SUNPOWER CORP
Form 10-K
March 19, 2010

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

FORM 10-K

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

For the fiscal year ended January 3, 2010

OR

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

For the transition period from _____ to _____

Commission file number 001-34166

SunPower Corporation
(Exact Name of Registrant as Specified in its Charter)

Delaware	94-3008969
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

3939 North First Street, San Jose, California 95134
(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: (408) 240-5500

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Class A Common Stock. $0.001 par value	Nasdaq Global Select Market
Class B Common Stock. $0.001 par value	Nasdaq Global Select Market

Securities registered pursuant to Section 12(g) of the Act:

None
(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes T No ¨

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 of Section 15(d) of the Act. Yes ¨ No T

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes T No ¨

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ¨ No o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ¨

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. (Check one):

Large Accelerated Filer T	Accelerated Filer ¨	Non-accelerated filer ¨	Smaller reporting company ¨
		(Do not check if a smaller reporting company)	

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ¨ No T

The aggregate market value of the voting stock held by non-affiliates of the registrant on June 28, 2009 was $2.1 billion. Such aggregate market value was computed by reference to the closing price of the common stock as reported on the Nasdaq Global Select Market on June 26, 2009. For purposes of determining this amount only, the registrant has defined affiliates as including the executive officers and directors of registrant on June 26, 2009.

The total number of outstanding shares of the registrant's class A common stock as of March 4, 2010 was 55,364,863.

The total number of outstanding shares of the registrant's class B common stock as of March 4, 2010 was 42,033,287.

DOCUMENTS INCORPORATED BY REFERENCE

Parts of the registrant's definitive proxy statement for the registrant's 2010 annual meeting of stockholders are incorporated by reference in Items 10, 11, 12, 13 and 14 of Part III of this Annual Report on Form 10-K.

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Explanatory Note

In this Annual Report on Form 10-K, we are restating (a) our consolidated financial statements as of and for the year ended December 28, 2008 and consolidated financial data for each of the quarterly periods for the year then ended as well as for the first three quarterly periods in the year ended January 3, 2010 (the "Restated Periods"), and (b) the Selected Financial Data in Item 6 as of and for the year ended December 28, 2008. These restatements correct misstatements identified through an independent investigation into certain unsubstantiated accounting entries on the books of our Company's Philippines operations, as well as other errors identified by the Audit Committee's investigation and by management and out-of-period adjustments. For a more detailed explanation of the investigation and these restatements, please see Part II — "Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations — Restatement of Previously Issued Consolidated Financial Statements" and "Item 8: Financial Statements and Supplementary Data — Note 2 of Notes to Consolidated Financial Statements."

In addition to the restated consolidated financial information for the Restated Periods, this Annual Report on Form 10-K also contains revised financial discussion and analysis regarding the Restated Periods. This revised disclosure is contained in Part I — "Item 1A: Risk Factors — Risks Related to Our Internal Control Over Financial Reporting and the Restatement of Our Previously Issued Financial Statements," Part II — "Item 6: Selected Consolidated Financial Data," "Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations — Restatement of Previously Issued Consolidated Financial Statements," "Item 7: Management's Discussion and Analysis of Financial Condition and Results — Quarterly Financial Results," "Item 8: Note 2 — Restatement of Previously Issued Consolidated Financial Statements" and "Item 9A: Controls and Procedures."

We believe that presenting all of this information regarding the Restated Periods in this Annual Report allows investors to review all pertinent data in a single presentation. We have not filed amendments to (a) our Quarterly Reports on Form 10-Q for the first three quarterly periods in the year ended January 3, 2010 or December 28, 2008, or (b) our Annual Report on Form 10-K for the year ended December 28, 2008 (collectively, the "Affected Reports"). Accordingly, investors should rely only on the financial information and other disclosures regarding the Restated Periods in this Annual Report on Form 10-K, and not on the Affected Reports.

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Trademarks

The following terms are our trademarks and may be used in this report: SunPower®, PowerGuard®, SunTile®, PowerTracker®, and PowerLight®. All other trademarks appearing in this report are the property of their holders.

Unit of Power

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

Cautionary Statement Regarding Forward-Looking Statements

This Annual Report on Form 10-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements that do not represent historical facts, and the assumptions underlying such statements. We use words such as "anticipate," "believe," "continue" "could," "estimate," "expect," "intend," "may," "plan," "predict," "potential," "should," "will," "would," and similar expressions to identify forward statements. Forward-looking statements in this Annual Report on Form 10-K include, but are not limited to, our plans and expectations regarding our ability to obtain financing, future financial results, operating results, business strategies, projected costs, products, competitive positions, management's plans and objectives for future operations, and industry trends. These forward-looking statements are based on information available to us as of the date of this Annual Report on Form 10-K and current expectations, forecasts and assumptions and involve a number of risks and uncertainties that could cause actual results to differ materially from those anticipated by these forward-looking statements. Such risks and uncertainties include a variety of factors, some of which are beyond our control. Please see "Item 1A: Risk Factors" and our other filings with the Securities and Exchange Commission for additional information on risks and uncertainties that could cause actual results to differ. These forward-looking statements should not be relied upon as representing our views as of any subsequent date, and we are under no obligation to, and expressly disclaim any responsibility to, update or alter our forward-looking statements, whether as a result of new information, future events or otherwise.

The following information should be read in conjunction with the Consolidated Financial Statements and the accompanying Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K. Our fiscal year ends on the Sunday closest to the end of the applicable calendar year. All references to fiscal periods apply to our fiscal quarters or year which ends on the Sunday closest to the calendar month end.

PART I

ITEM 1: BUSINESS

We are a vertically integrated solar products and services company that designs, manufactures and markets high-performance solar electric power technologies. Our solar cells and solar panels are manufactured using proprietary processes, and our technologies are based on more than 15 years of research and development. Of all the solar cells available for the mass market, we believe our solar cells have the highest conversion efficiency, a measurement of the amount of sunlight converted by the solar cell into electricity. Our solar power products are sold through our components and systems business segments. For more information about the financial condition and results of operations of each segment, please see Part II — "Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Item 8: Financial Statements and Supplementary Data."

We were originally incorporated in California in April 1985 by Dr. Richard Swanson to develop and commercialize high-efficiency solar cell technologies. Cypress Semiconductor Corporation ("Cypress") made a significant investment in SunPower in 2002. In November 2004, Cypress acquired 100% ownership of all outstanding shares of our capital stock, excluding unexercised warrants and options. In November 2005, we reincorporated in Delaware, created two classes of common stock and held an initial public offering ("IPO") of our class A common stock. After completion of our IPO, Cypress held all the outstanding shares of our class B common stock. On September 29, 2008, Cypress distributed to its shareholders all of its shares of our class B common stock, in the form of a pro rata dividend to the holders of record as of September 17, 2008 of Cypress common stock. As a result, our class B common stock trades publicly and is listed on the Nasdaq Global Select Market under the symbol "SPWRB", along with our class A common stock under the symbol "SPWRA", and we discontinued being a majority-owned subsidiary of Cypress.

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Business Segments Overview

Components Segment: Our Components Segment sells solar power products, including solar panels and inverters, which convert sunlight to electricity compatible with the utility network. We believe our solar cells provide the following benefits compared with conventional solar cells:

- superior performance, including the ability to generate up to 50% more power per unit area than conventional solar cells;
- superior aesthetics, with our uniformly black surface design that eliminates highly visible reflective grid lines and metal interconnect ribbons;
- more KWac per pound can be transported using less packaging, resulting in lower distribution costs; and
- more efficient use of silicon, a key raw material used in the manufacture of solar cells.

We sell our solar components products to installers and resellers, including our third-party global dealer network of approximately 1,000 partners, for use in residential and commercial applications where the high efficiency and superior aesthetics of our solar power products provide compelling customer benefits. We also sell products for use in multi-MWac solar power plant applications. In many situations, we offer a significantly lower area-related cost structure for our customers because our solar panels require a substantially smaller roof or land area than conventional solar technology and half or less of the roof or land area of commercial solar thin film technologies. We sell our products primarily in North America, Europe, the Middle East, Asia and Australia, principally in regions where government incentives have accelerated solar power adoption. In fiscal 2009, 2008 and 2007, components revenue represented approximately 61%, 43% and 40%, respectively, of total revenue.

As discussed more fully below, we manufacture our solar cells at our two facilities in the Philippines, and are developing a third solar cell manufacturing facility in Malaysia. Our solar cells are then combined into solar panels at our solar panel assembly facility located in the Philippines or by third-party subcontractors in China or Mexico.

Systems Segment: Our Systems Segment generally sells solar power systems directly to system owners and developers. When we sell a solar power system, it may include services such as development, engineering, procurement, permitting, construction, financing options, monitoring and maintenance. We believe our solar systems provide the following benefits compared with competitors' systems:

- superior performance delivered by maximizing energy delivery and financial return through systems technology design;
- superior customer service and systems performance delivered using best-in-class monitoring, reporting and maintenance management systems;
- superior systems design to meet customer needs and reduce cost, including non-penetrating, fast roof installation technologies; and
- superior channel breadth and delivery capability including turnkey systems.

Our customers include commercial and governmental entities, investors, electric utilities, independent power producers, production home builders and homeowners. We work with development, construction, system integration and financing companies to deliver our solar power systems to customers. Our solar power systems are designed to

generate electricity over a system life typically exceeding 25 years and are principally designed to be used in large-scale applications with system ratings of typically more than 500 KWac. Worldwide, we have more than 550 MWac of SunPower solar power plant systems operating or under contract. In fiscal 2009, 2008 and 2007, systems revenue represented approximately 39%, 57% and 60%, respectively, of total revenue.

We have solar power system projects completed in various countries including Australia, Germany, Italy, Portugal, South Korea, Spain and the United States. We sell distributed rooftop and ground-mounted solar power systems as well as central-station power plants around the globe. In the United States, distributed solar power systems are typically rated at more than 500 KWac of capacity to provide a supplemental, distributed source of electricity for a customer's facility as well as ground mount systems reaching up to 250 MWac for regulated utilities. In the United States, many customers choose to purchase solar electricity under a power purchase agreement ("PPA") with a financing company which buys the system from us. In Europe, our products and systems are typically purchased by a financing company and operated as a central-station solar power plant. These power plants are rated with capacities of approximately one to thirty MWac, and generate electricity for sale under tariff to private and public utilities. These markets are subject to industry-specific seasonal fluctuations. Accordingly, sales in our Systems Segment has historically reflected these seasonal trends with reduced revenue in the first two quarters and the largest percentage of total revenues being realized during the last two calendar quarters. There are various reasons for this seasonality, mostly related to economic incentives and weather patterns. See "Item 1A: Risk Factors" including "–Our Systems Segment could be adversely affected by seasonal trends and construction cycles."

In fiscal 2008, we began serving the utility market in the United States, as regulated utilities began seeking cost-effective renewable energy to meet governmental renewable portfolio standard requirements. In fiscal 2009, we completed the construction of the largest photovoltaic power plant in the United States, rated at 25 MWac, for Florida Power & Light Company.

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Change in Segment Reporting: On January 25, 2010, we announced that Howard Wenger and James Pape will serve as president of our utilities and power plants business group and president of our residential and commercial business group, respectively. To reflect the changes we are in the process of making decisions internally in terms of how we manage these customer-focused business groups, allocate resources and assess performance. We will change our segment reporting from our Systems Segment and Components Segment to our Utilities and Power Plants Segment ("UPP") and Residential and Commercial Segment ("R&C") effective in the second quarter of fiscal 2010. Our UPP Segment will reflect our large-scale solar products and systems business while our R&C Segment will reflect our rooftop solar products and systems business. We intend to reflect this new segment reporting in our Quarterly Report on Form 10-Q for such quarter.

Our Products and Services

Products Sold Through Our Components Segment

Our solar power products include solar cells and solar panels manufactured using proprietary processes, and our technologies are based on more than 15 years of research and development. We also sell a line of SunPower branded inverters manufactured by third parties.

Solar Cells

Solar cells are semiconductor devices that directly convert sunlight into direct current electricity. Our A-300 solar cell is a silicon solar cell with a specified power value of 3.1 watts and a conversion efficiency averaging between 20% and 21.5%. Our A-330 solar cell delivers 3.3 watts with a conversion efficiency of up to 22.7%. Our solar cells are designed without highly reflective metal contact grids or current collection ribbons on the front of the solar cells. This feature enables our solar cells to be assembled into solar panels that exhibit a more uniform appearance than conventional solar panels.

Solar Panels

Solar panels are solar cells electrically connected together and encapsulated in a weatherproof package. We believe solar panels made with our solar cells are the highest efficiency solar panels available for the mass market. Because our solar cells are more efficient relative to conventional solar cells, when our solar cells are assembled into panels, the assembly cost per watt is less because more power can be incorporated into a given size package. Higher solar panel efficiency allows installers to mount a solar power system with more power within a given roof or site area and can reduce per watt installation costs.

Products Sold Through Our Systems Segment

Our solar power system products are principally designed to be used in large-scale utility, commercial, public sector and production home applications. We manufacture certain of our solar power system products at our manufacturing facilities in Richmond, California and at other facilities located close to our customers. Some of our solar power system products are also manufactured for us by third-party suppliers.

PowerGuard® Roof System

Our PowerGuard Roof System ("PowerGuard") is a roof-mounted solar panel mounting system that delivers reliable, clean electricity while insulating and protecting the roof. PowerGuard is a patented, proprietary, pre-engineered solar power roofing tile system. Each PowerGuard tile consists of a solar laminate, lightweight cement substrate and styrofoam base. Designed for quick and easy installation, PowerGuard tiles fit together with interlocking

tongue-and-groove side surfaces. In addition to generating electricity, PowerGuard roof systems also insulate and protect the roof membrane from ultraviolet rays and thermal degradation. This saves both heating and cooling energy expenses and extends the roof life. The PowerGuard roof system has been tested and certified by Underwriters Laboratories Inc. (“UL”) and has received a UL-listed Class B fire rating which we believe facilitates obtaining building permits and inspector approvals.

Our PowerGuard system resists wind uplift without compromising the rooftop’s structural integrity. In comparison, conventional solar power systems typically penetrate the roof and may compromise the integrity of the roof and reduce its life span. Moreover, certain other conventional systems add weight for stability against wind and weather, which may exceed weight limits for some commercial buildings’ roofs.

PowerGuard tiles typically weigh approximately four pounds per square foot, which is supported by most commercial rooftops. Our technology integrates this lightweight construction with a patented pressure equalizing design that has been tested to withstand winds of up to 140 miles per hour. PowerGuard roof systems have been installed in a broad range of climates, including California, Illinois, Hawaii, Massachusetts, Nevada, New Jersey, New York and Switzerland and on a wide variety of building types, from rural single story warehouses to urban high rise structures.

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SunPower® T-10 Commercial Solar Roof Tiles

SunPower T-10 Commercial Solar Roof Tiles (“T-10”) are pre-engineered solar panels that tilt at a 10-degree angle. Depending on geographical location and local climate conditions, this can allow for the generation of up to 10% more annual energy output than traditional flat roof-mounted systems. These non-penetrating panels interlock for secure, rapid installation on rooftops without compromising the structural integrity of the roof.

Similar to our PowerGuard product, the patented SunPower T-10 commercial roof tile is lightweight, weighing less than four pounds per square foot, and is installed without penetrating the roof surface. Sloped side and rear wind deflectors improve wind performance, allowing T-10 arrays to withstand winds up to 120 miles per hour.

Whereas PowerGuard performance is optimized in constrained rooftop environments where it contributes to maximum power density, T-10 commercial roof tile performance is optimized for larger roofs with less space constraints as well as underutilized tracks of land, such as ground reservoirs.

SunPower® T-5 Solar Roof Tile System

The development of the SunPower T-5 roof tile is a direct result of the investment by the United States Department of Energy through its Solar America Initiative program. Tilted at a 5-degree angle, the T-5 roof tile is the industry's first all-in-one, non-penetrating photovoltaic rooftop product that combines solar panel, frame and mounting system into a single pre-engineered unit. The T-5 roof tile solar tiles interlock for wind resistance and secure installation. The patented design is adaptable to virtually any flat or low-slope rooftop.

The T-5 roof tile all-in-one mounting system and frame is made from an engineered glass-filled polymer that is non-reactive, eliminating the need for electrical grounding of the array. This makes the T-5 roof tile easier and faster to install than other rooftop systems. Its aerodynamic design is resistant to high winds, and the strong, smooth-edged, lightweight polymer material protects the roof for long-term durability and weighs less than three pounds per square foot. Since the T-5 roof tile is stacked for shipping, more KWac per pound can be transported using less packaging, resulting in lower distribution costs.

SunTile® Roof Integrated System for Residential Market

Our patented SunTile product is a highly efficient solar power shingle roofing system utilizing our solar cell technology that is designed to integrate with conventional residential roofing materials. SunTile solar shingles are designed to replace multiple types of roof panels, including the most common concrete flat, low and high profile “S” tile and composition shingles. We believe that SunTile systems are less visible on a roof than conventional solar technology because the solar panel is integrated directly into the roofing material instead of mounted onto the roof. SunTile systems have a UL-listed Class A fire rating, which is the highest level of fire rating provided by UL. SunTile is designed to be incorporated by production home builders into the construction of their new homes.

Ground Mounted SunPower Tracker Systems

We offer several types of ground-mounted solar power systems, including our fixed tilt and patented SunPower Tracker products. Our SunPower Tracker is a single-axis tracking system that automatically pivots solar panels to track the sun’s movement throughout the day. We believe this tracking feature increases the amount of sunlight that is captured and converted into energy by up to 30% over flat or fixed-tilt systems depending on geographic location and local climate conditions. A single motor and drive mechanism can control 10 to 20 rows, or more than 200 KWac of solar panels. The multi-row feature represents a cost advantage for our customers over dual axis tracking systems, as such systems require more motors, drives, land and power to operate per KWac of capacity. The SunPower Tracker

system can be assembled onsite, and is easily scalable. We have installed ground-mounted systems integrating SunPower Tracker in a wide range of geographical markets including Arizona, California, Florida, North Carolina, Hawaii, Nevada, New Jersey, Germany, Italy, Portugal, South Korea and Spain.

Fixed Tilt and SunPower Tracker Systems for Parking Structures

We have developed and patented designs for solar power systems for parking structures in multiple configurations. These dual use systems typically incorporate solar panels into the roof of a carport or similar structure to deliver onsite solar power while providing shade and protection. Aesthetically pleasing, standardized and scalable, they are well suited for parking lots adjacent to facilities. In addition, we have incorporated our SunPower Tracker technology into certain of our systems for elevated parking structures to provide a differentiated product offering to our customers.

Other System Offerings

We have other products that leverage our core systems. For example, our metal roof system is designed for sloped-metal roof buildings, which are used in some winery and warehouse applications. This solar power system is designed for rapid installation. We also offer other architectural products such as day lighting with translucent solar panels.

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Balance of System Components

“Balance of system components” are components of a solar power system other than the solar panels, and include SunPower branded inverters, mounting structures, charge controllers, grid interconnection equipment and other devices depending on the specific requirements of a particular system and project. Historically, we have sold our balance of system components under materials-only sales contracts in the United States, Europe and Asia.

Client Services Sold Through Our Systems Segment

We provide our power plant customers end-to-end management of the project life-cycle, from early stage site and project development, including full-scale environmental and build permitting, through engineering, procurement, construction and commissioning. Once tested, our plant operations and maintenance organization provides customers with not only “utility-scale” data acquisition, performance monitoring, diagnostic and performance reporting services, but also life-cycle asset planning and management with industry leading software applications. Through our energy services, we are positioned to provide full-scale, long-term power plant operations and maintenance services to customers.

Project Design Engineering

The project design engineering group is a full service engineering team that designs solar power systems by taking into account many different factors which will optimize a system’s performance. Starting with a site evaluation during the preliminary design phase, our proposal team evaluates each customer’s’ site conditions and energy needs and then models a solution that takes into account all the relevant variables including local weather patterns, land and/or building configurations, and utility rates. Once the preliminary design solution is established, the project engineering and electrical engineering teams create all necessary documentation and drawings for building permits and construction execution. The project design engineering group also designs the supervisory control and data acquisition (“SCADA”) and security system for the power plant. One of the many benefits to our customers is that this team is involved from the beginning of the project, through construction and into the final commissioning stage.

Financing Options

We offer different financing options to our customers by partnering with many companies and organizations. The options range from simple loans, to capital and operating leases, to long-term, multi-party PPAs and third party ownership structures.

Project and Construction Services

We provide project and construction management services for deployment of our photovoltaic systems. These services cover the full life cycle of a project. The services include site evaluation, feasibility studies, design oversight, permit approvals, material procurement, subcontracting, field supervision and system commissioning support. Subcontractors provide the needed field installation crews. We have prequalified and developed relationships with subcontractors in many of our target markets where local labor is used. Our construction managers provide the on-site supervision, safety, quality control, testing and commissioning support needed for the installation of these photovoltaic power systems.

Project Quality Assurance

Quality is of the utmost importance to ensure the solar power plant delivers expected performance over its life. We strive to assure quality by designing quality in each step of the project, including product research and development,

supplier quality, project design, construction, operations and maintenance. A disciplined design process based on a stage–gate approach assures product quality and reliability. Business processes are developed and documented, and teams are trained to perform their tasks correctly the first time. A preventive, simplification, and customer satisfaction ("PSC") approach is used to drive quality improvements throughout the product lifecycle. Measurements of quality performance, construction audits, correction and prevention of field failures or non-conformances, and an active "lessons-learned" program are some of the key steps of the PSC approach. Our focus on customer satisfaction helps drive improved service quality, responsiveness and customer experience.

Power Plant Operations and Maintenance

Our systems have a design life in excess of 25 years for which we provide commissioning, warranty, maintenance and performance monitoring services with the objective of maximizing our customer's electrical energy production. Commissioning services include testing designed to verify equipment and system performance to design requirements. We also pass through to customers long-term warranties from the original equipment manufacturers ("OEMs") of certain system components. Warranties of 25 years from solar panel suppliers are standard in the solar industry, while inverters typically carry warranty periods ranging from 5 to 10 years. In addition, we generally warrant our workmanship on installed systems for a period of 2, 5 or 10 years. Systems under warranty and systems under a performance monitoring contract use our proprietary software systems to collect and remotely analyze equipment operating and system performance data from all of our sites in our offices located in the United States and the Philippines. We offer our customers a comprehensive suite of solar power system maintenance services ranging from system monitoring, to preventive maintenance, to rapid-response outage restoration and inverter repair. Our Standard Monitoring Service Agreement includes continuous remote monitoring, system performance reports, and a 24/7 technical support line. Our Basic Service Level Agreement adds preventive maintenance to the Standard Monitoring Services Agreement, and our Plus Level Service Agreement includes all of the Basic Service Level Agreement features plus on-site corrective maintenance using regionally-located field service technicians.

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Monitoring

We have developed a proprietary set of advanced monitoring applications built upon the leading electric utility real-time monitoring platform (the "SunPower Monitoring System"). The monitoring service continuously scans the operational status and performance of the solar system and automatically identifies system outages and performance deficiencies to our 24/7 monitoring technicians. If the monitoring technicians cannot identify the cause of the problem within a predetermined response time, the issue is escalated to our performance engineers for further analysis and diagnostics. If the performance engineers cannot resolve the problem within the service response time, the issue is escalated to our field service team to resolve the problem at our customer's facility. Customers can access historical or daily system performance data through our customer website (www.sunpowermonitor.com). Some customers choose to install "digital signs" to display system performance information from the lobby of their facility. We believe these displays enhance our brand and educate the public and prospective customers about solar power.

In 2008, we released the SunPower Monitoring System, and in 2009, we released the industry's first monitoring application for the Apple iPhone™ and iPod touch® mobile devices. With the addition of this application to the SunPower Monitoring System, residential customers now have three easy ways to access information about the energy generated by their SunPower solar systems. Along with the iPhone and iPod touch application, the SunPower Monitoring System offers homeowners the ability to monitor SunPower solar systems with a wireless, in-home wall-mounted liquid crystal display ("LCD") that provides power production and cumulative energy information. The monitoring system also provides the convenience of Internet access to a solar system's performance from virtually anywhere. Customers can view a system's energy performance and environmental savings on an hourly, monthly and annual basis.

SunPower Energy Services

In addition to our solar power systems, we provide related energy efficiency services designed to increase the total return on investment through an integrated, seamless solution. We provide custom solar power generation and demand side management solutions to minimize facility energy use and demand, improve building operation controls and increase the comfort level of building occupants.

Research and Development

We engage in extensive research and development efforts to improve solar cell efficiency, enhance our products and reduce manufacturing cost and complexity. Our research and development organization works closely with our manufacturing facilities, our equipment suppliers and our customers to improve our solar cell design and to lower solar cell, solar panel and system product manufacturing and assembly costs. In addition, we have dedicated employees who work closely with our current and potential suppliers of crystalline silicon, a key raw material used in the manufacture of our solar cells, to develop specifications that meet our standards and ensure the high quality we require, while at the same time controlling costs.

We have government contracts that enable us to more rapidly develop new technologies and pursue additional research opportunities while helping to offset our research and development expense. In fiscal 2007, we signed a Solar America Initiative research and development agreement with the United States Department of Energy in which we have been awarded $18.1 million as of January 3, 2010. Total funding to our Company for the three-year effort is estimated to be $24.0 million. Our cost share requirement under this program, including lower-tier subcontract awards, is anticipated to be $27.5 million. Payments received under these contracts offset our research and development expense by approximately 22%, 25% and 21% in fiscal 2009, 2008 and 2007, respectively. Our research and development expenditures, net of payments received under these contracts, were approximately $31.6 million, $21.5 million and $13.6 million for fiscal 2009, 2008 and 2007, respectively.

For more information about these contracts, including the government's rights to use technology developed as a result of such contracts, please see "Item 1A: Risk Factors" including "–Our reliance on government programs to partially fund our research and development programs could impair our ability to commercialize our solar power products and services."

Manufacturing

The solar cell value chain starts with high purity silicon called polysilicon. Polysilicon is created by refining quartz or sand. Polysilicon is melted and grown into crystalline ingots by companies specializing in ingot growth, such as our joint venture located in South Korea named Woongjin Energy Co., Ltd. ("Woongjin Energy"). The ingots are sliced into wafers by a joint venture named First Philec Solar Corporation ("First Philec Solar") located in the Philippines, and by other vendors. The wafers are processed into solar cells in our own manufacturing facilities in the Philippines. Both Woongjin Energy and First Philec Solar were formed in part to help us secure our supply of these products.

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We manufacture our solar cells at our two facilities located near Manila in the Philippines. Our first facility ("FAB1") is 215,000 square feet and began operations in the fall of 2004. We currently operate four solar cell manufacturing lines at FAB1, with a total rated annual solar cell manufacturing capacity of 108 MWdc. In August 2006, we purchased a 344,000 square foot building in the Philippines ("FAB2"). This building is approximately 20 miles from FAB1 and was constructed to house up to twelve solar cell manufacturing lines. FAB2 began operations in the summer of 2007 and we currently operate twelve solar cell manufacturing lines, with a total rated annual solar cell manufacturing capacity of 466 MWdc. In addition, we intend to begin production in 2010 on the first solar cell manufacturing line of our planned third solar cell manufacturing facility ("FAB3") which is being constructed in Malaysia. FAB3 will be constructed in two phases, with an aggregate annual solar cell manufacturing capacity of more than 500 MWdc and 1 GWdc after completion of the first phase and second phase, respectively.

We manufacture our solar panels at our solar panel assembly facility located in the Philippines where we currently operate five solar panel assembly lines with a rated annual solar panel manufacturing capacity of 150 MWdc. Our solar panels are also manufactured for us by third-party subcontractors in China and Mexico. In December 2009, we entered into an arrangement with a third-party subcontractor for similar services provided in Poland beginning in the first quarter of fiscal 2010. In addition, we plan to establish a manufacturing facility to manufacture up to 25% of our solar panels in the United States within the next two years, whether produced internally or by third-party subcontractors located in states near attractive solar markets.

Over the past 15 years, we have developed a core competency in processing thin silicon wafers. This proprietary semiconductor processing expertise involves specialized equipment and facilities that we believe allow us to process thin wafers while minimizing breakage and accurately controlling the effect of metallic contaminants and other non-desirable process conditions.

We source the balance of system components based on quality, performance and cost considerations using solar panels supplied internally as well as from other third-party suppliers. We generally assemble proprietary components, such as cementitious coatings and certain adhesive applications, while we purchase generally available components from third-party suppliers. Certain of our products, such as our PowerGuard® and SunTile® products, are sometimes assembled at our third-party contractors' assembly plant prior to shipment to the project location. Other products such as our SunPower Tracker, SunPower® T-10 and T-20 commercial roof tiles are field assembled with components shipped directly from suppliers. We currently have the capacity to produce up to an aggregate of 300 MWdc of our PowerGuard, SunTile, SunPower Tracker, T-10 and T-20 products per year, depending on product mix, in our California assembly plant or a third-party contractor's assembly plant.

Supplier Relationships

Crystalline silicon is the leading commercial material for solar cells and is used in several forms, including single-crystalline, or monocrystalline silicon, multicrystalline, or polycrystalline silicon, ribbon and sheet silicon and thin-layer silicon. We believe our supplier relationships and various short- and long-term contracts will afford us the volume of material required to meet our planned output. For more information about risks related to our crystalline silicon, please see "Item 1A: Risk Factors" including "– Limited competition among suppliers has required us in some instances to enter into long-term, firm commitment supply agreements that could result in excess or insufficient inventory and place us at a competitive disadvantage."

With respect to suppliers for our Components Segment, we purchase polysilicon, silicon ingots and inverters on both a contracted and a purchase order basis. We have contracted with some of our suppliers for multi-year supply agreements. Under such agreements, we have annual minimum purchase obligations and in certain cases prepayment obligations.

With respect to suppliers for our Systems Segment, we are able to utilize solar panels and balance of system components from various manufacturers depending on power, performance and cost requirements for our construction projects. We historically partnered, and intend to continue to partner, with solar panel manufacturers that offer the most advanced solar panel technologies and the highest quality products.

Customers

Components Customers

We currently sell our solar power products to installers and resellers, including our third-party global dealer network. We sell our products in North America, Europe, the Middle East, Asia and Australia, principally in regions where government incentives have accelerated solar power adoption. In fiscal 2009, we opened offices in new markets such as France and Japan and continued to invest in established markets such as Germany, Italy and Spain. We currently work with a number of customers who have specific expertise and capabilities in a given market segment or geographic region. As we expand our manufacturing capacity, we anticipate developing additional customer relationships in other markets and geographic regions to continue to decrease our customer concentration and dependence. We generally do not have long-term agreements with our components customers, see “Item 1A: Risk Factors” including “–We often do not have long-term agreements with our customers and accordingly could lose customers without warning, which could cause our operating results to fluctuate.” No components customers accounted for 10 percent or more of our total revenue in fiscal years 2009, 2008 and 2007.

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International sales comprise the majority of components revenue and represented approximately 71%, 67% and 64% of components revenue in fiscal 2009, 2008 and 2007, respectively. We anticipate that a significant amount of our components revenue will continue to be generated by sales to customers outside the United States. A significant portion of our sales are denominated in Euros and we have entered into foreign currency forward exchange and option contracts to help manage the risk of an unfavorable United States dollar versus Euro exchange rate. For more information about risks related to currency fluctuations, please see “Item 1A: Risk Factors” including “– We have significant international activities and customers, and plan to continue these efforts, which subject us to additional business risks, including logistical complexity and political instability.” A table providing total revenue by geography for the last three fiscal years is found in Note 20 to Consolidated Financial Statements in Part II — "Item 8: Financial Statements and Supplementary Data."

Systems Customers

Our systems customers include commercial and governmental entities, investors, project developers, electric utilities, independent power producers, production home builders and homeowners. We work with development, construction, system integration and financing companies to deliver our solar power systems to wholesale sellers, retail sellers, and retail users of electricity. In the United States, we often work with financing companies that purchase solar power systems from us, and then sell solar electricity generated from these systems under PPAs to utilities or end-use customers. End-use customers typically pay the financing companies over an extended period of time based on energy they consume from the solar power systems, rather than paying for the full capital cost of purchasing the solar power systems. Worldwide, we have more than 550 MWac of SunPower solar power plant systems operating or under contract. In addition, our dealer network and our new homes division have deployed thousands of SunPower rooftop solar systems to residential customers. We have solar power system projects completed or in the process of being completed in countries around the world, including Australia, Germany, Italy, Portugal, South Korea, Spain and the United States.

We have five systems customers that each accounted for 10 percent or more of our total revenue in fiscal years 2009, 2008 and 2007 as follows:

		Year Ended		
(As a percentage of total revenue)		January 3, 2010	December 28, 2008	December 30, 2007
Significant Customers:	Business Segment			
Florida Power & Light Company	Systems	12 %	*	*
Naturener Group	Systems	*	18 %	*
Sedwick Corporate, S.L.	Systems	*	11 %	*
SolarPack	Systems	*	*	18 %
MMA Renewable Ventures	Systems	*	*	16 %

* denotes less than 10% during the period

Systems revenue by geography for destinations that accounted for 10 percent or more of our total systems revenue in fiscal years 2009, 2008 and 2007 is as follows:

	Year Ended		
(As a percentage of systems revenue)	January 3, 2010	December 28, 2008	December 30, 2007

Systems revenue by geography:						
United States	65	%	38	%	51	%
California	16	%	34	%	24	%
Florida	30	%	*		*	
Nevada	*		*		22	%
Rest of world	35	%	62	%	49	%
Italy	33	%	*		*	
Spain	*		54	%	46	%

* denotes less than 10% during the period

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In fiscal 2009, we completed the construction of a 25 MWac solar power plant in Desoto County, Florida that currently represents the largest photovoltaic power plant in the United States, a 24 MWac solar power plant in Montalto di Castro, Italy, a 10 MWac solar power plant for FPL at the Kennedy Space Center in Florida, and have substantially completed the construction of a 8 MWac solar power plant in Chicago, Illinois. In fiscal 2008, we energized several large-scale solar power plants in Spain rated at over 40 MWac in the aggregate. In fiscal 2007, we completed the construction of an approximately 14 MWdc solar power plant at Nellis Air Force Base in Nevada.

Marketing and Sales

We market and sell solar electric power technologies worldwide through both a direct sales force and resellers, including our third-party global dealer network. We have direct sales personnel or representatives in Australia, France, Germany, Greece, Italy, Japan, Korea, Spain, Switzerland and the United States. And during fiscal 2009, we expanded the size of our dealer network to approximately 1,000 dealers worldwide. Approximately 56%, 69% and 85% of our total revenue for fiscal 2009, 2008 and 2007, respectively, were derived through our direct sales force and sales affiliates, with the remainder from resellers. We provide warranty coverage on systems we sell through our direct sales force, sales affiliates and resellers. To the extent we sell through resellers, we may provide system design and support services while the resellers are responsible for construction, maintenance and service.

Our marketing programs include conferences and technology seminars, sales training, public relations and advertising. Our marketing group is also responsible for driving many qualified leads to support our sales teams lead generation efforts, assessing the productivity of our lead pipeline, and measuring marketing-generated leads to closed sales. We support our customers through our field application engineering and customer support organizations. We have marketing staff in San Jose and Richmond, California, United States, as well as in Frankfurt, Germany, Madrid, Spain and Geneva, Switzerland. Please see Note 20 of Notes to our Consolidated Financial Statements for information regarding our revenue by geographic region.

Backlog

Components Segment: Our solar panel and inverter sales within the Components Segment are typically ordered by customers under standard purchase orders with relatively short delivery lead-times, generally within one to three months. We have entered into long-term supply agreements with certain customers that contain minimum firm purchase commitments. However, specific products that are to be delivered and the related delivery schedules under these long-term contracts are often subject to modifications based on change orders and amendments agreed to with our customers. Our Components Segment backlog represents the uncompleted portion of firm purchase commitments.

Systems Segment: Our systems revenue is primarily comprised of engineering, procurement and construction (“EPC”) projects which are governed by customer contracts that require us to deliver functioning solar power systems. EPC projects are generally completed within three to twelve months from the date of the contract signing. In addition, our Systems Segment also derives revenue from sales of certain solar power products and services that are smaller in scope than an EPC project. Our Systems Segment backlog represents the uncompleted portion of contracted and financed projects. Contingent customer orders, including our contract with Pacific Gas and Electric Company (“PG&E”) to design and build a 210 MWac (or 250 MWdc) solar power plant in California, that are not yet financed are excluded from backlog as of January 3, 2010. Our EPC projects and contracts in our new homes group are often cancelable by our customers under certain situations. In addition, systems project revenue and related costs are often subject to delays or scope modifications based on change orders agreed to with our customers, or changes in the estimated construction costs to be incurred in completing the project.

Management believes that backlog at any particular date is not necessarily a meaningful indicator of future revenue for any particular period of time because our backlog excludes contracts signed and completed in the same quarter and

contracts still subject to obtaining project financing. Backlog totaled approximately $773 million and $1,144 million as of January 3, 2010 and December 28, 2008, respectively, a decrease of $371 million year-over-year related to: (i) long-term supply contracts for solar cells and solar panels with customers that were entered into during fiscal 2008 and were either terminated in 2009 or became uncertain at the end of 2009; and (ii) the difficult economic conditions resulting in near term challenges in financing system projects. Approximately $588 million of our backlog at January 3, 2010 is currently planned to be recognized as revenue during fiscal 2010.

Competition

The market for solar electric power technologies is competitive and continually evolving. We expect to face increased competition, which may result in price reductions, reduced margins or loss of market share. Our solar power products compete with a large number of competitors in the solar power market, including, but not limited to, First Solar, Inc., Q-Cells AG, Sanyo Corporation, Sharp Corporation, SolarWorld AG, Suntech Power Holdings Co., Ltd., Trina Solar Ltd. and Yingli Green Energy Holding Co. Ltd. We also face competition from resellers that have developed related offerings that compete with our product and service offerings, or have entered into strategic relationships with other existing solar power system providers. To the extent that government funding for research and development contracts, customer tax rebates and other programs that promote the use of solar and other renewable forms of energy are limited, we compete for such funds, both directly and indirectly, with other renewable energy providers and customers.

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In addition, universities, research institutions and other companies have brought to market alternative technologies such as thin films and concentrators, which compete with our technology in certain applications. Furthermore, the solar power market in general competes with conventional fossil fuels supplied by utilities and other sources of renewable energy such as wind, hydro, biomass, concentrated solar power and emerging distributed generation technologies such as micro-turbines, sterling engines and fuel cells. We believe solar power has certain advantages when compared to these other power generating technologies and offers a stable power price compared to utility network power, which typically increases as fossil fuel prices increase. In addition, solar power systems are deployed in many sizes and configurations and do not produce air, water or noise emissions. Most other distributed generation technologies create environmental impacts of some sort. The current high up-front cost of solar relative to utility network power, however, remains the primary market barrier to on-grid solar applications.

In the large-scale on-grid solar power systems market, we face direct competition from a number of companies, including those that manufacture, distribute, or install solar power systems as well as construction companies that have expanded into the renewable sector. In addition, we will occasionally compete with distributed generation equipment suppliers.

We believe that the key competitive factors in the market for solar cells and solar panels include:

- levelized cost of energy ("LCOE") an evaluation of the life-cycle energy costs and life-cycle energy production;
- power efficiency and performance;
- total system price;
- aesthetic appearance of solar cells and panels;
- strength of distribution relationships;
- timeliness of new product introductions; and
- warranty protection, quality and customer service.

The principal elements of competition in the solar systems market include technical expertise, experience, delivery capabilities, diversity of product offerings, financing structures, marketing and sales, price, product performance, quality, efficiency and reliability, and technical service and support. We believe that we compete favorably with respect to each of these factors, although we may be at a disadvantage in comparison to larger companies with broader product lines, greater technical service and support capabilities, and financial resources. For more information about risks related to our competition, please see "Item 1A: Risk Factors" including "– If we fail to successfully develop and introduce new and enhanced products and services, we may not be able to compete effectively, and our ability to generate revenues will suffer."

Intellectual Property

We rely on a combination of patent, copyright, trade secret, trademark and contractual protections to establish and protect our proprietary rights. "SunPower" is our registered trademark in countries throughout the world for use with solar cells, solar panels and mounting systems. We also hold registered trademarks for PowerLight®, PowerGuard®, PowerTracker® and SunTile® in certain countries. We are seeking and will continue to seek registration of the "SunPower" trademark and other trademarks in additional countries as we believe is appropriate. As of January 3, 2010, we held 8 trademarks in the United States, and had 7 trademark applications pending. We also held 19 trademarks and

had over 16 trademark applications pending in foreign jurisdictions. We require our business partners to enter into confidentiality and nondisclosure agreements before we disclose any sensitive aspects of our solar cells, technology or business plans, and we typically enter into proprietary information agreements with employees and consultants.

We currently own multiple patents and patent applications which cover aspects of the technology in the solar cells and mounting systems that we currently manufacture and market. We continue to file for and receive new patent rights on a regular basis. The lifetime of a utility patent typically extends for 20 years from the date of filing with the relevant government authority. We intend to continue assessing appropriate opportunities for patent protection of those aspects of our technology, designs, and methodologies and processes that we believe provide significant competitive advantages to us, and for licensing opportunities of new technologies relevant to our business. As of January 3, 2010, we held 65 patents in the United States, which will expire at various times between now and 2028, and had 100 patent applications pending. We also held 63 patents and had 185 patent applications pending in foreign jurisdictions. We additionally rely on trade secret rights to protect our proprietary information and know-how. We employ proprietary processes and customized equipment in our manufacturing facilities and require employees and consultants to enter into confidentiality agreements.

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In October 2009, we and SunLink Corporation ("SunLink") settled a patent infringement case brought by our Company before the United States District Court for the Northern District of California. We brought the lawsuit against SunLink in February 2008 asserting infringement of our patent rights covering our lightweight rooftop mounting products, PowerGuard® and SunPower® T-10. Under the terms of the settlement agreement, the specifics of which are confidential, SunLink has acknowledged the infringement of SunLink's MMS rooftop solar product as well as the validity and enforceability of our patent rights. For confidential consideration provided under the settlement, SunLink has received a license to our infringed patents.

For more information about risks related to our intellectual property, please see "Item 1A: Risk Factors" including "– We are dependent on our intellectual property, and we may face intellectual property infringement claims that could be time-consuming and costly to defend and could result in the loss of significant rights." and "– We rely substantially upon trade secret laws and contractual restrictions to protect our proprietary rights, and, if these rights are not sufficiently protected, our ability to compete and generate revenue could suffer." and "– We may not obtain sufficient patent protection on the technology embodied in the solar cells or solar system components we currently manufacture and market, which could harm our competitive position and increase our expenses."

Public Policy Considerations

Different policy mechanisms have been used by governments to accelerate the adoption of solar power. Examples of customer-focused financial mechanisms include capital cost rebates, performance-based incentives, feed-in tariffs, tax credits and net metering. Capital cost rebates provide funds to customers based on the cost and size of a customer's solar power system. Performance-based incentives provide funding to a customer based on the energy produced by their solar system. Feed-in tariffs pay customers for solar power system generation based on energy produced, at a rate generally guaranteed for a period of time. Tax credits reduce a customer's taxes at the time the taxes are due. In the United States and other countries, net metering has often been used as a supplemental program in conjunction with other policy mechanisms. Under net metering, a customer can generate more energy than used, during which periods the electricity meter will spin backwards. During these periods, the customer "lends" electricity to the grid, retrieving an equal amount of power at a later time. Net metering encourages customers to size their systems to match their electricity consumption over a period of time, such as monthly or annually.

In addition to the mechanisms described above, new market development mechanisms to encourage the use of renewable energy sources continue to emerge. For example, many states in the United States have adopted renewable portfolio standards which mandate that a certain portion of electricity delivered to customers come from eligible renewable energy resources. In certain developing countries, governments are establishing initiatives to expand access to electricity, including initiatives to support off-grid rural electrification using solar power. For more information about risks related to public policies, please see "Item 1A: Risk Factors" including "– Existing regulations and policies and changes to these regulations and policies may present technical, regulatory and economic barriers to the purchase and use of solar power products, which may significantly reduce demand for our products and services."

Environmental Regulations

We use, generate and discharge toxic, volatile or otherwise hazardous chemicals and wastes in our research and development, manufacturing and construction activities. We are subject to a variety of foreign, federal, state and local governmental laws and regulations related to the purchase, storage, use and disposal of hazardous materials.

We believe that we have all environmental permits necessary to conduct our business and expect to obtain all necessary environmental permits for FAB3 and future construction activities. We believe that we have properly handled our hazardous materials and wastes and have appropriately remediated any contamination at any of our premises. We are not aware of any pending or threatened environmental investigation, proceeding or action by

foreign, federal, state or local agencies, or third parties involving our current facilities. Any failure by us to control the use of, or to restrict adequately the discharge of, hazardous substances could subject us to substantial financial liabilities, operational interruptions and adverse publicity, any of which could materially and adversely affect our business, results of operations and financial condition.

Employees

As of January 3, 2010, we had approximately 5,160 employees worldwide, including approximately 550 employees located in the United States, 4,390 employees located in the Philippines and 220 employees located in other countries. Of these employees, approximately 4,100 were engaged in manufacturing, 205 in construction projects, 180 in research and development, 480 in sales and marketing and 195 in general and administrative services. None of our employees are represented by labor unions. Employees located in France, Italy and Spain are covered by collective bargaining agreements. We have never experienced a work stoppage and we believe relations with our employees are good.

Available Information

We make available our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 free of charge on our website at www.sunpowercorp.com, as soon as reasonably practicable after they are electronically filed or furnished to the SEC. Additionally, copies of materials filed by us with the SEC may be accessed at the SEC's Public Reference Room at 100 F Street NE, Washington, D.C. or at the SEC's website at http://www.sec.gov. For information about the SEC's Public Reference Room, the public may contact 1-800-SEC-0330. Copies of material filed by us with the SEC may also be obtained by writing to us at our corporate headquarters, SunPower Corporation, Attention: Investor Relations, 3939 North First Street, San Jose, California 95134, or by calling (408) 240-5500. The contents of our website are not incorporated into, or otherwise to be regarded as a part of, this Annual Report on Form 10-K.

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ITEM 1A: RISK FACTORS

Our operations and financial results are subject to various risks and uncertainties, including risks related to our supply chain, sales channels, liquidity, operations, intellectual property, and our debt and equity securities. Although we believe that we have identified and discussed below the key risk factors affecting our business, there may be additional risks and uncertainties that are not presently known or that are not currently believed to be significant that may also adversely affect our business, financial condition, results of operations, cash flows, and trading price of our class A and class B common stock as well as our 4.75% senior convertible debentures, 1.25% senior convertible debentures and 0.75% senior convertible debentures.

Risks Related to Our Internal Control Over Financial Reporting and the Restatement of Our Previously Issued Financial Statements

We have identified material weaknesses in our internal control over financial reporting that resulted in restatements of our consolidated financial statements included in this Annual Report on Form 10-K. These material weaknesses could continue to adversely affect our ability to report our results of operations and financial condition accurately and in a timely manner.

Our management is responsible for maintaining internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with GAAP. Our management assessed the effectiveness of our internal control over financial reporting as of January 3, 2010, and identified material weaknesses related to our Philippines operations. As a result of these material weaknesses, our management concluded that our internal control over financial reporting and our disclosure controls and procedures were not effective as of January 3, 2010. See Part II — “Item 9A: Controls and Procedures.”

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim consolidated financial statements will not be prevented or detected on a timely basis. Our efforts have been and will continue to be time-consuming and expensive. The effectiveness of any controls and procedures is subject to certain limitations, and, as a result, there can be no assurance that our controls and procedures will detect all errors or fraud. A control, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system will be attained. We also cannot assure you that other material weaknesses will not arise as a result of our past failure to maintain adequate internal controls and procedures or that circumvention of those controls and procedures will not occur. Additionally, even our improved controls and procedures may not be adequate to prevent or identify errors or irregularities or ensure that our financial statements are prepared in accordance with generally accepted accounting principles.

The investigations by the Audit Committee of our Board of Directors into some of our historical accounting practices and the determination of various accounting adjustments, which resulted in the restatement of our previously issued consolidated financial statements, have been time-consuming and expensive, and may continue to have an adverse effect on our financial condition, results of operations and cash flows.

Commencing November 2009, our Audit Committee devoted substantial internal and external resources to the investigation of certain unsubstantiated accounting entries in our Philippines operations. Over substantially the same period, we have devoted substantial additional resources to preparing the restated financial statements and information included in this Annual Report on Form 10-K. As a result of these efforts, we have incurred approximately $3.6 million in fees and expenses during the fourth quarter of fiscal 2009, primarily for additional accounting, tax, legal and related consulting costs, and we anticipate incurring additional charges in excess of $5 million during the first

quarter of fiscal 2010. These costs, as well as the substantial management time devoted to address these issues, have adversely affected and may continue to adversely affect our financial condition, results of operations and cash flows.

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We and certain of our current and former officers and directors have been named as parties to various lawsuits relating to our Philippines accounting issues, and may be named in further litigation, including with respect to the restatement of our consolidated financial statements, all of which could require significant management time and attention, result in significant legal expenses or damages, and cause our business, financial condition, results of operations and cash flows to suffer.

Three securities class action lawsuits were filed against our Company and certain of our current and former officers in the United States District Court for the Northern District of California on behalf of a class consisting of those who acquired our securities from April 17, 2008, through November 16, 2009. One such lawsuit also includes our independent registered public accounting firm, PricewaterhouseCoopers LLP, as a defendant. The actions arise from our announcement on November 16, 2009, that our Audit Committee commenced an internal investigation regarding certain unsubstantiated accounting entries. The complaints allege that the defendants made material misstatements and omissions concerning our financial results for 2008 and 2009, seek an unspecified amount of damages, and allege violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. These cases were consolidated under Case No. CV-09-5473 and the lead plaintiff and lead counsel were appointed on March 5, 2010. In addition, derivative actions purporting to be brought on our behalf have also been filed in state and federal courts against several of our current and former officers and directors based on the same events alleged in the securities class action lawsuits described above. The California state derivative complaints assert state-law claims for breach of fiduciary duty, abuse of control, unjust enrichment, gross mismanagement, and waste of corporate assets. The federal derivative complaints assert state-law claims for breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The complaints seek an unspecified amount of damages.

We cannot predict the outcome of these lawsuits. The matters which led to our Audit Committee’s investigation and the restatement of our consolidated financial statements have exposed us to greater risks associated with litigation, regulatory proceedings and government enforcement actions. We and our current and former officers and directors may, in the future, be subject to additional private and governmental actions relating to such matters. Subject to certain limitations, we are obligated to indemnify our current and former officers and directors in connection with such lawsuits and governmental investigations and any related litigation or settlements amounts. We cannot predict the outcome of these investigations or lawsuits. Regardless of the outcome, these lawsuits, and any other litigation that may be brought against us or our current or former officers and directors, could be time-consuming, result in significant expense and divert the attention and resources of our management and other key employees, which could have a material adverse effect on our business, financial condition, results of operations and cash flows. An unfavorable outcome in any of these matters could exceed coverage provided under potentially applicable insurance policies, which is limited. Any such unfavorable outcome could have a material adverse effect on our business, financial condition, results of operations and cash flows. Further, we could be required to pay damages or additional penalties or have other remedies imposed against us, or our current or former directors or officers, which could harm our reputation, business, financial condition, results of operations or cash flows. In addition, our Company is largely self insured so that expenses, settlements or damages in excess of $5 million in these actions will not be recoverable under the primary coverage insurance policies. Moreover, such policies are subject to several terms, conditions and exclusions. See also “Risks Related to Our Liquidity – Because we self-insure for certain indemnities we have made to our officers and directors, potential claims could materially and negatively impact our financial condition and results of operations.”

Risks Related to Our Supply Chain

We will continue to be dependent on a limited number of third-party suppliers for certain raw materials and components for our products, which could prevent us from delivering our products to our customers within required timeframes, which in turn could result in sales and installation delays, cancellations, penalty payments and loss of market share.

We rely on a limited number of third-party suppliers, including our joint ventures, for certain raw materials and components for our solar cells and power systems such as polysilicon, inverters and third-party solar panels. If we fail to develop or maintain our relationships with our suppliers, we may be unable to manufacture our products or our products may be available only at a higher cost or after a long delay. Such delays could prevent us from delivering our products to our customers within required timeframes and cause order cancellations and loss of market share. To the extent the processes that our suppliers use to manufacture components are proprietary, we may be unable to obtain comparable components from alternative suppliers. In addition, the current economic environment and credit markets could limit our suppliers' ability to raise capital if required to expand their production or satisfy their operating capital requirements. As a result, they could be unable to supply necessary raw materials, inventory and capital equipment to us which we would require to support our planned sales operations which would in turn negatively impact our sales volumes and cash flows. The failure of a supplier to supply raw materials or components in a timely manner, or to supply raw materials or components that meet our quality, quantity and cost requirements, could impair our ability to manufacture our products or increase their costs. If we cannot obtain substitute materials or components on a timely basis or on acceptable terms, we could be prevented from delivering our products to our customers within required timeframes, which could result in sales and installation delays, cancellations, penalty payments or loss of market share, any of which could have a material adverse effect on our business and results of operations.

Limited competition among suppliers has required us in some instances to enter into long-term, firm commitment supply agreements that could result in excess or insufficient inventory and place us at a competitive disadvantage.

Due to the industry-wide shortage of polysilicon experienced in previous years, we have purchased polysilicon that we resell to third-party ingot and wafer manufacturers who deliver wafers to us that we then use in the manufacturing of our solar cells. Without sufficient polysilicon, some of those ingot and wafer manufacturers would not be able to produce the wafers on which we rely. To match our estimated customer demand forecasts and growth strategy for the next several years, we have entered into multiple long-term supply agreements, including agreements with our joint ventures, Woongjin Energy and First Philec Solar. Some agreements provide for fixed or inflation-adjusted pricing, substantial prepayment obligations, and firm purchase commitments that require us to pay for the supply whether or not we accept delivery. If such agreements require us to purchase more polysilicon, ingots or wafers than required to meet our actual customer demand over time, the resulting excess inventory could materially and negatively impact our results of operations. In addition, if the prices under our long-term supply agreements result in our paying more for such supplies than the current market prices available to our competitors, we may also be placed at a competitive disadvantage, and our profitability could decline. However, if our agreements provide insufficient inventory to meet customer demand, or if our suppliers are unable or unwilling to provide us with the contracted quantities, we may purchase additional supply at available market prices which could be greater than expected and could materially and negatively impact our results of operations. Such market prices could also be greater than prices paid by our competitors, placing us at a competitive disadvantage and leading to a decline in our profitability. Further, we face significant specific counterparty risk under long-term supply agreements when dealing with suppliers without a long, stable production and financial history. In the event any such supplier experiences financial difficulties, it may be difficult or impossible, or may require substantial time and expense, for us to recover any or all of our prepayments. Any of the foregoing could materially harm our financial condition and results of operations.

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If third-party manufacturers become unable or unwilling to sell their solar cells and panels to us as a direct competitor in some markets, our business and results of operations may be materially negatively affected.

We plan to purchase a portion of our total product mix from third-party manufacturers of solar cells and panels. Such products increase our inventory available for sale to Systems Segment customers in some markets. However, such manufacturers may be our direct competitors. If they are unable or unwilling to sell to us, we may not have sufficient products available to sell to Systems Segment customers and satisfy our sales commitments, thereby materially and negatively affecting our business and results of operations.

Risks Related to Our Sales Channels

The increase in the global supply of solar cells and panels, and increasing competition, may cause substantial downward pressure on the prices of such products, resulting in lower revenues and earnings.

Global solar panel production materially increased in 2009, and is expected to continue to increase. Many competitors or potential competitors, particularly in China, continue to expand their production creating a potential oversupply of solar panels and cells in key markets. In 2010, we expect our cost structure to remain higher than Chinese module makers or thin film module markers. Increases in solar panel production and industry competition have resulted, and will continue to result, in substantial downward pressure on the price of solar cells and panels, including SunPower products. Such price reductions could continue to have a negative impact on our revenue and earnings, and materially adversely affect our business and financial condition.

Our operating results will be subject to fluctuations and are inherently unpredictable.

We do not know if our revenue will grow, or if it will grow sufficiently to outpace our expenses, which we expect to increase as we expand our manufacturing capacity. For example, in the first fiscal quarter of 2009 we experienced a net loss. We may not be profitable on a quarterly basis. Our quarterly revenue and operating results will be difficult to predict and have in the past fluctuated from quarter to quarter. In particular, revenue in our Systems Segment is difficult to forecast and is susceptible to large fluctuations. The amount, timing and mix of sales in our Systems Segment, often for a single medium or large-scale project, may cause large fluctuations in our revenue and other financial results as, at any given time, our Systems Segment is dependent on large scale projects and often a single project can account for a material portion of our total revenue in a given quarter. Further, our revenue mix of high margin materials sales versus lower margin projects in the Systems Segment can fluctuate dramatically from quarter to quarter, which may adversely affect our revenue and financial results in any given period. Any decrease in revenue from these large systems customers, whether due to a loss of projects or an inability to collect, could have a significant negative impact on our business. Our agreements with these customers may be cancelled if we fail to meet certain product specifications or materially breach the agreement. In the event of bankruptcy, our customers may seek to renegotiate the terms of current agreements or renewals. In addition, the failure by any significant customer to pay for orders, whether due to liquidity issues or otherwise, could materially and adversely affect our results of operations. Finally, our ability to meet project completion schedules for an individual project and the corresponding revenue impact under the percentage-of-completion method of recognizing revenue may similarly cause large fluctuations in our revenue and other financial results. Any of the foregoing may cause us to miss any current and future revenue or earnings guidance announced by us.

We base our planned operating expenses in part on our expectations of future revenue and a significant portion of our expenses is fixed in the short term. If revenue for a particular quarter is lower than we expect, we likely will be unable to proportionately reduce our operating expenses for that quarter, which would harm our operating results for that quarter. This may cause us to miss any revenue or earnings guidance announced by us.

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The execution of our growth strategy is dependent upon the continued availability of third-party financing arrangements for our customers, and is affected by general economic conditions.

The general economy and limited availability of credit and liquidity could materially and adversely affect our business and results of operations. Many purchasers of our systems projects have entered into third-party arrangements to finance their systems over an extended period of time while many end-customers have chosen to purchase solar electricity under a power purchase agreement ("PPA") with a financing company that purchases the system from us or our authorized dealers. In addition, under our power purchase business model, we often execute PPAs directly with the end-user customer purchasing solar electricity, with the expectation that we will later assign the PPA to a financier. Under such arrangements, the financier separately contracts with us to build and acquire the solar system, and then sells the electricity to the end-user customer under the assigned PPA. When executing PPAs with the end-user customers, we seek to mitigate the risk that a financier will not be available for the project by allowing termination of the PPA in such event without penalty. However, we may not always be successful in negotiating for penalty-free termination rights for failure to secure financing, and certain end-user customers have required substantial financial penalties in exchange for such rights. These structured finance arrangements are complex and may not be feasible in many situations.

Due to the general reduction in available credit to would-be borrowers and the poor state of economies worldwide, customers may be unable or unwilling to finance the cost of our products, or the parties that have historically provided this financing may cease to do so, or only do so on terms that are substantially less favorable for us or our customers, any of which could materially and adversely affect our revenue and growth in all segments of our business. Many customers, especially in the United States, choose to purchase solar electricity under a PPA with a financing company that buys the system from us. If economic recovery is slow in the United States or elsewhere, we may experience decreases in the demand for our solar power products, which may harm our operating results. We may in some cases seek to pursue partnership arrangements with financing entities to assist residential and other customers to obtain financing for the purchase or lease of our systems, which would expose us to credit or other risks. In addition, a rise in interest rates would likely increase our customers' cost of financing our products and could reduce their profits and expected returns on investment in our products. Similarly, the general reduction in available credit to would-be borrowers, the poor state of economies worldwide, and the condition of housing markets worldwide, could delay or reduce our sales of products to new homebuilders and authorized resellers. Collecting payment from customers facing liquidity challenges may also be difficult.

The reduction, modification or elimination of government and economic incentives could cause our revenue to decline and harm our financial results.

The market for on-grid applications, where solar power is used to supplement a customer's electricity purchased from the utility network or sold to a utility under tariff, depends in large part on the availability and size of government mandates and economic incentives because, at present, the cost of solar power exceeds retail electric rates in many locations. Such incentives vary by geographic market. Various government bodies in many countries, most notably Spain, the United States, Germany, Italy, South Korea, Canada, Japan, Portugal, Greece, France and Australia, have provided incentives in the form of feed-in tariffs, rebates, tax credits, renewable portfolio standards, and other incentives and mandates to end-users, distributors, system integrators and manufacturers of solar power products to promote the use of solar energy in on-grid applications and to reduce dependency on other forms of energy. Some of these government mandates and economic incentives are scheduled to be reduced or to expire, or could be eliminated altogether, including the feed-in tariffs in Germany and Italy. In February 2010 we agreed to acquire SunRay Malta Holdings Limited ("SunRay"), a European solar power plant developer. Upon the acquisition of SunRay our project development business in Europe, and particularly Italy in the near term, would be expanded significantly, which would in turn increase our exposure to regulatory changes in these jurisdictions. Because our sales are into the on-grid market, the reduction, modification or elimination of government mandates and economic incentives in one or more of

our customer markets would materially and adversely affect the growth of such markets or result in increased price competition, either of which could cause our revenue to decline and harm our financial results.

Existing regulations and policies and changes to these regulations and policies may present technical, regulatory and economic barriers to the purchase and use of solar power products, which may significantly reduce demand for our products and services.

The market for electricity generation products is heavily influenced by federal, state and local government regulations and policies concerning the electric utility industry in the United States and abroad, as well as policies promulgated by electric utilities. These regulations and policies often relate to electricity pricing and technical interconnection of customer-owned electricity generation, and could deter further investment in the research and development of alternative energy sources as well as customer purchases of solar power technology, which could result in a significant reduction in the potential demand for our solar power products. We anticipate that our solar power products and their installation will continue to be subject to oversight and regulation in accordance with federal, state and local regulations relating to construction, safety, environmental protection, utility interconnection and metering, and related matters. It is difficult to track the requirements of individual states and design equipment to comply with the varying standards. Any new regulations or policies pertaining to our solar power products may result in significant additional expenses to us, our resellers and resellers' customers, which could cause a significant reduction in demand for our solar power products.

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We may incur unexpected warranty and product liability claims that could materially and adversely affect our financial condition and results of operations.

In our Components Segment, our current standard product warranty for our solar panels includes a 10-year warranty period for defects in materials and workmanship and a 25-year warranty period for declines in power performance as well as a one-year warranty on the functionality of our solar cells. We believe our warranty periods are consistent with industry practice. We perform accelerated lifecycle testing that expose our solar panels to extreme stress and climate conditions in both environmental simulation chambers and in actual field deployments in order to highlight potential failures that would occur over the 25-year warranty period. Due to the long warranty period, we bear the risk of extensive warranty claims long after we have shipped product and recognized revenue. Although we conduct accelerated testing of our solar panels and have several years of experience with our all-back-contact solar cell architecture, our solar panels have not and cannot be tested in an environment that exactly simulates the 25-year warranty period and it is difficult to test for all conditions that may occur in the field. We have sold solar cells since late 2004 and have therefore not tested the full warranty cycle.

In our Systems Segment, our current standard warranty for our solar power systems differs by geography and end-customer application and usually includes a 2, 5 or 10-year comprehensive parts and workmanship warranty, after which the customer may typically extend the period covered by its warranty for an additional fee. Due to the long warranty period, we bear the risk of extensive warranty claims long after we have completed a project and recognized revenues. Warranty and product liability claims may also result from defects or quality issues in certain third party technology and components that our business incorporates into its solar power systems, particularly solar cells and panels, over which we have little or no control. While we generally pass through manufacturer warranties we receive from our suppliers to our customers, we are directly responsible for repairing or replacing any defective parts during our warranty period, often including those covered by manufacturers' warranties. If the manufacturer disputes or otherwise fails to honor its warranty obligations, we may be required to incur substantial costs before we are compensated, if at all, by the manufacturer. Furthermore, our warranties may exceed the period of any warranties from our suppliers covering components, such as third party inverters, included in our systems. In addition, manufacturer warranties may not fully compensate us for losses associated with third-party claims caused by defects or quality issues in their products. For example, most manufacture warranties exclude many losses that may result from a system component's failure or defect, such as the cost of de-installation, re-installation, shipping, lost electricity, lost renewable energy credits or other solar incentives, personal injury, property damage, and other losses. In certain cases our direct warranty coverage provided by SunPower to our customers, and therefore our financial exposure, may exceed our recourse available against cell, panel or other manufacturers for defects in their products. In addition, in the event we seek recourse through warranties, we will also be dependent on the creditworthiness and continued existence of the suppliers to our business.

For example, in late 2009, we discovered a potentially systemic defect in a particular third party supplier's solar panels. Following inspection of all SunPower-installed systems which utilize such panels, we took certain precautionary measures, including partially shutting down a small number of systems. Consistent with industry standards, the supplier's current warranty coverage in most cases does not include a variety of costs and potential claims associated with certain repair or replacement of the supplier's solar panels. While we are working cooperatively with the supplier to formulate a remediation plan that may provide certain reimbursement from the supplier, no assurance can be made that such a plan will be agreed. As a result, we may in the future incur significant unreimbursable expenses in connection with the repair or replacement of these panels, or related customer claims, which could have a material adverse effect on our business and results of operations.

Any increase in the defect rate of SunPower or third party products would cause us to increase the amount of warranty reserves and have a corresponding negative impact on our results of operations. Further, potential future product failures could cause us to incur substantial expense to repair or replace defective products, and we have agreed to

indemnify our customers and our distributors in some circumstances against liability from defects in our solar cells. A successful indemnification claim against us could require us to make significant damage payments. Repair and replacement costs, as well as successful indemnification claims, could materially and negatively impact our financial condition and results of operations.

Like other retailers, distributors and manufacturers of products that are used by customers, we face an inherent risk of exposure to product liability claims in the event that the use of the solar power products into which solar cells and solar panels are incorporated results in injury. We may be subject to warranty and product liability claims in the event that our solar power systems fail to perform as expected or if a failure of our solar power systems results, or is alleged to result, in bodily injury, property damage or other damages. Since our solar power products are electricity producing devices, it is possible that our systems could result in injury, whether by product malfunctions, defects, improper installation or other causes. In addition, since we only began selling our solar cells and solar panels in late 2004 and the products we are developing incorporate new technologies and use new installation methods, we cannot predict whether or not product liability claims will be brought against us in the future or the effect of any resulting negative publicity on our business. Moreover, we may not have adequate resources in the event of a successful claim against us. We rely on our general liability insurance to cover product liability claims and have not obtained separate product liability insurance. However, a successful warranty or product liability claim against us that is not covered by insurance or is in excess of our available insurance limits could require us to make significant payments of damages. In addition, quality issues can have various other ramifications, including delays in the recognition of revenue, loss of revenue, loss of future sales opportunities, increased costs associated with repairing or replacing products, and a negative impact on our goodwill and reputation, which could also adversely affect our business and operating results.

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If we fail to successfully develop and introduce new and enhanced products and services, we may not be able to compete effectively, and our ability to generate revenues will suffer.

The solar power market is characterized by continually changing technology requiring improved features, such as increased efficiency and higher power output and improved aesthetics. Technologies developed by our direct competitors, including thin film solar panels, concentrating solar cells, solar thermal electric and other solar technologies, may provide power at lower costs than our products. We also face competition in some markets from other power generation sources, including conventional fossil fuels, wind, biomass, and hydro. In addition, other companies could potentially develop a highly reliable renewable energy system that mitigates the intermittent power production drawback of many renewable energy systems. Companies could also offer other value-added improvements from the perspective of utilities and other system owners, in which case such companies could compete with us even if the cost of electricity associated with such new system is higher than that of our systems. Our failure to further refine our technology and develop and introduce new solar power products could cause our products or our manufacturing facilities to become uncompetitive or obsolete, which could reduce our market share and cause our sales to decline. This will require us to continuously develop new solar power products and enhancements for existing solar power products to keep pace with evolving industry standards, competitive pricing and changing customer requirements. As we introduce new or enhanced products or integrate new technology into our products, we will face risks relating to such transitions including, among other things, technical challenges, disruption in customers' ordering patterns, insufficient supplies of new products to meet customers' demand, possible product and technology defects arising from the integration of new technology and a potentially different sales and support environment relating to any new technology. Our failure to manage the transition to newer products or the integration of newer technology into our products could adversely affect our business' operating results and financial condition.

A limited number of customers are expected to continue to comprise a significant portion of our revenues and any decrease in revenue from these customers could have a significant adverse effect on us.

Even though we expect our customer base to increase and our revenue streams to diversify, a substantial portion of our revenues could continue to depend on sales to a limited number of customers and the loss of sales to or inability to collect from these customers would have a significant negative impact on our business. Our agreements with these customers may be cancelled if we fail to meet certain product specifications or materially breach the agreement or in the event of bankruptcy, and our customers may seek to renegotiate the terms of current agreements or renewals. In addition, the failure by any significant customer to pay for orders, whether due to liquidity issues or otherwise, could materially and negatively affect our results of operations.

We often do not have long-term agreements with our customers and accordingly could lose customers without warning, which could cause our operating results to fluctuate.

In our Components Segment, our solar cells and solar panel products are generally not sold pursuant to long-term agreements with customers, but instead are sold on a purchase order basis. In our Systems Segment, we typically contract to perform large projects with no assurance of repeat business from the same customers in the future. Although we believe that cancellations on our purchase orders to date have been insignificant, our customers may cancel or reschedule purchase orders with us on relatively short notice. Cancellations or rescheduling of customer orders could result in the delay or loss of anticipated sales without allowing us sufficient time to reduce, or delay the incurrence of, our corresponding inventory and operating expenses. In addition, changes in forecasts or the timing of orders from these or other customers expose us to the risks of inventory shortages or excess inventory. These circumstances, in addition to the completion and non-repetition of large systems projects, variations in average selling prices, changes in the relative mix of sales of components versus system products, and the fact that our supply agreements are generally long-term in nature and many of our other operating costs are fixed, in turn could cause our operating results to fluctuate and may result in a material adverse effect in our business.

Almost all of our Systems Segment construction contracts are fixed price contracts which may be insufficient to cover unanticipated or dramatic changes in costs over the life of the project.

Almost all of our Systems Segments construction contracts are fixed price contracts. All essential costs are estimated at the time of entering into the construction contract for a particular project, and these are reflected in the overall price that we charge our customers for the project. These cost estimates are preliminary and may or may not be covered by contracts between us or the subcontractors, suppliers and any other parties that may become necessary to complete to the project. Thus, if the cost of materials were to rise dramatically as a result of sudden increased demand, these costs may have to be borne by us.

In addition, we require qualified, licensed subcontractors to install most of our systems. Shortages of such skilled labor could significantly delay a project or otherwise increase our costs. In several instances in the past, we have obtained change orders that reimburse us for additional unexpected costs due to various reasons. Should miscalculations in planning a project or delays in execution occur, there can be no guarantee that we would be successful in obtaining reimbursement and we may not achieve our expected margins or we may be required to record a loss in the relevant fiscal period.

Our Systems Segment could be adversely affected by seasonal trends and construction cycles.

Our Systems Segment is subject to significant industry-specific seasonal fluctuations. Its sales have historically reflected these seasonal trends with the largest percentage of total revenues being realized during the last two calendar quarters. Low seasonal demand normally results in reduced shipments and revenues in the first two calendar quarters. There are various reasons for this seasonality, mostly related to economic incentives and weather patterns. For example, in European countries with feed-in tariffs, the construction of solar power systems may be concentrated during the second half of the calendar year, largely due to the annual reduction of the applicable minimum feed-in tariff and the fact that the coldest winter months are January through March. In the United States, customers will sometimes make purchasing decisions towards the end of the year in order to take advantage of tax credits or for other budgetary reasons. In addition, sales in the new home development market are often tied to construction market demands which tend to follow national trends in construction, including declining sales during cold weather months.

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The competitive environment in which our systems business operates often requires us to undertake customer obligations, which could materially and adversely affect our financial condition and results of operations if our customer obligations are more costly than expected.

We are often required as a condition of financing or at the request of our end customer to undertake certain obligations such as:

- System output performance guarantees;
- System maintenance;
- Penalty payments or customer termination rights if the system we are constructing is not commissioned within specified timeframes or other construction milestones are not achieved;
- Guarantees of certain minimum residual value of the system at specified future dates; and
- System put-rights whereby we could be required to buy-back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met.

Such financing arrangements and customer obligations involve complex accounting analyses and judgments regarding the timing of revenue and expense recognition and in certain situations these factors may require us to defer revenue recognition until projects are completed, which could adversely affect revenue and profits in a particular period.

Risks Related to Our Liquidity

Due to the general economic environment and other factors, we may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations and make adequate capital investments as planned.

We anticipate that our expenses will increase substantially in the foreseeable future. To develop new products, support future growth, achieve operating efficiencies and maintain product quality, we must make significant capital investments in manufacturing technology, facilities and capital equipment, research and development, and product and process technology. We also anticipate increased costs as we expand our manufacturing operations, hire additional personnel, pay more or make advance payments for raw material, especially polysilicon, increase our sales and marketing efforts, invest in joint ventures and acquisitions, and continue our research and development efforts with respect to our products and manufacturing technologies. We expect total capital expenditures in the range of $375 million to $475 million in 2010 as we continue to increase our solar cell and solar panel manufacturing capacity. These expenditures could be greater if we decide to bring capacity on line more rapidly and they could be less, if we enter into new contract manufacture or joint venture arrangements to provide manufacturing capacity. In addition, on February 11, 2010, we entered into a share purchase agreement with SunRay, and the shareholders of SunRay named therein, under which we agreed to purchase all issued share capital of SunRay for approximately $277 million. Also, holders of our debentures may require us to repurchase all or a portion of their 0.75% debentures on August 1, 2010. Any repurchase of the 0.75% debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the 0.75% debentures to be repurchased plus accrued and unpaid interest, an amount presently estimated to be $144.0 million in the aggregate. We may redeem some or all of the 0.75% debentures on or after August 1, 2010 for cash at a redemption price equal to 100% of the principal amount of the 0.75% debentures to be redeemed plus accrued and unpaid interest.

We believe that our current cash and cash equivalents, cash generated from operations and funds available under our facility agreement with the Malaysian government will be sufficient to fund the SunRay acquisition and our committed capital expenditures over the next 12 months. We may, however, seek to raise additional financing during the next 12 months in order to support our growth or to maintain a strong balance sheet with sufficient cash and liquidity. The uncollateralized revolving credit line and uncollateralized letter of credit subfeature of the Wells Fargo credit agreement are scheduled to expire on April 26, 2010, and we anticipate negotiating a new facility. If we are unable to negotiate and enter into a new facility prior to the expiration date of the Wells Fargo credit agreement, any then outstanding borrowings under the uncollateralized revolving credit line must be repaid by April 26, 2010, and all letters of credit issued under the uncollateralized letter of credit subfeature will expire on or before April 26, 2010 unless we provide by such date collateral in the form of cash or cash equivalents in the aggregate amount available to be drawn under letters of credit outstanding at such time. Such amount would be only $49.1 million as of March 4, 2010. See Part II — “Item 7: Management’s Discussion and Analysis of Financial Condition and Results of Operations–Contractual Obligations.”

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If our financial results or operating plans change from our current assumptions, or if the holders of our outstanding 1.25% and 0.75% convertible debentures become entitled, and elect, to convert the debentures into cash or cash and shares of class A common stock, we may not have sufficient resources to support our business plan or pay cash in connection with the redemption of outstanding 1.25% and 0.75% debentures. Also, holders of our debentures may also require us to repurchase their debentures for cash equal to 100% of the principal amount of the debentures to be redeemed plus accrued and unpaid interest in the event that our obligations under other indebtedness in excess of $25 million are accelerated and we fail to discharge such obligations. If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financings; although the current economic environment could also limit our ability to raise capital by issuing new equity or debt securities on acceptable terms, and lenders may be unwilling to lend funds on acceptable terms that would be required to supplement cash flows to support operations. Further, following the spin-off of our shares by Cypress on September 29, 2008, our ability to issue equity for financing purposes is subject to limits as described in "Our agreements with Cypress require us to indemnify Cypress for certain tax liabilities. These indemnification obligations and related contractual restrictions may limit our ability to obtain additional financing, participate in future acquisitions or pursue other business initiatives." We may also seek to sell assets, reduce or delay capital investments, or refinance or restructure our debt. For additional details see Note 14 of Notes to our Consolidated Financial Statements.

There can be no assurance that we will be able to generate sufficient cash flows, find other sources of capital or access capital markets to fund our operations and projects, make adequate capital investments to remain competitive in terms of technology development and cost efficiency. If adequate funds and alternative resources are not available on acceptable terms, our ability to fund our operations, develop and expand our manufacturing operations and distribution network, maintain our research and development efforts or otherwise respond to competitive pressures would be significantly impaired. Our inability to do the foregoing could have a material adverse effect on our business and results of operations.

Our current tax holidays in the Philippines, Switzerland and Malaysia will expire within the next several years.

We currently benefit from income tax holiday incentives in the Philippines in accordance with our subsidiary's registration with the Philippine Economic Zone Authority, which provide that we pay no income tax in the Philippines. Our current income tax holidays were granted as manufacturing lines were placed in services and thereafter expire within the next several years beginning in 2010, and we intend to apply for extensions and renewals upon expiration. However, these tax holidays may or may not be extended and the holiday for two of the sixteen total manufacturing lines will expire at the end of 2010. We believe that as our Philippine tax holidays expire, (a) gross income attributable to activities covered by our Philippine Economic Zone Authority registrations will be taxed at a 5% preferential rate, and (b) our Philippine net income attributable to all other activities will be taxed at the statutory Philippine corporate income tax rate, currently 30%. An increase in our tax liability could materially and negatively affect our financial condition and results of operations.

Our Company has an auxiliary company ruling in Switzerland where it sells its solar power products. The auxiliary company ruling results in a reduced effective Swiss tax rate of approximately 11.5%. The ruling expired in 2009, and our Company is currently in discussions with the Swiss authorities regarding an extension. If the ruling is not renewed, Swiss income would be taxable at the full Swiss tax rate of approximately 32%.

In May 2008, our Company was issued a letter from the Malaysian Industrial Development Authority related to our manufacturing activities in Malaysia authorizing either a 15 year income tax exemption or an income tax exemption equivalent to 100% of qualifying capital expenditures over a period of 10 years. The Malaysian manufacturing facility is currently under construction. We expect to pay no income tax in Malaysia related to manufacturing activities until 2023.

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Our substantial indebtedness and other contractual commitments could adversely affect our business, financial condition and results of operations, as well as our ability to meet any of our payment obligations under the 0.75%, 1.25% and 4.75% debentures and our other debt.

We currently have a significant amount of debt and debt service requirements that could have material consequences on our future operations, including:

- making it more difficult for us to meet our payment and other obligations under the 0.75%, 1.25% and 4.75% debentures and our other outstanding debt;
- resulting in an event of default if we fail to comply with the financial and other restrictive covenants contained in our debt agreements, which event of default could result in all of our debt becoming immediately due and payable;
- reducing the availability of our cash flow to fund working capital, capital expenditures, acquisitions and other general corporate purposes, and limiting our ability to obtain additional financing for these purposes;
- subjecting us to the risk of increased sensitivity to interest rate increases on our indebtedness with variable interest rates, including borrowings under our new credit facility;
- subjecting us to the risk of currency fluctuations and government-fixed foreign exchange rates and the effects of currency hedging activity or inability to hedge currency fluctuation;
- limiting our flexibility in planning for, or reacting to, and increasing our vulnerability to, changes in our business, the industry in which we operate and the general economy; and
- placing us at a competitive disadvantage compared to our competitors that have less debt or are less leveraged.

Any of the above-listed factors could have an adverse effect on our business, financial condition and results of operations and our ability to meet our payment obligations under the 0.75%, 1.25% and 4.75% debentures and our other debt. In addition, we also have significant contractual commitments for the purchase of polysilicon, some of which involve prepayments, and we may enter into additional, similar long-term supply agreements in the future. Further, if the holders of our outstanding 1.25% and 0.75% debentures have been entitled to, and do convert their debentures, the principal amount must be settled in cash and to the extent that the conversion obligation exceeds the principal amount of any debentures converted, we must satisfy the remaining conversion obligation of the 1.25% debentures in shares of our class A common stock, or, in the case of our 0.75% debentures, in shares of our class A common stock or cash. Future conversions could materially and adversely affect our liquidity and our ability to meet our payment obligations under our debt.

Under our credit agreement with Wells Fargo Bank, N.A. (“Wells Fargo”), our term loan with Union Bank, N.A. (“Union Bank”) and various derivative agreements, including our call spread overlay transactions associated with our 4.75% debentures, we were required to make representations about our financial statements at the signing of these agreements and, from time to time, we must repeat such representations when amending or offering compliance certificates to our counterparties. Material misrepresentations under our credit agreement with Wells Fargo and loan agreement with Union Bank with respect to the accuracy of our financial statements trigger events of default and allow each lender to accelerate repayment of outstanding indebtedness or require additional collateral. Material misrepresentations under our derivative transactions allow each counterparty to terminate early outstanding trading positions. In November 2009, we announced an independent investigation by our Audit Committee into unsubstantiated accounting entries and advised investors and third parties not to rely on our financial statements in certain prior annual and quarterly reports filed with the Securities and Exchange Commission. As a result, certain third

parties, including Wells Fargo, Union Bank and counterparties to our various derivative agreements delivered notice of what they identified as prior material misrepresentations about our financial statements and what they perceived as resulting events of defaults under our existing agreements. Any actual events of default under the credit agreement with Wells Fargo would cause a cross-default under our term loan with Union Bank. Similarly, any actual event of default under our term loan with Union Bank would cause a cross-default under our credit agreement with Wells Fargo. Any such defaults and cross-defaults, however, would not affect compliance with our Malaysian subsidiary's facility agreement with the Malaysian government, our commercial project financing agreement with Wells Fargo, or our 0.75%, 1.25% and 4.75% senior convertible debentures, unless either Wells Fargo or Union Bank accelerated more than $25 million of obligations and we failed to discharge such obligations, which could trigger cross-defaults under our convertible debentures.

As of January 3, 2010, any such events of default triggered by our announcement under our credit agreement with Wells Fargo, our term loan with Union Bank and our derivative agreements with various counterparties had been conditionally waived through February 16, 2010, and subsequently extended through March 19, 2010. The waivers granted by Wells Fargo, Union Bank and all counterparties under derivative agreements have since been extended indefinitely.

A change in our effective tax rate can have a significant adverse impact on our business.

A number of factors may adversely impact our future effective tax rates, such as the jurisdictions in which our profits are determined to be earned and taxed; changes in the valuation of our deferred tax assets and liabilities; adjustments to estimated taxes upon finalization of various tax returns; changes in available tax credits; changes in stock-based compensation expense; changes in tax laws or the interpretation of such tax laws (for example, proposals for fundamental U.S. international tax reform, such as the recent proposal by the federal government, if enacted); changes in generally accepted accounting principles; expiration or the inability to renew tax rulings or tax holiday incentives; and the repatriation of non-U.S. earnings for which we have not previously provided for U.S. taxes. In addition, the United States federal government has recently announced proposals for new U.S. tax legislation that, if adopted, could adversely affect our tax rate. A change in our effective tax rate due to any of these factors may adversely impact our future results from operations. See Part II — “Item 7: Management’s Discussion and Analysis of Financial Condition and Results of Operations–Results of Operations–Income Taxes.”

Because we self-insure for certain indemnities we have made to our officers and directors, potential claims could materially and negatively impact our financial condition and results of operations.

Our restated certificate of incorporation, by-laws and indemnification agreements require us to indemnify our officers and directors for certain liabilities that may arise in the course of their service to us. We primarily self-insure with respect to potential indemnifiable claims. Although we have insured our officers and directors against certain potential third-party claims for which we are legally or financially unable to indemnify them, we intend to primarily self-insure with respect to potential third-party claims which give rise to direct liability to such third party or an indemnification duty on our part. If we were required to pay a significant amount on account of these liabilities for which we self-insure, our business, financial condition and results of operations could be materially harmed. See also “Risks Related to Our Internal Control Over Financial Reporting and the Restatement of Our Previously Issued Financial Statements -- We and certain of our current and former officers and directors have been named as parties to various lawsuits relating to our Philippines accounting issues, and may be named in further litigation, including with respect to the restatement of our consolidated financial statements, all of which could require significant management time and attention, result in significant legal expenses or cause our business, financial condition, results of operations and cash flows to suffer.”

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Our credit agreements contain covenant restrictions that may limit our ability to operate our business.

We may be unable to respond to changes in business and economic conditions, engage in transactions that might otherwise be beneficial to us, or obtain additional financing, because our credit agreement with Wells Fargo, term loan with Union Bank, facility agreement with the Government of Malaysia, foreign exchange hedging agreements and equity derivative agreements contain, and any of our other future similar agreements may contain, covenant restrictions that limit our ability to, among other things:

- incur additional debt, assume obligations in connection with letters of credit, or issue guarantees;
- create liens;
- make certain investments or acquisitions;
- enter into transactions with our affiliates;
- sell certain assets;
- redeem capital stock or make other restricted payments;
- declare or pay dividends or make other distributions to stockholders; and
- merge or consolidate with any person.

Our ability to comply with these covenants is dependent on our future performance, which will be subject to many factors, some of which are beyond our control, including prevailing economic conditions. In addition, our failure to comply with these covenants could result in a default under the 0.75%, 1.25% and 4.75% debentures and our other debt, which could permit the holders to accelerate such debt. If any of our debt is accelerated, we may not have sufficient funds available to repay such debt, which could materially and negatively affect our financial condition and results of operation. As of January 3, 2010, any such events of default triggered by our announcement under our credit agreement with Wells Fargo, our term loan with Union Bank and our derivative agreements with various counterparties had been conditionally waived through February 16, 2010, and they have been subsequently extended indefinitely.

Risks Related to Our Operations

We may not be able to increase or sustain our recent growth rate, and we may not be able to manage our future growth effectively.

We may not be able to continue to expand our business or manage future growth. We plan to significantly increase our production capacity between 2010 and 2011, which will require successful execution of:

- expanding our existing manufacturing facilities and developing new manufacturing facilities, which would increase our fixed costs and, if such facilities are underutilized, would negatively impact our results of operations;
- ensuring delivery of adequate polysilicon and ingots;
- developing more efficient wafer-slicing methods;

- enhancing our customer resource management and manufacturing management systems;

- implementing and improving additional and existing administrative, financial and operations systems, procedures and controls, including the need to centralize, update and integrate our global financial internal control;

- hiring additional employees;

- expanding and upgrading our technological capabilities;

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- managing multiple relationships with our customers, suppliers and other third parties;
- maintaining adequate liquidity and financial resources; and
- continuing to increase our revenues from operations.

Our recent expansion has placed, and our planned expansion and any other future expansion will continue to place, a significant strain on our management, personnel, systems and resources. Expanding our manufacturing facilities or developing facilities may be delayed by difficulties such as unavailability of equipment or supplies or equipment malfunction. Ensuring delivery of adequate polysilicon and ingots is subject to many market risks including scarcity, significant price fluctuations and competition. Maintaining adequate liquidity is dependent upon a variety of factors including continued revenues from operations and compliance with our indentures and credit agreements. In addition, following the spin-off of our shares by Cypress on September 29, 2008, our ability to issue equity for financing purposes is restricted by our tax sharing agreement with Cypress. If we are unsuccessful in any of these areas, we may not be able to achieve our growth strategy and increase production capacity as planned during the foreseeable future. If we are unable to manage our growth effectively, we may not be able to take advantage of market opportunities, develop new solar cells and other products, satisfy customer requirements, execute our business plan or respond to competitive pressures.

We have significant international activities and customers, and plan to continue these efforts, which subject us to additional business risks, including logistical complexity and political instability.

In fiscal 2009, 2008 and 2007, a substantial portion of our sales was made to customers outside of the United States, and a substantial portion of our supply agreements are with supply and equipment vendors located outside of the United States. Historically, we have had significant sales in Germany, Italy and Spain. Currently our solar cell production lines are located at our manufacturing facilities in the Philippines, and we are constructing another manufacturing facility in Malaysia. The majority of our solar panel manufacturing functions has historically been conducted by third-party subcontractors in China and Mexico and we entered into an arrangement with a third-party subcontractor in December 2009 for similar services provided in Poland beginning in the first quarter of fiscal 2010. We plan to manufacture up to a quarter of our solar panels in the United States within the next two years, whether produced internally or by third-party subcontractors located in states near attractive solar markets. In addition, on February 11, 2010, we entered into a share purchase agreement to acquire SunRay, a European-based project developer with significant international operations.

Risks we face in conducting business internationally include:

- multiple, conflicting and changing laws and regulations, export and import restrictions, employment laws, environmental protection, regulatory requirements and other government approvals, permits and licenses;
- difficulties and costs in staffing and managing foreign operations as well as cultural differences;
- potentially adverse tax consequences associated with our permanent establishment of operations in more countries;
- relatively uncertain legal systems, including potentially limited protection for intellectual property rights, and laws, changes in the governmental incentives we rely on, regulations and policies which impose additional restrictions on the ability of foreign companies to conduct business in certain countries or otherwise place them at a competitive disadvantage in relation to domestic companies;
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repatriation of non-U.S. earnings should the U.S. government reduce or eliminate the deferral of U.S. taxes on this income as is under consideration;

- inadequate local infrastructure and developing telecommunications infrastructures;
- financial risks, such as longer sales and payment cycles and greater difficulty collecting accounts receivable;
- currency fluctuations and government-fixed foreign exchange rates and the effects of currency hedging activity or inability to hedge currency fluctuations;
- political and economic instability, including wars, acts of terrorism, political unrest, boycotts, curtailments of trade and other business restrictions;
- trade barriers such as export requirements, tariffs, taxes and other restrictions and expenses, which could increase the prices of our products and make us less competitive in some countries; and
- liabilities associated with compliance with laws (for example, the Foreign Corrupt Practices Act).

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For example, U.S. custom officials recently imposed a 2.5% tariff on solar panels manufactured by one of our competitors. Although the solar power industry is challenging the decision, any expansion of the tariff to other products or manufacturers could negatively impact our exports to the United States, and to other countries that adopt similar tariffs or regulations.

If we are unable to successfully manage any such risks, any one or more could materially and negatively affect our business, financial condition and results of operations.

If we experience interruptions in the operation of our solar cell production lines or are unable to add additional production lines, it would likely result in lower revenue and earnings than anticipated.

We currently have 16 solar cell manufacturing lines in production which are located at our manufacturing facilities in the Philippines. If our current or future production lines were to experience any problems or downtime, we would be unable to meet our production targets and our business would suffer. If any equipment were to break down or experience downtime, it could cause our production lines to go down. In addition, we are constructing another manufacturing facility in Malaysia. This expansion has required and will continue to require significant management attention, a significant investment of capital and substantial engineering expenditures and is subject to significant risks including:

- cost overruns, delays, equipment problems and other operating difficulties;
- difficulties expanding our processes to larger production capacity;
- custom-built equipment may take longer and cost more to engineer than planned and may never operate as designed; and
- incorporating first-time equipment designs and technology improvements, which we expect to lower unit capital and operating costs, but this new technology may not be successful.

If we experience any of these or similar difficulties, we may be unable to complete the addition of new production lines on schedule in order to expand our manufacturing facilities and our manufacturing capacity could be substantially constrained. If this were to occur, our per-unit manufacturing costs would increase, we would be unable to increase sales or gross margins as planned and our earnings would likely be materially impaired.

If we do not achieve satisfactory yields or quality in manufacturing our solar cells, our sales could decrease and our relationships with our customers and our reputation may be harmed.

The manufacture of solar cells is a highly complex process. Minor deviations in the manufacturing process can cause substantial decreases in yield and in some cases, cause production to be suspended or yield no output. We have from time to time experienced lower than anticipated manufacturing yields. This often occurs during the production of new products or the installation and start-up of new process technologies or equipment. As we expand our manufacturing capacity and bring additional lines or facilities into production, we may initially experience lower yields as is typical with any new equipment or process. We also expect to experience lower yields as we continue the initial migration of our manufacturing processes to thinner wafers. If we do not achieve planned yields, our product costs could increase, and product availability would decrease resulting in lower revenues than expected.

Additionally, products as complex as ours may contain undetected errors or defects, especially when first introduced. For example, our solar cells and solar panels may contain defects that are not detected until after they are shipped or are installed because we cannot test for all possible scenarios. These defects could cause us to incur significant

re-engineering costs, divert the attention of our engineering personnel from product development efforts and significantly affect our customer relations and business reputation. If we deliver solar cells or solar panels with errors or defects, including cells or panels of third-party manufacturers, or if there is a perception that such solar cells or solar panels contain errors or defects, our credibility and the market acceptance and sales of our products could be harmed. In addition, some of our arrangements with Systems Segment customers include termination or put rights for non-performance. In certain limited cases, we could be required to buy-back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met for periods up to two years.

We obtain certain of our capital equipment used in our manufacturing process from sole suppliers and if this equipment is damaged or otherwise unavailable, our ability to deliver products on time will suffer, which in turn could result in order cancellations and loss of revenue.

Some of the capital equipment used in the manufacture of our solar power products and in our wafer-slicing operations have been developed and made specifically for us, is not readily available from multiple vendors and would be difficult to repair or replace if it were to become damaged or stop working. If any of these suppliers were to experience financial difficulties or go out of business, or if there were any damage to or a breakdown of our manufacturing or wafer-slicing equipment at a time when we are manufacturing commercial quantities of our products, our business would suffer. In addition, a supplier's failure to supply this equipment in a timely manner, with adequate quality and on terms acceptable to us, could delay our capacity expansion of our manufacturing facility and otherwise disrupt our production schedule or increase our costs of production.

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Developing solar power plants may require significant upfront investments prior to our recognizing any revenue, which could adversely affect our business and results of operations.

In February 2010, we agreed to acquire SunRay, a European solar power plant developer with offices in Europe and the Middle East, for approximately $277 million. Upon the acquisition of SunRay, our project development business would be expanded significantly. The development of solar power plants can require long periods of time and substantial initial investments, which may never be recovered if a potential project cannot be completed on commercially reasonable terms or at all. Our efforts in this area may consist of all stages of development, including land acquisition, permitting, financing, construction, operation and the eventual sale of the projects. We will often choose to bear the costs of such efforts prior to our final sale to a customer, if any. This involves significant upfront investments of resources (including, for example, large transmission deposits or other payments, which may be non-refundable), and in some cases the actual costs of constructing a project, in advance of the signing of PPAs and EPC contracts and the receipt of any revenue, much of which is not recognized for several additional months or years following contract signing. Upon consummation of the proposed acquisition of SunRay, we will defer revenue on SunRay construction projects until the projects are financed and sold to independent third parties. Alternatively, we may choose to build, own and operate certain solar power plants for a period of time, after which the project assets may be sold to third parties. In such cases, revenue would be recognized as electricity is sold during the operation phase and revenue from disposition of the project assets would be recognized upon consummation of selling the project assets to independent third parties. Our potential inability to enter into sales contracts with customers after making such upfront investments could adversely affect our business and results of operations.

Project development or construction activities may not be successful, which could increase our costs and impair our ability to recover our investments.

The development and construction of solar power electric generation facilities and other energy infrastructure projects involve numerous risks. We may be required to spend significant sums for preliminary engineering, permitting, legal, and other expenses before we can determine whether a project is feasible, economically attractive or capable of being built. Successful completion of a particular project may be adversely affected by numerous factors, including:

- failures or delays in obtaining desired or necessary land rights, including ownership, leases and/or easements;
- failures or delays in securing necessary permits, licenses or other governmental approvals, or in overcoming objections from members of the public or adjoining land owners;
- uncertainties relating to land costs for projects;
- unforeseen engineering problems;
- access to available transmission for electricity generated by our solar power plants;
- construction delays and contractor performance shortfalls;
- work stoppages or labor disruptions;
- cost over-runs;
- availability of products and components from suppliers;
- adverse weather conditions;

- environmental, archaeological and geological conditions; and
- availability of construction and permanent financing.

If we are unable to complete the development of a solar power plant, or fail to meet one or more agreed target construction milestone dates, we may be subject to liquidated damages and/or penalties under the EPC agreement or other agreements relating to the power plant, and we typically will not be able to recover our investment in the project. We expect to invest a significant amount of capital to develop projects initially owned by us or ultimately owned by third parties. If we are unable to complete the development of a solar power project, we may write-down or write-off some or all of these capitalized investments, which would have an adverse impact on our net income in the period in which the loss is recognized.

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

Historically, we have relied on Jiawei SolarChina Co., Ltd. ("Jiawei"), a third-party subcontractor in China, to assemble a significant portion of our solar cells into solar panels and perform panel testing and to manage packaging, warehousing and shipping of our solar panels. In May 2009, we entered into an arrangement with Jabil Circuit, Inc. ("Jabil") for similar services that are provided in Mexico. In December 2009, we entered into another arrangement with Jabil for similar services provided in Poland beginning in the first quarter of fiscal 2010. Lastly, we plan to manufacture up to a quarter of our solar panels in the United States within the next two years, whether produced internally or by third-party subcontractors located in states near attractive solar markets. As a result of outsourcing a significant portion of this final step in our production, we face several significant risks, including limited control over assembly and testing capacity, delivery schedules, quality assurance, manufacturing yields and production costs. If the operations of Jiawei or Jabil were disrupted or their financial stability impaired, or if they were unable or unwilling to devote capacity to our solar panels in a timely manner, our business could suffer as we might be unable to produce finished solar panels on a timely basis. We also risk customer delays resulting from an inability to move module production to an alternate provider or to complete production internationally, and it may not be possible to obtain sufficient capacity or comparable production costs at another facility in a timely manner. In addition, migrating our design methodology to a new third-party subcontractor or to a captive panel assembly facility could involve increased costs, resources and development time, and utilizing additional third-party subcontractors could expose us to further risk of losing control over our intellectual property and the quality of our solar panels. Any reduction in the supply of solar panels could impair our revenue by significantly delaying our ability to ship products and potentially damage our relationships with new and existing customers, any of which could have a material and adverse effect on our financial condition and results of operation.

Our Systems Segment acts as the general contractor for our customers in connection with the installations of our solar power systems and is subject to risks associated with construction, cost overruns, delays and other contingencies tied to performance bonds and letters of credit, which could have a material adverse effect on our business and results of operations.

Our Systems Segment acts as the general contractor for our customers in connection with the installation of our solar power systems. All essential costs are estimated at the time of entering into the sales contract for a particular project, and these are reflected in the overall price that we charge our customers for the project. These cost estimates are preliminary and may or may not be covered by contracts between us or the other project developers, subcontractors, suppliers and other parties to the project. In addition, we require qualified, licensed subcontractors to install most of our systems. Shortages of such skilled labor could significantly delay a project or otherwise increase our costs. Should miscalculations in planning a project or defective or late execution occur, we may not achieve our expected margins or cover our costs. Also, some systems customers require performance bonds issued by a bonding agency or letters of credit issued by financial institutions. Due to the general performance risk inherent in construction activities, it has become increasingly difficult recently to secure suitable bonding agencies willing to provide performance bonding, and obtaining letters of credit requires adequate collateral because we have not obtained a credit rating. In the event we are unable to obtain bonding or sufficient letters of credit, we will be unable to bid on, or enter into, sales contracts requiring such bonding.

In addition, the contracts with some of our larger systems customers require that we would be obligated to pay substantial penalty payments for each day or other period its solar installation is not completed beyond an agreed target date, up to and including the return of the entire project sale price. This is particularly true in Europe, where long-term, fixed feed-in tariffs available to investors are typically set during a prescribed period of project completion, but the fixed amount declines over time for projects completed in subsequent periods. We face material financial

penalties in the event we fail to meet the completion deadlines, including but not limited a full refund of the contract price paid by the customers. In certain cases we do not control all of the events which could give rise to these penalties, such as reliance on the local utility to timely complete electrical substation construction.

Furthermore, investors often require that the solar power system generate specified levels of electricity in order to maintain their investment returns, allocating substantial risk and financial penalties to us if those levels are not achieved, up to and including the return of the entire project sale price. Also, our customers often require protections in the form of conditional payments, payment retentions or holdbacks, and similar arrangements that condition its future payments on performance. Delays in solar panel or other supply shipments, other construction delays, unexpected performance problems in electricity generation or other events could cause us to fail to meet these performance criteria, resulting in unanticipated and severe revenue and earnings losses and financial penalties. Construction delays are often caused by inclement weather, failure to timely receive necessary approvals and permits, or delays in obtaining necessary solar panels, inverters or other materials. Additionally, we sometimes purchase land in connection with project development and assume the risk of project completion. All such risks could have a material adverse effect on our business and results of operations.

Acquisitions of other companies or investments in joint ventures with other companies could materially and adversely affect our financial condition and results of operations, and dilute our stockholders' equity.

To increase our business and maintain our competitive position, we may acquire other companies or engage in joint ventures in the future. For example, on February 11, 2010, we entered into a share purchase agreement to purchase SunRay, under which we agreed to purchase all issued share capital of SunRay for approximately $277 million. This agreement may be terminated in some circumstances, in which case the acquisition of SunRay would not be completed. If conditions to closing are otherwise satisfied, we have the option to delay the closing of the transaction until no later than March 26, 2010. We have exercised this option, and as a result, we are required to pay interest to shareholders of SunRay on the purchase price payable with respect to their shares, and we have assumed many of the risks of ownership of SunRay pending the closing of the transaction. In particular, we are no longer able to assert certain of the closing conditions in our favor, including, among others, the closing conditions relating to the continuing accuracy of SunRay's representations and warranties and the occurrence of a material adverse effect; if the transaction closes, we will be responsible for any taxes imposed on SunRay during the delay period; and we will not be indemnified for breaches of SunRay's representations and warranties that occur during the delay period.

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Acquisitions and joint ventures involve a number of risks that could harm our business and result in the acquired business or joint venture not performing as expected, including:

- insufficient experience with technologies and markets in which the acquired business is involved, which may be necessary to successfully operate and integrate the business;
- problems integrating the acquired operations, personnel, technologies or products with the existing business and products;
- diversion of management time and attention from the core business to the acquired business or joint venture;
- potential failure to retain key technical, management, sales and other personnel of the acquired business or joint venture;
- difficulties in retaining relationships with suppliers and customers of the acquired business, particularly where such customers or suppliers compete with us;
- potential failure of the due diligence processes to identify significant issues with product quality and development or legal and financial liabilities, among other things;
- potential inability to obtain, or obtain in a timely manner, approvals from governmental authorities, which could delay or prevent such acquisitions;
- potential necessity to re-apply for permits of acquired projects;
- reliance upon joint ventures which we do not control;
- subsequent impairment of the acquired assets, including intangible assets; and
- assumption of liabilities including, but not limited to, lawsuits, tax examinations, warranty issues, liabilities associated with compliance with laws (for example, the Foreign Corrupt Practices Act).

Additionally, we may decide that it is in our best interests to enter into acquisitions or joint ventures that are dilutive to earnings per share or that negatively impact margins as a whole. In an effort to reduce our cost of goods sold, we have and may continue to enter into acquisitions or joint ventures involving suppliers or manufacturing partners, which would expose us to additional supply chain risks. Acquisitions or joint ventures could also require investment of significant financial resources and require us to obtain additional equity financing, which may dilute our stockholders' equity, or require us to incur additional indebtedness. Further, following the spin-off of our shares by Cypress on September 29, 2008, our ability to issue equity, including to acquire companies or assets, is subject to limits as described in "Our agreements with Cypress require us to indemnify Cypress for certain tax liabilities. These indemnification obligations and related contractual restrictions may limit our ability to obtain additional financing, participate in future acquisitions or pursue other business initiatives." To the extent these limits prevent us from pursuing acquisitions or investments that we would otherwise pursue, our growth and strategy could be impaired.

To the extent that we invest in upstream suppliers or downstream channel capabilities, we may experience competition or channel conflict with certain of our existing and potential suppliers and customers. Specifically, existing and potential suppliers and customers may perceive that we are competing directly with them by virtue of such investments and may decide to reduce or eliminate their supply volume to us or order volume from us. In particular, any supply reductions from our polysilicon, ingot or wafer suppliers could materially reduce manufacturing volume.

Our agreements with Cypress require us to indemnify Cypress for certain tax liabilities. These indemnification obligations and related contractual restrictions may limit our ability to obtain additional financing, participate in future acquisitions or pursue other business initiatives.

On October 6, 2005, while a wholly-owned subsidiary of Cypress, we entered into a tax sharing agreement with Cypress providing for each of the party's obligations concerning various tax liabilities. The tax sharing agreement is structured such that Cypress would pay all federal, state, local and foreign taxes that are calculated on a consolidated or combined basis while we were a member of Cypress's consolidated or combined group for federal, state, local and foreign tax purposes. Our portion of tax liabilities or benefits was determined based upon our separate return tax liability as defined under the tax sharing agreement. These tax liabilities or benefits were based on a pro forma calculation as if we were filing a separate income tax return in each jurisdiction, rather than on a combined or consolidated basis, subject to adjustments as set forth in the tax sharing agreement.

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On June 6, 2006, we ceased to be a member of Cypress's consolidated group for federal income tax purposes and certain state income tax purposes. On September 29, 2008, we ceased to be a member of Cypress's combined group for all state income tax purposes. To the extent that we become entitled to utilize our separate tax returns portions of any tax credit or loss carryforwards existing as of such date, we will distribute to Cypress the tax effect, estimated to be 40% for federal and state income tax purposes, of the amount of such tax loss carryforwards so utilized, and the amount of any credit carryforwards so utilized. We will distribute these amounts to Cypress in cash or in our shares, at Cypress's option. As of January 3, 2010, we had approximately $27.6 million of California net operating loss carryforwards, $2.6 million of federal credit carryforwards and $1.4 of California credit carryforwards, meaning that such potential future payments to Cypress, which would be made over a period of several years, would therefore aggregate approximately $2.2 million. These amounts do not reflect potential adjustments for the effect of the restatement of our consolidated financial statements. In fiscal 2009, we paid $16.5 million in cash to Cypress, of which $15.1 million represents the federal component and $1.4 million represents the state component.

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

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

We would also be liable to Cypress for taxes that might arise from the distribution by Cypress of our class B common stock to Cypress shareholders on September 29, 2008 (see Note 1 to Notes to our Consolidated Financial Statements). As a consequence, in connection with Cypress' spin-off of our class B common stock, Cypress and us, on August 12, 2008, entered into an Amendment No. 1 to Tax Sharing Agreement ("Amended Tax Sharing Agreement") to address certain transactions that may affect the tax treatment of the spin-off and certain other matters.

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

In addition, 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 provisions of other applicable law to the spin-off as a result of one or more acquisitions, as described in the agreement. An acquisition for these purposes includes any 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 issuances and dispositions of our stock prior to the spin-off and any acquisition of our stock by Cypress after the spin-off.

Under the Amended Tax Sharing Agreement, we also agreed that, until October 28, 2010, we will not affect a Recapitalization or enter into or facilitate any other transaction resulting in an acquisition, as described in the

agreement, of our stock without first obtaining the written consent of Cypress. As further detailed in the agreement, we are not required to obtain Cypress's consent unless such transactions 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 certain qualifying acquisitions of our stock, as defined in the agreement.

We also 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.

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Our headquarters and manufacturing facilities, as well as the facilities of certain of our key subcontractors, are located in regions that are subject to earthquakes and other natural disasters.

Our headquarters and research and development operations are located in California, our manufacturing facilities are located in the Philippines and Malaysia, and the facilities of our subcontractors for assembly and test of solar panels are located in China and Mexico. Since we do not have redundant facilities, any significant earthquake, tsunami or other natural disaster in these countries could materially disrupt our management operations and/or our production capabilities, and could result in our experiencing a significant delay in delivery, or substantial shortage, of our products and services.

We could be adversely affected by any violations of the U.S. Foreign Corrupt Practices Act ("FCPA") and similar worldwide anti-bribery laws.

The U.S. FCPA and similar anti-bribery laws in other jurisdictions generally prohibit companies and their intermediaries from making improper payments to non-U.S. officials for the purpose of obtaining or retaining business. Our policies mandate compliance with these anti-bribery laws. We operate in many parts of the world that have experienced governmental corruption to some degree and, in certain circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. In addition, due to the level of regulation in our industry, our entry into new jurisdictions through internal growth or acquisitions requires substantial government contact where norms can differ from U.S. standards. We train our key staff concerning FCPA issues, and we also inform many of our partners, subcontractors, agents and others who work for us or on our behalf that they must comply with FCPA requirements. There can be no assurance that our internal controls and procedures will always protect us from the reckless or criminal acts committed by our employees, subcontractors or agents. If we are found to be liable for FCPA violations (either due to our own acts or our inadvertence, or due to the acts or inadvertence of others), we could suffer from criminal or civil penalties or other sanctions which could have a material adverse effect on our business.

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

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

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

We rely heavily on the services of our key executive officers and the loss of services of any principal member of our management team could adversely impact our operations. In addition, we anticipate that we will need to hire a significant number of highly skilled technical, manufacturing, sales, marketing, administrative and accounting personnel. The competition for qualified personnel is intense in our industry. We may not be successful in attracting

and retaining sufficient numbers of qualified personnel to support our anticipated growth. However, we cannot guarantee that any employee will remain employed with us for any definite period of time since all of our employees, including our key executive officers, serve at-will and may terminate their employment at any time for any reason.

Risks Related to Our Intellectual Property

Loss of government programs that partially fund our research and development programs would increase our research and development expenses.

We selectively pursue contract research, product development and market development programs funded by various agencies of the federal and state governments to complement and enhance our own resources. Funding from government contracts is generally recorded as an offset to our research and development expense. These government agencies may not continue their commitment to programs relevant to our development projects. Moreover, we may not be able to compete successfully to obtain funding through these or other programs, and generally government agencies may unilaterally terminate or modify such agreements. A reduction or discontinuance of these programs, or of our participation in these programs, would increase our research and development expenses, which could materially and adversely affect our results of operations and could impair our ability to develop competitive solar power products and services.

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

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

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

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

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

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

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

“SunPower” is our registered trademark in certain countries, including the United States, for use with solar cells and solar panels. We are seeking similar registration of the “SunPower” trademark in other countries but we may not be successful in some of these jurisdictions. We hold registered trademarks for SunPower®, PowerLight®, PowerGuard®, PowerTracker® and SunTile®, in certain countries, including the United States. We have not registered, and may not be able to register, these trademarks in other key countries. In the foreign jurisdictions where we are unable to obtain or have not tried to obtain registrations, others may be able to sell their products using trademarks compromising or incorporating “SunPower,” or our other chosen brands, which could lead to customer confusion. In addition, if there are jurisdictions where another proprietor has already established trademark rights in marks containing “SunPower,” or our other chosen brands, we may face trademark disputes and may have to market our products with other trademarks, which may undermine our marketing efforts. We may encounter trademark disputes with companies using marks which are confusingly similar to the SunPower mark, or our other marks, which if not resolved favorably could cause our branding efforts to suffer. In addition, we may have difficulty in establishing strong brand recognition with consumers if others use similar marks for similar products.

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

We seek to protect our proprietary manufacturing processes, documentation and other written materials primarily under trade secret and copyright laws. We also typically require employees and consultants with access to our proprietary information to execute confidentiality agreements. The steps taken by us to protect our proprietary information may not be adequate to prevent misappropriation of our technology. In addition, our proprietary rights may not be adequately protected because:

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- people may not be deterred from misappropriating our technologies despite the existence of laws or contracts prohibiting it;

- policing unauthorized use of our intellectual property may be difficult, expensive and time-consuming, and we may be unable to determine the extent of any unauthorized use;

- the laws of other countries in which we market our solar cells, such as some countries in the Asia/Pacific region, may offer little or no protection for our proprietary technologies; and

- reports we file in connection with government-sponsored research contracts are generally available to the public and third parties may obtain some aspects of our sensitive confidential information.

Reverse engineering, unauthorized copying or other misappropriation of our proprietary technologies could enable third parties to benefit from our technologies without compensating us for doing so. Any inability to adequately protect our proprietary rights could harm our ability to compete, to generate revenue and to grow our business.

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

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

Our patent applications may not result in issued patents, and even if they result in issued patents, the patents may not have claims of the scope we seek or we may have to refile patent applications due to newly discovered prior art. In addition, any issued patents may be challenged, invalidated or declared unenforceable, or even if we obtain an award of damages for infringement by a third party, such award could prove insufficient to compensate for all damages incurred as a result of such infringement. The term of any issued patents would be 20 years from their filing date and if our applications are pending for a long time period, we may have a correspondingly shorter term for any patent that may issue. Our present and future patents may provide only limited protection for our technology and may not be sufficient to provide competitive advantages to us. For example, competitors could develop similar or more advantageous technologies on their own or design around our patents. Also, patent protection in certain foreign countries may not be available or may be limited in scope and any patents obtained may not be as readily enforceable as in the United States, making it difficult for us to effectively protect our intellectual property from misuse or infringement by other companies in these countries. Our inability to obtain and enforce our intellectual property rights in some countries may harm our business. In addition, given the costs of obtaining patent protection, we may choose not to protect certain innovations that later turn out to be important.

Risks Related to Our Debt and Equity Securities

Conversion of our outstanding 0.75%, 1.25% and 4.75% debentures, future substantial issuances or dispositions of our class A or class B common stock or other securities, could dilute ownership and earnings per share or cause the market price of our stock to decrease.

To the extent we issue class A common stock upon conversion of our outstanding 0.75%, 1.25% and 4.75% debentures, the conversion of some or all of such debentures will dilute the ownership interests of existing stockholders, including holders who had previously converted their debentures. Any sales in the public market of the class A and class B common stock issuable upon such conversion could adversely affect prevailing market prices of our class A and class B common stock. Sales of our class A or class B common stock in the public market or sales of any of our other securities could dilute ownership and earnings per share, and even the perception that such sales could occur and could cause the market prices of our class A and class B common stock to decline. In addition, the existence of our outstanding debentures may encourage short selling of our common stock by market participants who expect that the conversion of the debentures could depress the prices of our class A and class B common stock.

Approximately 4.7 million shares of class A common stock were lent to underwriters of our 1.25% and 0.75% debenture offerings, including approximately 2.9 million shares lent to Lehman Brothers International (Europe) Limited ("LBIE") and approximately 1.8 million shares lent to Credit Suisse International ("CSI"). Such shares were lent to facilitate later hedging arrangements of future purchases for debentures in the after-market. Shares still held by CSI may be freely sold into the market at any time, and such sales could depress our stock price. In addition, any hedging activity facilitated by our debenture underwriters would involve short sales or privately negotiated derivatives transactions. Due to the September 15, 2008 bankruptcy filing of Lehman Brothers Holding Inc. ("Lehman") and commencement of administrative proceedings for LBIE in the U.K., we recorded the shares lent to LBIE as issued and outstanding as of September 15, 2008, for the purpose of computing and reporting basic and diluted earnings per share. If Credit Suisse Securities (USA) LLC or its affiliates, including CSI, were to file bankruptcy or commence similar administrative, liquidating, restructuring or other proceedings, we may have to consider approximately 1.8 million shares lent to CSI as issued and outstanding for purposes of calculating earnings per share which would further dilute our earnings per share. These or other similar transactions could further negatively affect our stock price.

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The price of our class A common stock, and therefore of our outstanding 0.75%, 1.25% and 4.75% debentures, as well as our class B common stock may fluctuate significantly.

Our class A and class B common stock have experienced extreme price and volume fluctuations. The trading price of our class A and class B common stock could be subject to further wide fluctuations due to the factors discussed in this risk factors section. In addition, the stock market in general, and the Nasdaq Global Select Market and the securities of technology companies and solar companies in particular, have experienced severe price and volume fluctuations. These trading prices and valuations, including our own market valuation and those of companies in our industry generally, may not be sustainable. These broad market and industry factors may decrease the market price of our class A and class B common stock, regardless of our actual operating performance. Because the 0.75%, 1.25% and 4.75% debentures are convertible into our class A common stock, volatility or depressed prices of our class A common stock could have a similar effect on the trading price of these debentures.

Difference in trading history, liquidity, voting rights and other factors may continue to result in different market values for shares of our class A and our class B common stock.

The class A and class B common stock continue to maintain different trading histories, liquidity, and voting rights. Our class B common stock has consistently maintained lower trading prices and liquidity compared to the class A common stock following our spin-off from Cypress on September 28, 2008. This may be caused by the lack of a long trading history and lower trading volume of the class B common stock, compared to the class A common stock, as well as other factors. In addition, the class B common stock is entitled to eight votes per share and the class A common stock is entitled to one vote per share. Additionally, our restated certificate of incorporation imposed certain limitations on the rights of holders of class B common stock to vote the full number of their shares. The difference in the voting rights of our class A and class B common stock could reduce the value of our class A common stock to the extent that any investor or potential future purchaser of our common stock ascribes value to the right of our class B common stock to eight votes per share. These and other factors could lead to ongoing differences in market values between our class A and our class B common stock.

Delaware law and our certificate of incorporation and by-laws contain anti-takeover provisions, our outstanding 0.75%, 1.25% and 4.75% debentures provide for a right to convert upon certain events, and our Board of Directors entered into a rights agreement and declared a rights dividend, any of which could delay or discourage takeover attempts that stockholders may consider favorable.

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

- the right of the Board of Directors to elect a director to fill a vacancy created by the expansion of the Board of Directors;

- the prohibition of cumulative voting in the election of directors, which would otherwise allow less than a majority of stockholders to elect director candidates;

- the requirement for advance notice for nominations for election to the Board of Directors or for proposing matters that can be acted upon at a stockholders' meeting;

- the ability of the Board of Directors to issue, without stockholder approval, up to approximately 10.0 million shares of preferred stock with terms set by the Board of Directors, which rights could be senior to those of common stock;

-

our Board of Directors is divided into three classes of directors, with the classes to be as nearly equal in number as possible;

- no action can be taken by stockholders except at an annual or special meeting of the stockholders called in accordance with our bylaws, and stockholders may not act by written consent;

- stockholders may not call special meetings of the stockholders;

- limitations on the voting rights of our stockholders with more than 15% of our class B common stock 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; and

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- our Board of Directors is able to alter our by-laws without obtaining stockholder approval.

Certain provisions of our outstanding debentures could make it more difficult or more expensive for a third party to acquire us. Upon the occurrence of certain transactions constituting a fundamental change, holders of our outstanding 1.25% and 0.75% debentures will have the right, at their option, to require us to repurchase, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest on the debentures, all of their debentures or any portion of the principal amount of such debentures in integral multiples of $1,000. We may also be required to issue additional shares of our class A common stock upon conversion of such debentures in the event of certain fundamental changes. In addition, on August 12, 2008, we entered into a Rights Agreement with Computershare Trust Company, N.A. and our Board of Directors declared an accompanying rights dividend. The Rights Agreement became effective upon completion of Cypress' spin-off of our shares of class B common stock to the holders of Cypress common stock. The Rights Agreement contains specific features designed to address the potential for an acquirer or significant investor to take advantage of our capital structure and unfairly discriminate between classes of our common stock. Specifically, the Rights Agreement 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. Our Board of Directors determined that the rights dividend became payable to the holders of record of our common stock as of the close of business on September 29, 2008. The rights dividend and Rights Agreement, commonly referred to as a "poison pill," could delay or discourage takeover attempts that stockholders may consider favorable.

ITEM 1B: UNRESOLVED STAFF COMMENTS

None.

ITEM 2: PROPERTIES

Our corporate headquarters is located in San Jose, California, where we occupy approximately 60,000 square feet under a lease from Cypress that expires in April 2011. In Richmond, California, we occupy approximately 207,000 square feet for office, light industrial and research and development use under a lease from an unaffiliated third party that expires in December 2018. In addition to these facilities, we also have our European headquarters located in Geneva, Switzerland where we occupy approximately 4,000 square feet under a lease that expires in September 2012 as well as sales and support offices in Southern California, New Jersey, Oregon, Australia, Canada, France, Germany, Italy, Spain, and South Korea, all of which are leased from unaffiliated third parties.

We leased from Cypress an approximately 215,000 square foot building in the Philippines from fiscal 2003 through April 2008, which serves as FAB1 with four solar cell manufacturing lines in operation. In May 2008, we purchased FAB1 from Cypress and assumed the lease for the land from an unaffiliated third party for a total purchase price of $9.5 million. The lease for the land expires in May 2048 and is renewable for an additional 25 years. In August 2006, we purchased a 344,000 square foot building in the Philippines which serves as FAB2 with twelve solar cell manufacturing lines in operation. We plan to begin production in 2010 on the first solar cell manufacturing line at FAB3 which is being constructed in Malaysia. FAB3 is being constructed in two phases, with an aggregate annual solar cell manufacturing capacity of more than 500 MWdc and 1 GWdc after completion of the first phase and second phase, respectively. In January 2008, we completed the construction of an approximately 175,000 square foot building in the Philippines which serves as our solar panel assembly facility that currently operates five solar panel assembly lines with a rated annual solar panel manufacturing capacity of 150 MWdc. We may require additional space in the future, which may not be available on commercially reasonable terms or in the location we desire.

Because of the interrelation of our business segments, both the Components Segment and Systems Segment use substantially all of the properties at least in part, and we retain the flexibility to use each of the properties in whole or

in part for each of the segments. Therefore, we do not identify or allocate assets by business segment. For more information on property, plant and equipment by country, see Note 20 of Notes to our Consolidated Financial Statements in Part II — "Item 8: Financial Statements and Supplemental Data."

ITEM 3: LEGAL PROCEEDINGS

Audit Committee Investigation and Related Litigation

In November 2009, the Audit Committee of our Board of Directors initiated an independent investigation, which was recently completed, regarding certain unsubstantiated accounting entries. For information regarding the Audit Committee's investigation and the restatement adjustments, see Part II — "Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations — Restatement of Previously Issued Consolidated Financial Statements" and "Item 8: Financial Statements and Supplementary Data — Note 2 of Notes to Consolidated Financial Statements." For a description of the control deficiencies identified by management as a result of the investigation and our internal reviews, and management's plan to remediate those deficiencies, see Part II — "Item 9A: Controls and Procedures."

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Three securities class action lawsuits were filed against our Company and certain of our current and former officers in the United States District Court for the Northern District of California on behalf of a class consisting of those who acquired our securities from April 17, 2008, through November 16, 2009. The cases are captioned Plichta v. SunPower Corp. et al., Case No. CV-09-5473-RS (N.D. Cal.) (filed November 18, 2009); Cao v. SunPower Corp. et al., Case No. CV-09-5488-RS (N.D. Cal.) (filed November 18, 2009); and Parrish v. SunPower Corp. et al., Case No. C-09-05520-RS (N.D. Cal.) (filed November 20, 2009). The Cao lawsuit also includes our independent registered public accounting firm, PricewaterhouseCoopers LLP, as a defendant. The actions arise from the Audit Committee's investigation announcement on November 16, 2009. The complaints allege that the defendants made material misstatements and omissions concerning our financial results for 2008 and 2009, seek an unspecified amount of damages, and allege violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. The cases were consolidated as Case No. CV-09-5473, and lead plaintiff and lead counsel were appointed, on March 5, 2010. We believe we have meritorious defenses to these allegations and will vigorously defend our self in these matters. We are currently unable to determine if the resolution of these matters will have an adverse effect on our financial position, liquidity or results of operations.

Derivative actions purporting to be brought on our behalf have also been filed in state and federal courts against several of our current and former officers and directors based on the same events alleged in the securities class action lawsuits described above. The California state derivative complaints, captioned Bonna v. Werner et al., Case No. 1-09-CV-158522 (Santa Clara Sup. Ct.) (filed December 1, 2009), Sutherland v. Werner et al., Case No. 1-09-CV-159022 (Santa Clara Sup. Ct.) (filed December 9, 2009), and Barker v. Rodgers et al., Case No. 1-10-CV-161238 (Santa Clara Sup. Ct.) (filed January 11, 2010), assert state-law claims for breach of fiduciary duty, abuse of control, unjust enrichment, gross mismanagement, and waste of corporate assets. The federal derivative complaints, captioned Logan v. Werner et al., Case No. C-09-05731-RS (N.D. Cal.) (filed December 4, 2009) and Clarke v. Werner et al., Case No. CV-09-5925-RS (N.D. Cal.) (filed December 17, 2009), assert state-law claims for breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The complaints seek an unspecified amount of damages. We intend to oppose the derivative plaintiffs' efforts to pursue this litigation on our behalf. We are currently unable to determine if the resolution of these matters will have an adverse effect on our financial position, liquidity or results of operations.

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

ITEM 4: RESERVED

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PART II

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

Our class A and class B common stock is listed on the Nasdaq Global Select Market under the trading symbol "SPWRA" and "SPWRB," respectively. The high and low trading prices of our class A and class B common stock during fiscal 2009 and 2008 are as follows:

	SPWRA		SPWRB*	
	High	Low	High	Low
For the year end January 3, 2010				
Fourth quarter	$33.70	$20.05	$29.19	$17.60
Third quarter	33.45	22.35	28.63	19.90
Second quarter	32.34	22.61	28.97	19.71
First quarter	45.15	20.91	38.16	19.27
For the year end December 28, 2008				
Fourth quarter	$77.25	$19.00	$71.47	$11.94
Third quarter	97.55	61.23	-	-
Second quarter	99.58	72.71	-	-
First quarter	131.29	54.95	-	-

* Our class B common stock started trading publicly on September 30, 2008.

As of March 4, 2010, there were approximately 53 and 1,028 record holders of our class A and class B common stock, respectively. A substantially greater number of holders of our class A and class B common stock are in "street name" or beneficial holders, whose shares are held of record by banks, brokers and other financial institutions.

Dividends

We have never declared or paid any cash dividend on our common stock, and we do not currently intend to pay any cash dividend on our common stock in the foreseeable future. We intend to retain future earnings, if any, to finance the operation and expansion of our business.

Our credit facilities place restrictions on our Company and our subsidiaries' ability to pay cash dividends. Additionally, our 1.25% and 0.75% convertible debentures allow the holders to convert their bonds into our class A common stock if we declare a dividend that on a per share basis exceeds 10% of our class A common stock's market price.

Recent Sales of Unregistered Securities

We conducted no unregistered sales of equity securities during the fourth quarter of fiscal 2009.

Issuer Purchases of Equity Securities

Period	Total Number of Shares Purchased (1) (in thousands)	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly	Maximum Number of Shares That May Yet Be Purchased Under

				Announced Plans or Programs	the Publicly Announced Plans or Programs
October 26, 2009 through November 22, 2009	27	$	26.55	-	-
	27	$	26.55	-	-

(1) The total number of shares purchased includes only shares surrendered to satisfy tax withholding obligations in connection with the vesting of restricted stock issued to employees.

Equity Compensation Plan Information

The following table provides certain information as of January 3, 2010 with respect to our equity compensation plans under which shares of class A common stock are authorized for issuance (in thousands, except dollar figures):

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Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights		Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities relfected in the first column)
Equity compensation plans approved by security holders	1,594		$ 10.25	2,351
Equity compensation shares not approved by security holders	15	(1)	$ 2.00	-
	1,609	(2)	$ 10.17	2,351

(1) Represents one option to purchase shares of class A common stock issued to one SunPower employee on June 17, 2004 with an exercise price of $2.00, vesting over five years.

(2) This table excludes options to purchase an aggregate of approximately 290,000 shares of class A common stock, at a weighted average exercise price of $13.07 per share, that we assumed in connection with the acquisition of PowerLight Corporation (“PowerLight”) (now known as SunPower Corporation, Systems) in January 2007.

ITEM 6: SELECTED CONSOLIDATED FINANCIAL DATA

On November 16, 2009, our Company announced that its Audit Committee commenced an independent investigation into certain accounting and financial reporting matters at our Philippines operations (“SPML”). The Audit Committee retained independent counsel, forensic accountants and other experts to assist it in conducting the investigation.

As a result of the investigation, the Audit Committee concluded that cer