

SUNPOWER CORP
Form PREC14C
August 12, 2008

Table of Contents

SCHEDULE 14C
Information Statement Pursuant to Section 14(c)
of the Securities Exchange Act of 1934

Check the appropriate box:

- Preliminary information statement
- Definitive information statement
- Confidential, for use of the Commission only (as permitted by Rule 14c-5(d)(2))

SUNPOWER CORPORATION
(Name of Registrant as Specified in Its Charter)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11.
 - (1) Title of each class of securities to which transaction applies:

 - (2) Aggregate number of securities to which transaction applies:

 - (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

 - (4) Proposed maximum aggregate value of transaction:

 - (5) Total fee paid:
- Fee paid previously with preliminary materials.
- Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
 - (1) Amount Previously Paid:

 - (2) Form, Schedule or Registration Statement No.:

 - (3) Filing Party:

(4) Date Filed:

Table of Contents

**NOTICE OF ACTION TAKEN PURSUANT TO
WRITTEN CONSENT OF STOCKHOLDERS
SUNPOWER CORPORATION
3939 NORTH FIRST STREET
SAN JOSE, CA 95134
408-240-5500**

DATE FIRST SENT OR GIVEN TO STOCKHOLDERS: , 2008

**WE ARE NOT ASKING YOU FOR A PROXY AND
YOU ARE REQUESTED NOT TO SEND US A PROXY.**

To the stockholders of SunPower Corporation:

This Notice and the accompanying Information Statement are being furnished to the stockholders of SunPower Corporation, a Delaware corporation (we, us, our or the Company), in connection with action taken by Cypress Semiconductor Corporation (Cypress), the holder of a majority of the voting power of the issued and outstanding voting securities of the Company, approving, by written consent dated , 2008, an amendment and restatement of our certificate of incorporation. The primary purposes of the amendments to our certificate of incorporation are to facilitate the proposed spin-off by Cypress to its stockholders of the shares of our Class B common stock held by Cypress and to protect our public stockholders following the spin-off by making it more difficult for a potential acquiror of, or significant investor in, the Company to take advantage of our capital structure and unfairly discriminate between classes of our common stock.

Please review the Information Statement included with this Notice for a more complete description of this matter.

Our board of directors has fixed the close of business on August 29, 2008 as the record date for the determination of stockholders entitled to notice of the action by written consent. Pursuant to Rule 14c-2 under the Securities Exchange Act of 1934, as amended, the corporate action authorized by Cypress, which holds all of our outstanding shares of Class B common stock and a majority of the combined voting power of our outstanding shares of Class A and Class B common stock, can be taken no sooner than 20 calendar days after the accompanying Information Statement is first sent or given to the Company's stockholders. Since the accompanying Information Statement is first being sent or given to security holders on , 2008, the corporate action described therein may be effective on or after , 2008. Following the effectiveness of the above action by written consent authorizing the transaction described in the accompanying Information Statement, we expect to cause the amended and restated certificate of incorporation to take effect by filing it with the Secretary of State of the State of Delaware at least five days prior to the distribution date for the proposed spin-off.

Cypress is not obligated to effect the spin-off and there can be no assurance that it will occur. If the spin-off does not occur, we do not expect the amendment and restatement to take effect.

WE ARE NOT ASKING YOU FOR A PROXY AND YOU ARE REQUESTED NOT TO SEND US A PROXY.

As the matters set forth in this Notice and accompanying Information Statement have been duly authorized and approved by the written consent of the holders of a majority of the voting power of the Company's issued and outstanding voting securities, your vote or consent is not requested or required to approve these matters. The accompanying Information Statement is provided solely for your information. The accompanying Information Statement also serves as the notice required by Section 228 of the General Corporation Law of the State of Delaware of the taking of a corporate action without a meeting by less than unanimous written consent of the Company's

stockholders.

By order of the Board of Directors,

/s/ BRUCE R. LEDESMA

Bruce R. Ledesma
Corporate Secretary

San Jose, California
, 2008

TABLE OF CONTENTS

	Page
<u>ABOUT THIS INFORMATION STATEMENT</u>	1
<u>General</u>	1
<u>Board Approval of the Restated Certificate</u>	1
<u>The Action by Written Consent</u>	2
<u>Effectiveness of the Restated Certificate</u>	2
<u>No Further Voting Required</u>	2
<u>Notice Pursuant to Section 228</u>	2
<u>Dissenters' Rights of Appraisal</u>	2
<u>APPROVAL OF THE RESTATED CERTIFICATE</u>	2
<u>Summary of the Amendments to Our Certificate of Incorporation</u>	3
<u>Background of the Actions</u>	3
<u>Recommendation and Reasons of the Special Committee</u>	5
<u>Approval by Board of Directors</u>	6
<u>AMENDED TAX SHARING AGREEMENT</u>	6
<u>RIGHTS PLAN</u>	7
<u>Adoption of the Rights Plan by Board of Directors</u>	7
<u>Summary of Terms of the Rights Plan</u>	8
<u>GOVERNANCE CHANGES RESULTING FROM THE SPIN-OFF</u>	9
<u>Classified Board</u>	10
<u>Removal of Directors Only for Cause</u>	10
<u>No Stockholder Action by Written Consent</u>	10
<u>No Stockholder Right to Call Special Meetings</u>	10
<u>Elimination of Supermajority Approval Requirements</u>	10
<u>Elimination of Requirement to Have Cypress Representatives on Board Committees</u>	11
<u>INTEREST OF CERTAIN PERSONS IN MATTERS TO BE ACTED UPON</u>	11
<u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u>	12
<u>DELIVERY OF INFORMATION STATEMENT</u>	15
<u>FORWARD-LOOKING STATEMENTS</u>	15
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	15
<u>ANNEX A Form of Restated Certificate of Incorporation of SunPower Corporation</u>	A-1

Table of Contents

**SUNPOWER CORPORATION
3939 NORTH FIRST STREET
SAN JOSE, CA 95134**

INFORMATION STATEMENT

**We Are Not Asking You for a Proxy and
You are Requested Not To Send Us a Proxy.**

ABOUT THIS INFORMATION STATEMENT

General

This Information Statement is being furnished by SunPower Corporation, a Delaware corporation (we, us, our or the Company), in connection with action taken by Cypress Semiconductor Corporation (Cypress), the holder of a majority of the voting power of the Company s issued and outstanding voting securities, approving, by written consent dated , 2008, an amendment and restatement of our certificate of incorporation (the Restated Certificate). The written consent approving the Restated Certificate was given by Cypress in connection with the proposed spin-off by Cypress to its stockholders of the shares of the Company s Class B common stock held by Cypress (the spin-off). The amendments to our certificate of incorporation to be effected by the Restated Certificate are principally to:

- (i) clarify that, following the spin-off, the shares of our Class B common stock will remain outstanding as a separate class from our Class A shares and will be transferable by holders of Class B common stock as a separate class;
- (ii) eliminate the ability of holders of shares of Class B common stock following the spin-off to voluntarily convert Class B shares into shares of our Class A common stock;
- (iii) restrict the voting power of a holder of more than 15% of our outstanding shares of Class B common stock with respect to the election or removal of directors to 15% of the outstanding shares of Class B common stock, unless such holder also holds an equal or greater percentage of our outstanding Class A common stock. This voting restriction will not be effective until the date (but will automatically be effective as of such date), if any, that the Internal Revenue Service (the IRS) issues a ruling (the Supplemental Ruling) that the effectiveness of the restriction will not prevent the favorable rulings received by Cypress with respect to certain tax issues arising under Section 355 of the Internal Revenue Code (the Code) in connection with the spin-off from having full force and effect; and
- (iv) facilitate adoption of a stockholder rights plan by allowing for dividends payable in rights to holders of Class B shares that, under certain circumstances, entitle such holders to purchase shares of our Class B common stock (or shares of our capital stock having voting rights equivalent to those of the Class B common stock (Equivalent Class B Shares)) and permitting the issuance of shares of Class B common stock upon exercise of such rights. Our certificate of incorporation already allows for the issuance of Class A shares upon the exercise of similar rights relating to our Class A shares.

We are first sending or giving this Information Statement on or about , 2008 to our stockholders of record as of the close of business on August 29, 2008 (the Record Date). Under the General Corporation Law of the State of Delaware (the DGCL), the Restated Certificate will not be effective until filed with the Secretary of State of the State of Delaware. We expect to file the Restated Certificate with the Delaware Secretary of State at least five days prior to the distribution date for the spin-off.

Our principal executive offices are located at 3939 North First Street, San Jose, California 95134, and our main telephone number is (408) 240-5500.

Board Approval of the Restated Certificate

On August 12, 2008, acting upon the recommendation of a special committee of our board of directors independent of Cypress (the special committee), our board of directors approved, subject to stockholder approval,

Table of Contents

the Restated Certificate. A summary of the amendments to our certificate of incorporation to be effected by the Restated Certificate is set forth in Approval of the Restated Certificate, and a copy of the form of the Restated Certificate as approved is attached hereto as Appendix A in its entirety.

The Action by Written Consent

On _____, 2008, Cypress, the holder of all of our outstanding shares of Class B common stock, approved by written consent the Restated Certificate (the Written Consent). The Written Consent will become effective 20 days after this Information Statement is first sent or given to our stockholders.

Effectiveness of the Restated Certificate

Under the DGCL, the Restated Certificate will not be effective until filed with the Secretary of State of the State of Delaware. We expect to file the Restated Certificate with the Delaware Secretary of State at least five days prior to the distribution date for the spin-off. Our board of directors may abandon the Restated Certificate at any time prior to its filing, without any further action by our stockholders; however, we have agreed with Cypress that, if Cypress fixes a record and distribution date for the spin-off, we will file the Restated Certificate no later than five days prior to the distribution date. We expect the Restated Certificate to be abandoned if the spin-off does not occur.

No Further Voting Required

We are not seeking consent, authorizations, or proxies from you. Section 228 of the DGCL (Section 228) and our certificate of incorporation provide that actions requiring a vote of the stockholders may be approved by written consent of the holders of outstanding shares of voting capital stock having not less than the minimum number of votes which would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. The approval by at least a majority of the outstanding voting power of our common stock, voting together as a single class, is required to approve the Restated Certificate.

As of the Record Date, we had _____ shares of Class A common stock and _____ shares of Class B common stock issued and outstanding and entitled to vote on the Restated Certificate. Each share of Class A common stock is entitled to one vote, and each share of Class B common stock is entitled to eight votes. As of the Record Date, Cypress beneficially owned _____ shares, or 100%, of our Class B common stock, representing approximately _____ % of the combined voting power of our Class A common stock and Class B common stock. Accordingly, the action by Written Consent executed by Cypress pursuant to Section 228 is sufficient to approve the Restated Certificate and no further stockholder action is required.

Notice Pursuant to Section 228

Pursuant to Section 228, we are required to provide prompt notice of the taking of a corporate action by written consent to our stockholders who have not consented in writing to such action. This Information Statement serves as the notice required by Section 228.

Dissenters' Rights of Appraisal

The DGCL does not provide dissenters' rights of appraisal to our stockholders in connection with the matters approved by the Written Consent.

APPROVAL OF THE RESTATED CERTIFICATE

On August 12, 2008, acting upon the recommendation of the special committee, our board of directors approved, subject to stockholder approval, the Restated Certificate. The stockholder action to approve the Restated Certificate, if not revoked or terminated, will become effective after the passage of 20 calendar days from the date this Information Statement is first sent or given to our stockholders. The Restated Certificate will not be effective until filed with the Secretary of State of the State of Delaware. We expect to file the Restated Certificate with the Delaware Secretary of State at least five days prior to the distribution date for the spin-off. Our board of directors may abandon the Restated Certificate at any time prior to its filing, without any further action by our stockholders;

Table of Contents

however, we have agreed with Cypress that, if Cypress fixes a record and distribution date for the spin-off, we will file the Restated Certificate no later than five days prior to the distribution date. We expect the Restated Certificate to be abandoned if the spin-off does not occur. Cypress is not obligated to effect the spin-off and there can be no assurance that it will occur. The following summary of the amendments to our certificate of incorporation to be effected by the Restated Certificate is qualified in its entirety by reference to the full text of the form of the Restated Certificate attached hereto as Annex A. You are encouraged to read the form of the Restated Certificate in its entirety.

Summary of the Amendments to Our Certificate of Incorporation

The amendments to our certificate of incorporation to be effected by the Restated Certificate are principally to:

- (i) clarify that, following the spin-off, the shares of our Class B common stock will remain outstanding as a separate class from our Class A shares and will be transferable by holders of Class B common stock as a separate class;
- (ii) eliminate the ability of holders of shares of Class B common stock to voluntarily convert Class B shares into shares of our Class A common stock following the spin-off;
- (iii) restrict the voting power of a holder of more than 15% of our outstanding shares of Class B common stock with respect to the election or removal of directors to 15% of the outstanding shares of Class B common stock. However, if such holder also owns in excess of 15% of our outstanding shares of Class A common stock, then the holder may exercise the voting power of our Class B common stock in excess of 15% to the extent that such holder has an equivalent percentage of outstanding Class A common stock. For example, a holder of 20% of our outstanding Class B common stock, and none of our Class A common stock, would be limited to 15% of the voting power of our outstanding Class B common stock in the election or removal of directors. On the other hand, if this person owned both 20% of our outstanding Class B common stock and 17% of our outstanding Class A common stock, then the person would be able to exercise 17% of the voting power of our outstanding Class B common stock in the election or removal of directors. Any shares of Class B common stock as to which voting power is restricted as described above would automatically be voted in proportion to the shares of Class B common stock held by holders of less than 15% of such stock. This voting restriction will not be effective until the date (but will automatically be effective as of such date), if any, that the Supplemental Ruling is received; and
- (iv) facilitate adoption of a stockholder rights plan by allowing for dividends payable in rights to holders of Class B shares that, under certain circumstances, entitle such holders to purchase shares of our Class B common stock or Equivalent Class B Shares and permitting the issuance of shares of Class B common stock upon exercise of such rights. Our certificate of incorporation already allows for the issuance of Class A shares upon the exercise of similar rights relating to our Class A shares.

Background of the Actions

From time to time, Cypress has discussed with representatives of the Company possible transactions that would effect a separation of Cypress's business from the Company. To consider such possible transactions, we formed the special committee consisting of Mr. Pat Wood III and Ms. Betsy Atkins, members of our board of directors who are independent of Cypress. The special committee retained the law firm of Skadden, Arps, Slate, Meagher & Flom LLP as independent counsel.

In early February 2008, Cypress advised representatives of the Company that it had submitted a request to the IRS for a private ruling with respect to certain tax issues arising under Section 355 of the Code in connection with a potential spin-off to its stockholders of the shares of our Class B common stock held by Cypress. During February and March 2008, the special committee held a number of meetings with its advisors and our management, and in executive

session without management present, to discuss the nature of Cypress's private ruling request, the potential timing of any spin-off and its implications for the Company and the holders of its Class A common stock. Among the considerations was the resulting capitalization of the Company, and whether there would be one or two classes of stock outstanding following the spin-off.

Table of Contents

On April 17, 2008, Cypress announced that it received a favorable ruling from the IRS. That ruling provides that, based on the facts and representations submitted by Cypress, no gain or loss would be recognized by Cypress or its stockholders upon the distribution by Cypress, and receipt by its stockholders, of all of Cypress's shares of our Class B common stock.

On a number of occasions, the special committee met with its advisors and our management, and in executive session without management present, to discuss the potential transaction with particular focus on the treatment of and effect on our public stockholders holding Class A shares. In addition, our management and members of the special committee and its legal advisors discussed with representatives of Cypress on multiple occasions a number of issues relating to the potential spin-off, including various possibilities for eliminating the Class B shares, which have eight votes per share, by converting them into shares of our Class A common stock. Cypress was unable to accommodate any of the special committee's requests in this regard because Cypress's ruling from the IRS assumes that shares of our Class B common stock would remain outstanding as a separate class from the Class A common stock following the spin-off. In addition, Cypress required as a condition of the spin-off that certain provisions in our certificate of incorporation be revised to clarify certain ambiguities with respect to the effect of the spin-off on the Class B shares. As a result, the special committee and our board of directors understood that maintaining the Class B common stock after the spin-off is an integral part of the spin-off planned by Cypress, and our board of directors has no plan or intention to attempt to eliminate the Class B common stock.

On July 17, 2008, Cypress announced that its board of directors had authorized its management to proceed with the spin-off, with the objective of having the transaction completed by the end of 2008, or sooner if possible.

In order to effectuate the spin-off, Cypress required that we:

amend our certificate of incorporation to clarify that, following the spin-off, the shares of our Class B common stock will remain outstanding as a separate class from our Class A shares and will be transferable by holders of Class B common stock as a separate class;

amend our certificate of incorporation to eliminate the ability of holders of shares of Class B common stock following the spin-off to voluntarily convert Class B shares into shares of our Class A common stock; and

enter into an amendment to the tax sharing agreement between us and Cypress that provides for, among other things, our obligation to indemnify Cypress against any tax resulting from the spin-off if that tax results from transactions involving certain acquisitions or dispositions of our stock. See Amended Tax Sharing Agreement.

In addition, in order to protect our public stockholders following the spin-off by making it more difficult for a potential acquiror or significant investor of the Company to take advantage of our capital structure and unfairly discriminate between classes of our common stock, our special committee requested that our board of directors:

amend our certificate of incorporation to restrict the voting power of a holder of more than 15% of our outstanding shares of Class B common stock with respect to the election or removal of directors to 15% of the outstanding shares of Class B common stock, unless such holder of Class B common stock has an equivalent percentage of our outstanding Class A common stock;

amend our certificate of incorporation to facilitate adoption of a shareholder rights plan by allowing for dividends payable in rights to holders of Class B shares that, under certain circumstances, entitle such holders to purchase shares of our Class B common stock or Equivalent Class B Shares and permitting the issuance of shares of Class B common stock upon exercise of such rights; and

adopt a stockholder rights plan effective upon the spin-off to discourage any one person or group from accumulating a significant percentage of the outstanding shares of our Class B common stock and thereby gain significant voting influence over our company without making a correspondingly significant economic investment (or from accumulating a significant percentage of the combined outstanding shares of Class A and Class B common stock).

Because the restriction on the voting power of a holder of more than 15% of our Class B shares was not contemplated by the ruling Cypress received from the IRS regarding the spin-off, the effectiveness of this provision

Table of Contents

is subject to receipt by Cypress of a supplemental ruling from the IRS that the effectiveness of the restriction will not prevent the favorable rulings received by Cypress with respect to certain tax issues arising under Section 355 of the Code in connection with the spin-off from having full force and effect. Cypress has informed us that it intends to submit a request for such supplemental ruling, but there can be no assurance that it will do so, or that a favorable ruling will be received.

Recommendation and Reasons of the Special Committee

The special committee met on August 6, 2008 to consider the proposed actions to be taken in relation to the proposed spin-off transactions in their entirety, including the proposed amendments to our certificate of incorporation, the amendment to the tax sharing agreement with Cypress and our adoption of a stockholder rights plan. In making a determination of whether to recommend that our board of directors take such actions, the special committee considered, among other things, the factors listed below.

Greater Ability to Make Independent Decisions. The special committee considered the benefits of Cypress no longer controlling us. The spin-off will allow us to pursue future business initiatives free from the constraints of having a controlling corporate shareholder whose policies may restrict actions we believe to be in the best interests of the Company and our public stockholders. Absent the separation from Cypress, it is possible that Cypress could restrict our ability to make investments or pursue strategies that our management and board of directors believe to be in our best long-term interests.

More Flexibility to Use Equity to Raise Capital, Make Acquisitions and Compensate Employees. The special committee considered the benefits of our being able to use equity to raise cash, make acquisitions or compensate and incentivize employees without being constrained by Cypress and its own goals in terms of the ownership of a certain percentage of voting power or equity in the Company. The special committee also considered the limitations on our ability to issue equity contained in the amendment to the tax sharing agreement.

Elimination of Stock Overhang. The special committee considered the benefits of eliminating the overhang on the market for our common stock that results from having a large corporate stockholder, thereby potentially increasing the liquidity and public float of our common stock.

The Consequences of Two Classes of Publicly Traded Stock. The special committee also considered the consequences of having two classes of common stock being publicly traded, one having eight votes per share and the other class having one vote per share, and the experience of other companies having a two class high vote low vote common stock structure. The special committee considered the experience of other companies with two publicly traded classes of common stock and the trading performance of each of the classes. The special committee also considered the potential for a person to acquire voting influence in excess of its equity ownership in us by accumulating shares of our Class B common stock as well as restrictions on the voting rights of a more than 15% holder of Class B shares to be contained in the Restated Certificate and the limitations on acquiring more than 20% of the Class B shares to be contained in the stockholder rights plan.

Change in Control Premium. The special committee considered the potential benefits of enabling our public stockholders to share in any premium associated with a change in control of us if such an event should occur, subject to the limitations in the amendment to the tax sharing agreement and the potential for significant liability to us if certain transactions did occur.

Terms of the Tax Sharing Agreement. The special committee considered our potential liability under the current and amended tax sharing agreement if certain actions occur that result in the spin-off failing to qualify

as a tax free distribution. See Amended Tax Sharing Agreement.

Governance Changes Resulting from the Spin-Off. The special committee considered the changes in our governance structure that will become effective following the spin-off pursuant to the existing terms of our certificate of incorporation and by-laws, as described under Governance Changes Resulting from the Spin-Off.

Table of Contents

After careful consideration of these and other factors, the special committee recommended at its meeting on August 6, 2008 that our board of directors approve the proposed spin-off transactions in their entirety, including the Restated Certificate, the amended tax sharing agreement requested by Cypress and the adoption of a stockholder rights plan.

Approval by Board of Directors

The board of directors met on August 7, 2008 to consider the actions for the spin-off recommended by the special committee in their entirety, including the Restated Certificate, the amended tax sharing agreement with Cypress and our adoption of a stockholder rights plan.

After careful consideration of the factors described below and others, our board of directors approved the Restated Certificate, the amended tax sharing agreement and the stockholder rights plan at a meeting on August 12, 2008. In making its determination to approve these actions, including the Restated Certificate, the amended tax sharing agreement requested by Cypress and the adoption of the stockholder rights plan, the board of directors considered:

each of the factors separately considered by the special committee as described above under Recommendation and Reasons of the Special Committee;

the recommendation of the special committee, which is comprised solely of independent directors of SunPower who are also not affiliated with Cypress or our management;

the advice of its legal advisors; and

such other factors as the board of directors deemed relevant and important to the interests of our stockholders.

AMENDED TAX SHARING AGREEMENT

We and Cypress entered into a tax sharing agreement in November 2004 that provides for each of the party's obligations concerning various tax liabilities. In connection with the spin-off, Cypress has received a favorable ruling from the IRS with respect to certain tax issues arising under Section 355 of the Code in connection with the spin-off. That ruling provides that, based on the facts and representations submitted by Cypress, no gain or loss would be recognized by Cypress or its stockholders upon the distribution by Cypress, and receipt by its stockholders, of all of Cypress's shares of our Class B common stock. Despite such ruling, however, the distribution may nonetheless be taxable to Cypress under Section 355(e) of the Code if 50% or more of our voting power or economic value is acquired as part of a plan or series of related transactions that includes the distribution of our stock. The tax sharing agreement addresses our obligation to indemnify Cypress for any liability incurred as a result of issuances or dispositions of our stock after a tax-free spin-off by Cypress. On August 12, 2008, we and Cypress entered into an amendment to the tax sharing agreement to address certain transactions that may affect the tax treatment of the spin-off and certain other matters. Under the amended tax sharing agreement, we are required to provide notice to Cypress of certain transactions that could give rise to our indemnification obligation relating to taxes resulting from the application of Section 355(e) of the Code or similar provision of other applicable law to the spin-off as a result of one or more acquisitions (within the meaning of Section 355(e)) of our stock after the spin-off. An acquisition for these purposes includes any such acquisition attributable to a conversion of any or all of our Class B common stock to Class A common stock or any similar recapitalization transaction or series of related transactions (a Recapitalization). We are not required to indemnify Cypress for any taxes which would result solely from (A) issuances and dispositions of our stock prior to the spin-off and (B) any acquisition of our stock by Cypress after the spin-off.

Under the amended tax sharing agreement, we also agreed that, for a period of 25 months following the spin-off, we will not (i) effect a Recapitalization or (ii) enter into or facilitate any other transaction resulting in an acquisition (within the meaning of Section 355(e) of the Code) of our stock without first obtaining the written consent of Cypress; provided, we are not required to obtain Cypress's consent unless such transaction (either alone or when taken together with one or more other transactions entered into or facilitated by us consummated after

Table of Contents

August 4, 2008 and during the 25-month period following the spin-off) would involve the acquisition for purposes of Section 355(e) of the Code after August 4, 2008 of more than 25% of our outstanding shares of common stock. In addition, the requirement to obtain Cypress's consent does not apply to (A) any acquisition of our stock that will qualify under Treasury Regulation Section 1.355-7(d)(8) in connection with the performance of services, (B) any acquisition of our stock for which we furnish to Cypress prior to such acquisition an opinion of counsel and supporting documentation, in form and substance reasonably satisfactory to Cypress (a Tax Opinion), that such acquisition will qualify under Treasury Regulation Section 1.355-7(d)(9), (C) an acquisition of our stock (other than involving a public offering) for which we furnish to Cypress prior to such acquisition a Tax Opinion to the effect that such acquisition will qualify under the so-called "super safe harbor" contained in Treasury Regulation Section 1.355-7(b)(2) or (D) the adoption by us of a standard stockholder rights plan. We further agreed that we will not (i) effect a Recapitalization during the 36 month period following the spin-off without first obtaining a Tax Opinion to the effect that such Recapitalization (either alone or when taken together with any other transaction or transactions) will not cause the spin-off to become taxable under Section 355(e), or (ii) seek any private ruling, including any supplemental private ruling, from the IRS with regard to the spin-off, or any transaction having any bearing on the tax treatment of the spin-off, without the prior written consent of Cypress.

Compliance with the tax-free distribution rules addressed in the tax sharing agreement, and the amendment thereto, could limit our ability to use our equity to raise capital, pursue acquisitions, compensate employees or engage in other business initiatives for a period of time after spin-off will be restricted if we can only sell or issue a limited amount of our stock before triggering our obligation to indemnify Cypress for taxes it incurs under Section 355(e) of the Code.

RIGHTS PLAN

Following its meeting on August 6, 2008, the special committee formally recommended to the board of directors at a meeting on August 7, 2008 that the board adopt a stockholder rights plan. The rights plan proposed for approval by the board of directors contained specific features designed to address the potential for an acquiror or significant investor to take advantage of our capital structure and unfairly discriminate between classes of our common stock. Specifically, the rights plan is designed to address the inequities that could result if an investor, by acquiring 20% or more of the outstanding shares of Class B common stock, were able to gain significant voting influence over our company without making a correspondingly significant economic investment.

In addition, like similar rights plans adopted by companies with only one class of common stock, the stockholder rights plan is also intended to:

reduce our vulnerability to potentially coercive takeover practices or takeover bids that are inadequate or otherwise inconsistent with the interests of our stockholders;

encourage potential acquirors to negotiate with our board of directors and to enhance the bargaining position of our board of directors in any such negotiations; and

provide a means by which we may, under appropriate circumstances, seek to keep a hostile bidder at bay while pursuing a course of continued independence or developing or implementing alternatives to provide superior value to stockholders.

Adoption of the Rights Plan by Board of Directors

At the meeting of our board of directors on August 7, 2008, the special committee recommended to the board that it adopt the proposed rights plan. At the same meeting our board of directors received advice from Jones Day, our outside legal advisors, on the legal aspects of the proposed plan and on the fiduciary duties of the board in considering

its adoption. The board also received advice from outside financial advisors on the financial aspects of the proposed rights plan.

After considering the recommendation of the special committee and the advice of its legal and financial advisors, the board of directors adopted the rights plan at a meeting on August 12, 2008. The rights plan is designed to take effect immediately upon the proposed spin-off.

Table of Contents

Summary of Terms of the Rights Plan

The following summarizes the principal terms and operation of the rights plan as adopted by the board of directors on August 12, 2008. The following summary of the rights plan is qualified in its entirety by reference to the full text of the rights plan, a copy of which was filed as Exhibit 4.1 to our Current Report on Form 8-K filed with the Securities and Exchange Commission (the SEC) on August 12, 2008. See *Where You Can Find More Information*. You are encouraged to read the rights plan in its entirety.

Dividend Declaration; Subsequent Issuances of Rights. Effective immediately upon the proposed spin-off, a committee formed by the board of directors would authorize and declare a dividend distribution of one right (each, a Right) for each share of either class of common stock then outstanding. Each share of either class of common stock issued thereafter would also be accompanied by a Right.

Initial Characteristics of the Rights. Until the distribution date (described below), the Rights would be attached to our common shares, would be represented by the certificates representing the common shares, would not trade separately and would not be exercisable. In effect, the Rights would be completely dormant.

Distribution Date; Exercisability. The Distribution Date would be the earlier to occur of:

(i) the tenth calendar day following the date of our public announcement (the Share Acquisition Date) that a person or group of persons has acquired beneficial ownership of (a) 20% or more of the aggregate outstanding Class A and Class B common stock, or (b) 20% or more of the outstanding Class B common stock (which, as of the date of this Information Statement, would represent approximately 18% of the voting power of our aggregate outstanding common stock) (an Acquiring Person); and

(ii) the tenth business day (or such later date as may be specified by the board) following the commencement by any person or group of persons of a tender offer or exchange offer, the consummation of which would result in beneficial ownership by such person or group of (a) 20% or more of the aggregate outstanding Class A and Class B common stock, or (b) 20% or more of the outstanding Class B common stock (which, as of the date of this Information Statement, would represent approximately 18% of the voting power of our aggregate outstanding common stock).

Upon the occurrence of a Distribution Date, the Rights would separate from our common stock, would be represented by separate rights certificates and would become nominally exercisable to purchase, prior to the occurrence of a flip-in event or a flip-over event, one one-hundredth of a share of a new series of preferred stock of the Company (the Preferred Shares). Each Preferred Share issued in respect of Rights attached to a share of Class A common stock would have economic and voting rights generally equal to 100 shares of Class A common stock, and each Right issued in respect of a share of Class B common stock would have economic and voting rights generally equal to 100 shares of Class B common stock. The exercise price payable for one one-hundredth of a Preferred Share upon any exercise of a Right is \$450.00 (representing a 595% premium over the closing price of one share of Class A common stock on Nasdaq on August 11, 2008, the trading day before the rights plan was adopted). Accordingly, we do not intend that it would be economical for a holder to exercise the Rights prior to the occurrence of a flip-in event or a flip-over event as described below.

Flip-In Event. The Rights are intended to provide protection against, among other things, potential abuses associated with partial tender offers or creeping accumulations of common stock. If (i) any person or group were to become an Acquiring Person, (ii) an Acquiring Person were to engage in a self-dealing transaction involving us, or (iii) during such time as there is an Acquiring Person, there were any reclassification of our securities, any recapitalization or any

other transaction resulting in a disproportionate increase in the Acquiring Person's ownership of our equity securities, then, and in each such case, from and after the later of the Share Acquisition Date and the Distribution Date, each Right, other than Rights that are or were owned beneficially by an Acquiring Person (which would be void) would become exercisable upon payment of the then-current exercise price of the Right to purchase a number of shares of common stock of the corresponding class having a market value at the time of such flip-in event of two times the exercise price of the Right. The Rights therefore provide protection against, among other things, potential abuses associated with partial tender offers or creeping accumulations of common stock.

Table of Contents

If there were an insufficient number of authorized shares of common stock to permit the full exercise of the Rights upon the occurrence of a flip-in event, we would be required to seek to authorize additional common stock for issuance upon exercise of the Rights. If we were unable to authorize additional common stock, we would be required to deliver the applicable class of common stock (to the extent available) and then cash having an aggregate value equal to the excess of the value of the common stock issuable upon the exercise of the Rights over the exercise price without requiring payment of the exercise price. To the extent that any legal or contractual restrictions would prevent us from paying the full amount of cash payable, we would be required to pay all amounts which were not then restricted on a pro rata basis and to continue to make payments on a pro rata basis as funds became available until the full amount due to each holder of Rights had been paid.

Flip-Over Event. The Rights are also intended to provide protection against, among other things, potential abuses associated with squeeze-out mergers and similar transactions occurring subsequent to a partial acquisition of the common stock by an Acquiring Person. If, at any time after the Share Acquisition Date:

- (i) we were to merge with and into any other person and we were not the surviving corporation;
- (ii) any person were to merge with or into us and we were the surviving corporation, but the common stock were changed or exchanged; or
- (iii) 50% or more of our assets or earning power were sold or transferred to any other person;

then, and in each such case, from and after the later of the Share Acquisition Date and the Distribution Date, each Right, other than Rights owned beneficially by an Acquiring Person (which would be void), would become exercisable upon payment of the then-current exercise price of the Right to purchase a number of common shares of such surviving corporation or other person having a market value at the time of such flip-over event of two times the exercise price of the Right.

Exchange. Our board of directors is entitled to order the exchange of the Rights, in whole or in part, at an exchange ratio of one share of Class A common stock or Class B common stock, as the case may be, per Right (subject to adjustment) at any time after the later of the Distribution Date and the Share Acquisition Date, but prior to the acquisition by any person or group of 50% or more of the then-outstanding common stock. Rights held by any Acquiring Person would be void, and thus would not be exchanged. This exchange provision would simplify the mechanics of the exercise of Rights and would provide additional flexibility to the board following a Share Acquisition Date.

Redemption. Our board of directors is entitled to redeem the Rights in whole, but not in part, at the nominal price of \$0.001 per Right at any time prior to the later of the Share Acquisition Date and the Distribution Date. This redemption provision is designed to provide flexibility to the board in determining whether and when to redeem the Rights, and would permit the board to redeem the Rights in connection with an acquisition that has been approved by the board. Immediately upon the effectiveness of the action of the board electing to redeem the Rights, the Rights would cease to be exercisable and the only right of the holders of Rights would be to receive the redemption price.

Expiration. The Rights would expire ten years after the record date for distribution of the Rights, unless earlier exchanged or redeemed by our board of directors as described above.

GOVERNANCE CHANGES RESULTING FROM THE SPIN-OFF

In addition to the amendments to our certificate of incorporation described above, the spin-off will result in a number of changes to our governance structure pursuant to the existing terms of our certificate of incorporation. These

provisions will not be amended by the Restated Certificate. The changes include the classification of our board of directors, the elimination of the ability of our stockholders to act by written consent or to call special meetings and the elimination of the supermajority board approval requirements for certain extraordinary events.

Certain of these changes may have the effect of delaying, deferring or discouraging another party from acquiring control of us.

Table of Contents

Classified Board

Currently, each of our directors is elected by our stockholders each year at our annual meeting to serve for a one year term. Pursuant to the terms of our certificate of incorporation, upon the spin-off, our board of directors will be divided into three classes of directors, with the classes to be as nearly equal in number as possible, with the initial term of office of the Class I directors expiring at the next annual meeting of stockholders following the spin-off, the term of office of the Class II directors expiring at the second annual meeting following the spin-off and the term of office of the Class III directors expiring at the third annual meeting following the spin-off. Each class of directors will have terms of three years following the initial term of such class. Our by-laws contain a process for determining to which class our incumbent directors will belong in the event that our board of directors becomes classified. The then current board of directors shall be ranked in the following order:

first, directors who are also employees of the Company, followed by directors who are also employees of Cypress (but not of the Company), followed by directors who are also members of the board of directors (but not employees) of Cypress, followed by other directors. Ties in the rankings of directors made in accordance with the preceding sentence shall be settled as follows: (i) first, the board member having served on the Company's board of directors longer shall be given priority, and (ii) second, the board member whose last name appears first alphabetically shall receive priority.

the directors, ranked in accordance with the preceding bullet, shall be designated to the director classifications in descending order of class (Class III, Class II, Class I), such that the director ranked first shall be the first Class III director, and so forth.

In accordance with this process, following the spin-off, Class I will be composed of Dr. Uwe-Ernst Bufe (an independent director) and Mr. Pat Wood (an independent director), Class II will be composed of Ms. Betsy Atkins (an independent director) and Mr. Steve Albrecht (an independent director and also a director of Cypress), and Class III will be composed of Mr. Thomas H. Werner (our Chief Executive Officer) and Mr. T.J. Rodgers (our Chairman, and President and Chief Executive Officer, and a director, of Cypress).

Removal of Directors Only for Cause

Currently, any of our directors or our entire board of directors may be removed from office at any time, with or without cause, by the holders of a majority of the voting power of the shares then entitled to vote at an election of directors. Under the DGCL, in the case of a corporation with a classified board, unless the corporation's certificate of incorporation otherwise provides, any director or the entire board of directors of such corporation may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of a majority of the voting power of the shares then entitled to vote at an election of directors. Following the spin-off and the classification of our board of directors, the removal of our directors will be governed by the DGCL.

No Stockholder Action by Written Consent

Currently, our stockholders may act without a meeting by written consent. Following the spin-off, no action will be able to be taken by stockholders except at an annual or special meeting of the stockholders called in accordance with the Company's by-laws, and stockholders may not act by written consent.

No Stockholder Right to Call Special Meetings

Currently, special meetings of our stockholders may be called by Cypress, our board of directors, the chairman of our board or our chief executive officer. Following the spin-off, no stockholder will have the right to call a special meeting.

Elimination of Supermajority Approval Requirements

Currently, the affirmative vote of at least 75% of the members of our board of directors are required to: (a) amend our certificate of incorporation or adopt, amend or repeal our by-laws; (b) appoint or remove our chief executive officer; (c) designate, appoint or allow for the nomination or recommendation for election by our stockholders of an individual to our board of directors; (d) change the size of our board of directors to be other than

Table of Contents

in the range of five to seven members; (e) form a committee of our board of directors or establish or change a charter, committee responsibilities or committee membership of any committee of our board of directors; (f) adopt any stockholder rights plan, poison pill or other similar arrangement; or (g) approve any transactions that would involve a merger, consolidation, restructuring, sale of substantially all of our assets or any of our subsidiaries or otherwise result in any person or entity obtaining control of us or any of our subsidiaries. Following the spin-off, these super-majority requirements shall expire and be of no further force or effect.

Elimination of Requirement to Have Cypress Representatives on Board Committees

Currently, our by-laws provide that a representative specifically designated by Cypress shall serve on each committee of our board of directors unless otherwise prohibited by the rules of The Nasdaq Stock Market or applicable law. Following the spin-off, Cypress shall no longer have this right.

INTEREST OF CERTAIN PERSONS IN MATTERS TO BE ACTED UPON

On July 17, 2008, Cypress publicly announced that its board of directors had authorized its management to proceed with a spin-off of its shares in the Company to its stockholders. Cypress has informed the Company that it intends the proposed spin-off to qualify for tax-free treatment under the Internal Revenue Code. Cypress has further informed the Company of its belief that certain amendments to be contained in the Restated Certificate, particularly the clarification regarding the status of the Class B common stock following the spin-off and the elimination of the ability of holders of shares of Class B common stock following the spin-off to voluntarily convert Class B shares into shares of our Class A common stock, were required in order for Cypress to effect the spin-off on a tax free basis. Thus, to the extent that these amendments enabled a tax-free spin-off by Cypress, Cypress and its stockholders will benefit from the adoption of the Restated Certificate.

One of the Company's directors, Mr. Steven Albrecht, is also a director of Cypress, and the Company's Chairman of the Board, Mr. T.J. Rodgers, also serves as President and Chief Executive Officer, and a director, of Cypress. Mr. Albrecht and Mr. Rodgers thus may be considered to have an interest in this matter to the extent that their interests derive from their positions with Cypress. As of July 31, 2008, Messrs. Albrecht and Rodgers beneficially owned 70,890 and 3,528,259 shares of Cypress common stock, respectively, including 57,990 shares and 2,858,947 shares, respectively, issuable upon currently vested stock options and shares issuable within 60 days of July 31, 2008 upon the vesting of outstanding awards for Cypress common stock.

Table of Contents**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth certain information regarding beneficial ownership of our Class A and Class B common stock as of March 12, 2008 (except as described below) by:

each of our directors;

our Chief Executive Officer, Chief Financial Officer, and each of the three other most highly compensated individuals who served as our executive officers at fiscal year-end, who we collectively refer to as our named executive officers;

our directors and executive officers as a group; and

each person (including any group as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934) who is known by us to beneficially own more than 5% of any class of our common stock.

The beneficial ownership table will be updated for holdings as of August 12, 2008 in the definitive Information Statement. Applicable beneficial ownership percentages listed below are based on 40,535,337 shares of Class A common stock and 44,533,287 shares of Class B common stock outstanding as of March 12, 2008. The business address for each of our directors and executive officers is our corporate headquarters at 3939 North First Street, San Jose, California 95134.

Directors and Named Executive Officers	Shares Beneficially Owned(1)				% Total Voting Power(2)
	Class A		Class B		
	Common Stock Shares	%	Common Stock Shares	%	
W. Steve Albrecht(3)	11,602	*	44,533,287	100	89.8
Betsy S. Atkins(4)	2,200	*		*	*