depreciation | (529,896) | (442,884) |
| | $585,344 | $533,387 |

3 The Company's mortgage loan agreement with International Finance Corporation ("IFC") is collateralized by certain manufacturing equipment with a net book value of $111.9 million and $145.9 million as of December 28, 2014 and December 29, 2013, respectively.

4 Includes $94.4 million and $52.6 million of solar power systems associated with sale-leaseback transactions under the financing method as of December 28, 2014 and December 29, 2013, respectively, which are depreciated using the straight-line method to their estimated residual values over the lease terms of up to 20 years (see Note 6).

| (In thousands) | As of December 28, 2014 | December 29, 2013 |
|---|---|---|
| Property, plant and equipment, net by geography[5]: | | |
| Philippines | $335,643 | $321,410 |
| United States | 183,631 | 153,074 |
| Mexico | 40,251 | 32,705 |
| Europe | 24,748 | 25,293 |
| Other | 1,071 | 905 |
| | $585,344 | $533,387 |

5 Property, plant and equipment, net by geography is based on the physical location of the assets.

| (In thousands) | As of December 28, 2014 | December 29, 2013 |
|---|---|---|
| Other long-term assets: | | |
| Equity method investments | $210,898 | $131,739 |
| Retainage[6] | — | 88,934 |
| Cost method investments | 32,308 | 12,374 |
| Long-term debt issuance costs | 11,600 | 10,274 |
| Other | 57,023 | 55,156 |
| | $311,829 | $298,477 |

6 Retainage refers to the earned, but unbilled, portion of a construction and development project for which payment is deferred by the customer until certain contractual milestones are met.

96

Table of Contents

| (In thousands) | As of December 28, 2014 | December 29, 2013 |
|---|---|---|
| Accrued liabilities: | | |
| Bond hedge derivatives | $51,951 | $110,477 |
| Employee compensation and employee benefits | 47,667 | 50,449 |
| Deferred revenue | 33,412 | 29,287 |
| Short-term residential lease financing | 1,489 | 14,436 |
| Interest payable | 10,575 | 10,971 |
| Short-term warranty reserves | 13,278 | 10,426 |
| Restructuring reserve | 13,477 | 7,134 |
| VAT payables | 6,073 | 7,089 |
| Derivative financial instruments | 1,345 | 6,170 |
| Other | 151,767 | 111,718 |
| | $331,034 | $358,157 |

| (In thousands) | As of December 28, 2014 | December 29, 2013 |
|---|---|---|
| Other long-term liabilities: | | |
| Deferred revenue | $176,804 | $176,925 |
| Long-term warranty reserves | 141,370 | 138,946 |
| Long-term sale-leaseback financing | 111,904 | 65,944 |
| Long-term residential lease financing | 27,122 | 31,933 |
| Unrecognized tax benefits | 31,764 | 28,927 |
| Long-term pension liability | 9,980 | 5,430 |
| Derivative financial instruments | 3,712 | 775 |
| Other | 52,688 | 75,111 |
| | $555,344 | $523,991 |

| (In thousands) | As of December 28, 2014 | December 29, 2013 |
|---|---|---|
| Accumulated other comprehensive loss: | | |
| Cumulative translation adjustment | $(8,712) | $(3,766) |
| Net unrealized loss on derivatives | (1,443) | (805) |
| Net loss on long-term pension liability adjustment | (2,878) | — |
| Deferred taxes | (422) | 253 |
| | $(13,455) | $(4,318) |

Note 6. LEASING

Residential Lease Program

The Company offers a solar lease program, in partnership with third-party investors, which provides U.S. residential customers SunPower systems under 20-year lease agreements that include system maintenance and warranty coverage. Leases are classified as either operating or sales-type leases in accordance with the relevant accounting guidelines.

97

Table of Contents

Operating Leases

The following table summarizes "Solar power systems leased and to be leased, net" under operating leases on the Company's Consolidated Balance Sheets as of December 28, 2014 and December 29, 2013, respectively:

| (In thousands) | As of December 28, 2014 | December 29, 2013 |
|---|---|---|
| Solar power systems leased and to be leased, net[1,2]: | | |
| Solar power systems leased | $396,704 | $324,202 |
| Solar power systems to be leased | 21,202 | 36,645 |
| | 417,906 | 360,847 |
| Less: accumulated depreciation | (26,993) | (15,343) |
| | $390,913 | $345,504 |

1 Solar power systems leased and to be leased, net are physically located in the United States.

2 As of December 28, 2014 and December 29, 2013, the Company has pledged solar assets with an aggregate book value of $140.1 million and $147.7 million, respectively, to third-party investors as security for the Company's contractual obligations.

The following table presents the Company's minimum future rental receipts on operating leases placed in service as of December 28, 2014:

| (In thousands) | Fiscal 2015 | Fiscal 2016 | Fiscal 2017 | Fiscal 2018 | Fiscal 2019 | Thereafter | Total |
|---|---|---|---|---|---|---|---|
| Minimum future rentals on operating leases placed in service[1] | $14,318 | 13,176 | 13,213 | 13,258 | 13,303 | 187,459 | $254,727 |

1 Minimum future rentals on operating leases placed in service does not include contingent rentals that may be received from customers under agreements that include performance-based incentives.

Sales-Type Leases

As of December 28, 2014 and December 29, 2013, respectively, the Company's net investment in sales-type leases presented in "Accounts receivable, net" and "Long-term financing receivables, net" on the Company's Consolidated Balance Sheets was as follows:

| (In thousands) | As of December 28, 2014 | December 29, 2013 |
|---|---|---|
| Financing receivables: | | |
| Minimum lease payments receivable[1] | $319,244 | $217,666 |
| Unguaranteed residual value | 34,343 | 23,366 |
| Unearned income | (74,859) | (61,326) |
| Net financing receivables | $278,728 | $179,706 |
| Current | $9,141 | $4,433 |
| Long-term | $269,587 | $175,273 |

1 Net of allowance for doubtful accounts.

As of December 28, 2014, future maturities of net financing receivables for sales-type leases are as follows:

| (In thousands) | Fiscal 2015 | Fiscal 2016 | Fiscal 2017 | Fiscal 2018 | Fiscal 2019 | Thereafter | Total |
|---|---|---|---|---|---|---|---|
| Scheduled maturities of minimum lease payments receivable[1] | $15,513 | 15,470 | 15,660 | 15,857 | 16,058 | 240,686 | $319,244 |

Table of Contents

[1] Minimum future rentals on sales-type leases placed in service does not include contingent rentals that may be received from customers under agreements that include performance-based incentives.

Third-Party Financing Arrangements

The Company has entered into multiple facilities under which solar power systems are financed by third-party investors. Under the terms of certain programs the investors make an upfront payment to the Company, which the Company recognizes as a non-recourse liability that will be reduced over the specified term of the program as customer receivables and government incentives are received by the third-party investors. As the non-recourse liability is reduced over time, the Company makes a corresponding reduction in customer and government incentive receivables on its balance sheet. Under this approach, for both operating and sales-type leases the Company continues to account for these arrangements with its residential lease customers in the consolidated financial statements. As of December 28, 2014, and December 29, 2013, the remaining liability to the third-party investors, presented in "Accrued liabilities" and "Other long-term liabilities" on the Company's Consolidated Balance Sheets, was $28.6 million and $46.4 million, respectively (see Note 5).

The Company has entered into a total of seven facilities with third-party investors under which the parties invest in entities that hold SunPower solar power systems and leases with residential customers. The Company holds controlling interests in these less-than-wholly-owned entities and has therefore fully consolidated these entities. The Company accounts for the portion of net assets in the consolidated entities attributable to the investors as "Redeemable noncontrolling interests" and "Noncontrolling interests" in its consolidated financial statements. Noncontrolling interests in subsidiaries that are redeemable at the option of the noncontrolling interest holder are classified as "Redeemable noncontrolling interests in subsidiaries," between liabilities and equity on the Company's Consolidated Balance Sheets. During the year ended December 28, 2014 and December 29, 2013 the Company received $100.7 million and $100.0 million, in contributions from investors under the related facilities and attributed $64.3 million and $62.0 million, respectively, in losses to the third-party investors primarily as a result of allocating certain assets, including tax credits, to the investors.

Sale-Leaseback Arrangements

The Company enters into sale-leaseback arrangements under which solar power systems are sold to third parties and subsequently leased back by the Company over minimum lease terms of up to 20 years. Separately, the Company enters into power purchase agreements ("PPAs") with end customers, who host the leased solar power systems and buy the electricity directly from the Company under PPAs with durations of up to 25 years. At the end of the lease term, the Company has the option to purchase the systems at fair value or may be required to remove the systems and return them to the third parties.

The Company has classified its sale-leaseback arrangements of solar power systems not involving integral equipment as operating leases. The deferred profit on the sale of these systems is recognized over the term of the lease. As of December 28, 2014, future minimum lease obligations associated with these systems was $96.2 million, which will be recognized over the minimum lease terms. Future minimum payments to be received from customers under PPAs associated with the solar power systems under sale-leaseback arrangements classified as operating leases will be recognized over the lease terms of up to 20 years and are contingent upon the amounts of energy produced by the solar power systems.

The Company enters into sale-leaseback arrangements under which the systems under the sale-leaseback arrangements have been determined to be integral equipment as defined under the accounting guidance for such transactions. The Company was further determined to have continuing involvement with the solar power systems throughout the lease due to purchase option rights. As a result of such continuing involvement, the Company accounts for each transaction as a financing. Under the financing method, the proceeds received from the sale of the solar power systems are recorded by the Company as financing liabilities and presented within "Other long-term liabilities" in the Company's Consolidated Balance Sheets (see Note 3). The financing liabilities are subsequently reduced by the Company's payments to lease back the solar power systems, less interest expense calculated based on the Company's incremental borrowing rate adjusted to the rate required to prevent negative amortization. The solar power systems under the sale-leaseback arrangements remain on the Company's balance sheet and are classified within "Property, plant and equipment, net" (see Note 5). As of December 28, 2014, future minimum lease obligations for the sale-leaseback arrangements accounted for under the financing method were $100.9 million, which will be recognized over the lease terms of up to 20 years.

## Note 7. FAIR VALUE MEASUREMENTS

Table of Contents

Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement (observable inputs are the preferred basis of valuation):

- Level 1 — Quoted prices in active markets for identical assets or liabilities.
- Level 2 — Measurements are inputs that are observable for assets or liabilities, either directly or indirectly, other than quoted prices included within Level 1.
- Level 3 — Prices or valuations that require management inputs that are both significant to the fair value measurement and unobservable.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The Company measures certain assets and liabilities at fair value on a recurring basis. There were no transfers between fair value measurement levels during any presented period. The Company did not have any assets or liabilities measured at fair value on a recurring basis requiring Level 3 inputs as of December 28, 2014 or December 29, 2013.

The following table summarizes the Company's assets and liabilities measured and recorded at fair value on a recurring basis as of December 28, 2014 and December 29, 2013, respectively:

| | December 28, 2014 | | | December 29, 2013 | | |
|---|---|---|---|---|---|---|
| (In thousands) | Total | Level 1 | Level 2 | Total | Level 1 | Level 2 |
| Assets | | | | | | |
| Cash and cash equivalents[1]: | | | | | | |
| Money market funds | $375,000 | $375,000 | $— | $358,001 | $358,001 | $— |
| Prepaid expenses and other current assets: | | | | | | |
| Debt derivatives (Note 11) | 51,951 | — | 51,951 | 110,477 | — | 110,477 |
| Derivative financial instruments (Note 12) | 7,018 | — | 7,018 | 4,642 | — | 4,642 |
| Other long-term assets: | | | | | | |
| Derivative financial instruments (Note 12) | — | — | — | 588 | — | 588 |
| Total assets | $433,969 | $375,000 | $58,969 | $473,708 | $358,001 | $115,707 |
| Liabilities | | | | | | |
| Accrued liabilities: | | | | | | |
| Debt derivatives (Note 11) | $51,951 | $— | $51,951 | $110,477 | $— | $110,477 |
| Derivative financial instruments (Note 12) | 1,345 | — | 1,345 | 6,170 | — | 6,170 |
| Other long-term liabilities: | | | | | | |
| Derivative financial instruments (Note 12) | 3,712 | — | 3,712 | 775 | — | 775 |
| Total liabilities | $57,008 | $— | $57,008 | $117,422 | $— | $117,422 |

1 The Company's cash equivalents consist of money market fund instruments and commercial paper that are classified as available-for-sale and are highly liquid investments with original maturities of 90 days or less. The Company's money market fund instruments are categorized within Level 1 of the fair value hierarchy because they are valued using quoted market prices for identical instruments in active markets.

Other financial instruments, including the Company's accounts receivable, accounts payable and accrued liabilities, are carried at cost, which generally approximates fair value due to the short-term nature of these instruments.

Debt Derivatives

The 4.50% Bond Hedge (as defined in Note 11) and the embedded cash conversion option within the 4.50% debentures due 2015 (as defined in Note 11) are classified as derivative instruments that require mark-to-market treatment with changes in fair value reported in the Company's Consolidated Statements of Operations. The fair values of these derivative instruments

Table of Contents

were determined utilizing the following Level 1 and Level 2 inputs:

| | As of [1] December 28, 2014 | December 29, 2013 |
|---|---|---|
| Stock price | $26.32 | $28.91 |
| Exercise price | $22.53 | $22.53 |
| Interest rate | 0.19 % | 0.33 % |
| Stock volatility | 61.7 % | 57.7 % |
| Credit risk adjustment | 0.65 % | 0.71 % |
| Maturity date | February 18, 2015 | February 18, 2015 |

1 The valuation model utilizes these inputs to value the right but not the obligation to purchase one share of the Company's common stock at $22.53. The Company utilized a Black-Scholes valuation model to value the 4.50% Bond Hedge and embedded cash conversion option. The underlying input assumptions were determined as follows:

(i) Stock price. The closing price of the Company's common stock on the last trading day of the quarter.

(ii) Exercise price. The exercise price of the 4.50% Bond Hedge and the embedded cash conversion option.

(iii) Interest rate. The Treasury Strip rate associated with the life of the 4.50% Bond Hedge and the embedded cash conversion option.

(iv) Stock volatility. The volatility of the Company's common stock over the life of the 4.50% Bond Hedge and the embedded cash conversion option.

(v) Credit risk adjustment. Represents the weighted average of the credit default swap rate of the counterparties.

Assets and Liabilities Measured at Fair Value on a Non-Recurring Basis

The Company measures certain investments and non-financial assets (including project assets, property, plant and equipment, and other intangible assets) at fair value on a non-recurring basis in periods after initial measurement in circumstances when the fair value of such asset is impaired below its recorded cost.

Held-to-Maturity Debt Securities

The Company's debt securities, classified as held-to-maturity, consist of Philippine government bonds that are maintained as collateral for present and future business transactions within the country. These bonds have maturity dates of up to five years and are classified as "Restricted long-term marketable securities" on the Company's Consolidated Balance Sheets. As of December 28, 2014 and December 29, 2013, these bonds had a carrying value of $7.2 million and $8.9 million respectively. The Company records such held-to-maturity investments at amortized cost based on its ability and intent to hold the securities until maturity. The Company monitors for changes in circumstances and events that would affect its ability and intent to hold such securities until the recorded amortized costs are recovered. No other-than-temporary impairment loss was incurred during any presented period. The held-to-maturity debt securities were categorized in Level 2 of the fair value hierarchy.

Equity and Cost Method Investments

The Company holds equity investments in non-consolidated entities that are accounted for under both the equity and cost method. The Company monitors these investments, which are included in "Other long-term assets" in its Consolidated Balance Sheets, for impairment and records reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include Level 2 and Level 3 measurements such as the valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market prices, and declines in operations of the issuer.

As of December 28, 2014 and December 29, 2013, the Company had $210.9 million and $131.7 million, respectively, in investments accounted for under the equity method (see Note 10). As of December 28, 2014 and December 29, 2013, the Company had $32.3 million and $12.4 million, respectively, in investments accounted for under the cost method.

Table of Contents

Related-Party Transactions with Equity and Cost Method Investees:

| (In thousands) | | As of December 28, 2014 | December 29, 2013 |
|---|---|---|---|
| Accounts receivable | | $35,072 | $11,780 |
| Accounts payable | | $57,167 | $51,499 |
| Other long-term assets: | | | |
| Long-term note receivable | | $3,102 | $3,688 |
| | Fiscal Year | | |
| (In thousands) | 2014 | 2013 | 2012 |
| Payments made to investees for products/services | $462,596 | $480,802 | $606,301 |

Cost Method Investment in Tendril Networks, Inc. ("Tendril")

In November 2014, the Company purchased $20.0 million of preferred stock for an approximately 21% stake in Tendril accounted for under the cost method. In connection with the investment, the Company entered into an agreement to purchase up to 14 million shares of Tendril common stock through November 23, 2024, subject to the Company meeting certain revenue milestones and other conditions. If SunPower exercises its right to purchase the maximum allowable number of shares under the warrant purchase agreements, the Company's stake in Tendril would increase to approximately 25%.

In connection with the initial investment in Tendril, the Company also entered into commercial agreements under a Master Services Agreement ("MSA") and Statements of Work ("SOWs"). Under these commercial agreements, Tendril will use up to $13.0 million of SunPower's initial investment to develop, jointly with SunPower, solar software solution products for the Company.

Note 8. RESTRUCTURING

November 2014 Restructuring Plan

On November 14, 2014, the Company announced a reorganization plan aimed towards realigning resources consistently with SunPower's global strategy and improving its overall operating efficiency and cost structure. In connection with this plan, which is expected to be completed by the end of fiscal 2015, SunPower expects approximately 85 to 115 employees to be affected, primarily in Europe, representing approximately 1% to 2% of SunPower's global workforce. SunPower expects to incur restructuring charges totaling approximately $15 million to $25 million, principally composed of severance benefits, lease and related termination costs, and other associated costs. SunPower expects more than 90% of total charges to be cash. The actual timing and costs of the plan may differ from SunPower’s current expectations and estimates due to a number of factors, including uncertainties related to required consultations with employee representatives as well as other local labor law requirements and mandatory processes in the relevant jurisdictions.

Legacy Restructuring Plans

During fiscal 2012 and 2011, the Company implemented approved restructuring plans, related to all segments, to align with changes in the global solar market which included the consolidation of the Company's Philippine manufacturing operations as well as actions to accelerate operating cost reduction and improve overall operating efficiency. These restructuring activities were substantially complete as of December 28, 2014, however, the Company expects to continue to incur costs as it finalizes previous estimates and actions in connection with these plans, primarily due to other costs, such as legal services.

The following table summarizes the restructuring charges recognized in the Company's Consolidated Statements of Operations:

| (In thousands) | Fiscal Year 2014 | 2013 | 2012 | Cumulative To Date |
|---|---|---|---|---|
| November 2014 Plan: | | | | |
| Non-cash impairment charges | $719 | $— | $— | $719 |
| Severance and benefits | 12,180 | — | — | 12,180 |
| Other costs[1] | 213 | — | — | 213 |
| | 13,112 | — | — | 13,112 |
| Legacy Restructuring Plans: | | | | |
| Non-cash impairment charges | — | 443 | 60,153 | 60,596 |
| Severance and benefits | (1,645) | (535) | 30,398 | 46,709 |
| Lease and related termination costs | 244 | 610 | 4,232 | 5,774 |
| Other costs[1] | 512 | 2,084 | 6,040 | 10,860 |
| | (889) | 2,602 | 100,823 | 123,939 |
| Total restructuring charges | $12,223 | $2,602 | $100,823 | $137,051 |

The following table summarizes the restructuring reserve activity during the fiscal year ended December 28, 2014:

| (In thousands) | Fiscal Year 2013 | Charges (Benefits) | Payments | 2014 |
|---|---|---|---|---|
| November 2014 Plan: | | | | |
| Severance and benefits | $— | $12,180 | $(105) | $12,075 |
| Other costs[1] | — | 213 | (68) | 145 |
| | — | 12,393 | (173) | 12,220 |
| Legacy Restructuring Plans: | | | | |
| Severance and benefits | 3,961 | (1,645) | (1,895) | 421 |
| Lease and related termination costs | 1,609 | 244 | (1,463) | 390 |
| Other costs[1] | 1,564 | 512 | (1,630) | 446 |
| | 7,134 | (889) | (4,988) | 1,257 |
| Total restructuring liability | $7,134 | $11,504 | $(5,161) | $13,477 |

[1] Other costs primarily represent associated legal services.

Note 9. COMMITMENTS AND CONTINGENCIES

Facility and Equipment Lease Commitments

The Company leases certain facilities under non-cancellable operating leases from unaffiliated third parties. As of December 28, 2014, future minimum lease payments for facilities under operating leases were $55.5 million, to be paid over the remaining contractual terms of up to 10 years. The Company also leases certain buildings, machinery and equipment under non-cancellable capital leases. As of December 28, 2014, future minimum lease payments for assets under capital leases were $6.4 million, to be paid over the remaining contractual terms of up to 10 years.

Purchase Commitments

The Company purchases raw materials for inventory and manufacturing equipment from a variety of vendors. During the normal course of business, in order to manage manufacturing lead times and help assure adequate supply, the

Company enters into agreements with contract manufacturers and suppliers that either allow them to procure goods and services based on specifications defined by the Company, or that establish parameters defining the Company's requirements. In certain instances, these agreements allow the Company the option to cancel, reschedule or adjust the Company's requirements based on its business needs prior to firm orders being placed. Consequently, only a portion of the Company's disclosed purchase commitments arising from these agreements are firm, non-cancellable, and unconditional commitments.

The Company also has agreements with several suppliers, including some of its non-consolidated investees, for the procurement of polysilicon, ingots, wafers, and Solar Renewable Energy Credits, among others, which specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years and provide for certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that the Company terminates the arrangements.

Future purchase obligations under non-cancellable purchase orders and long-term supply agreements as of December 28, 2014 are as follows:

| (In thousands) | Fiscal 2015 | Fiscal 2016 | Fiscal 2017 | Fiscal 2018 | Fiscal 2019 | Thereafter | Total[1,2,3] |
|---|---|---|---|---|---|---|---|
| Future purchase obligations | $598,461 | 334,897 | 405,949 | 182,181 | 175,695 | 164,847 | $1,862,030 |

[1] Total future purchase obligations as of December 28, 2014 include $2.5 million to related parties.

[2] Total future purchase obligations was composed of $216.5 million related to non-cancellable purchase orders and $1.6 billion related to long-term supply agreements.

[3]During fiscal 2014, the Company did not fulfill all of the purchase commitments it was otherwise obligated to take by December 31, 2014, as specified in several related contracts with a supplier. On February 6, 2015, the Company received a notice from the supplier requesting payment for $56.1 million related to this shortfall. This amount has been included in the '2015' column in the above table and the Company has not recorded an accrual for this amount as of December 28, 2014, as it expects to satisfy the obligation via purchases of inventory in fiscal 2015, within the cure period specified in the contracts, and the amounts did not become due until after the end of fiscal 2014.

The Company expects that all obligations related to non-cancellable purchase orders for manufacturing equipment will be recovered through future cash flows of the solar cell manufacturing lines and solar panel assembly lines when such long-lived assets are placed in service. Factors considered important that could result in an impairment review include significant under-performance relative to expected historical or projected future operating results, significant changes in the manner of use of acquired assets, and significant negative industry or economic trends. Obligations related to non-cancellable purchase orders for inventories match current and forecasted sales orders that will consume these ordered materials and actual consumption of these ordered materials are compared to expected demand regularly. The Company anticipates total obligations related to long-term supply agreements for inventories will be recovered because quantities are less than management's expected demand for its solar power products. The terms of the long-term supply agreements are reviewed by management and the Company assesses the need for any accruals for estimated losses on adverse purchase commitments, such as lower of cost or market value adjustments that will not be recovered by future sales prices, forfeiture of advanced deposits and liquidated damages, as necessary.

Advances to Suppliers

As noted above, the Company has entered into agreements with various vendors, some of which are structured as "take or pay" contracts, that specify future quantities and pricing of products to be supplied. Certain agreements also provide for penalties or forfeiture of advanced deposits in the event the Company terminates the arrangements. Under certain agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements. During fiscal 2014, the Company made additional advance payments totaling $65.7 million, in accordance with the terms of existing long-term supply agreements. As of December 28, 2014 and December 29, 2013, advances to suppliers totaled $409.7 million and $383.3 million, respectively, of which $98.1 million and $58.6 million, respectively, is classified as short-term in the Company's Consolidated Balance Sheets. Two suppliers accounted for 82% and 17% of total advances to suppliers as of December 28, 2014, and 77% and 22% as of December 29, 2013.

Advances from Customers

The Company has entered into other agreements with customers who have made advance payments for solar power products and systems. These advances will be applied as shipments of product occur or upon completion of certain project milestones. The estimated utilization of advances from customers as of December 28, 2014 is as follows:

Table of Contents

| (In thousands) | Fiscal 2015 | Fiscal 2016 | Fiscal 2017 | Fiscal 2018 | Fiscal 2019 | Thereafter | Total |
|---|---|---|---|---|---|---|---|
| Estimated utilization of advances from customers | $31,788 | 22,713 | 27,039 | 27,039 | 28,842 | 43,263 | $180,684 |

In fiscal 2010, the Company and its joint venture, AUO SunPower Sdn. Bhd. ("AUOSP"), entered into an agreement under which the Company resells to AUOSP polysilicon purchased from a third-party supplier. Advance payments provided by AUOSP related to such polysilicon are then made by the Company to the third-party supplier. These advance payments are applied as a credit against AUOSP's polysilicon purchases from the Company. Such polysilicon is used by AUOSP to manufacture solar cells which are sold to the Company on a "cost-plus" basis. As of December 28, 2014 and December 29, 2013, outstanding advance payments received from AUOSP totaled $167.2 million and $181.3 million, respectively, of which $18.3 million and $14.0 million, respectively, is classified as short-term in the Company's Consolidated Balance Sheets, based on projected product shipment dates.

Product Warranties

The following table summarizes accrued warranty activity for fiscal 2014, 2013, and 2012, respectively:

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012 |
| Balance at the beginning of the period | $149,372 | $117,172 | $94,323 |
| Accruals for warranties issued during the period | 24,942 | 40,259 | 29,833 |
| Settlements and adjustments during the period | (19,666) | (8,059) | (6,984) |
| Balance at the end of the period | $154,648 | $149,372 | $117,172 |

Contingent Obligations

Project agreements often require the Company to undertake obligations including: (i) system output performance warranties; (ii) system maintenance; (iii) penalty payments or customer termination rights if the system the Company is constructing is not commissioned within specified timeframes or other milestones are not achieved; and (iv) system put-rights whereby the Company could be required to buy back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met for periods of up to two years. Historically, the Company's systems have performed significantly above the performance warranty thresholds, and there have been no cases in which the Company has had to buy back a system.

Future Financing Commitments

The Company is required to provide certain funding under the joint venture agreement with AU Optronics Singapore Pte. Ltd. ("AUO") and another unconsolidated investee, subject to certain conditions (see Note 10). As of December 28, 2014, the Company has future financing obligations through fiscal 2015 totaling $171.9 million.

Liabilities Associated with Uncertain Tax Positions

Total liabilities associated with uncertain tax positions were $31.8 million and $28.9 million as of December 28, 2014 and December 29, 2013, respectively, and are included in "Other long-term liabilities" in the Company's Consolidated Balance Sheets as they are not expected to be paid within the next 12 months. Due to the complexity and uncertainty associated with its tax positions, the Company cannot make a reasonably reliable estimate of the period in which cash settlement, if any, would be made for its liabilities associated with uncertain tax positions in other long-term liabilities.

Indemnifications

The Company is a party to a variety of agreements under which it may be obligated to indemnify the counterparty with respect to certain matters. Typically, these obligations arise in connection with contracts and license agreements or the sale of assets, under which the Company customarily agrees to hold the other party harmless against losses arising from a breach of warranties, representations and covenants related to such matters as title to assets sold, negligent acts, damage to property, validity of certain intellectual property rights, non-infringement of third-party rights, and certain tax related matters including indemnification to customers under §48(c) solar commercial investment tax credit ("ITC") and Treasury Grant payments under Section 1603 of the American Recovery and Reinvestment Act ("Cash Grant"). In each of these circumstances, payment by the Company is typically subject to the other party making a claim to the Company that is contemplated by and valid under the indemnification provisions of the particular contract, which provisions are typically contract-specific, as well as bringing the claim under the procedures specified in the particular contract. These procedures usually allow the Company to challenge the other party's claims or, in case of breach of intellectual property representations or covenants, to control the defense or settlement of any third party claims brought against the other party. Further, the Company's obligations under these agreements may be limited in terms of activity (typically to replace or correct the products or terminate the agreement with a refund to the other party), duration and/or amounts. In some instances, the Company may have recourse against third parties and/or insurance covering certain payments made by the Company.

In certain limited circumstances the Company has provided indemnification to customers and investors under which the Company is contractually obligated to compensate these parties for losses they may suffer as a result of reductions in benefits received under ITC and Treasury Cash Grant programs. The Company applies for ITC and Cash Grant incentives based on guidance provided by IRS and the Treasury Department, which include assumptions regarding the fair value of the qualified solar power systems, among others.  Certain of the Company’s development agreements, sales-leaseback arrangements, and financing arrangements with investors of its residential lease program, incorporate assumptions regarding the future level of incentives to be received, which in some instances may be claimed directly by its customers and investors. Since the Company cannot determine future revisions to the U.S. Treasury guidelines governing system values or how the IRS will evaluate system values used in claiming ITCs, the Company is unable to reliably estimate the maximum potential future payments that it could have to make under the Company’s contractual investor obligation as of each reporting date.

Defined Benefit Pension Plans

The Company maintains defined benefit pension plans for its non-U.S. employees. Benefits under these plans are generally based on an employee’s years of service and compensation. Funding requirements are determined on an individual country and plan basis and are subject to local country practices and market circumstances. The funded status of the benefit plans, which represents the difference between the benefit obligation and fair value of plan assets, is calculated on a plan-by-plan basis. The benefit obligation and related funded status are determined using assumptions as of the end of each fiscal year. The Company recognizes the overfunded or underfunded status of its benefit plans as an asset or liability on its Consolidated Balance Sheets. As of December 28, 2014 and December 29, 2013, the underfunded status of the Company’s benefit plans, presented in "Other long-term liabilities" on the Company’s Consolidated Balance Sheets, was $10.0 million and $5.4 million, respectively. The impact of transition assets and obligations and actuarial gains and losses are recorded in "Accumulated other comprehensive loss", and are generally amortized as a component of net periodic cost over the average remaining service period of participating employees. Total other comprehensive loss related to the Company’s benefit plans was $2.9 million for the year ended December 28, 2014.

Legal Matters

Derivative Litigation

Derivative actions purporting to be brought on the Company's behalf have been filed in state and federal courts against several of the Company's current and former officers and directors. The actions arise from the Audit Committee's investigation announcement on November 16, 2009 regarding certain unsubstantiated accounting entries. The California state derivative cases were consolidated as In re SunPower Corp. S'holder Derivative Litig., Lead Case No. 1-09-CV-158522 (Santa Clara Sup. Ct.), and co-lead counsel for plaintiffs have been appointed. The complaints assert state-law claims for breach of fiduciary duty, abuse of control, unjust enrichment, gross mismanagement, and waste of corporate assets. Plaintiffs filed a consolidated amended complaint on March 5, 2012. The federal derivative complaints were consolidated as In re SunPower Corp. S'holder Derivative Litig., Master File No. CV-09-05731-RS (N.D. Cal.), and lead plaintiffs and co-lead counsel were appointed on January 4, 2010. The federal complaints assert state-law claims for breach of fiduciary duty, waste of corporate assets, and unjust enrichment, and seek an unspecified amount of damages. Plaintiffs filed a consolidated complaint on May 13, 2011. A Delaware state derivative case, Brenner v. Albrecht, et al., C.A. No. 6514-VCP (Del Ch.), was filed on May 23, 2011 in the Delaware Court of Chancery. The complaint asserted state-law claims for breach of fiduciary duty and contribution and indemnification, and sought an unspecified amount of damages. On December 19, 2013, the parties executed a stipulated settlement agreement, providing that all claims against all defendants would be released and dismissed with prejudice, and that the Company would not oppose a request by the plaintiffs' counsel for an award of attorneys' fees up to $1 million, one half of which would be paid from the proceeds of directors and officers liability insurance. At a hearing on August 22, 2014, the

Table of Contents

Superior Court of California for Santa Clara County entered an order providing for final approval of the stipulated settlement and dismissing that action with prejudice. On September 9, 2014, the court in the consolidated federal derivative action dismissed that action with prejudice. Those dismissals are now final. On October 22, 2014, the Delaware Chancery Court entered an order dismissing the Delaware derivative action with prejudice.

Tax Benefit Indemnification Litigation

On March 19, 2014, the Company received notice that a lawsuit had been filed by NRG Solar LLC (“NRG”) against SunPower Corporation, Systems, a wholly-owned subsidiary of the Company (“SunPower Systems”), in the Superior Court of Contra Costa County, California.  The complaint asserts that, according to the indemnification provisions in the contract pertaining to SunPower Systems’ sale of a large California solar project to NRG, SunPower Systems owes NRG $75 million in connection with certain tax benefits associated with the project that were approved by the Treasury Department for an amount that was less than expected. The Company does not believe that the facts support NRG’s claim under the operative indemnification provisions and intends to vigorously contest the claim. On May 5, 2014, SunPower Systems filed a demurrer to NRG’s complaint.  The Court sustained the demurrer with leave to amend. NRG filed its amended complaint on September 3, 2014. SunPower Systems filed a demurrer to NRG's amended complaint, which the Court sustained, again, with leave to amend.  NRG filed its Second Amended Complaint on January 13, 2015.  SunPower Systems filed a demurrer to NRG’s Second Amended Complaint, which is scheduled to be heard on March 12, 2015.  The case currently is pending and no trial date or case schedule has been set yet.

First Philec Arbitration

On January 28, 2015, an arbitral tribunal of the International Court of Arbitration of the International Chamber of Commerce declared a binding partial award in the matter of an arbitration between First Philippine Electric Corporation ("FPEC") and First Philippine Solar Corporation ("FPSC") against SunPower Philippines Manufacturing, Ltd. ("SPML"), our wholly-owned subsidiary. FPSC is a joint venture of FPEC and SPML for the purpose of slicing silicon wafers from ingots. SPML has not purchased any wafers from FPSC since the third quarter of 2012.

The tribunal found SPML in breach of its obligations under its supply agreement with FPSC, and in breach of its joint venture agreement with FPEC. The tribunal ordered that (i) SPML must purchase FPEC’s interests in FPSC for an aggregate of $30.3 million, subject to adjustment to account for minority interests, and (ii) after completing the purchase of FPEC’s controlling interest in FPSC, to pay FPSC damages in the amount of $25.2 million. SPML’s purchase of FPEC’s interests in FPSC and the subsequent damages payment to FPSC have been suspended pending the parties’ agreement as to legal arrangements required to complete these transactions, but the transactions are presently scheduled to be completed in the second quarter of 2015.

As a result, as of the fourth quarter of fiscal 2014, the Company recorded an accrual of $63.0 million related to this case based on its best estimate of probable loss.

Other Litigation

The Company is also a party to various other litigation matters and claims that arise from time to time in the ordinary course of its business. While the Company believes that the ultimate outcome of such matters will not have a material adverse effect on the Company, their outcomes are not determinable and negative outcomes may adversely affect the Company's financial position, liquidity or results of operations.

Note 10. EQUITY METHOD INVESTMENTS

As of December 28, 2014 and December 29, 2013, the Company's carrying value of its equity method investments totaled $210.9 million and $131.7 million, respectively, and is classified as "Other long-term assets" in its Consolidated Balance Sheets. The Company's share of its earnings (loss) from equity method investments is reflected as "Equity in earnings of unconsolidated investees" in its Consolidated Statement of Operations.

Equity Investment and Joint Venture with AUOSP

In fiscal 2010, the Company, AUO and AU Optronics Corporation, the ultimate parent company of AUO ("AUO Taiwan"), formed the joint venture AUOSP. The Company and AUO each own 50% of the joint venture AUOSP. AUOSP owns a solar cell manufacturing facility in Malaysia and manufactures solar cells and sells them on a "cost-plus" basis to the Company and AUO.

Table of Contents

In connection with the joint venture agreement, the Company and AUO also entered into licensing and joint development, supply, and other ancillary transaction agreements. Through the licensing agreement, the Company and AUO licensed to AUOSP, on a non-exclusive, royalty-free basis, certain background intellectual property related to solar cell manufacturing (in the case of the Company), and manufacturing processes (in the case of AUO). Under the seven-year supply agreement with AUOSP, renewable by the Company for one-year periods thereafter, the Company is committed to purchase 80% of AUOSP's total annual output allocated on a monthly basis to the Company. The Company and AUO have the right to reallocate supplies from time to time under a written agreement. In fiscal 2010, the Company and AUOSP entered into an agreement under which the Company will resell to AUOSP polysilicon purchased from a third-party supplier and AUOSP will provide prepayments to the Company related to such polysilicon, which prepayment will then be made by the Company to the third-party supplier.

The Company and AUO are not permitted to transfer any of AUOSP's shares held by them, except to each other. The Company and AUO agreed to each contribute additional amounts through fiscal 2015 amounting to $169.0 million, or such lesser amount as the parties may mutually agree. In addition, if AUOSP, the Company or AUO requests additional equity financing to AUOSP, then the Company and AUO will each be required to make additional cash contributions of up to $50.0 million in the aggregate. During fiscal 2014, the Company and AUO each contributed $72.0 million to AUOSP.

The Company has concluded that it is not the primary beneficiary of AUOSP since, although the Company and AUO are both obligated to absorb losses or have the right to receive benefits, the Company alone does not have the power to direct the activities of AUOSP that most significantly impact its economic performance. In making this determination the Company considered the shared power arrangement, including equal board governance for significant decisions, elective appointment, and the fact that both parties contribute to the activities that most significantly impact the joint venture's economic performance. The Company accounts for its investment in AUOSP using the equity method as a result of the shared power arrangement. As of December 28, 2014, the Company's maximum exposure to loss as a result of its equity investment in AUOSP is limited to the carrying value of the investment. As of December 28, 2014 and December 29, 2013, the Company's investment in AUOSP had a carrying value of $191.7 million and $112.6 million, respectively.

Equity Investment in Huaxia CPV (Inner Mongolia) Power Co., Ltd. ("CCPV")

In December 2012, the Company entered into an agreement with Tianjin Zhonghuan Semiconductor Co. Ltd., Inner Mongolia Power Group Co. Ltd. and Hohhot Jinqiao City Development Company Co., Ltd. to form CCPV, a jointly owned entity to manufacture and deploy the Company's C7 Tracker concentrator technology in Inner Mongolia and other regions in China. CCPV is based in Hohhot, Inner Mongolia. The establishment of the entity was subject to approval of the Chinese government, which was received in the fourth quarter of fiscal 2013. In December 2013, the Company made a $16.4 million equity investment in CCPV, for a 25% equity ownership.

The Company has concluded that it is not the primary beneficiary of CCPV since, although the Company is obligated to absorb losses and has the right to receive benefits, the Company alone does not have the power to direct the activities of CCPV that most significantly impact its economic performance. The Company accounts for its investment in CCPV using the equity method since the Company is able to exercise significant influence over CCPV due to its board position.

Equity Investment in Diamond Energy Pty Ltd. ("Diamond Energy")

In October 2012, the Company made a $3.0 million equity investment in Diamond Energy, an alternative energy project developer and clean electricity retailer headquartered in Melbourne, Australia, in exchange for a 25% equity ownership.

The Company has concluded that it is not the primary beneficiary of Diamond Energy since, although the Company is obligated to absorb losses and has the right to receive benefits, the Company alone does not have the power to direct the activities of Diamond that most significantly impact its economic performance. The Company accounts for its investment in Diamond using the equity method since the Company is able to exercise significant influence over Diamond due to its board position.

Table of Contents

Note 11. DEBT AND CREDIT SOURCES

The following table summarizes the Company's outstanding debt on its Consolidated Balance Sheets:

| | December 28, 2014 | | | | December 29, 2013 | | | |
|---|---|---|---|---|---|---|---|---|
| (In thousands) | Face Value | Short-term | Long-term | Total | Face Value | Short-term | Long-term | Total |
| Convertible debt: | | | | | | | | |
| 0.875% debentures due 2021 | $400,000 | $— | $400,000 | $400,000 | $— | $— | $— | $— |
| 0.75% debentures due 2018 | 300,000 | — | 300,000 | 300,000 | 300,000 | — | 300,000 | 300,000 |
| 4.50% debentures due 2015 | 249,645 | 245,325 | — | 245,325 | 250,000 | 225,889 | — | 225,889 |
| 4.75% debentures due 2014 | — | — | — | — | 230,000 | 230,000 | — | 230,000 |
| 0.75% debentures due 2027 | 79 | — | 79 | 79 | 79 | — | 79 | 79 |
| IFC mortgage loan | 47,500 | 15,000 | 32,500 | 47,500 | 62,500 | 15,000 | 47,500 | 62,500 |
| CEDA loan | 30,000 | — | 30,000 | 30,000 | 30,000 | — | 30,000 | 30,000 |
| Quinto Credit Facility | 61,481 | — | 61,481 | 61,481 | — | — | — | — |
| Other debt[1] | 91,398 | 1,963 | 89,435 | 91,398 | 50,926 | 41,227 | 9,699 | 50,926 |
| | $1,180,103 | $262,288 | $913,495 | $1,175,783 | $923,505 | $512,116 | $387,278 | $899,394 |

1 Other debt excludes payments related to capital leases, which are disclosed in Note 9.

As of December 28, 2014, the aggregate future contractual maturities of the Company's outstanding debt, at face value, was as follows:

| (In thousands) | Fiscal 2015 | Fiscal 2016 | Fiscal 2017 | Fiscal 2018 | Fiscal 2019 | Thereafter | Total |
|---|---|---|---|---|---|---|---|
| Aggregate future maturities of outstanding debt | $266,659 | 19,970 | 20,294 | 306,077 | 5,789 | 561,314 | $1,180,103 |

Convertible Debt

The following table summarizes the Company's outstanding convertible debt:

| | December 28, 2014 | | | December 29, 2013 | | |
|---|---|---|---|---|---|---|
| (In thousands) | Carrying Value | Face Value | Fair Value[1] | Carrying Value | Face Value | Fair Value[1] |
| Convertible debt: | | | | | | |
| 0.875% debentures due 2021 | $400,000 | $400,000 | $358,000 | $— | $— | $— |

| | | | | | | |
|---|---|---|---|---|---|---|
| 0.75% debentures due 2018 | 300,000 | 300,000 | 366,750 | 300,000 | 300,000 | 367,578 |
| 4.50% debentures due 2015 | 245,325 | 249,645 | 294,581 | 225,889 | 250,000 | 343,895 |
| 4.75% debentures due 2014 | — | — | | 230,000 | 230,000 | 269,252 |
| 0.75% debentures due 2027 | 79 | 79 | 80 | 79 | 79 | 102 |
| | $945,404 | $949,724 | $1,019,411 | $755,968 | $780,079 | $980,827 |

109

[1] The fair value of the convertible debt was determined using Level 2 inputs based on quarterly market prices as reported by an independent pricing source.

The Company's outstanding convertible debentures are senior, unsecured obligations of the Company, ranking equally with all existing and future senior unsecured indebtedness of the Company.

0.875% Debentures Due 2021

In June 2014, the Company issued $400.0 million in principal amount of its 0.875% debentures due 2021. Interest is payable semi-annually, beginning on December 1, 2014. Holders may exercise their right to convert the debentures at any time into shares of the Company's common stock at an initial conversion price approximately equal to $48.76 per share, subject to adjustment in certain circumstances. If not earlier repurchased or converted, the 0.875% debentures due 2021 mature on June 1, 2021.

0.75% Debentures Due 2018

In May 2013, the Company issued $300.0 million in principal amount of its 0.75% debentures due 2018. Interest is payable semi-annually, beginning on December 1, 2013. Holders may exercise their right to convert the debentures at any time into shares of the Company's common stock at an initial conversion price approximately equal to $24.95 per share, subject to adjustment in certain circumstances. If not earlier repurchased or converted, the 0.75% debentures due 2018 mature on June 1, 2018.

4.50% Debentures Due 2015

In 2010, the Company issued $250.0 million in principal amount of its 4.50% senior cash convertible debentures ("4.50% debentures due 2015"). Interest is payable semi-annually, beginning on September 15, 2010. If not earlier repurchased or converted, the 4.50% debentures due 2015 mature on March 15, 2015. The 4.50% debentures due 2015 are convertible, upon certain events and restrictions, only into cash, and not into shares of the Company's common stock (or any other securities) at an initial conversion price of $22.53 per share. The conversion price is subject to adjustment in certain events, such as distributions of dividends or stock splits. Upon conversion, the Company will deliver cash in an amount calculated by reference to the price of its common stock over the applicable observation period.

The embedded cash conversion option is a derivative instrument (derivative liability) that is required to be separated from the 4.50% debentures due 2015. The fair value of the derivative liability is classified within "Other long-term liabilities" on the Company's Consolidated Balance Sheets. Changes in the fair value of the derivative liability are reported in the Company's Consolidated Statements of Operations until such transaction settles or expires.

During fiscal 2014, the Company recognized a non-cash loss of $58.5 million, recorded in "Other, net" in the Company's Consolidated Statement of Operations related to the change in fair value of the embedded cash conversion option. In fiscal 2013 and 2012, the Company recognized a non-cash loss of $108.2 million and a non-cash gain of $1.6 million, respectively, recorded in "Other, net" in the Company's Consolidated Statement of Operations related to the change in fair value of the embedded cash conversion option.

In fiscal 2014, 2013 and 2012, the Company recognized $19.8 million, $17.3 million and $15.2 million of non-cash interest expense, respectively, related to the amortization of the debt discount on the 4.50% debentures. As of December 28, 2014, the remaining unamortized debt discount of $4.3 million will be recognized through March 15, 2015.

Call Spread Overlay with Respect to 4.50% Debentures

Concurrently with the issuance of the 4.50% debentures due 2015, the Company entered into privately-negotiated convertible debenture hedge transactions (collectively, the "4.50% Bond Hedge") and warrant transactions (collectively, the "4.50% Warrants" and together with the 4.50% Bond Hedge, the “CSO2015”), with certain of the initial purchasers of the 4.50% debentures due 2015 or their affiliates. The CSO2015 transactions represent a call spread overlay with respect to the 4.50% debentures due 2015, whereby the cost of the 4.50% Bond Hedge purchased by the Company to cover the cash outlay upon conversion of the debentures is reduced by the sales prices of the 4.50% Warrants. Assuming full performance by the counterparties (and 4.50% Warrants strike prices above the conversion price of the 4.50% debentures due 2015), the transactions effectively reduce the Company's potential payout over the principal amount on the 4.50% debentures due 2015 upon conversion of the 4.50% debentures due 2015.

Table of Contents

Under the terms of the 4.50% Bond Hedge, the Company bought options to acquire, at an exercise price of $22.53 per share, subject to customary adjustments for anti-dilution and other events, cash in an amount equal to the market value of up to 11.1 million shares of the Company's common stock. Under the terms of the 4.50% Warrants, the Company sold warrants to acquire, at an exercise price of $24.00 per share, up to 11.1 million shares of the Company's common stock. Each 4.50% Bond Hedge and 4.50% Warrant transaction is a separate transaction, entered into by the Company with each counterparty, and is not part of the terms of the 4.50% debentures due 2015.

The 4.50% Bond Hedge, which is indexed to the Company's common stock, is a derivative instrument that requires mark-to-market accounting treatment due to the cash settlement features until such transactions settle or expire. The fair value of the 4.50% Bond Hedge is classified as "Other long-term assets" in the Company's Consolidated Balance Sheets.

During fiscal 2014, the Company recognized a non-cash gain of $58.5 million, in "Other, net" in the Company's Consolidated Statement of Operations related to the change in fair value of the 4.50% Bond Hedge. During fiscal 2013 and 2012, the Company recognized a non-cash gain of $108.1 million and a non-cash loss of $1.6 million, respectively, in "Other, net" in the Company's Consolidated Statement of Operations related to the change in fair value of the 4.50% Bond Hedge.

4.75% Debentures Due 2014

In May 2009, the Company issued $230.0 million in principal amount of its 4.75% senior convertible debentures ("4.75% debentures due 2014"). Interest on the 4.75% debentures due 2014 was payable semi-annually, beginning October 15, 2009. Holders of the 4.75% debentures due 2014 were able to exercise their right to convert the debentures at any time into shares of the Company's common stock at a conversion price equal to $26.40 per share, subject to adjustment upon certain events. In April 2014, the 4.75% debentures due 2014 matured. During April 2014, the Company issued approximately 7.1 million shares of its common stock to holders that exercised conversion rights prior to their maturity and paid holders an aggregate of $41.7 million in cash in connection with the settlement of the remaining 4.75% debentures. Subsequent to the maturity date, no 4.75% debentures remained outstanding.

Call Spread Overlay with Respect to the 4.75% Debentures

Concurrently with the issuance of the 4.75% debentures due 2014, the Company entered into certain convertible debenture hedge transactions (the "4.75% Bond Hedge") and warrant transactions (the "4.75% Warrants") with affiliates of certain of the underwriters of the 4.75% debentures due 2014 (together, the "CSO2014"), whereby the cost of the 4.75% Bond Hedges purchased by the Company to cover the potential share outlays upon conversion of the debentures was reduced by the sales prices of the 4.75% Warrants. The CSO2014 were not subject to mark-to-market accounting treatment since they could only be settled by issuance of the Company's common stock.

The 4.75% Bond Hedge allowed the Company to purchase up to 8.7 million shares of the Company's common stock, on a net share basis. Each 4.75% Bond Hedge and 4.75%Warrant was a separate transaction, entered into by the Company with each counterparty, and was not part of the terms of the 4.75% debentures due 2014. The exercise prices of the 4.75% Bond Hedge were $26.40 per share of the Company's common stock, subject to customary adjustment for anti-dilution and other events. In February 2014, the parties agreed to unwind the 4.75% Bond Hedge in full for a total cash settlement of $68.8 million, calculated by reference to the weighted price of the Company's common stock on the settlement day, received by the Company.

Under the 4.75% Warrants, the Company sold warrants to acquire up to 8.7 million shares of the Company's common stock at an exercise price of $26.40 per share of the Company's common stock, subject to adjustment for certain anti-dilution and other events. In February 2014, the parties agreed to unwind the 4.75% Warrants in full for a total cash settlement of $81.1 million, calculated by reference to the weighted price of the Company's common stock on the settlement date, paid by the Company.

Other Debt and Credit Sources

Mortgage Loan Agreement with IFC

In May 2010, the Company entered into a mortgage loan agreement with IFC. Under the loan agreement, we borrowed $75.0 million and are required to repay the amount borrowed starting two years after the date of borrowing, in 10 equal semi-annual installments. The Company is required to pay interest of LIBOR plus 3% per annum on outstanding borrowings; a front-end fee of 1% on the principal amount of borrowings at the time of borrowing; and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed. The Company may prepay all or a part of the outstanding principal, subject to a 1% prepayment premium. The Company has pledged certain assets as collateral supporting its repayment

Table of Contents

obligations (see Note 3). As of both December 28, 2014 and December 29, 2013, the Company had restricted cash and cash equivalents of $9.2 million related to the IFC debt service reserve, which is the amount, as determined by IFC, equal to the aggregate principal and interest due on the next succeeding interest payment date.

Loan Agreement with California Enterprise Development Authority ("CEDA")

In 2010, the Company borrowed the proceeds of the $30.0 million aggregate principal amount of CEDA's tax-exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (the "Bonds") maturing April 1, 2031 under a loan agreement with CEDA. The Bonds mature on April 1, 2031, bear interest at a fixed rate of 8.50% through maturity, and include customary covenants and other restrictions on the Company.

July 2013 Revolving Credit Facility with Credit Agricole

In July 2013, the Company entered into a revolving credit facility with Credit Agricole, as administrative agent, and certain financial institutions, under which the Company may borrow up to $250.0 million. On August 26, 2014, the Company entered into an amendment to the revolving credit facility that, among other things, extends the maturity date of the facility from July 3, 2016 to August 26, 2019 (the "Maturity Date"). Amounts borrowed may be repaid and reborrowed until the Maturity Date. The Company may request increases to the available capacity of the revolving credit facility to an aggregate of $300.0 million, subject to the satisfaction of certain conditions. The revolving credit facility includes representations, covenants, and events of default customary for financing transactions of this type.

The revolving credit facility was entered into in conjunction with the delivery by Total S.A. of a guarantee of the Company's obligations under the related facility. On January 31, 2014, as contemplated by the facility, (i) the Company's obligations under the facility became secured by a pledge of certain accounts receivable and inventory; (ii) certain of the Company's subsidiaries entered into guarantees of the facility; and (iii) Total S.A.'s guarantee of the Company's obligations under the facility expired. Until the expiration of the guarantee on January 31, 2014, the Company was required to pay Total S.A. an annual guarantee fee of 2.75% of the outstanding amount under the revolving credit facility.

Before January 31, 2014, the Company was required to pay interest on outstanding borrowings and fees of (a) with respect to any LIBOR rate loan, 0.60% plus the LIBOR rate divided by a percentage equal to one minus the stated maximum rate of all reserves required to be maintained against "Eurocurrency liabilities" as specified in Regulation D; (b) with respect to any alternative base rate loan, 0.25% plus the greater of (1) the prime rate, (2) the Federal funds rate plus 0.50%, and (3) the one month LIBOR rate plus 1%; and (c) a commitment fee of 0.06% per annum on funds available for borrowing and not borrowed.

After January 31, 2014, the Company is required to pay interest on outstanding borrowings and fees of (a) with respect to any LIBOR rate loan, an amount ranging from 1.50% to 2.00% (depending on the Company's leverage ratio from time to time) plus the LIBOR rate divided by a percentage equal to one minus the stated maximum rate of all reserves required to be maintained against "Eurocurrency liabilities" as specified in Regulation D; (b) with respect to any alternate base rate loan, an amount ranging from 0.50% to 1.00% (depending on the Company's leverage ratio from time to time) plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.50%, and (3) the one-month LIBOR rate plus 1%; and (c) a commitment fee ranging from 0.25% to 0.35% (depending on the Company's leverage ratio from time to time) per annum on funds available for borrowing and not borrowed.

As of December 28, 2014 and December 29, 2013, the Company had no outstanding borrowings under the revolving credit facility.

Liquidity Support Agreement with Total S.A.

In February 2012, the Company entered into a Liquidity Support Agreement with Total S.A. and the DOE, and a series of related agreements with Total S.A. and Total, under which Total S.A. agreed to provide the Company, or cause to be provided, additional liquidity under certain circumstances. The Liquidity Support Agreement was terminated in the first quarter of fiscal 2014. There were no outstanding guarantees or debt under the agreement upon termination (see Note 2).

Project Financing

In order to facilitate the construction and sale of certain solar projects, the Company obtains non-recourse project loans from third-party financial institutions that are contemplated as part of the structure of the sales transaction. The customer, which is not a related party to either the financial institution or the Company, in certain circumstances is permitted to assume the loans at the time that the project entity is sold to the customer. During fiscal 2013, the Company entered into a project loan with a consortium of lenders to facilitate the development of a 10 MW utility and power plant project under construction in Israel. During the first quarter of fiscal 2014, the Company sold the Israeli project. The related loan, amounting to ILS 141.8 million (approximately $40.7 million based on the exchange rate at the time of sale), and accrued and unpaid interest was assumed by the customer. In instances where the debt is issued as a form of pre-established customer financing, subsequent debt assumption is reflected as a financing outflow and operating inflow for purposes of the statement of cash flows to reflect the substance of the assumption as a facilitation of customer financing from a third-party.

On October 17, 2014, the Company, through a wholly-owned subsidiary (the "Project Company"), entered into an approximately $377.0 million credit facility with Santander Bank, N.A., Mizuho Bank, Ltd. and Credit Agricole (the "Quinto Credit Facility") in connection with the planned construction of the approximately 135 MW Quinto Solar Energy Project, located in Merced County, California (the "Quinto Project").

The Quinto Credit Facility includes approximately $318.0 million in construction loan commitments and approximately $59.0 million in letter of credit commitments. Principal and accrued interest on the construction loans are convertible into term loans following the end of the construction period. The Quinto Credit Facility matures at the end of the seventh year following the term loan conversion, with semi-annual principal payments computed on a 19-year amortization schedule and a balloon payment at maturity. Generally, borrowings under the Quinto Credit Facility will bear interest of (a) with respect to any LIBOR rate loan, either 1.625% or 1.875% (until December 31, 2019 and on December 31, 2019 and thereafter, respectively) plus the LIBOR rate divided by a percentage equal to one minus the stated maximum rate of all reserves required to be maintained against "Eurocurrency Liabilities" as specified in Regulation D and (b) with respect to any alternate base rate loan, either 0.625% or 0.875% (until December 31, 2019 and on December 31, 2019 and thereafter, respectively) plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.50%, and (3) the one-month LIBOR rate plus 1%. In addition, a commitment fee of 0.50% per annum is charged on funds available for borrowing and not borrowed. All outstanding indebtedness under the Quinto Credit Facility may be voluntarily prepaid in whole or in part without premium or penalty, other than customary breakage costs. We have committed to invest approximately $139 million of equity in the Quinto Project Company, with such investments to be made over time in connection with the completion of project development milestones. The Quinto Credit Facility is secured by the assets of, and equity in, the Project Company, but is otherwise non-recourse to us and our affiliates. The Quinto Credit Facility contains certain affirmative and negative covenants that limit or restrict, subject to certain exceptions, the ability of the Project Company to do certain things including the incurrence of indebtedness or liens, payment of dividends, merging or consolidating, transactions with affiliates or changing the nature of its business.

Proceeds from the Quinto Credit Facility will be used primarily to fund the construction of the Quinto Project under a turnkey EPC agreement between the Project Company and SunPower Corporation, Systems, our wholly-owned subsidiary.

As of December 28, 2014 we had outstanding borrowings of $61.5 million under the Quinto Credit Facility.

Other Debt

During fiscal 2014, the Company entered into two long-term non-recourse loans to finance solar power systems and leases under its residential lease program. In fiscal 2014 the Company drew down $81.9 million of proceeds, net of issuance costs, under the loan agreements. The loans have a 17-year term and as of December 28, 2014, the short-term and long-term balances of the loans were $1.5 million and $80.4 million, respectively.

During fiscal 2013, the Company entered into a long-term non-recourse loan agreement with a third-party financial institution to finance a 5.4 MW utility and power plant operating in Arizona. The outstanding balance of the loan as of December 28, 2014 was $8.6 million.

Other debt is further composed of non-recourse project loans in EMEA which are scheduled to mature through 2028.

August 2011 Letter of Credit Facility with Deutsche Bank

In August 2011, the Company entered into a letter of credit facility agreement with Deutsche Bank, as administrative agent, and certain financial institutions. Payment of obligations under the letter of credit facility is guaranteed by Total S.A. pursuant to the Credit Support Agreement (see Note 2). The letter of credit facility provides for the issuance, upon request by the Company, of letters of credit by the issuing banks thereunder in order to support certain obligations of the Company, in an aggregate amount not to exceed $878.0 million for the period from January 1, 2014 through December 31, 2014. Aggregate letter of credit amounts may be increased upon the agreement of the parties but, otherwise, may not exceed (i) $936.0 million

Table of Contents

for the period from January 1, 2015 through December 31, 2015, and (ii) $1.0 billion for the period from January 1, 2016 through June 28, 2016.

As of December 28, 2014 and December 29, 2013, letters of credit issued and outstanding under the August 2011 letter of credit facility with Deutsche Bank totaled $654.7 million and $736.0 million, respectively.

September 2011 Letter of Credit Facility with Deutsche Bank Trust

In September 2011, the Company entered into a letter of credit facility with Deutsche Bank Trust which provides for the issuance, upon request by the Company, of letters of credit to support obligations of the Company in an aggregate amount not to exceed $200.0 million. Each letter of credit issued under the facility is fully cash-collateralized and the Company has entered into a security agreement with Deutsche Bank Trust, granting them a security interest in a cash collateral account established for this purpose.

As of December 28, 2014 and December 29, 2013, letters of credit issued and outstanding under the Deutsche Bank Trust facility amounted to $1.6 million and $2.4 million, respectively, which were fully collateralized with restricted cash on the Consolidated Balance Sheets.

Note 12. DERIVATIVE FINANCIAL INSTRUMENTS

The following tables present information about the Company's hedge instruments measured at fair value on a recurring basis as of December 28, 2014 and December 29, 2013, all of which utilize Level 2 inputs under the fair value hierarchy:

| (In thousands) | Balance Sheet Classification | December 28, 2014 | December 29, 2013 |
|---|---|---|---|
| Assets | | | |
| Derivatives designated as hedging instruments: | | | |
| Foreign currency option contracts | Prepaid expenses and other current assets | $2,240 | $615 |
| Foreign currency forward exchange contracts | Prepaid expenses and other current assets | 4 | 35 |
| Foreign currency option contracts | Other long-term assets | — | 588 |
| | | $2,244 | $1,238 |
| Derivatives not designated as hedging instruments: | | | |
| Foreign currency option contracts | Prepaid expenses and other current assets | $— | $381 |
| Foreign currency forward exchange contracts | Prepaid expenses and other current assets | 4,774 | 3,611 |
| | | $4,774 | $3,992 |
| Liabilities | | | |
| Derivatives designated as hedging instruments: | | | |
| Foreign currency option contracts | Accrued liabilities | $— | $1,595 |
| Foreign currency option contracts | Other long-term liabilities | — | 555 |
| Interest rate contracts | Other long-term liabilities | 3,712 | 220 |
| | | $3,712 | $2,370 |

| | | | |
|---|---|---|---|
| Derivatives not designated as hedging instruments: | | | |
| Foreign currency option contracts | Accrued liabilities | $— | $386 |
| Foreign currency forward exchange contracts | Accrued liabilities | 1,345 | 4,189 |
| | | $1,345 | $4,575 |

Table of Contents

| | December 28, 2014 | | | | | |
|---|---|---|---|---|---|---|
| | | | | Gross Amounts Not Offset in the Consolidated Balance Sheets, but Have Rights to Offset | | |
| (In thousands) | Gross Amounts Recognized | Gross Amounts Offset | Net Amounts Presented | Financial Instruments | Cash Collateral | Net Amounts |
| Derivative assets | $7,018 | $— | $7,018 | $1,345 | $— | $5,673 |
| Derivative liabilities | $5,057 | $— | $5,057 | $1,345 | $— | $3,712 |

| | December 29, 2013 | | | | | |
|---|---|---|---|---|---|---|
| | | | | Gross Amounts Not Offset in the Consolidated Balance Sheets, but Have Rights to Offset | | |
| (In thousands) | Gross Amounts Recognized | Gross Amounts Offset | Net Amounts Presented | Financial Instruments | Cash Collateral | Net Amounts |
| Derivative assets | $5,230 | $— | $5,230 | $4,512 | $— | $718 |
| Derivative liabilities | $6,945 | $— | $6,945 | $4,512 | $— | $2,433 |

The following table summarizes the pre-tax amount of unrealized gain or loss recognized in "Accumulated other comprehensive income" ("OCI") in "Stockholders' equity" in the Consolidated Balance Sheets:

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012 |
| Derivatives designated as cash flow hedges: | | | |
| Gain (loss) in OCI at the beginning of the period | $(805) | $(243) | $10,473 |
| Unrealized gain (loss) recognized in OCI (effective portion) | (255) | (168) | (1,720) |
| Less: Loss (gain) reclassified from OCI to revenue (effective portion) | (383) | (394) | (8,996) |
| Net gain (loss) on derivatives | $(638) | $(562) | $(10,716) |
| Gain (loss) in OCI at the end of the period | $(1,443) | $(805) | $(243) |

The following table summarizes the amount of gain or loss recognized in "Other, net" in the Consolidated Statements of Operations in the years ended December 28, 2014, December 29, 2013 and December 30, 2012:

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012 |
| Derivatives designated as cash flow hedges: | | | |
| Gain (loss) recognized in "Other, net" on derivatives (ineffective portion and amount excluded from effectiveness testing) | $704 | $(3,029) | $(1,853) |
| Derivatives not designated as hedging instruments: | | | |
| Gain (loss) recognized in "Other, net" | $6,463 | $(4,615) | $3,126 |

Foreign Currency Exchange Risk

Designated Derivatives Hedging Cash Flow Exposure

The Company's cash flow exposure primarily relates to anticipated third-party foreign currency revenues and expenses and interest rate fluctuations. To protect financial performance, the Company enters into foreign currency forward and option

Table of Contents

contracts designated as cash flow hedges to hedge certain forecasted revenue transactions denominated in currencies other than their functional currencies.

As of December 28, 2014, the Company had designated outstanding cash flow hedge option contracts and forward contracts with an aggregate notional value of $26.6 million and $12.2 million, respectively. As of December 29, 2013, the Company had designated outstanding cash flow hedge option contracts and forward contracts with an aggregate notional value of $105.9 million and $42.8 million, respectively. The Company designates either gross external or intercompany revenue up to its net economic exposure. These derivatives have a maturity of 12 months or less and consist of foreign currency option and forward contracts. The effective portion of these cash flow hedges is reclassified into revenue when third-party revenue is recognized in the Consolidated Statements of Operations.

Non-Designated Derivatives Hedging Transaction Exposure

Derivatives not designated as hedging instruments consist of forward and option contracts used to hedge re-measurement of foreign currency denominated monetary assets and liabilities primarily for intercompany transactions, receivables from customers, and payables to third parties. Changes in exchange rates between the Company's subsidiaries' functional currencies and the currencies in which these assets and liabilities are denominated can create fluctuations in the Company's reported consolidated financial position, results of operations and cash flows. As of December 28, 2014, the Company held option contracts and forward contracts with an aggregate notional value of zero and $122.5 million, respectively, to hedge balance sheet exposure. The maturity dates of these contracts range from December 2014 to March 2015. The Company held option contracts and forward contracts with an aggregate notional value of $9.4 million and $32.1 million, respectively, as of December 29, 2013, to hedge balance sheet exposure.

Interest Rate Risk

The Company also enters into interest rate swap agreements to reduce the impact of changes in interest rates on its project specific non-recourse floating rate debt. As of December 28, 2014 and December 29, 2013, the Company had interest rate swap agreements designated as cash flow hedges with an aggregate notional value of $247.0 million and $9.0 million, respectively. These swap agreements allow the Company to effectively convert floating-rate payments into fixed rate payments periodically over the life of the agreements. These derivatives have a maturity of more than 12 months. The effective portion of these cash flow hedges is reclassified into interest expense when the hedged transactions are recognized in the Consolidated Statements of Operations.

Credit Risk

The Company's option and forward contracts do not contain any credit-risk-related contingent features. The Company is exposed to credit losses in the event of nonperformance by the counterparties to these option and forward contracts. The Company enters into derivative contracts with high-quality financial institutions and limits the amount of credit exposure to any single counterparty. In addition, the Company continuously evaluates the credit standing of its counterparties.

Note 13. INCOME TAXES

The geographic distribution of income (loss) from continuing operations before income taxes and equity earnings of unconsolidated investees and the components of provision for income taxes are summarized below:

Table of Contents

| (In thousands) | Fiscal Year 2014 | 2013 | 2012 |
|---|---|---|---|
| Geographic distribution of income (loss) from continuing operations before income taxes and equity in earnings of unconsolidated investees: | | | |
| U.S. income (loss) | $183,412 | $(32,022) | $(140,432) |
| Non-U.S. income (loss) | 1,202 | 73,605 | (189,231) |
| Income (loss) before income taxes and equity in earnings (loss) of unconsolidated investees | $184,614 | $41,583 | $(329,663) |
| Provision for income taxes: | | | |
| Current tax benefit (expense) | | | |
| Federal | $141 | $5,068 | $— |
| State | 3,554 | (2,414) | (805) |
| Foreign | (16,571) | (14,043) | (28,183) |
| Total current tax expense | $(12,876) | $(11,389) | $(28,988) |
| Deferred tax benefit (expense) | | | |
| Federal | $2,797 | $— | $— |
| State | 10 | — | — |
| Foreign | 1,309 | (516) | 7,146 |
| Total deferred tax benefit (expense) | 4,116 | (516) | 7,146 |
| Provision for income taxes | $(8,760) | $(11,905) | $(21,842) |

The provision for income taxes differs from the amounts obtained by applying the statutory U.S. federal tax rate to income before taxes as shown below:

| (In thousands) | Fiscal Year 2014 | 2013 | 2012 |
|---|---|---|---|
| Statutory rate | 35% | 35% | 35% |
| Tax benefit (expense) at U.S. statutory rate | $(64,614) | $(14,554) | $115,382 |
| Foreign rate differential | (15,387) | 9,324 | (82,017) |
| State income taxes, net of benefit | 2,180 | (2,414) | (805) |
| Goodwill impairment | — | — | (12,596) |
| Deemed foreign dividend | (4,625) | (2,511) | — |
| Tax credits (research and development/investment tax credit) | 9,262 | 15,599 | 939 |
| Change in valuation allowance | 52,489 | (32,512) | (53,075) |
| Reserve release | 1,948 | 10,550 | — |
| Non-controlling interest income | 11,052 | 9,570 | — |
| Lehman settlement | — | — | 17,726 |
| Other, net | (1,065) | (4,957) | (7,396) |
| Total | $(8,760) | $(11,905) | $(21,842) |

Table of Contents

| (In thousands) | As of December 28, 2014 | December 29, 2013 |
|---|---|---|
| Deferred tax assets: | | |
| Net operating loss carryforwards | $60,092 | $84,815 |
| Research and development credit and California manufacturing credit carryforwards | 14,846 | 26,865 |
| Reserves and accruals | 164,585 | 145,382 |
| Synthetic debt | 1,635 | 13,595 |
| Stock-based compensation stock deductions | 14,694 | 14,752 |
| Other | 216 | — |
| Total deferred tax asset | 256,068 | 285,409 |
| Valuation allowance | (118,748) | (90,571) |
| Total deferred tax asset, net of valuation allowance | 137,320 | 194,838 |
| Deferred tax liabilities: | | |
| Foreign currency derivatives unrealized gains | (422) | 184 |
| Other intangible assets and accruals | (35,279) | (44,959) |
| Fixed asset basis difference | (95,247) | (143,491) |
| Total deferred tax liabilities | (130,948) | (188,266) |
| Net deferred tax asset | $6,372 | $6,572 |

As of December 28, 2014, the Company had federal net operating loss carryforwards of $288.3 million for tax purposes, of which $94.8 million relate to stock deductions and $129.3 million relate to debt issuance, both of which will benefit equity when realized. These federal net operating loss carryforwards will expire at various dates from 2031 to 2033. As of December 28, 2014, the Company had California state net operating loss carryforwards of approximately $180.5 million for tax purposes, of which $40.3 million relate to stock deductions and $50.7 million relate to debt issuance, both of which will benefit equity when realized. These California net operating loss carryforwards will expire at various dates from 2031 to 2033. The Company also had credit carryforwards of approximately $49.7 million for federal tax purposes and $9.4 million for state tax purposes. These federal credit carryforwards will expire at various dates from 2018 to 2035, and the California credit carryforwards do not expire. The Company’s ability to utilize a portion of the net operating loss and credit carryforwards is dependent upon the Company being able to generate taxable income in future periods and may be limited due to restrictions imposed on utilization of net operating loss and credit carryforwards under federal and state laws upon a change in ownership, such as the transaction with Cypress.

The Company is subject to tax holidays in the Philippines where it manufactures its solar power products. The Company's current income tax holidays were granted as manufacturing lines were placed in service and thereafter expire within this fiscal year, and we are in the process of or have applied for extensions and renewals upon expiration. Tax holidays in the Philippines reduce the Company's tax rate to 0% from 30%. Tax savings associated with the Philippines tax holidays were approximately $8.3 million, $11.7 million, and $9.5 million in fiscal 2014, 2013, and 2012, respectively, which provided a diluted net income (loss) per share benefit of $0.05, $0.08, and $0.07, respectively.

The Company has a tax ruling in Switzerland where it sells its solar power products. The ruling in Switzerland reduces the Company's tax rate to 11.5% from approximately 24.2%. Tax savings associated with this ruling were approximately $3.5 million, $1.5 million, and $1.8 million in fiscal 2014, 2013, and 2012, respectively, which provided a diluted net income (loss) per share benefit of $0.02, $0.02, and $0.02 in fiscal 2014, 2013, and 2012, respectively. This current tax ruling expires at the end of 2019.

As of December 28, 2014, the Company's foreign subsidiaries have accumulated undistributed earnings of approximately $231.1 million that are intended to be indefinitely reinvested outside the United States and, accordingly, no provision for U.S. federal and state tax has been made for the distribution of these earnings. At December 28, 2014, the amount of the unrecognized deferred tax liability on the indefinitely reinvested earnings was $61.5 million.

Valuation Allowance

Table of Contents

The Company’s valuation allowance is related to deferred tax assets in the United States and France, and was determined by assessing both positive and negative evidence. When determining whether it is more likely than not that deferred assets are recoverable, with such assessment being required on a jurisdiction by jurisdiction basis, management believes that sufficient uncertainty exists with regard to the realizability of these assets such that a valuation allowance is necessary. Factors considered in providing a valuation allowance include the lack of a significant history of consistent profits, the lack of consistent profitability in the solar industry, and the lack of carryback capacity to realize these assets, and other factors. Based on the absence of sufficient positive objective evidence, management is unable to assert that it is more likely than not that the Company will generate sufficient taxable income to realize these remaining net deferred tax assets. Should the Company achieve a certain level of profitability in the future, it may be in a position to reverse the valuation allowance which would result in a non-cash income statement benefit. The change in valuation allowance for fiscal 2014, 2013, and 2012 was $28.2 million, $91.8 million, and $52.4 million, respectively.

Unrecognized Tax Benefits

Current accounting guidance contains a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon ultimate settlement.

A reconciliation of the beginning and ending amounts of unrecognized tax benefits during fiscal 2014, 2013, and 2012 is as follows:

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012 |
| Balance, beginning of year | $29,618 | $62,932 | $33,565 |
| Additions for tax positions related to the current year | 5,579 | 2,053 | 708 |
| Additions (reductions) for tax positions from prior years | 14,408 | (24,535) | 32,493 |
| Reductions for tax positions from prior years/statute of limitations expirations | (3,391) | (12,431) | (2,684) |
| Foreign exchange (gain) loss | (1,927) | 1,599 | (1,150) |
| Balance at the end of the period | $44,287 | $29,618 | $62,932 |

Included in the unrecognized tax benefits at December 2014 and 2013 is $28.2 million and $25.9 million, respectively that, if recognized, would result in a reduction of the Company's effective tax rate. The amounts differ from the long term liability recorded of $31.8 million and $28.9 million as of December 2014 and 2013 due to accrued interest and penalties. Certain components of the unrecognized tax benefits are recorded against deferred tax asset balances.

Management believes that events that could occur in the next 12 months and cause a change in unrecognized tax benefits include, but are not limited to, the following:

- commencement, continuation or completion of examinations of the Company’s tax returns by the U.S. or foreign taxing authorities; and

- expiration of statutes of limitation on the Company’s tax returns.

The calculation of unrecognized tax benefits involves dealing with uncertainties in the application of complex global tax regulations. Uncertainties include, but are not limited to, the impact of legislative, regulatory and judicial developments, transfer pricing and the application of withholding taxes. Management regularly assesses the Company's tax positions in light of legislative, bilateral tax treaty, regulatory and judicial developments in the countries in which the Company does business. Management determined that an estimate of the range of reasonably possible change in the amounts of unrecognized tax benefits within the next 12 months cannot be made.

Classification of Interests and Penalties

Table of Contents

The Company accrues interest and penalties on tax contingencies which are classified as "Provision for income taxes" in the Consolidated Statements of Operations. Accrued interest as of December 28, 2014 and December 29, 2013 was approximately $3.3 million and $2.6 million, respectively. Accrued penalties were not material for any of the periods presented.

Tax Years and Examination

The Company files tax returns in each jurisdiction in which it is registered to do business. In the United States and many of the state jurisdictions, and in many foreign countries in which the Company files tax returns, a statute of limitations period exists. After a statute of limitations period expires, the respective tax authorities may no longer assess additional income tax for the expired period. Similarly, the Company is no longer eligible to file claims for refund for any tax that it may have overpaid. The following table summarizes the Company’s major tax jurisdictions and the tax years that remain subject to examination by these jurisdictions as of December 28, 2014:

| Tax Jurisdictions | Tax Years |
|---|---|
| United States | 2011 and onward |
| California | 2010 and onward |
| Switzerland | 2005 and onward |
| Philippines | 2011 and onward |
| France | 2010 and onward |
| Italy | 2009 and onward |

Additionally, certain pre-2011 U.S. corporate tax return and pre-2010 California tax returns are not open for assessment but the tax authorities can adjust net operating loss and credit carryovers that were generated.

The Company is under tax examinations in various jurisdictions. The Company does not expect the examinations to result in a material assessment outside of existing reserves. If a material assessment in excess of current reserves results, the amount that the assessment exceeds current reserves will be a current period charge to earnings.

Note 14. COMMON STOCK

Common Stock

Voting Rights - Common Stock

All common stock holders are entitled to one vote per share on all matters submitted to be voted on by the Company's stockholders, subject to the preferences applicable to any preferred stock outstanding.

Dividends - Common Stock

All common stock holders are entitled to receive equal per share dividends when and if declared by the Board of Directors, subject to the preferences applicable to any preferred stock outstanding. Certain of the Company's debt agreements place restrictions on the Company and its subsidiaries’ ability to pay cash dividends.

Shares Reserved for Future Issuance

The Company had shares of common stock reserved for future issuance as follows:
(In thousands)

| | December 28, 2014 | December 29, 2013 |
|---|---|---|
| Equity compensation plans | 7,953 | 3,963 |

Note 15. NET INCOME (LOSS) PER SHARE

The Company calculates net income (loss) per share by dividing earnings allocated to common stockholders by the weighted average number of common shares outstanding for the period.

Table of Contents

Diluted weighted average shares is computed using basic weighted average shares plus any potentially dilutive securities outstanding during the period using the treasury-stock-type method and the if-converted method, except when their effect is anti-dilutive. Potentially dilutive securities include stock options, restricted stock units, the Upfront Warrants held by Total, warrants associated with the CSO2015 and CSO2014, and senior convertible debentures.

The following table presents the calculation of basic and diluted net income (loss) per share:

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands, except per share amounts) | 2014 | 2013 | 2012 |
| Basic net income (loss) per share: | | | |
| Numerator | | | |
| Net income (loss) attributable to stockholders | $245,894 | $95,593 | $(352,020) |
| Denominator | | | |
| Basic weighted-average common shares | 128,635 | 120,819 | 117,093 |
| Basic net income (loss) per share | $1.91 | $0.79 | $(3.01) |
| Diluted net income (loss) per share: | | | |
| Numerator | | | |
| Net income (loss) attributable to stockholders | $245,894 | $95,593 | $(352,020) |
| Add: Interest expense incurred on the 0.75% debentures due 2018, net of tax | 2,103 | 1,295 | — |
| Add: Interest expense incurred on the 0.875% debentures due 2021, net of tax | 1,897 | — | — |
| Add: Interest expense incurred on the 4.75% debentures due 2014, net of tax | 2,630 | — | — |
| Net income (loss) available to common stockholders | $252,524 | $96,888 | $(352,020) |
| Denominator | | | |
| Basic weighted-average common shares | 128,635 | 120,819 | 117,093 |
| Effect of dilutive securities: | | | |
| Stock options | 84 | 109 | — |
| Restricted stock units | 4,522 | 5,010 | — |
| Upfront Warrants (held by Total) | 7,236 | 5,090 | — |
| Warrants (under the CSO2015) | 2,945 | 590 | — |
| Warrants (under the CSO2014) | 262 | 292 | — |
| 0.75% debentures due 2018 | 12,026 | 7,070 | — |
| 0.875% debentures due 2021 | 4,530 | — | — |
| 4.75% debentures due 2014 | 2,511 | — | — |
| Dilutive weighted-average common shares | 162,751 | 138,980 | 117,093 |
| Dilutive net income (loss) per share | $1.55 | $0.70 | $(3.01) |

The Upfront Warrants allow Total to acquire up to 9,531,677 shares of the Company's common stock at an exercise price of $7.8685. Holders of the Warrants under the CSO2015 and CSO2014, may acquire up to 11.1 million and 8.7 million shares, respectively, of the Company's common stock at an exercise price of $24.00 and $26.40, respectively. If the market price per share of the Company's common stock for the period exceeds the established strike price of the respective warrants, they will have a dilutive effect on its diluted net income per share using the treasury-stock method. In February 2014, the CSO2014 was settled, leaving none of the related Warrants outstanding (see Note 11).

Holders of the Company's 0.875% debentures due 2021, 0.75% debentures due 2018, and the 4.75% debentures due 2014 may convert the debentures into shares of the Company's common stock, at the applicable conversion rate, at any time on or prior to maturity. These debentures are included in the calculation of diluted net income per share if they were outstanding

Table of Contents

during the period presented and if their inclusion is dilutive under the if-converted method. In April 2014, the 4.75% debentures matured and were fully settled in both cash and shares of the Company's common stock during the quarter (see Note 11).

Holders of the Company's 4.50% debentures due 2015 may, under certain circumstances at their option, convert the debentures into cash, and not into shares of the Company's common stock (or any other securities). Therefore, the 4.50% debentures due 2015 are excluded from the net income per share calculation.

The following is a summary of outstanding anti-dilutive potential common stock that was excluded from income (loss) per diluted share in the following periods:

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012[1] |
| Stock options | 142 | 194 | 363 |
| Restricted stock units | 374 | 1,600 | 6,287 |
| Upfront Warrants (held by Total) | — | — | * |
| Warrants (under the CSO2015) | — | — | * |
| Warrants (under the CSO2014) | — | — | * |
| 0.875% debentures due 2021 | — | n/a | n/a |
| 4.75% debentures due 2014 | — | 8,712 | 8,712 |

1 As a result of the net loss per share for fiscal 2012, the inclusion of all potentially dilutive stock options, restricted stock units, and common shares under noted warrants and convertible debt would be anti-dilutive. Therefore, those stock options, restricted stock units and shares were excluded from the computation of the weighted-average shares for diluted net loss per share for such period.

* The Company's average stock price during the period did not exceed the exercise price of the related warrants during the period.

Note 16. STOCK-BASED COMPENSATION

The following table summarizes the consolidated stock-based compensation expense by line item in the Consolidated Statements of Operations:

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012 |
| Cost of Americas revenue | $8,115 | $5,150 | $6,181 |
| Cost of EMEA revenue | 1,961 | 2,660 | 3,851 |
| Cost of APAC revenue | 4,245 | 3,006 | 1,578 |
| Research and development | 7,714 | 5,414 | 5,005 |
| Sales, general and administrative | 33,557 | 29,448 | 25,824 |
| Total stock-based compensation expense | $55,592 | $45,678 | $42,439 |

The following table summarizes the consolidated stock-based compensation expense by type of awards:

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands) | 2014 | 2013 | 2012 |
| Employee stock options | $— | $— | $649 |
| Restricted stock units | 55,591 | 46,215 | 40,996 |
| Change in stock-based compensation capitalized in inventory | 1 | (537) | 794 |
| Total stock-based compensation expense | $55,592 | $45,678 | $42,439 |

As of December 28, 2014, the total unrecognized stock-based compensation related to outstanding restricted stock units was $78.3 million, which the Company expects to recognize over a weighted-average period of 1.4 years.

Equity Incentive Programs

122

Table of Contents

Stock-based Incentive Plans

The Company has three stock incentive plans: the 1996 Stock Plan ("1996 Plan"), the Third Amended and Restated 2005 SunPower Corporation Stock Incentive Plan ("2005 Plan") and the PowerLight Corporation Common Stock Option and Common Stock Purchase Plan ("PowerLight Plan"). The PowerLight Plan was assumed by the Company by way of the acquisition of PowerLight in fiscal 2007. Under the terms of all three plans, the Company may issue incentive or non-statutory stock options or stock purchase rights to directors, employees and consultants to purchase common stock. The 2005 Plan was adopted by the Company's Board of Directors in August 2005, and was approved by shareholders in November 2005. The 2005 Plan replaced the 1996 Plan and allows not only for the grant of options, but also for the grant of stock appreciation rights, restricted stock grants, restricted stock units and other equity rights. The 2005 Plan also allows for tax withholding obligations related to stock option exercises or restricted stock awards to be satisfied through the retention of shares otherwise released upon vesting. The PowerLight Plan was adopted by PowerLight's Board of Directors in October 2000.

In May 2008, the Company's stockholders approved an automatic annual increase available for grant under the 2005 Plan, beginning in fiscal 2009. The automatic annual increase is equal to the lower of three percent of the outstanding shares of all classes of the Company's common stock measured on the last day of the immediately preceding fiscal quarter, 6.0 million shares, or such other number of shares as determined by the Company's Board of Directors. As of December 28, 2014, approximately 8.0 million shares were available for grant under the 2005 Plan. In fiscal 2014, the Company's Board of Directors voted not to add the three percent annual increase at the beginning of fiscal 2015. No new awards were approved by the Company's Board of Directors in fiscal 2014. No new awards are being granted under the 1996 Plan or the PowerLight Plan.

Incentive stock options may be granted at no less than the fair value of the common stock on the date of grant. Non-statutory stock options and stock purchase rights may be granted at no less than 85% of the fair value of the common stock at the date of grant. The options and rights become exercisable when and as determined by the Company's Board of Directors, although these terms generally do not exceed ten years for stock options. Under the 1996 and 2005 Plans, the options typically vest over five years with a one-year cliff and monthly vesting thereafter. Under the PowerLight Plan, the options typically vest over five years with yearly cliff vesting. Under the 2005 Plan, the restricted stock grants and restricted stock units typically vest in three equal installments annually over three years.

The majority of shares issued are net of the minimum statutory withholding requirements that the Company pays on behalf of its employees. During fiscal 2014, 2013, and 2012, the Company withheld 1,738,625 shares, 1,329,140 shares, and 905,953 shares, respectively, to satisfy the employees' tax obligations. The Company pays such withholding requirements in cash to the appropriate taxing authorities. Shares withheld are treated as common stock repurchases for accounting and disclosure purposes and reduce the number of shares outstanding upon vesting.

Restricted Stock and Stock Options

The following table summarizes the Company's non-vested restricted stock activities:

Table of Contents

| | Restricted Stock Units | |
|---|---|---|
| | Shares (in thousands) | Weighted-Average Grant Date Fair Value Per Share[1] |
| Outstanding as of January 1, 2012 | 7,370 | 13.25 |
| Granted | 5,638 | 5.93 |
| Vested[2] | (2,844) | 13.94 |
| Forfeited | (1,588) | 11.52 |
| Outstanding as of December 30, 2012 | 8,576 | 8.53 |
| Granted | 5,607 | 15.88 |
| Vested[2] | (3,583) | 9.48 |
| Forfeited | (1,008) | 10.10 |
| Outstanding as of December 29, 2013 | 9,592 | 12.26 |
| Granted | 2,187 | 31.80 |
| Vested[2] | (4,432) | 11.61 |
| Forfeited | (792) | 15.00 |
| Outstanding as of December 28, 2014 | 6,555 | 18.88 |

[1] The Company estimates the fair value of its restricted stock awards and units at its stock price on the grant date.

[2] Restricted stock awards and units vested include shares withheld on behalf of employees to satisfy the minimum statutory tax withholding requirements.

The following table summarizes the Company's outstanding options as of December 28, 2014:

| | Outstanding Stock Options | | | |
|---|---|---|---|---|
| | Shares (in thousands)[1] | Weighted-Average Exercise Price Per Share | Weighted-Average Remaining Contractual Term (in years) | Aggregate Intrinsic Value (in thousands) |
| Outstanding and exercisable as of December 28, 2014 | 210 | $ 41.44 | 2.51 | $ 1,036 |

The intrinsic value of options exercised in fiscal 2014, 2013, and 2012 were $2.4 million, $0.8 million, and $0.1 million, respectively. There were no stock options granted in fiscal 2014, 2013, and 2012.

The aggregate intrinsic value in the preceding table represents the total pre-tax intrinsic value, based on the Company's closing stock price of $26.32 at December 28, 2014 which would have been received by the option holders had all option holders exercised their options as of that date. The total number of in-the-money options exercisable was 0.1 million shares as of December 28, 2014.

Note 17. SEGMENT INFORMATION

The Company's President and Chief Executive Officer, as the chief operating decision maker ("CODM"), has organized the Company, manages resource allocations and measures performance of the Company's activities among three regional segments: (i) the Americas Segment, (ii) the EMEA Segment, and (iii) the APAC Segment. The Americas Segment includes both North and South America. The EMEA Segment includes European countries, as well as the Middle East and Africa. The APAC segment includes all Asia-Pacific countries.

The CODM assesses the performance of the three regional segments using information about their revenue and gross margin after certain adjustments to reflect the substance of the revenue transactions for certain utility and power plant projects, and adding back certain non-cash expenses such as stock-based compensation expense and interest expense, as well as other items including gain on contract termination, loss on change in European government incentives, accelerated depreciation associated with the Company's manufacturing step reduction program, and amortization of other intangible assets. The CODM does not review asset information by segment.

The following tables present information by region; including revenue, gross margin, and depreciation and amortization.

| | Fiscal Year | | |
|---|---|---|---|
| (In thousands): | 2014 | 2013 | 2012 |
| Revenue | | | |
| Americas | $2,323,441 | $1,676,472 | $1,696,348 |
| EMEA | 288,533 | 450,659 | 489,484 |
| APAC | 415,291 | 380,072 | 231,669 |
| Total revenue | 3,027,265 | 2,507,203 | 2,417,501 |
| Cost of revenue | | | |
| Americas | 1,759,639 | 1,299,701 | 1,415,417 |
| EMEA | 250,735 | 419,416 | 559,993 |
| APAC | 391,764 | 297,014 | 195,693 |
| Total cost of revenue | 2,402,138 | 2,016,131 | 2,171,103 |
| Gross margin | | | |
| Americas | 563,802 | 376,771 | 280,931 |
| EMEA | 37,798 | 31,243 | (70,509) |
| APAC | 23,527 | 83,058 | 35,976 |
| Total gross margin | $625,127 | $491,072 | $246,398 |

| | Fiscal Year | | |
|---|---|---|---|
| Depreciation and amortization by region (in thousands): | 2014 | 2013 | 2012 |
| Americas | $62,193 | $46,843 | $59,120 |
| EMEA | $14,073 | $22,380 | $33,047 |
| APAC | $32,529 | $28,223 | $16,489 |

The following tables present information by significant customers and categories:

| | | Fiscal Year | | |
|---|---|---|---|---|
| (As a percentage of total revenue): | | 2014 | 2013 | 2012 |
| Significant Customers: | Business Segment | | | |
| MidAmerican Energy Holdings Company | Americas | 49% | 25% | * |
| NRG Solar, Inc. | Americas | * | 17% | 35% |

* denotes less than 10% during the period

| | Fiscal Year | | |
|---|---|---|---|
| Revenue by Significant Category (in thousands): | 2014 | 2013 | 2012 |
| Solar power components[1] | $943,652 | $917,960 | $985,436 |
| Solar power systems[2] | 1,896,696 | 1,399,972 | 1,318,269 |
| Residential leases[3] | 129,962 | 137,054 | 68,914 |
| Other revenue[4] | 56,955 | 52,217 | 44,882 |
| | $3,027,265 | $2,507,203 | $2,417,501 |

1

Solar power components represents direct sales of panels, balance of system components, and inverters to dealers, systems integrators, and residential, commercial, and utility customers in all regions.

2 Solar power systems represents revenue recognized in connection with our construction and development contracts.

3 Residential leases represents revenue recognized on solar power systems leased to customers under our solar lease program.

4 Other revenue includes revenue related to our solar power services and solutions, such as post-installation systems monitoring and maintenance and commercial power purchase agreements.

Table of Contents

A reconciliation of the Company's segment revenue and gross margin to its consolidated financial statements for the fiscal years ended December 28, 2014, December 29, 2013, and December 30, 2012 is as follows:

| | Fiscal 2014 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Revenue | | | Gross margin | | | | | |
| Revenue and Gross margin by region (in thousands, except percentages): | AMERICAS | EMEA | APAC | AMERICAS | | EMEA | | APAC | |
| As reviewed by CODM | $1,914,825 | $288,533 | $415,291 | $415,453 | 21.7 % | $51,468 | 17.8 % | $46,624 | 11.2 % |
| Utility and power plant projects | 408,616 | — | — | 190,712 | | — | | — | |
| Loss on First Philec arbitration ruling | — | — | — | (32,624) | | (6,112) | | (18,070) | |
| Stock-based compensation | — | — | — | (8,115) | | (1,962) | | (4,244) | |
| Non-cash interest expense | — | — | — | (1,624) | | (352) | | (783) | |
| Other | — | — | — | — | | (5,244) | | — | |
| GAAP | $2,323,441 | $288,533 | $415,291 | $563,802 | 24.3 % | $37,798 | 13.1 % | $23,527 | 5.7 % |

| | Fiscal 2013 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Revenue | | | Gross margin | | | | | |
| Revenue and Gross margin by region (in thousands, except percentages): | AMERICAS | EMEA | APAC | AMERICAS | | EMEA | | APAC | |
| As reviewed by CODM | $1,772,260 | $450,659 | $379,400 | $435,815 | 24.6 % | $25,189 | 5.6 % | $69,375 | 18.3 % |
| Utility and power plant projects | (95,788) | — | — | (77,338) | | — | | — | |
| Gain on contract termination | — | — | — | 25,604 | | 9,395 | | 16,988 | |
| Stock-based compensation | — | — | — | (5,150) | | (2,660) | | (3,006) | |
| Non-cash interest expense | — | — | — | (1,203) | | (495) | | (713) | |
| Other | — | — | 672 | (957) | | (186) | | 414 | |
| GAAP | $1,676,472 | $450,659 | $380,072 | $376,771 | 22.5 % | $31,243 | 6.9 % | $83,058 | 21.9 % |

| | Fiscal 2012 | | | | | |
|---|---|---|---|---|---|---|
| | Revenue | | | Gross margin | | |
| Revenue and Gross margin by region (in thousands, except percentages): | AMERICAS | EMEA | APAC | AMERICAS | EMEA | APAC |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| As reviewed by CODM | $1,901,159 | $489,291 | $231,669 | $414,605 | 21.8 % | $(54,532) | (11.1)% | $43,921 | 19.0 % |
| Utility and power plant projects | (204,811) | — | — | (107,163) | | — | | — | |
| Stock-based compensation | — | — | — | (6,181) | | (3,851) | | (1,578) | |
| Non-cash interest expense | — | — | — | (1,024) | | (526) | | (292) | |
| Other | — | 193 | — | (19,306) | | (11,600) | | (6,075) | |
| GAAP | $1,696,348 | $489,484 | $231,669 | $280,931 | 16.6 % | $(70,509) | (14.4)% | $35,976 | 15.5 % |

Table of Contents

Note 18. SUBSEQUENT EVENTS

On January 28, 2015, an arbitral tribunal of the International Court of Arbitration of the International Chamber of Commerce declared a binding partial award in the matter of an arbitration between FPEC and FPSC against SPML, our wholly-owned subsidiary. FPSC is a joint venture of FPEC and SPML for the purpose of slicing silicon wafers from ingots. SPML has not purchased any wafers from FPSC since the third quarter of 2012.

The tribunal found SPML in breach of its obligations under its supply agreement with FPSC, and in breach of its joint venture agreement with FPEC. The tribunal ordered that (i) SPML must purchase FPEC's interests in FPSC for an aggregate of $30.3 million, subject to adjustment to account for minority interests, and (ii) after completing the purchase of FPEC's controlling interest in FPSC, to pay FPSC damages in the amount of $25.2 million. SPML's purchase of FPEC's interests in FPSC and the subsequent damages payment to FPSC have been suspended pending the parties' agreement as to legal arrangements required to complete these transactions, but the transactions are presently scheduled to be completed in the second quarter of 2015.

As a result, as of the fourth quarter of fiscal 2014, the Company recorded an accrual of $63.0 million related to this case based on its best estimate of probable loss.

Table of Contents

SELECTED UNAUDITED QUARTERLY FINANCIAL DATA

Consolidated Statements of Operations:

| (In thousands, except per share data) | Three Months Ended December 28, 2014 | September 28, 2014 | June 29, 2014 | March 30, 2014 | December 29, 2013 | September 29, 2013 | June 30, 2013 | March 31, 2013 |
|---|---|---|---|---|---|---|---|---|
| Revenue | $1,164,238 | $662,734 | $507,871 | $692,422 | $638,134 | $657,120 | $576,516 | $635,433 |
| Gross margin | $259,479 | $108,514 | $94,145 | $162,989 | $130,668 | $193,230 | $107,861 | $59,313 |
| Net income (loss) | $121,609 | $17,284 | $1,168 | $43,034 | $3,872 | $87,382 | $4,265 | $(61,969) |
| Net income (loss) attributable to stockholders | $134,715 | $32,033 | $14,102 | $65,044 | $22,338 | $108,386 | $19,565 | $(54,696) |
| Net income (loss) per share attributable to stockholders: | | | | | | | | |
| Basic | $1.03 | $0.24 | $0.11 | $0.53 | $0.18 | $0.89 | $0.16 | $(0.46) |
| Diluted | $0.83 | $0.20 | $0.09 | $0.42 | $0.15 | $0.73 | $0.15 | $(0.46) |

127

ITEM 9: CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURES

None.

ITEM 9A: CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain "disclosure controls and procedures," as defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act, that are designed to provide reasonable assurance that information required to be disclosed in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognizes that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Additionally, in designing disclosure controls and procedures, our management is required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure control and procedure also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Based on their evaluation as of the end of the period covered by this Annual Report on Form 10-K, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of December 28, 2014 at a reasonable assurance level.

Management's Report on Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Exchange Act Rule 13a-15(f). Management conducted an evaluation of the effectiveness of our internal control over financial reporting using the criteria described in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) ("COSO"). Based on this evaluation, management concluded that our internal control over financial reporting was effective as of December 28, 2014 based on the criteria described in Internal Control-Integrated Framework issued by COSO. Management reviewed the results of its assessment with our Audit Committee.

The effectiveness of the Company's internal control over financial reporting as of December 28, 2014 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report which is included in Item 8 of this Annual Report on Form 10-K.

Changes in Internal Control over Financial Reporting

We regularly review our system of internal control over financial reporting and make changes to our processes and systems to improve controls and increase efficiency, while ensuring that we maintain an effective internal control environment. Changes may include such activities as implementing new, more efficient systems, consolidating activities, and migrating processes.

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

ITEM 9B: OTHER INFORMATION

None.

Table of Contents

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2015 annual meeting of stockholders.

We have adopted a code of ethics, entitled Code of Business Conduct and Ethics, that applies to all of our directors, officers and employees, including our principal executive officer, principal financial officer, and principal accounting officer. We have made it available, free of charge, on our website at www.sunpower.com, and if we amend it or grant any waiver under it that applies to our principal executive officer, principal financial officer, or principal accounting officer, we will promptly post that amendment or waiver on our website as well.

ITEM 11: EXECUTIVE COMPENSATION

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2015 annual meeting of stockholders.

ITEM 12: SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2015 annual meeting of stockholders.

ITEM 13: CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2015 annual meeting of stockholders.

ITEM 14: PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2015 annual meeting of stockholders.

Table of Contents

PART IV

ITEM 15: EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

The following documents are filed as a part of this Annual Report on Form 10-K:

1. Financial Statements:



2. Financial Statement Schedule:

All financial statement schedules are omitted as the required information is inapplicable or the information is presented in the Consolidated Financial Statements or Notes to Consolidated Financial Statements under Item 8 of this Annual Report on Form 10-K.

3. Exhibits:

EXHIBIT INDEX

| Exhibit Number | Description |
|---|---|
| 3.1 | Restated Certificate of Incorporation of SunPower Corporation (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 16, 2011). |
| 3.2 | Amended and Restated By-Laws of SunPower Corporation (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 7, 2012). |
| 4.1 | Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.1 to the Registrant's Annual Report on From 10-K filed with the Securities and Exchange Commission on February 29, 2012). |
| 4.2 | Indenture, dated February 7, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association, as Trustee (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 8, 2007). |
| 4.3 | Third Supplemental Indenture, dated May 4, 2009, by and between SunPower Corporation and Wells Fargo Bank, N.A., as Trustee (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed by SunPower Corporation on May 6, 2009). |
| 4.4 | Fourth Supplemental Indenture, dated April 1, 2010, by and between SunPower Corporation and Wells Fargo, National Association as Trustee (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 6, 2010). |
| 4.5 | Sixth Supplemental Indenture, dated November 16, 2011, by and between SunPower Corporation and Wells Fargo Bank, National Association as Trustee (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on |

| | |
|---|---|
| | November 16, 2011). |
| 4.6 | Seventh Supplemental Indenture, dated November 16, 2011, by and between SunPower Corporation and Wells Fargo Bank, National Association as Trustee (incorporated by reference to Exhibit 4.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 16, 2011). |
| 4.7 | Eighth Supplemental Indenture, dated November 16, 2011, by and between SunPower Corporation and Wells Fargo Bank, National Association as Trustee (incorporated by reference to Exhibit 4.4 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 16, 2011). |

130

Table of Contents

| | |
|---|---|
| 4.8 | Amended and Restated Rights Agreement, dated November 16, 2011, by and between SunPower Corporation and Computershare Trust Company, N.A., as Rights Agent, including the form of Certificate of Designation of Series A Junior Participating Preferred Stock, the forms of Right Certificates, and the Summary of Rights attached thereto as Exhibits A, B, and C, respectively (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form 8-A filed with the Securities and Exchange Commission on November 16, 2011). |
| 4.9 | Certificate of Designation of Series A Junior Participating Preferred Stock of SunPower Corporation (incorporated by reference to Exhibit 4.6 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 16, 2011). |
| 4.10 | Amendment No. 1, dated May 10, 2012, to the Amended and Restated Rights Agreement, dated as of November 16, 2011, by and between the SunPower Corporation and Computershare Trust Company, N.A., as rights agent (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 10, 2012). |
| 4.11 | Indenture, dated as of May 29, 2013, by and between SunPower Corporation and Wells Fargo Bank, National Association, as Trustee (incorporated by reference to Exhibit 4.1 to the Registrant’s Current Report on Form 8-K filed with the Securities and Exchange Commission on May 29, 2013). |
| 10.1 | Convertible Debenture Hedge Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Wachovia Bank, National Association (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009). |
| 10.2 | Convertible Debenture Hedge Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009). |
| 10.3 | Convertible Debenture Hedge Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009). |
| 10.4 | Convertible Debenture Hedge Transaction Confirmation, dated March 25, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 29, 2010). |
| 10.5 | Convertible Debenture Hedge Transaction Confirmation, dated March 25, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 29, 2010). |
| 10.6 | Convertible Debenture Hedge Transaction Confirmation, dated March 25, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 29, 2010). |
| 10.7 | Convertible Debenture Hedge Transaction Confirmation, dated March 25, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 29, 2010). |
| 10.8 | Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010). |
| 10.9 | Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April |

| | |
|---|---|
| | 9, 2010). |
| 10.10 | Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010). |
| 10.11 | Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010). |
| 10.12 | Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Wachovia Bank, National Association (incorporated by reference to Exhibit 10.4 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009). |
| 10.13 | Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.5 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009). |
| 10.14 | Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.6 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009). |

Table of Contents

| | |
|---|---|
| 10.15 | Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010). |
| 10.16 | Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010). |
| 10.17 | Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010). |
| 10.18 | Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010). |
| 10.19 | Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.6 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010). |
| 10.20 | Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.7 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010). |
| 10.21 | Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.8 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010). |
| 10.22 | Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010). |
| 10.23† | Warrant Adjustment Notice, dated August 26, 2011, from Wachovia Bank, National Association, regarding Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Wachovia Bank, National Association (incorporated by reference to Exhibit 10.4 to the Registrant’s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011). |
| 10.24 | Warrant Adjustment Notice, dated August 30, 2011, to Deutsche Bank AG, London Branch, regarding (1) Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Deutsche Bank AG, London Branch; (2) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch; and (3) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Deutsche Bank AG, London (incorporated by reference to Exhibit 10.5 to the Registrant’s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011). |
| 10.25† | Warrant Adjustment Notice, dated August 31, 2011, from Credit Suisse International, regarding (1) Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Credit Suisse International; (2) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Credit Suisse International; and (3) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.6 to the Registrant’s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011). |
| 10.26 | Warrant Adjustment Notice, dated September 21, 2011, from Bank of America, N.A., regarding (1) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation |

| | |
|---|---|
| | and Bank of America, N.A.; and (2) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.7 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011). |
| 10.27 | Warrant Adjustment Notice, dated September 21, 2011, from Barclays Bank PLC, regarding (1) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Barclays Bank PLC; and (2) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.8 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011). |
| 10.28 | Indenture, dated as of June 11, 2014 by and between SunPower Corporation and Wells Fargo Bank, National Association, as Trustee (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 11, 2014). |
| 10.29 | Credit Support Agreement, dated April 28, 2011, between SunPower Corporation and Total S.A. (incorporated by reference to Exhibit 99.5 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 12, 2011). |

132

| | |
|---|---|
| 10.30 | Amendment to Credit Support Agreement, dated June 7, 2011, between SunPower Corporation and Total S.A. (incorporated by reference to Exhibit 10.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 7, 2011). |
| 10.31 | Second Amendment to Credit Support Agreement, dated December 12, 2011, by and between Total S.A. and SunPower Corporation (incorporated by reference to Exhibit 10.3 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2011). |
| 10.32 | Third Amendment to Credit Support Agreement, dated December 14, 2012, by and between SunPower Corporation and Total S.A. (incorporated by reference to Exhibit 10.34 to the Registrant’s Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 25, 2013) |
| 10.33 | Affiliation Agreement, dated April 28, 2011, between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 99.6 to the Registrant’s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 12, 2011). |
| 10.34 | Amendment to Affiliation Agreement, dated June 7, 2011, between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.2 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 7, 2011). |
| 10.35 | Second Amendment to Affiliation Agreement, dated December 23, 2011, by and between Total G&P and SunPower Corporation (incorporated by reference to Exhibit 10.4 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2011). |
| 10.36 | Amendment No. 3 to Affiliation Agreement, dated February 28, 2012, by and between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.91 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012). |
| 10.37 | Amendment No. 4 to Affiliation Agreement, dated August 10, 2012, by and between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 2, 2012). |
| 10.38 | Affiliation Agreement Guaranty, dated April 28, 2011, between SunPower Corporation and Total S.A. (incorporated by reference to Exhibit 99.7 to the Registrant’s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 12, 2011). |
| 10.39 | Research & Collaboration Agreement, dated April 28, 2011, between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 99.8 to the Registrant’s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 12, 2011). |
| 10.40 | Amendment to Research & Collaboration Agreement, dated June 7, 2011, between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.3 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 7, 2011). |
| 10.41 | Registration Rights Agreement, dated April 28, 2011, between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 99.9 to the Registrant’s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 12, 2011). |
| 10.42^ | SunPower Corporation 1996 Stock Plan and form of agreements there under (incorporated by reference to Exhibit 10.3 to the Registrant’s Registration Statement on Form S-1 filed with the Securities and Exchange Commission on August 25, 2005). |
| 10.43^ | SunPower Corporation 2005 Stock Unit Plan (incorporated by reference to Exhibit 10.28 to the Registrant’s Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 31, 2005). |
| 10.44^ | Third Amended and Restated SunPower Corporation 2005 Stock Incentive Plan and forms of agreements there-under (incorporated by reference to Exhibit 4.1 to the Registrant’s Registration Statement on Form S-8 filed with the Securities and Exchange Commission on November 17, 2011). |

| | |
|---|---|
| 10.45^ | PowerLight Corporation Common Stock Option and Common Stock Purchase Plan (incorporated by reference to Exhibit 4.3 to the Registrant's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on January 25, 2007). |
| 10.46^ | Form of PowerLight Corporation Incentive/Non-Qualified Stock Option, Market Standoff and Stock Restriction Agreement (Employees) (incorporated by reference to Exhibit 4.4 to the Registrant's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on January 25, 2007). |
| 10.47^ | Outside Director Compensation Policy, as amended on June 15, 2011 (incorporated by reference to Exhibit 10.17 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 9, 2011). |
| 10.48^ | Form of Employment Agreement for Executive Officers (incorporated by reference to Exhibit 10.47 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 18, 2014).. |

Table of Contents

| | |
|---|---|
| 10.49^ | SunPower Corporation Annual Executive Bonus Plan (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on April 30, 2014). |
| 10.50^ | SunPower Corporation Executive Quarterly Bonus Plan (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on April 30, 2014). |
| 10.51^* | Form of Indemnification Agreement for Directors and Officers. |
| 10.52 | 2014 Management Career Transition Plan, dated April 30, 2013 (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 2, 2013). |
| 10.53^ | Form of Retention Agreement, dated May 20, 2011, by and between SunPower Corporation and certain executive officers (incorporated by reference to Exhibit 10.13 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 9, 2011). |
| 10.54† | Mortgage Loan Agreement, dated May 6, 2010, by and among SunPower Philippines Manufacturing Ltd., SPML Land, Inc. and International Finance Corporation (incorporated by reference to Exhibit 10.13 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 13, 2010). |
| 10.55 | Guarantee Agreement, dated May 6, 2010, by and between SunPower Corporation and International Finance Corporation (incorporated by reference to Exhibit 10.14 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 13, 2010). |
| 10.56 | Amendment No. 1 to Loan Agreement, dated November 2, 2010, by and between SunPower Philippines Manufacturing Ltd. and International Finance Corporation (incorporated by reference to Exhibit 10.42 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 28, 2011). |
| 10.57 | Mortgage Supplement No. 1, dated November 3, 2010, by and between SunPower Philippines Manufacturing Ltd., SPML Land, Inc. and International Finance Corporation (incorporated by reference to Exhibit 10.63 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 25, 2013). |
| 10.58 | Mortgage Supplement No. 2, dated October 9, 2012, by and between SunPower Philippines Manufacturing Ltd., SPML Land, Inc. and International Finance Corporation (incorporated by reference to Exhibit 10.64 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 25, 2013). |
| 10.59 | Mortgage Supplement No. 3, dated February 7, 2013, by and between SunPower Philippines Manufacturing Ltd., SPML Land, Inc. and International Finance Corporation (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 7, 2013). |
| 10.60 | Loan Agreement, dated December 1, 2010, by and among California Enterprise Development Authority and SunPower Corporation, relating to $30,000,000 California Enterprise Development Authority Tax Exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (incorporated by reference to Exhibit 10.50 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 28, 2011). |
| 10.61 | First Supplement to Loan Agreement, dated June 1, 2011, by and between California Enterprise Development Authority and SunPower Corporation, relating to $30,000,000 California Enterprise Development Authority Tax Exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (incorporated by reference to Exhibit 10.16 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 9, 2011). |
| 10.62† | |

| | |
|---|---|
| | Letter of Credit Facility Agreement, dated August 9, 2011, by and among SunPower Corporation, Total S.A., the Subsidiary Applicants party thereto, the Banks party thereto, and Deutsche Bank AG New York Branch (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011). |
| 10.63† | First Amendment to Letter of Credit Facility Agreement, dated December 20, 2011, by and among SunPower Corporation, Total S.A., the Subsidiary Applicants party thereto, the Banks party thereto, and Deutsche Bank AG New York Branch (incorporated by reference to Exhibit 10.65 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012). |
| 10.64 | Second Amendment to Letter of Credit Facility Agreement, dated December 19, 2012, by and among SunPower Corporation, Total S.A., the Subsidiary Applicants party thereto, the Banks party thereto, and Deutsche Bank AG New York Branch (incorporated by reference to Exhibit 10.69 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 25, 2013). |

Table of Contents

| | |
|---|---|
| 10.65 | Third Amendment to Letter of Credit Facility Agreement, dated December 20, 2013, by and among SunPower Corporation, SunPower Corporation, Systems, Total S.A., Deutsche Bank AG New York Branch (incorporated by reference to Exhibit 10.61 to the Registrant’s Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 18, 2014). |
| 10.66* | Fourth Amendment to Letter of Credit Facility Agreement, dated December 23, 2014, by and among SunPower Corporation, SunPower Corporation, Systems, Total S.A., Deutsche Bank AG New York Branch. |
| 10.67 | Continuing Agreement for Standby Letters of Credit and Demand Guarantees, dated September 27, 2011, by and among SunPower Corporation, Deutsche Bank Trust Company Americas, and Deutsche Bank AG New York Branch (incorporated by reference to Exhibit 10.10 to the Registrant’s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011). |
| 10.68 | Revolving Credit Agreement, dated July 3, 2013, by and among SunPower Corporation and Credit Agricole Corporate and Investment Bank, and the financial institutions party thereto (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on October 31, 2013). |
| 10.69 | First Amendment to Revolving Credit Agreement, dated August 26, 2014, by and among SunPower Corporation, its subsidiaries, SunPower Corporation, Systems; SunPower North America LLC; and SunPower Capital, LLC, and Credit Agricole Corporate and Investment Bank and the other lenders party thereto (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 28, 2014). |
| 10.70* | Credit Agreement, dated as of October 17, 2014, among Solar Star California XIII, LLC, Santander Bank, N.A., Mizuho Bank LTD., and Crédit Agricole Corporate and Investment Bank and the several lenders from time to time parties thereto. |
| 10.71 | Security Agreement, dated September 27, 2011, by and among SunPower Corporation, Deutsche Bank Trust Company Americas, and Deutsche Bank AG New York Branch (incorporated by reference to Exhibit 10.11 to the Registrant’s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011). |
| 10.72 | Joint Venture Agreement, dated May 27, 2010, by and among SunPower Technology, Ltd., AU Optronics Singapore Pte. Ltd., AU Optronics Corporation and AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.) (incorporated by reference to Exhibit 10.15 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 13, 2010). |
| 10.73 | Amendment No. 1 to Joint Venture Agreement, dated June 29, 2010, by and among SunPower Technology, Ltd., AU Optronics Singapore Pte. Ltd., AU Optronics Corporation and AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.) (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 12, 2010). |
| 10.74 | Amendment No. 2 to Joint Venture Agreement, dated July 5, 2010, by and among SunPower Technology, Ltd., AU Optronics Singapore Pte. Ltd., AU Optronics Corporation and AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.) (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 12, 2010). |
| 10.75 | Amendment No. 3 to Joint Venture Agreement, dated March 3, 2014, by and among SunPower Technology, Ltd., AU Optronics Singapore Pte. Ltd., AU Optronics Corporation and AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.) (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on April 30, 2014). |
| 10.76† | |

| | |
|---|---|
| | Supply Agreement, dated July 5, 2010, by and among AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.), SunPower Systems, Sarl and AU Optronics Singapore Pte. Ltd. (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 12, 2010). |
| 10.77 | License and Technology Agreement, dated July 5, 2010, by and among SunPower Technology, Ltd., AU Optronics Singapore Pte. Ltd. and AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.) (incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 12, 2010). |
| 10.78 | Tax Sharing Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.16 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005). |
| 10.79 | Amendment No. 1 to Tax Sharing Agreement, dated August 12, 2008, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 12, 2008). |

135

Table of Contents

| | |
|---|---|
| 10.80 | Liquidity Support Agreement, dated February 28, 2012, by and among SunPower Corporation, Total S.A. and the U.S. Department of Energy, acting by and through the Secretary of Energy (incorporated by reference to Exhibit 10.89 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012). |
| 10.81 | Compensation and Funding Agreement, dated February 28, 2012, by and between SunPower Corporation and Total S.A. (incorporated by reference to Exhibit 10.90 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012). |
| 10.82 | Amendment No. 1 to Compensation and Funding Agreement, dated August 10, 2012, by and between SunPower Corporation and Total S.A. (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 2, 2012). |
| 10.83 | Warrant to Purchase Common Stock, dated February 28, 2012, issued to Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.92 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012). |
| 10.84† | Revolving Credit and Convertible Loan Agreement, dated February 28, 2012, by and between Total Gas & Power USA, SAS and SunPower Corporation (incorporated by reference to Exhibit 10.93 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012). |
| 10.85 | Private Placement Agreement, dated February 28, 2012, by and between Total Gas & Power USA, SAS and SunPower Corporation (incorporated by reference to Exhibit 10.94 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012). |
| 10.86 | Form of Warrant to Purchase Common Stock, issued by SunPower Corporation to Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.95 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012). |
| 10.87 | Form of Guarantee from Total S.A. and Bank (incorporated by reference to Exhibit 10.96 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012). |
| 10.88 | Form of Convertible Term Loan Note, issued by SunPower Corporation to Holder (incorporated by reference to Exhibit 10.97 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012). |
| 10.89 | Revolving Loan Note, dated February 28, 2012, issued by SunPower Corporation to Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.98 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012). |
| 10.90 | Form of Terms Agreement, between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.99 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012). |
| 10.91 | Waiver Letter, dated October 3, 2012, from the International Finance Corporation (incorporated by reference to Exhibit 10.94 to the Registrant’s Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 25, 2013). |
| 10.92† | Engineering, Procurement and Construction Agreement, dated September 30, 2011 by and between High Plains Ranch II, LLC and SunPower Corporation, Systems (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 2, 2012). |
| 10.93† | Engineering, Procurement and Construction Agreement (Antelope Valley Solar Project 308.97MW at the Delivery Point), dated December 28, 2012, by and between SunPower Corporation, Systems and Solar Star California XIX, LLC (incorporated by reference to Exhibit 10.96 to the Registrant’s Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 25, 2013). |
| 10.94† | |

| | |
|---|---|
| | Engineering, Procurement and Construction Agreement (Antelope Valley Solar Project 270.18 MW at the Delivery Point), dated December 28, 2012, by and between SunPower Corporation, Systems and Solar Star California XX, LLC (incorporated by reference to Exhibit 10.97 to the Registrant’s Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 25, 2013). |
| 10.95 | Amendment No. 1 to Master Agreement, dated February 20, 2013, by and among SunPower Corporation, Total Gas & Power U.S.A. SAS and Total S.A (incorporated by reference to Exhibit 10.98 to the Registrant’s Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 25, 2013). |
| 10.96 | First Amendment to Employment Agreement, dated May 1, 2013, by and among SunPower Corporation and Charles David Boynton (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 2, 2013). |
| 10.97† | Security Agreement, dated January 31, 2014, by and among SunPower Corporation, SunPower Corporation, Systems, SunPower North America, LLC, SunPower Capital, LLC, and Crédit Agricole Corporate and Investment Bank (incorporated by reference to Exhibit 10.91 to the Registrant’s Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 18, 2014). |
| 21.1* | List of Subsidiaries. |
| 23.1* | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm. |

136

| | |
|---|---|
| 24.1* | Power of Attorney. |
| 31.1* | Certification by Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a). |
| 31.2* | Certification by Chief Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a). |
| 32.1* | Certification Furnished 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 Schema Document. |
| 101.CAL*+ | XBRL Taxonomy Calculation Linkbase Document. |
| 101.LAB*+ | XBRL Taxonomy Label Linkbase Document. |
| 101.PRE*+ | XBRL Taxonomy Presentation Linkbase Document. |
| 101.DEF*+ | XBRL Taxonomy Definition Linkbase Document. |

Exhibits marked with a carrot (^) are director and officer compensatory arrangements.

Exhibits marked with an asterisk (*) are filed herewith.

Exhibits marked with an extended cross (†) are subject to a request for confidential treatment filed with the Securities and Exchange Commission.

Exhibits marked with a cross (+) are XBRL (Extensible Business Reporting Language) information furnished and not filed herewith, are not a part of a registration statement or Prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, are deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, and otherwise are not subject to liability under these sections.

Table of Contents

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 thereto duly authorized.

SUNPOWER CORPORATION

Dated: February 24, 2015

By: /s/ CHARLES D. BOYNTON

Charles D. Boynton
Executive Vice President and
Chief Financial Officer

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/ THOMAS H. WERNER<br>Thomas H. Werner | President, Chief Executive Officer and Director (Principal Executive Officer) | February 24, 2015 |
| /S/ CHARLES D. BOYNTON<br>Charles D. Boynton | Executive Vice President and Chief Financial Officer (Principal Financial Officer) | February 24, 2015 |
| /S/ ERIC BRANDERIZ<br>Eric Branderiz | Senior Vice President, Corporate Controller and Chief Accounting Officer (Principal Accounting Officer) | February 24, 2015 |
| *<br>Arnaud Chaperon | Director | February 24, 2015 |
| *<br>Bernard Clement | Director | February 24, 2015 |
| *<br>Denis Giorno | Director | February 24, 2015 |
| *<br>Catherine A. Lesjak | Director | February 24, 2015 |
| *<br>Thomas R. McDaniel | Director | February 24, 2015 |
| *<br>Jean-Marc Otero del Val | Director | February 24, 2015 |

| | | |
|---|---|---|
| *<br>Humbert de Wendel | Director | February 24, 2015 |
| *<br>Patrick Wood III | Director | February 24, 2015 |

* By: /S/ CHARLES D. BOYNTON
Charles D. Boynton
Power of Attorney

Table of Contents

Index to Exhibits

| Exhibit Number | Description |
|---|---|
| 10.51^* | Form of Employment Agreement for Executive Officers. |
| 10.66* | Fourth Amendment to Letter of Credit Facility Agreement, dated December 23, 2014, by and among SunPower Corporation, SunPower Corporation, Systems, Total S.A., Deutsche Bank AG New York Branch. |
| 10.70* | Credit Agreement, dated as of October 17, 2014, among Solar Star California XIII, LLC, Santander Bank, N.A., Mizuho Bank LTD., and Crédit Agricole Corporate and Investment Bank and the several lenders from time to time parties thereto. |
| 21.1* | List of Subsidiaries. |
| 23.1* | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm. |
| 24.1* | Power of Attorney. |
| 31.1* | Certification by Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a). |
| 31.2* | Certification by Chief Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a). |
| 32.1* | Certification Furnished 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 Schema Document. |
| 101.CAL*+ | XBRL Taxonomy Calculation Linkbase Document. |
| 101.LAB*+ | XBRL Taxonomy Label Linkbase Document. |
| 101.PRE*+ | XBRL Taxonomy Presentation Linkbase Document. |
| 101.DEF*+ | XBRL Taxonomy Definition Linkbase Document. |

Exhibits marked with a carrot (^) are director and officer compensatory arrangements.

Exhibits marked with an asterisk (*) are filed herewith.

Exhibits marked with a cross (+) are XBRL (Extensible Business Reporting Language) information furnished and not filed herewith, are not a part of a registration statement or Prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, are deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, and otherwise are not subject to liability under these sections.