

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

POST-EFFECTIVE AMENDMENT NO. 1  
TO  
FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

**TTM TECHNOLOGIES, INC.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of  
incorporation or organization)

91-1033443

(I.R.S. Employer  
Identification Number)

2630 South Harbor Boulevard  
Santa Ana, California 92704  
(714) 327-3000

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

Kenton K. Alder  
Chief Executive Officer  
TTM Technologies, Inc.  
2630 South Harbor Boulevard  
Santa Ana, California 92704  
(714) 327-3000

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

Copies to:

Michael L. Kaplan, Esq.  
Brian H. Blaney, Esq.  
Greenberg Traurig, LLP  
2375 East Camelback Road, Suite 700  
Phoenix, Arizona 85016  
(602) 445-8000 (phone)  
(602) 445-8100 (facsimile)

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. ☐

If any of the 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, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. ☒

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please 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 registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. ☐

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. ☐

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" and "smaller reporting 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 ☐

## Explanatory note

This Post-Effective Amendment No. 1 to the Registration Statement on Form S-3 (File No. 333-148687) of TTM Technologies, Inc. is being filed solely to file the exhibits indicated in "Part II—Item 16—Exhibits". Other than the addition of the exhibits and corresponding changes to the exhibit index and signature page, the remainder of the Form S-3 is unchanged.

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## Part II

### Information not required in prospectus

#### Item 16. Exhibits.

Exhibit number	Exhibit
1.1	Form of Underwriting Agreement
*2.1	Form of Plan of Reorganization(1)
*2.2	Agreement and Plan of Merger dated as of June 24, 2005(2)
*2.3	Stock and Asset Purchase Agreement by and among Tyco Printed Circuit Group LP, Tyco Electronics Corporation, Raychem International, Tyco Kappa Limited, Tyco Electronics Logistics AG, and TTM (Ozarks) Acquisition, Inc. dated as of August 1, 2006(3)
*3.1	Registrant's Certificate of Incorporation(2)
*3.2	Registrant's Amended and Restated Bylaws(4)
*4.1	Form of Registrant's common stock certificate(2)
*4.2	Form of Indenture
*5.1	Opinion of Greenberg Traurig, LLP
*10.1	UBS Credit Agreement(5)
*10.2	Employment Agreement dated as of December 31, 2005 between the Registrant and Kenton K. Alder(6)
*10.3	Form of Executive Change in Control Severance Agreement and schedule of agreements entered into on December 1, 2005(6)
*10.4	Employment Agreement dated as of December 1, 2006 between the Registrant and Douglas L. Soder(7)
*10.5	Form of Severance Agreement and schedule of agreements entered into on December 1, 2006(7)
*10.6	2006 Incentive Compensation Plan(7)
*10.7	Form of Stock Option Agreement(7)
*10.8	Form of Restricted Stock Unit Award Agreement(7)
*10.9	Form of Indemnification Agreement with directors(1)
*10.10	Statutory Warranty Deeds for Redmond Facility(1)
*21.1	Subsidiaries of the Registrant(7)
*23.1	Consent of KPMG LLP, independent registered public accounting firm
*24.1	Power of Attorney of Directors and Executive Officers (included on the Signature Page of the Registration Statement)
25.1	Statement of Eligibility on Form T-1 of American Stock Transfer & Trust Company

\* Previously filed.

- (1) Incorporated by reference to the Registration Statement on Form S-1 (Registration No. 333-39906) declared effective September 20, 2000.
- (2) Incorporated by reference to the Registrant's Form 8-K as filed with the Securities and Exchange Commission (the "Commission") on August 30, 2005.
- (3) Incorporated by reference to the Registrant's Form 8-K as filed with the Commission on August 4, 2006.
- (4) Incorporated by reference to the Registrant's Form 8-K as filed with the Commission on November 14, 2007.
- (5) Incorporated by reference to the Registrant's Form 10-K as filed with the Commission on November 2, 2006.
- (6) Incorporated by reference to the Registrant's Form 10-K as filed with the Commission on March 14, 2006.
- (7) Incorporated by reference to the Registrant's Form 10-K as filed with the Commission on March 16, 2007.

## Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Santa Ana, state of California, on May 8, 2008.

### TTM TECHNOLOGIES, INC.

By: /s/ Steven W. Richards

Name: Steven W. Richards

Title: Executive Vice President and Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Kenton K. Alder*</u> Kenton K. Alder	President, Chief Executive Officer (Principal Executive Officer), and Director	May 8, 2008
<u>/s/ Steven W. Richards</u> Steven W. Richards	Executive Vice President, Chief Financial Officer (Principal Financial and Accounting Officer), and Secretary	May 8, 2008
<u>/s/ Robert E. Klatell*</u> Robert E. Klatell	Chairman of the Board	May 8, 2008
<u>/s/ Thomas T. Edman*</u> Thomas T. Edman	Director	May 8, 2008
<u>/s/ James K. Bass*</u> James K. Bass	Director	May 8, 2008
<u>/s/ Richard P. Beck*</u> Richard P. Beck	Director	May 8, 2008
<u>/s/ John G. Mayer*</u> John G. Mayer	Director	May 8, 2008

\*By: /s/ Steven W. Richards  
Steven W. Richards  
Attorney-in-Fact

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## Form of Underwriting Agreement

\$[•]

TTM Technologies, Inc.

[•]% Convertible Senior Notes due 201[•]

Underwriting Agreement

May [•], 2008

J.P. Morgan Securities Inc.  
277 Park Avenue  
New York, New York 10017

UBS Securities LLC  
299 Park Avenue  
New York, New York 10171

As Representatives of the  
several Underwriters listed  
in Schedule 1 hereto

Ladies and Gentlemen:

TTM Technologies, Inc., a Delaware corporation (the "**Company**"), proposes to issue and sell to the several Underwriters listed in Schedule 1 hereto (the "**Underwriters**"), for whom you are acting as Representatives (the "**Representatives**"), an aggregate of \$[•] principal amount of its [•]% Convertible Senior Notes due 201[•] (the "**Firm Securities**"), and, at the option of the Underwriters, up to an additional aggregate of \$[•] principal amount of its [•]% Convertible Senior Notes due 201[•] (the "**Additional Securities**"). The Firm Securities and the Additional Securities are herein referred to as the "**Securities**." The Securities will be issued pursuant to a Supplemental Indenture to be dated as of May [•], 2008 (the "**Indenture**") between the Company and [•] (the "**Trustee**"). The Securities will be convertible into shares (the "**Underlying Securities**") of common stock of the Company, par value \$0.001 per share (the "**Common Stock**"), in accordance with the terms of the Indenture. The Company hereby confirms its agreement with the several Underwriters concerning the purchase and sale of the Securities, as follows:

1. Registration Statement. The Company has prepared and filed with the Securities and Exchange Commission (the "**Commission**") under the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder (collectively, the "**Securities Act**"),

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a registration statement (File No. 333-148687) including a prospectus, relating to certain debt and equity securities to be issued by the Company from time to time. Such registration statement, as amended at the time it becomes effective, including the information, if any, deemed pursuant to Rule 430A, 430B or 430C under the Securities Act to be part of the registration statement at the time of its effectiveness ("**Rule 430 Information**"), is referred to herein as the "**Registration Statement**"; and as used herein, the term "**Preliminary Prospectus**" means each prospectus included in such registration statement (and any amendments thereto) before it becomes effective, any prospectus filed with the Commission pursuant to Rule 424(a) under the Securities Act and the prospectus included in the Registration Statement at the time of its effectiveness that omits Rule 430 Information, and the term "**Prospectus**" means the prospectus in the form first used (or made available upon request of purchasers pursuant to Rule 173 under the Securities Act) in connection with confirmation of sales of the Securities. If the Company has filed an abbreviated registration statement pursuant to Rule 462(b) under the Securities Act (the "**Rule 462 Registration Statement**"), then any reference herein to the term "Registration Statement" shall be deemed to include such Rule 462 Registration Statement. Any reference in this Agreement to the Registration Statement, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, as of the effective date of the Registration Statement or the date of such Preliminary Prospectus or the Prospectus, as the case may be and any reference to "amend", "amendment" or "supplement" with respect to the Registration Statement, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any documents filed after such date under the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder (collectively, the "**Exchange Act**") that are deemed to be incorporated by reference therein. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Registration Statement and the Prospectus.

At or prior to the time when sales of the Securities are first made (the "**Time of Sale**"), the Company had prepared the following information (collectively, the "**Time of Sale Information**"): a Preliminary Prospectus dated May [•], 2008, and each "free-writing prospectus" (as defined pursuant to Rule 405 under the Securities Act) listed on Annex B hereto.

**2. Purchase of the Securities by the Underwriters.** (a) The Company agrees to issue and sell the Securities to the several Underwriters as provided in this Agreement, and each Underwriter, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, agrees, severally and not jointly, to purchase from the Company the respective principal amount of Securities set forth opposite such Underwriter's name in Schedule 1 hereto at a price (the "**Purchase Price**") equal to [•]% of the principal amount thereof plus accrued interest, if any, from May [•], 2008 to the date of payment and delivery.

On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Company agrees to sell to the several Underwriters the Additional Securities, and the Underwriters shall have the right to purchase in whole, or from time to time in part, the Additional Securities from the Company at the Purchase Price plus accrued interest, if any, from the Closing Date (as defined below) to the date of payment and delivery, solely to cover over-allotments.

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If any Additional Securities are to be purchased, the principal amount of Additional Securities to be purchased by each Underwriter shall be the principal amount of Additional Securities which bears the same ratio to the aggregate principal amount of Additional Securities being purchased as the principal amount of Firm Securities set forth opposite the name of such Underwriter in Schedule 1 hereto (or such principal amount increased as set forth in Section 10 hereof) bears to the aggregate principal amount of Firm Securities being purchased from the Company by the several Underwriters, subject, however, to such adjustments as the Representatives in their sole discretion may make in order to ensure that the principal amount of Additional Securities purchased by each Underwriter is a multiple of \$1,000.

The Underwriters may exercise the option to purchase the Additional Securities at any time in whole, or from time to time in part, on or before the thirtieth day following the date of this Agreement, by written notice from the Representatives to the Company. Such notice shall set forth the aggregate principal amount of Additional Securities as to which the option is being exercised and the date and time when the Additional Securities are to be delivered and paid for (an **"Additional Closing Date"**), which shall be on or after the date and time of the Closing Date (as hereinafter defined) but shall not be earlier than two business days after the date such notice is given nor later than the tenth full Business Day (as hereinafter defined) after the date of such notice (unless such time and date are postponed in accordance with the provisions of Section 10 hereof), except as otherwise may be agreed between the parties.

(b) The Company understands that the Underwriters intend to make a public offering of the Securities as soon after the effectiveness of this Agreement as in the judgment of the Representatives is advisable, and initially to offer the Securities on the terms set forth in the Prospectus. The Company acknowledges and agrees that the Underwriters may offer and sell Securities to or through any affiliate of an Underwriter and that any such affiliate may offer and sell Securities purchased by it to or through any Underwriter.

(c) Payment for the Securities shall be made by wire transfer in immediately available funds to the account specified by the Company to the Representatives at 10:00 A.M. New York City time on May [•], 2008, or at such other time or place on the same or such other date, not later than the fifth Business Day thereafter, as the Representatives and the Company may agree upon in writing. The time and date of such payment is referred to herein as the **"Closing Date."**

As used herein, the term **"Business Day"** means any day other than a day on which banks are permitted or required to be closed in New York City.

Payment for the Securities shall be made against delivery to the nominee of The Depository Trust Company for the respective accounts of the several Underwriters of the Securities of one or more global notes (collectively, the **"Global Notes"**) representing the Securities, with any transfer taxes payable in connection with the transfer to the Underwriters of the Securities duly paid by the Company. The Global Notes will be made available for inspection by the Representatives at the office of J.P. Morgan Securities Inc. at the address set forth above not later than 1:00 P.M., New York City time, on the Business Day immediately prior to the Closing Date.

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(d) The Company acknowledges and agrees that the Underwriters are acting solely in the capacity of an arm's length contractual counterparty to the Company with respect to the offering of Securities contemplated hereby (including in connection with determining the terms of the offering) and not as financial advisors or fiduciaries to, or agents of, the Company or any other person. Additionally, neither the Representatives nor any other Underwriter are advising the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Company shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Underwriters shall have no responsibility or liability to the Company with respect thereto. Any review by the Underwriters of the Company, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Underwriters and shall not be on behalf of the Company.

3. Representations and Warranties of the Company. The Company represents and warrants to each Underwriter that:

(a) *Preliminary Prospectus*. No order preventing or suspending the use of any Preliminary Prospectus has been issued by the Commission, and each Preliminary Prospectus, at the time of filing thereof, complied in all material respects with the Securities Act and did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation or warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter expressly for use in any Preliminary Prospectus, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 7(b) hereof.

(b) *Time of Sale Information*. The Time of Sale Information, at the Time of Sale did not, and at the Closing Date will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation or warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in such Time of Sale Information, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 7(b) hereof. No statement of material fact included in the Prospectus has been omitted from the Time of Sale Information and no statement of material fact included in the Time of Sale Information that is required to be included in the Prospectus has been omitted therefrom.

(c) *Issuer Free Writing Prospectus*. Other than the Registration Statement, the Preliminary Prospectus and the Prospectus, the Company (including its agents and representatives, other than the Underwriters in their capacity as such) has not made, used, prepared, authorized, approved or referred to and will not make, use, prepare, authorize, approve or refer to any "written communication" (as defined in Rule 405 under the Securities Act) that

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constitutes an offer to sell or solicitation of an offer to buy the Securities (each such communication by the Company or its agents and representatives (other than a communication referred to in clause (i) below) an “**Issuer Free Writing Prospectus**”) other than (i) any document not constituting a prospectus pursuant to Section 2(a)(10)(a) of the Securities Act or Rule 134 under the Securities Act or (ii) the documents listed on Annex B hereto and other written communications approved in writing in advance by the Representatives. Each such Issuer Free Writing Prospectus complied in all material respects with the Securities Act, has been filed in accordance with the Securities Act (to the extent required thereby) and, when taken together with the Preliminary Prospectus accompanying, or delivered prior to delivery of, or filed prior to the first use of such Issuer Free Writing Prospectus, did not, and at the Closing Date will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation or warranty with respect to any statements or omissions made in each such Issuer Free Writing Prospectus in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in any Issuer Free Writing Prospectus, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 7(b) hereof.

(d) *Registration Statement and Prospectus.* The Registration Statement has been declared effective by the Commission. No order suspending the effectiveness of the Registration Statement has been issued by the Commission and no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the offering has been initiated or threatened by the Commission; as of the applicable effective date of the Registration Statement and any amendment thereto, the Registration Statement complied and will comply in all material respects with the Securities Act and the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission thereunder (collectively, the “**Trust Indenture Act**”), and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading; and as of the date of the Prospectus and any amendment or supplement thereto and as of the Closing Date, the Prospectus will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation and warranty with respect to (i) that part of the Registration Statement that constitutes the Statement of Eligibility and Qualification (Form T-1) of the Trustee under the Trust Indenture Act or (ii) any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in the Registration Statement and the Prospectus and any amendment or supplement thereto, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 7(b) hereof.

(e) *Incorporated Documents.* The documents incorporated by reference in the Registration Statement, the Prospectus and the Time of Sale Information, when they became effective or were filed with the Commission, as the case may be, conformed in all material

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respects to the requirements of the Securities Act or the Exchange Act, as applicable, and none of such documents contained any untrue statement of a material fact or omitted to state a material fact or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and any further documents so filed and incorporated by reference in the Registration Statement, the Prospectus or the Time of Sale Information, when such documents become effective or are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(f) *Financial Statements.* The financial statements and the related notes thereto included or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as applicable, and present fairly, in all material respects, the consolidated financial position of the Company and its subsidiaries as of the dates indicated and the consolidated results of their operations and the consolidated changes in their cash flows for the periods specified; such consolidated financial statements have been prepared in conformity with generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods covered thereby, and the supporting schedules included or incorporated by reference in the Registration Statement present fairly, in all material respects, the information required to be stated therein; the other financial information included or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus has been derived from the accounting records of the Company and its subsidiaries and presents fairly, in all material respects, the information shown thereby; and there are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the Registration Statement, the Time of Sale Information or the Prospectus (or any document incorporated by reference) that are not included or incorporated by reference as required; the Company and its subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations) that would be required to be described in the Registration Statement, the Time of Sale Information or the Prospectus; and all disclosures contained or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply with Regulation G under the Exchange Act and Item 10 of Regulation S-K under the Securities Act, in all material respects as applicable.

(g) *No Material Adverse Change.* Since the date of the most recent financial statements of the Company included or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus, (i) there has not been any change in the capital stock (other than the issuance of shares of Common Stock and options to purchase shares of Common Stock granted under, or contracts or commitments pursuant to, the Company's previous or currently existing stock option and other similar officer, director or employee benefit plans or the issuance of Common Stock upon the exercise of outstanding options and warrants) or long-term debt of the Company or any of its subsidiaries, or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock, or

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any material adverse change, or any development that could reasonably be expected to result in a material adverse change, in or affecting the business, properties, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries taken as a whole; (ii) neither the Company nor any of its subsidiaries has entered into any transaction or agreement that is material to the Company and its subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Company and its subsidiaries taken as a whole; and (iii) neither the Company nor any of its subsidiaries has sustained any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority, except in each case of clauses (i), (ii) and (iii) as otherwise disclosed in each of the Registration Statement, the Time of Sale Information and the Prospectus.

(h) *Organization and Good Standing.* The Company and each of its subsidiaries have been duly organized and are validly existing and in good standing under the laws of their respective jurisdictions of organization, are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the failure to be so qualified, in good standing or have such power or authority would not have or would not be reasonably expected to have, individually or in the aggregate, a material adverse effect on the business, properties, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries taken as a whole or on the performance by the Company of its obligations under the Transaction Documents (as defined below) (a "**Material Adverse Effect**"). The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Exhibit 21.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2007.

(i) *Stock Options.* Except as described in each of the Time of Sale Information and the Prospectus, with respect to the stock options (the "**Stock Options**") granted pursuant to the stock-based compensation plans of the Company and its subsidiaries (the "**Company Stock Plans**"), (i) each Stock Option designated by the Company at the time of grant as an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended (the "**Code**") so qualifies, (ii) each grant of a Stock Option was duly authorized no later than the date on which the grant of such Stock Option was by its terms to be effective (the "**Grant Date**") by all necessary corporate action, including, as applicable, approval by the board of directors of the Company (or a duly constituted and authorized committee thereof) and any required stockholder approval by the necessary number of votes or written consents, and the award agreement governing such grant (if any) was duly executed and delivered by each party thereto, (iii) each such grant was made in accordance with the terms of the Company Stock Plans, the Exchange Act and all other applicable laws and regulatory rules or requirements, including the rules of The Nasdaq Global Select Market (the "**Nasdaq**") and any other exchange on which Company securities are traded, (iv) the per share exercise price of each Stock Option was equal to or greater than the fair market value of a share of Common Stock on the applicable Grant Date and (v) each such grant was properly accounted for in accordance with GAAP in the financial statements (including the related notes) of the Company and disclosed in the Company's filings

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with the Commission in accordance with the Exchange Act and all other applicable laws. The Company has not knowingly granted, and there is no and has been no policy or practice of the Company of granting, Stock Options immediately prior to the release or other public announcement of material information regarding the Company or its subsidiaries or their results of operations or prospects.

(j) *Capitalization.* The Company has an authorized capitalization as set forth in the Registration Statement, the Time of Sale Information and the Prospectus under the heading "Capitalization"; all the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and are not subject to any pre-emptive or similar rights; except as described in or expressly contemplated by each of the Time of Sale Information and the Prospectus, there are no outstanding rights (including, without limitation, pre-emptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in the Company or any of its subsidiaries, or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of the Company or any such subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options; the capital stock of the Company conforms in all material respects to the description thereof contained in the Registration Statement, the Time of Sale Information and the Prospectus; and all the outstanding shares of capital stock or other equity interests of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable (except, in the case of any foreign subsidiary, for directors' qualifying shares and except as otherwise described in each of the Registration Statement, the Time of Sale Information and the Prospectus) and are owned directly or indirectly by the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party except as set forth in each of the Registration Statement, the Time of Sale Information and the Prospectus.

(k) *Due Authorization.* The Company has full right, power and authority to execute and deliver this Agreement, the Securities and the Indenture (collectively, the "**Transaction Documents**") and to perform its obligations hereunder and thereunder; each of the Transaction Documents has been duly and properly authorized by the Company and all action required to be taken by the Company for such due and proper authorization and for the execution and delivery by the Company of each of the Transaction Documents and the consummation by it of the transactions contemplated thereby has been duly and validly taken.

(l) *Underwriting Agreement.* This Agreement has been executed and delivered by the Company.

(m) *Indenture.* Upon effectiveness of the Registration Statement, the Indenture was or will have been duly qualified under and will conform in all material respects to the requirements of the Trust Indenture Act and, when duly executed and delivered in accordance with its terms by each of the parties thereto, will constitute a valid and legally binding agreement of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by (i) applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or (ii) by equitable principles relating to enforceability (clauses (i) and (ii) collectively, the "**Enforceability Exceptions**").

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(n) *The Securities*. The Securities have been duly authorized by the Company and, when duly executed, authenticated, issued and delivered as provided in the Indenture and paid for as provided herein, will be duly and validly issued and outstanding and will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms, subject to the Enforceability Exceptions, and will be entitled to the benefits of the Indenture.

(o) *The Underlying Securities*. Upon issuance and delivery of the Securities in accordance with this Agreement and the Indenture, the Securities will be convertible at the option of the holder thereof into shares of the Underlying Securities in accordance with the terms of the Securities and the Indenture; the Underlying Securities reserved for issuance upon conversion of the Securities have been duly authorized and reserved and, when issued upon conversion of the Securities in accordance with the terms of the Securities, will be validly issued, fully paid and non-assessable, and the issuance of the Underlying Securities will not be subject to any preemptive or similar rights.

(p) *Descriptions of the Transaction Documents*. Each Transaction Document conforms in all material respects to the description thereof contained in each of the Registration Statement, the Time of Sale Information and the Prospectus.

(q) *No Violation or Default*. Neither the Company nor any of its subsidiaries is (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, have a Material Adverse Effect.

(r) *No Conflicts*. Except as set forth in each of the Registration Statement, the Time of Sale Information and the Prospectus, the execution, delivery and performance by the Company of each of the Transaction Documents to which it is a party, the issuance and sale of the Securities (including the issuance of the Underlying Securities upon conversion thereof) and compliance by the Company with the terms thereof and the consummation of the transactions contemplated by the Transaction Documents will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the charter or by-laws or similar organizational documents of the Company or any of its subsidiaries or (iii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (i)

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and (iii) above, for any such conflict, breach, violation or default that would not, individually or in the aggregate, have a Material Adverse Effect.

(s) *No Consents Required.* No consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Company of each of the Transaction Documents to which it is a party, the issuance and sale of the Securities (including the issuance of the Underlying Securities upon conversion thereof) and compliance by the Company with the terms thereof and the consummation of the transactions contemplated by the Transaction Documents, except for the registration of the Securities under the Securities Act and such consents, approvals, authorizations, orders and registrations or qualifications as may be required under applicable state securities laws in connection with the purchase and distribution of the Securities by the Underwriters.

(t) *Legal Proceedings.* Except as described in each of the Registration Statement, the Time of Sale Information and the Prospectus, there are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Company or any of its subsidiaries is or may be a party or to which any property of the Company or any of its subsidiaries is or may be the subject that, individually or in the aggregate, if determined adversely to the Company or any of its subsidiaries, could reasonably be expected to have a Material Adverse Effect or materially and adversely affect the ability of the Company to perform its obligations under the Transaction Documents; no such investigations, actions, suits or proceedings are threatened or, to the knowledge of the Company, contemplated by any governmental or regulatory authority or threatened by others; and (i) there are no current or pending legal, governmental or regulatory actions, suits or proceedings that are required under the Securities Act to be described in the Registration Statement or the Prospectus that are not so described in each of the Registration Statement, the Time of Sale Information and the Prospectus and (ii) there are no statutes, regulations or contracts or other documents that are required under the Securities Act to be filed as exhibits to the Registration Statement or described in the Registration Statement or the Prospectus that are not so filed as exhibits to the Registration Statement or described in each of the Registration Statement, the Time of Sale Information and the Prospectus.

(u) *Independent Accountants.* KPMG LLP, who has certified certain financial statements of the Company and its subsidiaries, is an independent registered public accounting firm with respect to the Company and its subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act.

(v) *Title to Real and Personal Property.* The Company and its subsidiaries have good and marketable title in fee simple to, or have valid rights to lease or otherwise use, all items of real and personal property that are material to the respective businesses of the Company and its subsidiaries, in each case free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and its subsidiaries or (ii) could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

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(w) *Intellectual Property.*

(i) The Company and its subsidiaries own or possess the rights to use all patents, patent applications, inventions, trademarks, service marks, trade names, trademark registrations, service mark registrations, domain names, copyrights, licenses, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) and other intellectual property necessary for the conduct of their respective businesses ("**Intellectual Property**"); and, to the Company's knowledge, the conduct of their respective businesses will not conflict in any material respect with any such rights of others, and the Company and its subsidiaries have not received any notice of any claim of infringement or conflict with any such rights of others. To the Company's knowledge, there are no valid and enforceable rights of third parties to the Intellectual Property that are or would be infringed by the business currently conducted by the Company and its subsidiaries. None of the patents owned or licensed by the Company that are material to the Company's and its subsidiaries' respective businesses is invalid or unenforceable; and the Company is not aware of any basis for a finding that any of the Intellectual Property is invalid or unenforceable. All Intellectual Property owned by the Company or its subsidiaries is free and clear of all liens, encumbrances, defects or other restrictions, except as would not, singly or in the aggregate, have a Material Adverse Effect on the Company. The Company and its subsidiaries have taken all actions reasonably necessary to maintain and protect all registered Intellectual Property owned by the Company or its subsidiaries, including payment of applicable maintenance fees, filing of applicable statements of use, timely response to office actions, and disclosure of any required information.

(ii) The Company and its subsidiaries are in compliance with all applicable federal, state, local and foreign laws, rules, regulations, requirements, decisions and orders relating to intellectual property except as would not, individually or in the aggregate, have a Material Adverse Effect.

(iii) Neither the Company nor any of its subsidiaries is subject to any judgment, order, writ, injunction or decree of any court or any federal, state, local, foreign or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or any arbitrator, nor has it entered into or is it a party to any contract, in each case which materially restricts or impairs their use of any Intellectual Property.

(iv) The Company and its subsidiaries have taken all actions reasonably necessary to protect their rights in confidential information and trade secrets, protect any confidential information provided to them by any other person, and obtain ownership of all works of authorship and inventions made by its employees, consultants and contractors and which relate to the Company business. All founders, key employees and any other employees involved in the development of software for the Company have signed confidentiality and invention assignment agreements with the Company.

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(x) *No Undisclosed Relationships.* No relationship, direct or indirect, exists between or among the Company or any of its subsidiaries, on the one hand, and the directors, officers, stockholders, customers, suppliers or other affiliates of the Company or any of its subsidiaries, on the other, that is required by the Securities Act to be described in the Registration Statement and the Prospectus and that is not so described in each of such documents and in the Time of Sale Information.

(y) *Investment Company Act.* Neither the Company nor any of its subsidiaries is, and after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Registration Statement, the Time of Sale Information and the Prospectus none of them will be, an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.

(z) *Taxes.* The Company and its subsidiaries have paid all federal, state, local and foreign taxes and filed all tax returns required to be paid or filed through the date hereof; and except as otherwise disclosed in each of the Registration Statement, the Time of Sale Information and the Prospectus, there is no tax deficiency that has been, or could reasonably be expected to be, asserted against the Company or any of its subsidiaries or any of their respective properties or assets.

(aa) *Licenses and Permits.* The Company and its subsidiaries possess all licenses, certificates, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as described in each of the Registration Statement, the Time of Sale Information and the Prospectus, except where the failure to possess or make the same would not, individually or in the aggregate, have a Material Adverse Effect; and except as described in each of the Registration Statement, the Time of Sale Information and the Prospectus, neither the Company nor any of its subsidiaries has received notice of any revocation or modification of any such license, certificate, permit or authorization or has any reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course.

(bb) *No Labor Disputes.* No labor disturbance by or dispute with employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is contemplated or threatened and the Company is not aware of any existing or imminent labor disturbance by, or dispute with, the employees of any of its or its subsidiaries' principal suppliers, contractors or customers, except as would not have a Material Adverse Effect.

(cc) *Compliance With Environmental Laws.* (i) The Company and its subsidiaries (A) are, and at all prior times were, in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, requirements, decisions and orders relating to the protection of human health and safety, the environment, natural resources or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "**Environmental Laws**"); (B) have received and are in compliance with all permits, licenses, certificates or other authorizations or approvals required of them under applicable Environmental Laws to conduct their respective businesses;

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and (C) have not received notice of any actual or potential liability under or relating to any Environmental Laws, including for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, and have no knowledge of any event or condition that would reasonably be expected to result in any such notice, (ii) there are no costs or liabilities associated with Environmental Laws of or relating to the Company or its subsidiaries, except in the case of each of (cc)(A) and (cc)(B) above, for any such failure to comply, or failure to receive required permits, licenses or approvals, or cost or liability, as would not, individually or in the aggregate, have a Material Adverse Effect; and (iii) except as described in each of the Time of Sale Information and the Prospectus, (A) there are no proceedings that are pending, or that are known to be contemplated, against the Company or any of its subsidiaries under any Environmental Laws in which a governmental entity is also a party, other than such proceedings regarding which it is reasonably believed no monetary sanctions of \$100,000 or more will be imposed, (B) the Company and its subsidiaries are not aware of any issues regarding compliance with Environmental Laws, or liabilities or other obligations under Environmental Laws or concerning hazardous or toxic substances or wastes, pollutants or contaminants, that could reasonably be expected to have a material effect on the capital expenditures, earnings or competitive position of the Company and its subsidiaries, and (C) none of the Company and its subsidiaries anticipates material capital expenditures relating to any Environmental Laws.

(dd) *Compliance With ERISA.* (i) Each employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), for which the Company or any member of its "Controlled Group" (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Code) would have any liability (each, a "**Plan**") has been maintained in compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions effected pursuant to a statutory or administrative exemption; (iii) for each Plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no "accumulated funding deficiency" as defined in Section 412 of the Code, whether or not waived, has occurred or is reasonably expected to occur; (iv) the fair market value of the assets of each Plan exceeds the present value of all benefits accrued under such Plan (determined based on those assumptions used to fund such Plan); (v) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur; and (vi) neither the Company nor any member of its Controlled Group has incurred, nor reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to a Plan or premiums to the Pension Benefit Guaranty Corporation, in the ordinary course and without default) in respect of a Plan (including a "multiemployer plan", within the meaning of Section 4001(a)(3) of ERISA).

(ee) *Disclosure Controls.* The Company maintains an effective system of "disclosure controls and procedures" (as defined in Rule 13a-15(e) of the Exchange Act) that is designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company's

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management as appropriate to allow timely decisions regarding required disclosure. The Company has carried out evaluations of the effectiveness of its disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act.

(ff) *Accounting Controls*. The Company maintains a system of "internal control over financial reporting" (as defined in Rule 13a-15(f) of the Exchange Act) that complies with the requirements of the Exchange Act and has been designed by, or under the supervision of, its principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including, but not limited to internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as disclosed in each of the Registration Statement, the Time of Sale Information and the Prospectus, there are no material weaknesses or significant deficiencies in the Company's internal controls over financial reporting.

(gg) *No Unlawful Payments*. Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(hh) *Insurance*. The Company and its subsidiaries have insurance covering their respective properties, operations, personnel and businesses, including business interruption insurance, which insurance is in amounts and insures against such losses and risks as the Company believes are adequate to protect the Company and its subsidiaries and their respective businesses; and neither the Company nor any of its subsidiaries has (i) received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance or (ii) any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage at reasonable cost from similar insurers as may be necessary to continue its business.

(ii) *Compliance with Money Laundering Laws*. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency,

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authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(jj) *Compliance with OFAC.* None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**"); and the Company will not directly or indirectly use the proceeds of the offering of the Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(kk) *No Restrictions on Subsidiaries.* Except as set forth in each of the Registration Statement, the Time of Sale Information and the Prospectus, no subsidiary of the Company is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's properties or assets to the Company or any other subsidiary of the Company.

(ll) *No Broker's Fees.* Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than the Transaction Documents) that would give rise to a valid claim against the Company or any of its subsidiaries or any Underwriter for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Securities.

(nn) *No Registration Rights.* No person has the right to require the Company or any of its subsidiaries to register any securities for sale under the Securities Act by reason of the filing of the Registration Statement with the Commission or the issuance and sale of the Securities.

(oo) *No Stabilization.* The Company has not taken, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities.

(pp) *Margin Rules.* Neither the issuance, sale and delivery of the Securities nor the application of the proceeds thereof by the Company as described in the Registration Statement, the Time of Sale Information and the Prospectus will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(qq) *Forward-Looking Statements.* No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in any of the Registration Statement, the Time of Sale Information and the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(rr) *Statistical and Market Data.* Nothing has come to the attention of the Company that has caused the Company to believe that the statistical and market-related data included or

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incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus is not based on or derived from sources that are reliable and accurate in all material respects.

(ss) *Sarbanes-Oxley Act*. There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply in all material respects with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith, including Section 402 related to loans and Sections 302 and 906 related to certifications.

(tt) *Status under the Securities Act*. The Company is not an ineligible issuer as defined under the Securities Act, in each case at the times specified in the Securities Act in connection with the offering of the Securities. The Company has paid the registration fee for this offering pursuant to Rule 457 under the Securities Act.

4. Further Agreements of the Company. The Company covenants and agrees with each Underwriter that:

(a) *Required Filings*. The Company will file the final Prospectus with the Commission within the time periods specified by Rule 424(b) and Rule 430A, 430B or 430C under the Securities Act, will file any Issuer Free Writing Prospectus (including the term sheet in the form of Annex C hereto) to the extent required by Rule 433 under the Securities Act; and will file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of the Prospectus and for so long as the delivery of a prospectus is required in connection with the offering or sale of the Securities; and the Company will furnish copies of the Prospectus and each Issuer Free Writing Prospectus (to the extent not previously delivered) to the Underwriters in New York City prior to 10:00 A.M., New York City time, on the Business Day next succeeding the date of this Agreement in such quantities as the Representatives may reasonably request.

(b) *Delivery of Copies*. The Company will deliver, without charge, (i) to the Representatives, two signed copies of the Registration Statement as originally filed and each amendment thereto, in each case including all exhibits and consents filed therewith and documents incorporated by reference therein; and (ii) to each Underwriter (A) a conformed copy of the Registration Statement as originally filed and each amendment thereto, in each case including all exhibits and consents filed therewith and (B) during the Prospectus Delivery Period (as defined below), as many copies of the Prospectus (including all amendments and supplements thereto and documents incorporated by reference therein) and each Issuer Free Writing Prospectus as the Representatives may reasonably request. As used herein, the term "**Prospectus Delivery Period**" means such period of time after the first date of the public offering of the Securities as in the opinion of counsel for the Underwriters a prospectus relating to the Securities is required by law to be delivered (or required to be delivered but for Rule 172 under the Securities Act) in connection with sales of the Securities by any Underwriter or dealer.

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(c) *Amendments or Supplements, Issuer Free Writing Prospectuses.* Before preparing, using, authorizing, approving, referring to or filing any Issuer Free Writing Prospectus, and before filing any amendment or supplement to the Registration Statement or the Prospectus, whether before or after the time that the Registration Statement becomes effective, the Company will furnish to the Representatives and counsel for the Underwriters a copy of the proposed Issuer Free Writing Prospectus, amendment or supplement for review and will not prepare, use, authorize, approve, refer to or file any such Issuer Free Writing Prospectus or file any such proposed amendment or supplement to which the Representatives reasonably object.

(d) *Notice to the Representatives.* The Company will advise the Representatives promptly, and confirm such advice in writing, (i) when the Registration Statement has become effective; (ii) when any amendment to the Registration Statement has been filed or becomes effective; (iii) when any supplement to the Prospectus or any Issuer Free Writing Prospectus or any amendment to the Prospectus has been filed; (iv) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or the receipt of any comments from the Commission relating to the Registration Statement or any other request by the Commission for any additional information; (v) of the issuance by the Commission of any order suspending the effectiveness of the Registration Statement or preventing or suspending the use of any Preliminary Prospectus or the Prospectus or the initiation or threatening of any proceeding for that purpose or pursuant to Section 8A of the Securities Act; (vi) of the occurrence of any event within the Prospectus Delivery Period as a result of which the Prospectus, the Time of Sale Information or any Issuer Free Writing Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus, the Time of Sale Information or any such Issuer Free Writing Prospectus is delivered to a purchaser, not misleading; and (vii) of the receipt by the Company of any notice with respect to any suspension of the qualification of the Securities for offer and sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and the Company will use its reasonable efforts to prevent the issuance of any such order suspending the effectiveness of the Registration Statement, preventing or suspending the use of any Preliminary Prospectus or the Prospectus or suspending any such qualification of the Securities and, if any such order is issued, will use its reasonable efforts to obtain as soon as possible the withdrawal thereof.

(e) *Ongoing Compliance.* (1) If during the Prospectus Delivery Period (i) any event shall occur or condition shall exist as a result of which the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, not misleading or (ii) it is necessary to amend or supplement the Prospectus to comply with law, the Company will immediately notify the Underwriters thereof and forthwith prepare and, subject to paragraph (c) above, file with the Commission and furnish to the Underwriters and to such dealers as the Representatives may designate, such amendments or supplements to the Prospectus as may be necessary so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus will comply with law and (2) if at any time prior to the

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Closing Date (i) any event shall occur or condition shall exist as a result of which the Time of Sale Information as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances, not misleading or (ii) it is necessary to amend or supplement the Time of Sale Information to comply with law, the Company will immediately notify the Underwriters thereof and forthwith prepare and, subject to paragraph (c) above, file with the Commission (to the extent required) and furnish to the Underwriters and to such dealers as the Representatives may designate, such amendments or supplements to the Time of Sale Information as may be necessary so that the statements in the Time of Sale Information as so amended or supplemented will not, in the light of the circumstances, be misleading or so that the Time of Sale Information will comply with law.

(f) *Blue Sky Compliance.* The Company will qualify the Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Representatives shall reasonably request and will continue such qualifications in effect so long as required for distribution of the Securities; provided that the Company shall not be required to (i) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify, (ii) file any general consent to service of process in any such jurisdiction or (iii) subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(g) *Earning Statement.* The Company will make generally available to its security holders and the Representatives as soon as practicable an earning statement that satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 of the Commission promulgated thereunder covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the "effective date" (as defined in Rule 158) of the Registration Statement.

(h) *Clear Market.* Without the prior written consent of the Representatives, the Company will not, during the period ending 90 days after the date of the Prospectus, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, (iii) file with the Commission a registration statement under the Securities Act relating to any additional shares of its Common Stock or securities convertible into, or exchangeable for, any shares of its Common Stock, or publicly disclose the intention to effect any transaction described in clause (i), (ii) or (iii), whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise; provided that the foregoing shall not apply to (A) the sale of the Securities under this Agreement or the issuance of the Underlying Securities, (B) the grant by the Company of employee or director stock options in the ordinary course of business, the issuance by the Company of any shares of Common Stock upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof or (C) the filing of any registration statement in respect of the Securities and the Underlying Securities. Notwithstanding the

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foregoing, if (1) during the last 17 days of the 90-day restricted period, the Company issues an earnings release or material news or a material event relating to the Company occurs; or (2) prior to the expiration of the 90-day restricted period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the 90-day period, the restrictions imposed by this Agreement shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

(i) *Use of Proceeds.* The Company will apply the net proceeds from the sale of the Securities as described in the Registration Statement, the Time of Sale Information and the Prospectus under the heading "Use of proceeds". In addition and not in limitation of the foregoing, the Company shall, immediately upon receipt of the net proceeds from the sale of the Securities, pay off all principal of and interest on each loan outstanding under the Credit Agreement dated as of October 27, 2006 among the Company, the Guarantors and the Lenders (as such terms are defined therein), UBS Securities LLC, Bank of America, N.A., Comerica Bank, Silicon Valley Bank, JPMorgan Chase Bank, N.A., UBS Loan Finance LLC and UBS AG, Stamford Branch (the "**Credit Agreement**"), pay in full all other expenses or amounts payable under the Credit Agreement and terminate all commitments and letters of credit under the Credit Agreement.

(j) The Company shall maintain a program under which its executive officers and directors may sell shares of Common Stock pursuant to the exemption under clause (c) of the second paragraph of the lock-up letters described in Section 6(l) hereof pursuant to any contract, instruction or plan complying with Rule 10b5-1 under the Exchange Act. Such program shall be reasonably designed and enforced by the Company to ensure that such officers and directors sell no more than an aggregate of 400,000 shares of Common Stock during the period that such lock-up letters are in effect. If at any time the Company has knowledge that greater than 400,000 shares of Common Stock have been sold by such officers and directors in violation of such lock-up agreements or this Agreement, the Company shall immediately notify the Representatives and take all reasonably necessary actions to prevent any such further sales.

(k) *Underlying Securities.* The Company will reserve and keep available at all times, free of pre-emptive rights, shares of Common Stock for the purpose of enabling the Company to satisfy all obligations to issue the Underlying Securities upon conversion of the Securities. The Company will use its best efforts to cause the Underlying Securities to be listed on the Nasdaq.

(l) *No Stabilization.* The Company will not take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities, and will not take any action prohibited by Regulation M under the Exchange Act, in connection with the distribution of the Securities contemplated hereby.

(m) *Record Retention.* The Company will, pursuant to reasonable procedures developed in good faith, retain copies of each Issuer Free Writing Prospectus that is not filed with the Commission in accordance with Rule 433 under the Securities Act.

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5. Certain Agreements of the Underwriters. Each Underwriter hereby represents and agrees that:

(a) It has not and will not use, authorize use of, refer to, or participate in the planning for use of, any “free writing prospectus”, as defined in Rule 405 under the Securities Act (which term includes use of any written information furnished to the Commission by the Company and not incorporated by reference into the Registration Statement and any press release issued by the Company) other than (i) a free writing prospectus that, solely as a result of use by such Underwriter, would not trigger an obligation to file such free writing prospectus with the Commission pursuant to Rule 433, (ii) any Issuer Free Writing Prospectus listed on Annex B or prepared pursuant to Section 3(c) or Section 4(c) above (including any electronic road show), or (iii) any free writing prospectus prepared by such Underwriter and approved by the Company in advance in writing (each such free writing prospectus referred to in clauses (i) or (iii), an “**Underwriter Free Writing Prospectus**”). Notwithstanding the foregoing, the Underwriters may use a term sheet substantially in the form of Annex C hereto without the consent of the Company.

(b) It is not subject to any pending proceeding under Section 8A of the Securities Act with respect to the offering (and will promptly notify the Company if any such proceeding against it is initiated during the Prospectus Delivery Period).

6. Conditions of Underwriters’ Obligations. The obligation of each Underwriter to purchase the Firm Securities on the Closing Date or Additional Securities on an Additional Closing Date, as the case may be as provided herein is subject to the performance by the Company of its covenants and other obligations hereunder and to the following additional conditions:

(a) *Registration Compliance; No Stop Order.* No order suspending the effectiveness of the Registration Statement shall be in effect, and no proceeding for such purpose or pursuant to Section 8A under the Securities Act shall be pending before or threatened by the Commission; the Prospectus and each Issuer Free Writing Prospectus shall have been timely filed with the Commission under the Securities Act (in the case of an Issuer Free Writing Prospectus, to the extent required by Rule 433 under the Securities Act) and in accordance with Section 4(a) hereof; and all requests by the Commission for additional information shall have been complied with to the reasonable satisfaction of the Representatives.

(b) *Representations and Warranties.* The representations and warranties of the Company contained herein shall be true and correct on the date hereof and on and as of the Closing Date or any Additional Closing Date, as the case may be; and the statements of the Company and its officers made in any certificates delivered pursuant to this Agreement shall be true and correct on and as of the Closing Date or any Additional Closing Date, as the case may be.

(c) *No Downgrade.* Subsequent to the earlier of (A) the Time of Sale and (B) the execution and delivery of this Agreement, (i) no downgrading shall have occurred in the rating accorded the Securities or any other debt securities or preferred stock issued or guaranteed by the

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Company or any of its subsidiaries by any “nationally recognized statistical rating organization”, as such term is defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, or has changed its outlook with respect to, its rating of the Securities or of any other debt securities or preferred stock issued or guaranteed by the Company or any of its subsidiaries (other than an announcement with positive implications of a possible upgrading).

(d) *No Material Adverse Change.* No material change in the capital stock or long term debt of the Company and no event or condition of a type described in Section 3(g) hereof shall have occurred or shall exist, which change, event or condition is not described in each of the Time of Sale Information (excluding any amendment or supplement thereto) and the Prospectus (excluding any amendment or supplement thereto) and the effect of which in the judgment of the Representatives makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities on the Closing Date or the Additional Closing Date, as the case may be, on the terms and in the manner contemplated by this Agreement, the Time of Sale Information and the Prospectus.

(e) *Officer's Certificate.* The Representatives shall have received on and as of the Closing Date a certificate of the chief financial officer or chief accounting officer of the Company who has specific knowledge of the Company's financial matters and is satisfactory to the Underwriters (i) confirming that such officer has carefully reviewed the Registration Statement, the Time of Sale Information and the Prospectus and, to the knowledge of such officer, the representations set forth in Sections 3(b) and 3(d) hereof are true and correct, (ii) confirming that the other representations and warranties of the Company in this Agreement are true and correct and that the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date and (iii) to the effect set forth in paragraphs (c) and (d) above.

(f) *Comfort Letters.* On the date of this Agreement and on the Closing Date, KPMG LLP shall have furnished to the Representatives, at the request of the Company, letters, dated the respective dates of delivery thereof and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus; provided, that the letter delivered on the Closing Date shall use a "cut-off" date no more than three Business Days prior to the Closing Date.

(g) *Opinion and 10b-5 Statement of Counsel for the Company.* Greenberg Traurig, LLP, counsel for the Company, shall have furnished to the Representatives, at the request of the Company, their written opinion and 10b-5 statement, dated the Closing Date or the Additional Closing Date, as the case may be, and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Annex A-1 hereto. [•], Chinese counsel for the Company, shall have furnished to the Representatives, at the request of the Company, their written opinion, dated the Closing Date or the Additional Closing Date, as

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the case may be, and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Annex A-2 hereto.

(h) *Opinion and 10b-5 Statement of Counsel for the Underwriters.* The Representatives shall have received on and as of the Closing Date or the Additional Closing Date, as the case may be, an opinion and 10b-5 statement of Davis Polk & Wardwell, counsel for the Underwriters, with respect to such matters as the Representatives may reasonably request, and such counsel shall have received such documents and information as they may reasonably request to enable them to pass upon such matters.

(i) *No Legal Impediment to Issuance.* No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority that would, as of the Closing Date or the Additional Closing Date, as the case may be, prevent the issuance or sale of the Securities; and no injunction or order of any federal, state or foreign court shall have been issued that would, as of the Closing Date or the Additional Closing Date, as the case may be, prevent the issuance or sale of the Securities.

(j) *Good Standing.* The Representatives shall have received on and as of the Closing Date satisfactory evidence of the good standing of the Company and its subsidiaries in their respective jurisdictions of organization and their good standing as foreign entities in such other jurisdictions as the Representatives may reasonably request, in each case in writing or any standard form of telecommunication from the appropriate governmental authorities of such jurisdictions.

(l) *Lock-up Agreements.* The "lock-up" agreements, each substantially in the form of Exhibit A hereto, between you and the officers and directors of the Company relating to sales and certain other dispositions of shares of Stock or certain other securities, delivered to you on or before the date hereof, shall be full force and effect on the Closing Date or Additional Closing Date, as the case may be.

(m) *Listing.* An application for the listing of the Underlying Securities shall have been submitted to the Nasdaq.

(n) *Additional Documents.* On or prior to the Closing Date or the Additional Closing Date, as the case may be, the Company shall have furnished to the Representatives such further certificates and documents as the Representatives may reasonably request.

All opinions, letters, certificates and evidence mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriters.

#### 7. Indemnification and Contribution.

(a) *Indemnification of the Underwriters.* The Company agrees to indemnify and hold harmless each Underwriter, its affiliates, directors and officers and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Securities Act or Section 20

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of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of, or are based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, not misleading, (ii) or any untrue statement or alleged untrue statement of a material fact contained in the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus or any Time of Sale Information (including any Time of Sale Information that has subsequently been amended), or caused by any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, in each case except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to any Underwriter furnished to the Company in writing by such Underwriter expressly for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in subsection (b) below.

(b) *Indemnification of the Company.* Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, its directors, its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the indemnity set forth in paragraph (a) above, but only with respect to any losses, claims, damages or liabilities that arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to such Underwriter furnished to the Company in writing by such Underwriter expressly for use in the Registration Statement, the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus or any Time of Sale Information, it being understood and agreed that the only such information furnished by any Underwriter consists of the following information in the Prospectus furnished on behalf of each Underwriter: [(i) the names of the Underwriters which appear on the front cover and back cover of the Prospectus; (ii) the names of the Underwriters which appear under the caption "Plan of distribution" in the Prospectus; (iii) the information contained in the ninth paragraph under the caption "Plan of distribution" in the Prospectus (for the avoidance of doubt, such paragraph begins with the words "We have been advised that the underwriters..."); and (v) the paragraph concerning over-allotment, stabilizing transactions and syndicate covering transactions under the caption "Plan of distribution".] [update as necessary]

(c) *Notice and Procedures.* If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any person in respect of which indemnification may be sought pursuant to either paragraph (a) or (b) above, such person (the "Indemnified Person") shall promptly notify the person against whom such indemnification may be sought (the "Indemnifying Person") in writing; provided that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have under this Section 7 except to the extent that it has been materially prejudiced (through the forfeiture

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of substantive rights or defenses) by such failure; and provided, further, that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have to an Indemnified Person otherwise than under this Section 7. If any such proceeding shall be brought or asserted against an Indemnified Person and it shall have notified the Indemnifying Person thereof, the Indemnifying Person shall retain counsel reasonably satisfactory to the Indemnified Person (who shall not, without the consent of the Indemnified Person, be counsel to the Indemnifying Person) to represent the Indemnified Person and any others entitled to indemnification pursuant to Section 7 that the Indemnifying Person may designate in such proceeding and shall pay the reasonable fees and expenses of such proceeding and shall pay the reasonable fees and expenses of counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary; (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interest between them. It is understood and agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred. Any such separate firm for any Underwriter, its affiliates, directors and officers and any control persons of such Underwriter shall be designated in writing by such Underwriter and any such separate firm for the Company, its directors, its officers who signed the Registration Statement and any control persons of the Company shall be designated in writing by the Company. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Person shall have requested that an Indemnifying Person reimburse the Indemnified Person for reasonable fees and expenses of counsel as contemplated by this paragraph, the Indemnifying Person shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by the Indemnifying Person of such request and (ii) the Indemnifying Person shall not have reimbursed the Indemnified Person in accordance with such request prior to the date of such settlement. No Indemnifying Person shall, without the written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnification could have been sought hereunder by such Indemnified Person, unless such settlement (x) includes an unconditional release of such Indemnified Person, in form and substance reasonably satisfactory to such Indemnified Person, from all liability on claims that are the subject matter of such proceeding and (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

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(d) *Contribution.* If the indemnification provided for in paragraphs (a) and (b) above is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other, from the offering of the Securities or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company, on the one hand, and the Underwriters, on the other, in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other, shall be deemed to be in the same respective proportions as the net proceeds (before deducting expenses) received by the Company from the sale of the Securities and the total underwriting discounts and commissions received by the Underwriters in connection therewith, in each case as set forth in the table on the cover of the Prospectus, bear to the aggregate offering price of the Securities. The relative fault of the Company, on the one hand, and the Underwriters, on the other, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) *Limitation on Liability.* The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph (d) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Person in connection with any such action or claim. Notwithstanding the provisions of this Section 7, in no event shall an Underwriter be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by such Underwriter with respect to the offering of the Securities exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 7 are several in proportion to their respective purchase obligations hereunder and not joint.

(f) *Non-Exclusive Remedies.* The remedies provided for in this Section 7 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity.

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8. Effectiveness of Agreement. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

9. Termination. This Agreement may be terminated in the absolute discretion of the Representatives, by notice to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date or, in the case of the Additional Securities, prior to the Additional Closing Date (i) trading generally shall have been suspended or materially limited on or by the Nasdaq Stock Market; (ii) trading of any securities issued or guaranteed by the Company shall have been suspended on any exchange or in any over-the-counter market; (iii) a general moratorium on commercial banking activities shall have been declared by federal or New York State authorities; or (iv) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis, either within or outside the United States, that, in the judgment of the Representatives, is material and adverse and makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities on the Closing Date or the Additional Closing Date, as the case may be, on the terms and in the manner contemplated by this Agreement, the Time of Sale Information and the Prospectus.

10. Defaulting Underwriter. (a) If, on the Closing Date or the Additional Closing Date, as the case may be, either Underwriter defaults on its obligation to purchase the Securities that it has agreed to purchase hereunder on such date, the non-defaulting Underwriter may in its discretion arrange for the purchase of such Securities by other persons reasonably satisfactory to the Company on the terms contained in this Agreement. If, within 36 hours after any such default by either Underwriter, the non-defaulting Underwriter does not arrange for the purchase of such Securities, then the Company shall be entitled to a further period of 36 hours within which to procure other persons reasonably satisfactory to the non-defaulting Underwriter to purchase such Securities on such terms. If other persons become obligated or agree to purchase the Securities of a defaulting Underwriter, either the non-defaulting Underwriter or the Company may postpone the Closing Date or the Additional Closing Date, as the case may be, for up to five full Business Days in order to effect any changes that in the opinion of counsel for the Company or counsel for the Underwriter may be necessary in the Registration Statement and the Prospectus or in any other document or arrangement, and the Company agrees to promptly prepare any amendment or supplement to the Registration Statement and the Prospectus that effects any such changes. As used in this Agreement, the term "Underwriter" includes, for all purposes of this Agreement unless the context otherwise requires, any person not listed in Schedule 1 hereto that, pursuant to this Section 10, purchases Securities that a defaulting Underwriter agreed but failed to purchase.

(b) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter by the non-defaulting Underwriter and the Company as provided in paragraph (a) above, the aggregate principal amount of such Securities that remains unpurchased on the Closing Date or the Additional Closing Date, as the case may be does not exceed one-eleventh of the aggregate principal amount of all the Securities to be purchased on such date, then the Company shall have the right to require each non-defaulting Underwriter to purchase the principal amount of Securities that such Underwriter agreed to purchase hereunder plus the Securities of the defaulting Underwriter for which such arrangements have not been made.

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(c) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter by the non-defaulting Underwriter and the Company as provided in paragraph (a) above, the aggregate principal amount of such Securities that remain unpurchased on the Closing Date or the Additional Closing Date, as the case may be, exceeds one-eleventh of the aggregate principal amount of all the Securities to be purchased on such date, or if the Company shall not exercise the right described in paragraph (b) above, then this Agreement or, with respect to any Additional Closing Date, the obligation of the Underwriter to purchase Securities on the Additional Closing Date, as the case may be, shall terminate without liability on the part of the non-defaulting Underwriter. Any termination of this Agreement pursuant to this Section 10 shall be without liability on the part of the Company, except that the Company will continue to be liable for the payment of expenses as set forth in Section 11 hereof and except that the provisions of Section 7 hereof shall not terminate and shall remain in effect.

(d) Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Company or any non-defaulting Underwriter for damages caused by its default.

11. Payment of Expenses. (a) Whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, the Company will pay or cause to be paid all costs and expenses incident to the performance of its obligations hereunder, including without limitation, (i) the costs incident to the authorization, issuance, sale, preparation and delivery of the Securities and any taxes payable in that connection; (ii) the costs incident to the preparation, printing and filing under the Securities Act of the Registration Statement, the Preliminary Prospectus, any Issuer Free Writing Prospectus, any Time of Sale Information and the Prospectus (including all exhibits, amendments and supplements thereto) and the distribution thereof; (iii) the costs of reproducing and distributing each of the Transaction Documents; (iv) the fees and expenses of the Company's counsel and independent accountants; (v) the fees and expenses incurred in connection with the registration or qualification and determination of eligibility for investment of the Securities under the laws of such jurisdictions as the Representatives may designate and the preparation, printing and distribution of a Blue Sky Memorandum (including the related fees and expenses of counsel for the Underwriters not to exceed \$10,000); (vi) any fees charged by rating agencies for rating the Securities; (vii) the fees and expenses of the Trustee and any paying agent (including related fees and expenses of any counsel to such parties); (viii) all expenses and application fees incurred in connection with any filing with, and clearance of the offering by, the Financial Industry Regulatory Authority, Inc.; (ix) any fees or costs incident to listing the Underlying Securities on the Nasdaq; and (x) all expenses incurred by the Company in connection with any "road show" presentation to potential investors.

(b) If (i) this Agreement is terminated pursuant to Section 9, (ii) the Company for any reason fails to tender the Securities for delivery to the Underwriters or (iii) the Underwriters decline to purchase the Securities for any reason permitted under this Agreement, the Company agrees to reimburse the Underwriters for all out-of-pocket costs and expenses (including the fees and expenses of their counsel) reasonably incurred by the Underwriters in connection with this Agreement and the offering contemplated hereby.

12. Persons Entitled to Benefit of Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers

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and directors and any controlling persons referred to herein, and the affiliates referred to in Section 7 hereof. Nothing in this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein. No purchaser of Securities from any Underwriter shall be deemed to be a successor merely by reason of such purchase.

13. Survival. The respective indemnities, rights of contribution, representations, warranties and agreements of the Company and the Underwriters contained in this Agreement or made by or on behalf of the Company or the Underwriters pursuant to this Agreement or any certificate delivered pursuant hereto shall survive the delivery of and payment for the Securities and shall remain in full force and effect, regardless of any termination of this Agreement or any investigation made by or on behalf of the Company or the Underwriters.

14. Certain Defined Terms. For purposes of this Agreement, (a) except where otherwise expressly provided, the term “**affiliate**” has the meaning set forth in Rule 405 under the Securities Act; and (b) the term “**subsidiary**” has the meaning set forth in Rule 405 under the Securities Act.

15. Miscellaneous. (a) *Authority of the Representatives*. Any action by the Underwriters hereunder may be taken by Representatives on behalf of the Underwriters, and any such action taken by the Representatives shall be binding upon the Underwriters.

(b) *Notices*. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted and confirmed by any standard form of telecommunication. Notices to the Underwriters shall be given to the Representatives c/o J.P. Morgan Securities Inc., 277 Park Avenue, New York, New York 10172 (fax: (212) 622-8358); Attention: Equity Syndicate Desk. Notices to the Company shall be given to it at TTM Technologies, Inc., 2630 South Harbor Boulevard, Santa Ana, California 92704 (fax: (714) 784-3712); Attention: Chief Financial Officer.

(c) *Governing Law*. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(d) *Counterparts*. This Agreement may be signed in counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument.

(e) *Amendments or Waivers*. No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

(f) *Headings*. The headings herein are included for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

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If the foregoing is in accordance with your understanding, please indicate your acceptance of this Agreement by signing in the space provided below.

Very truly yours,

TTM TECHNOLOGIES, INC.

By

\_\_\_\_\_  
Title:

Accepted: May [•], 2008

For itself and on behalf of the  
several Underwriters listed  
in Schedule 1 hereto.

J.P. MORGAN SECURITIES INC.

By

\_\_\_\_\_  
Authorized Signatory

UBS SECURITIES LLC

By

\_\_\_\_\_  
Authorized Signatory

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

## FORM T-1

STATEMENT OF ELIGIBILITY AND QUALIFICATION  
UNDER THE TRUST INDENTURE ACT OF 1939 OF A  
CORPORATION DESIGNATED TO ACT AS TRUSTEE**AMERICAN STOCK TRANSFER & TRUST COMPANY**

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(Exact name of trustee as specified in its charter)**New York**

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(State of incorporation  
if not a national bank)**13-3439945**

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(I.R.S. employer  
identification No.)**59 Maiden Lane****New York, New York**

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(Address of trustee's  
principal executive offices)**10038**

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(Zip Code)**TTM TECHNOLOGIES, INC.**

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(Exact name of obligor as specified in its charter)**Delaware**

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(State or other jurisdiction of  
incorporation or organization)**91-1033443**

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(I.R.S. employer  
identification No.)**2630 South Harbor Boulevard****Santa Ana, California**

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(Address of principal executive  
offices)**92704**

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(Zip Code)**Convertible Senior Notes due 2015**

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(Title of the Indenture Securities)

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GENERAL

1. General Information.

Furnish the following information as to the trustee:

- a. Name and address of each examining or supervising authority to which it is subject.

New York State Banking Department, Albany, New York

- b. Whether it is authorized to exercise corporate trust powers.

The Trustee is authorized to exercise corporate trust powers.

2. Affiliations with Obligor and Underwriters.

If the obligor or any underwriter for the obligor is an affiliate of the trustee, describe each such affiliation.

None.

3. Voting Securities of the Trustee.

Furnish the following information as to each class of voting securities of the trustee:

As of April 30, 2008

COL. A	COL. B
Title of Class	Amount Outstanding
Common Shares — par value \$600 per share.	1,000 shares

4. Trusteeships under Other Indentures.

None.

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5. Interlocking Directorates and Similar Relationships with the Obligor or Underwriters

None.

6. Voting Securities of the Trustee Owned by the Obligor or its Officials

None.

7. Voting Securities of the Trustee Owned by Underwriters or their Officials

None.

8. Securities of the Obligor Owned or Held by the Trustee

None.

9. Securities of Underwriters Owned or Held by the Trustee.

None.

10. Ownership or Holdings by the Trustee of Voting Securities of Certain Affiliates or Security Holders of the Obligor

None.

11. Ownership or Holdings by the Trustee of any Securities of a Person Owning 50 Percent or More of the Voting Securities of the Obligor

None.

12. Indebtedness of the Obligor to the Trustee.

None.

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13. Defaults by the Obligor.

None.

14. Affiliations with the Underwriters.

None.

15. Foreign Trustee.

Not applicable.

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16. List of Exhibits.

- T-1.1 - A copy of the Organization Certificate of American Stock Transfer & Trust Company, as amended to date — Exhibit A
- T-1.4 - A copy of the By-Laws of American Stock Transfer & Trust Company, as amended to date — Exhibit B
- T-1.6 - The consent of the Trustee required by Section 321(b) of the Trust Indenture Act of 1939 — Exhibit C
- T-1.7 - A copy of the latest report of condition of the Trustee published pursuant to law or the requirements of its supervising or examining authority — Exhibit D

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, the Trustee, American Stock Transfer & Trust Company, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of New York, and State of New York, on the 6<sup>th</sup> day of May, 2008.

AMERICAN STOCK TRANSFER  
& TRUST COMPANY  
Trustee

BY: /s/ Herb Lemmer  
Vice President

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**State of New York**  
**Banking Department**

I, DAVID S. FREDSTALL, Deputy Superintendent of Banks of the State of New York, DO HEREBY APPROVE the annexed certificate entitled "AMENDED AND RESTATED ORGANIZATION CERTIFICATE OF AMERICAN STOCK TRANSFER & TRUST COMPANY Under Section 8007 of the Banking Law," dated September 22, 2005 providing for a change in the address of the corporation's principal office, and to clarify the Company's ability to administer common or collective trusts.

Witness, my hand and official seal of the Banking Department at the City of New York, this third day of November in the Year of our Lord Two Thousand and Five.

/s/ David S. Fredsall

*Deputy Superintendent of Banks*

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AMENDED AND RESTATED ORGANIZATION CERTIFICATE

OF AMERICAN STOCK TRANSFER & TRUST COMPANY

UNDER SECTION 8007 OF THE BANKING LAW

We, the undersigned, MICHAEL KARFUNKEL and CLARA KARFUNKEL, being respectively the President and Secretary of American Stock Transfer & Trust Company, do hereby certify that:

1. The name of the corporation is "American Stock Transfer & Trust Company." The name under which the corporation was originally formed was "American Trust Company." The name of the corporation was changed from "American Trust Company" to "American Stock Transfer & Trust Company" by a Certificate of Amendment of the Organization Certificate effective December 28, 1987.

2. The Organization Certificate of the corporation was approved by the Office of the Superintendent of Banks of the State of New York on October 1, 1987, a Certificate of Amendment of the Organization Certificate of the corporation was approved by the Office of the Superintendent of Banks of the State of New York on December 28, 1987, a Restated Organization Certificate of the corporation was approved by the Office of the Superintendent of Banks of the State of New York on April 13, 1988; and an Amended and Restated Organization Certificate of the corporation was approved by the Office of the Superintendent of Banks of the State of New York on January 13, 1992.

3. The Organization Certificate of the corporation, as heretofore amended and restated, is hereby amended to reflect (i) a change in the address of the corporation's principal office consistent with a change of location previously approved by the Office of the Superintendent of Banks of the State of New York on August 15, 2000 pursuant to Section 113 of the Banking Law, as set forth in Article SECOND, and (ii) a change to its business, affairs, rights and powers pursuant to Section 8001(2)(1) of the Banking Law, as set forth in Article SEVENTH, and, as so amended, the Organization Certificate of the corporation is hereby restated to read as herein set forth in full:

"FIRST: The name of the corporation is American Stock Transfer & Trust Company.

"SECOND: The place where its principal office is located is 59 Maiden Lane, Borough of Manhattan, City, County and State of New York.

"THIRD: The amount of the authorized capital stock of the corporation is Six Hundred Thousand Dollars (\$600,000), and the number of shares into which such capital stock is divided is 1,000 shares, with a par value of \$600 each.

"FOURTH: All of the shares of capital stock of the corporation are classified as common shares.

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"FIFTH: The term of existence of the corporation is to be perpetual.

"SIXTH: The number of directors of the corporation shall not be less than seven and not more than fifteen.

"SEVENTH: The corporation is to exercise the powers conferred by Section 100 of the Banking Law, including corporate trust powers; personal trust powers; pension trust powers for tax qualified, pension trusts and retirement plans; and common or collective trust powers; provided, however, that the corporation shall neither accept deposits nor make loans except for deposits and loans arising directly from the exercise of its fiduciary powers as specified in this Article SEVENTH."

4. The foregoing Amended and Restated Organization Certificate was authorized by the unanimous written consent of the shareholders of the corporation.

IN WITNESS WHEREOF, the undersigned have subscribed this Amended and Restated Certificate this 22nd day of September, 2005.

/s/ Michael Karfunkel

Michael Karfunkel,  
President

/s/ Clara Karfunkel

Clara Karfunkel,  
Secretary

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**BY-LAWS OF**  
**AMERICAN STOCK TRANSFER & TRUST COMPANY**  
(A New York Corporation)

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**ARTICLE I. MEETINGS OF SHAREHOLDERS**

**SECTION 1. Annual Meeting.** The annual meeting of shareholders of American Stock Transfer & Trust Company (the "Company") shall be held at such time within the first four calendar months of each year at such place in the City of New York as may from time to time be designated by the Board of Directors (the "Board") for the election of directors and the transaction of such other business as may properly come before the meeting.

**SECTION 2. Special Meetings.** Special meetings of shareholders may be called at any time by the Board, the President or the Chairman of the Board (the "Chairman") or as otherwise provided by law or the organization certificate, as amended.

**SECTION 3. Action Without a Meeting.** Any action required or permitted to be taken at an annual or special meeting of shareholders may be taken without such a meeting by written consent, setting forth the action so taken signed by the holders of all outstanding shares entitled to vote thereon.

**ARTICLE II. BOARD OF DIRECTORS**

**SECTION 1. Number.** The affairs of the Company shall be managed and its corporate powers exercised by a Board, which shall consist of not less than five *nor* more than fifteen members. The number of directors, within the maximum and minimum limits specified herein and in the organization certificate, as amended, may be increased or reduced from time to time either by the vote of a majority of the directors then in office or by the shareholders. In the event of any increase in the number of directors, additional directors may be elected either by the Board, in the manner herein prescribed for the filling of vacancies, or by the shareholders.

**SECTION 2. Vacancies.** Vacancies not exceeding one-third of the entire Board may be filled by the vote of a majority of the directors then in office at any regular or special meeting of the Board, and directors so elected shall hold office

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for the balance of the unexpired term.

**SECTION 3. Quorum.** One-half of the entire Board shall constitute a quorum for the transaction of business. If less than a quorum be present at any meeting duly called, a majority of those present may adjourn the meeting from time to time.

**SECTION 4. Action by the Board.** Except as otherwise provided in these By Laws or by law, the vote of a majority of the directors present at the time of any vote, if a quorum is present at such time, shall be the act of the Board.

**SECTION 5. Special and Regular Meetings of the Board.** Regular meetings of the Board shall be held without notice at such times and at such places as may, from time to time, be fixed by the Board. The first regular meeting after the annual meeting of shareholders shall be the annual meeting of the Board. Special meetings of the Board may be called by the Chairman or the President and shall be so called at the written request of any three directors. Notice of each special meeting shall be mailed or telegraphed not less than one day before the meeting. A notice, or waiver of notice, need not specify the purpose of any meeting of the Board.

**SECTION 6. Compensation.** The compensation of the directors shall be fixed by the Board.

### **ARTICLE III. COMMITTEES**

**SECTION 1. Executive Committee.** There shall be an Executive Committee constituted as hereinafter provided, consisting of at least five directors, which shall possess and may exercise all the authority of the Board, except as otherwise provided by law. In the event a quorum shall not be present at any regular or special meeting of the Board, the directors present at such meeting, if not less than five, shall be constituted and meet as an Executive Committee and shall act only by the concurrent vote of a majority of the number present. The President or, in his absence, the Chairman, shall preside over any such Executive Committee meeting. In the absence of the President and the Chairman, the Executive Vice President shall preside over any such meeting.

**SECTION 2. Other Committees of the Board.** The Board may appoint such other regular or special committees consisting of at least three directors and such officers or such other persons and having such powers and functions as the Board may prescribe. The Board may, from time to time, suspend, alter, continue or terminate any such committee or the powers and functions thereof.

**SECTION 3. Officers' Committees.** Subject to the approval of the Board,

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the President may appoint, or may provide for the appointment of, committees consisting of officers or other persons, which such chairmanships, vice chairmanships and secretaryships and such duties and powers as the President may, from time to time, designate and prescribe. The Board or the President may, from time to time, suspend, alter, continue or terminate any of such committees or the powers and functions thereof.

**SECTION 4. Compensation.** The Board may provide for compensation to be paid to persons serving on committees appointed by the Board.

#### **ARTICLE IV. OFFICERS**

**SECTION I. (a) Titles, Election and Appointment.** The Board shall, at its annual meeting, elect a President, a Chairman of the board and an Executive Vice President, each of whom shall be directors and each of whom shall hold office until the next annual meeting of the board and until a successor is elected and qualified. The Board shall also elect at such meeting, and may elect at any regular or special meeting, one or more Vice Chairman, one or more Senior Vice Presidents, one or more Vice Presidents, a Treasurer and/or Controller, a Secretary and one more other officers as the Board may deem appropriate or desirable, all of whom shall hold their office until the next annual meeting of the Board and until their successors are elected and qualified. With the exception of the President and the Secretary, one person may hold more than one of the offices specified in this Section and may have such other titles as the Board may determine.

**(b) The Board may appoint a General Administrative Board, consisting of, in addition to the President, the Chairman and the Executive Vice President, each Senior Vice President and such other officers as the Board may determine. The President may select alternates for officers appointed by the Board to the General Administrative Board to serve in the absence of officers appointed by the Board.**

(c) The Board may, from time to time, grant or provide for the granting, to officers such particular supervisory and administrative responsibilities and authority and such additional titles and designations, if any, as the Board may deem appropriate.

(d) All officers shall be subject to the supervision and direction of the Board. The authority, duties and responsibilities of any officer of the Company may be suspended by the President, with or without cause and an officer elected or appointed by the Board may be removed by the Board, with or without cause. Any vacancy occurring in any office, unless such office shall be abolished by the

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Board, may be tilted at any regular meeting of the Board or at any special meeting of the Board held for such purpose.

**SECTION 2. (a) Duties and Authority of the President, the Chairman and the Executive Vice President.** The President shall be the Chief Executive Officer of the Company. The President shall direct the policies of the Company and shall have administrative authority over its business, affairs and property. The President shall be a member of all regular committees of the Board and, if specifically appointed thereto, of special committees of the Board, provided that the President shall not be a member of the examining committee. The President shall preside at meetings of the shareholders and the Board.

(b) The Chairman and the Executive Vice President shall participate in the direction of the policies of the Company and in the administration of its business, affairs and property and shall have such further duties and authority as may be conferred or required by law. The Chairman and the Executive Vice President shall, unless the Board otherwise provides, be members of all regular committees and the Board and, if specifically appointed thereto, special committees of the Board. In the absence of the President, the Chairman shall preside at the meetings of the shareholders and the Board. In the absence of both the President and the Chairman, the Executive Vice President shall preside at meetings of the shareholders and the Board.

**SECTION 3. Duties and Authority of Vice Presidents.** Each Vice President who is a director and such other Vice Presidents who may, from time to time, be designated by the Board or the President shall, to the extent authorized by the Board or the President, participate in the supervision of the policies of the Company and in the administration of its business, affairs and property.

**SECTION 4. General Provisions.** In addition to the duties and authority expressly conferred by these By-Laws or by a resolution of the Board, officers shall have such other duties and authority usually pertaining to their respective offices as well as such other duties and authority as may from time to time be assigned to them by the Board or by the President.

**SECTION 5. Compensation of Officers.** Compensation of officers shall be fixed by the Board.

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## **ARTICLE V. INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS**

**SECTION 1. Indemnification of Officers and Directors.** The Company shall indemnify any person made, or threatened to be made, a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was a director or officer of the Company against all judgments fines, amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, to the fullest extent and in the manner set forth in and permitted by Article VII of the New York State Banking Law and any other applicable law, as from time to time in effect. The foregoing provision of this Article V shall be deemed to be a contract between the Company and each director and officer who serves in such capacity at any time while this Article V and the relevant provisions of Article VII of the New York State Banking Law and other applicable law, if any, are in effect, and, except to the extent otherwise required by law, any repeal or modification thereof shall not affect any rights or obligations then existing or thereafter arising with respect to any state of facts then or theretofore existing or thereafter arising or any action, suite or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

**SECTION 2. Indemnification of Others.** The Board in its discretion shall have power on behalf of the Company to indemnify any person, other than a director or officer, made a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was an employee or agent of the Corporation.

**SECTION 3. Insurance.** The Board in its discretion shall have the power to purchase and maintain insurance in accordance with, and subject to, the provisions of the New York State Banking Law.

## **ARTICLE VI. SIGNATURE AUTHORITY**

The signature powers of officers and employees of the Company shall be fixed by the Board, which may confer upon certain officers the authority to delegate signature powers.

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**ARTICLE VII. SEAL**

The Board shall provide a seal for the Company.

**ARTICLE VIII. AMENDMENTS OF BY-LAWS**

These By-Laws may be amended, revoked or suspended in a manner not inconsistent with law at any regular or special meeting of the board by the vote of a majority of the entire Board. Such amendment, revocation or suspension may be evidenced by resolution or otherwise as the Board may deem appropriate.

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Securities and Exchange Commission  
Washington, DC 20549

Gentlemen:

Pursuant to the provisions of Section 321 (b) of the Trust Indenture Act of 1939, and subject to the limitations therein contained, American Stock Transfer & Trust Company hereby consents that reports of examinations of said corporation by Federal, State, Territorial or District authorities may be furnished by such authorities to you upon request therefor.

Very truly yours,

AMERICAN STOCK TRANSFER & TRUST COMPANY

By /s/ Herb Lemmer

Vice President

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# Consolidated Report of Condition for Insured Commercial and State-Chartered Savings Banks for December 31,2007

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding as of the last business day of the quarter.

## Schedule RC — Balance Sheet

	Dollar Amounts in Thousands	Bil Mil Thou	
<b>ASSETS</b>			
1. Cash and balances due from depository institutions (from Schedule RC-A):			
a. Noninterest-bearing, balances and currency and coin (1)	RCON0081	3,869	1.a.
b. Interest-bearing balances (2)	RCON0071	6,026	1.b.
2. Securities:			
a. Held-to-maturity securities (from Schedule RC-B, column A)	RCON1754	0	2.a.
b. Available-for-sale securities (from Schedule RC-B, column D)	RCON1773	11,090	2.b.
3. Federal funds sold and securities purchased under agreements to resell:			
a. Federal funds sold	RCONB987	0	3.a.
b. Securities purchased under agreements to resell (3)	RCONB989	0	3.b.
4. Loans and lease financing receivables (from Schedule RC-C):			
a. Loans and leases held for sale	RCON5369	0	4.a.
b. Loans and leases, net of unearned income	RCONB528	0	4.b.
c. LESS: Allowance for loan and lease losses	RCON3123	0	4.c.
d. Loans and leases, net of unearned income and allowance (item 4.b minus 4.c)	RCONB529	0	4.d.
5. Trading assets (from Schedule RC-D)	RCON3545	0	5.
6. Premises and fixed assets (including capitalized leases)	RCON2145	11,417	6.
7. Other real estate owned (from Schedule RC-M)	RCON2150	0	7.
8. Investments in unconsolidated subsidiaries and associated companies (from Schedule RC-M)	RCON2130	0	8.
9. Not applicable			
10. Intangible assets:			
a. Goodwill	RCON3163	0	10.a.
b. Other intangible assets (from Schedule RC-M)	RCON0426	15,875	10.b.
11. Other assets (from Schedule RC-F)	RCCN2160	13,192	11.
	RCON2170	63,469	12.
12. Total assets (sum of items 1 through 11)			

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- (1) Includes cash items in process of collection and unposted debits.  
(2) Includes time certificates of deposit not held for trading.  
(3) Includes all securities resale agreements regardless of maturity.
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## Schedule RC — Continued

	Dollar Amounts in Thousands	Bil Mil Thou	
<b>LIABILITIES</b>			
13. Deposits:			
a. In domestic offices (sum of totals of columns A and C from Schedule RC-E)	RCON2200	0	13a.
(1) Noninterest-bearing <sup>(1)</sup>	RCON6631	0	13.a.(1)
(2) Interest-bearing	RCON6636	0	13.a.(2)
b. Not applicable			
14. Federal funds purchased and securities sold under agreements to repurchase:			
a. Federal funds purchased <sup>(2)</sup>	RCONB993	0	14.a.
b. Securities sold under agreements to repurchase <sup>(3)</sup>	RCONB995	0	14.b.
15. Trading liabilities (from Schedule RC-D)	RCON3548	0	15.
16. Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases) (from Schedule RC-M)	RCON3180	0	16.
17. Not applicable			
18. Not applicable			
19. Subordinated notes and debentures <sup>(4)</sup>	RCON3200	0	19.
20. Other liabilities (from Schedule RC-G)	RCON2930	5,852	20.
21. Total liabilities (sum of items 13 through 20)	RCON2948	5,852	21.
22. Minority interest in consolidated subsidiaries	RCON3000	0	22.
<b>EQUITY CAPITAL</b>			
23. Perpetual preferred stock and related surplus	RCON3838	0	23.
24. Common stock	RCON3230	600	24.
25. Surplus (exclude all surplus related to preferred stock)	RCON3839	38,609	25.
26.			
a. Retained earnings	RCON3632	17,518	26.a.
b. Accumulated other comprehensive income <sup>(5)</sup>	RCONB530	889	26.b.
27. Other equity capital components <sup>(6)</sup>	RCONA130	0	27.
28. Total equity capital (sum of items 23 through 27)	RCON3210	57,616	28.
29. Total liabilities, minority interest, and equity capital (sum of items 21, 22, and 28)	RCON3300	63,468	29.

## Memorandum

To be reported with the March Report of Condition.

	Number		
1. Indicate in the box at the right the number of the statement below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 2006	RCON6724	N/A	M.1.
1 = Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the bank			
2 = Independent audit of the bank's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company (but not on the bank separately)			
3 = Attestation on bank management's assertion on the effectiveness of the bank's internal control over financial reporting by a certified public accounting firm			
4 = Directors' examination of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm (may be required by state chartering authority)			
5 = Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)			
6 = Review of the bank's financial statements by external auditors			
7 = Compilation of the bank's financial statements by external auditors			
8 = Other audit procedures (excluding tax preparation work)			
9 = No external audit work			

(1) Includes total demand deposits and noninterest-bearing time and savings deposits.

(2) Report overnight Federal Home Loan Bank advances in Schedule RC, item 16, "Other borrowed money."

(3) Includes all securities repurchase agreements, regardless of maturity,

(4) Includes limited-life preferred stock and related surplus.

(5) Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, and minimum pension liability adjustments.

(6) Includes treasury stock and unearned Employee Stock Ownership Plan shares.