

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re) Chapter 11
QIMONDA RICHMOND, LLC, et al.,) Case No. 09-____ ()
Debtors.) Jointly Administered
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**AFFIDAVIT OF MIRIAM MARTINEZ
IN SUPPORT OF CHAPTER 11 PETITIONS
AND VARIOUS FIRST DAY APPLICATIONS AND MOTIONS**

STATE OF NORTH CAROLINA)
)
COUNTY OF WAKE) ss:

Miriam Martinez being duly sworn, deposes and says:

1. I am the President and Chief Financial Officer of Qimonda North America Corp. (“QNA”), a corporation organized under the laws of Delaware, and Qimonda Richmond, LLC (“QR”), a Delaware limited liability company. QNA and certain of its affiliates and subsidiaries (collectively, the “Debtors”) are the debtors and debtors-in-possession in the above-captioned Chapter 11 cases (collectively, these “Chapter 11 Cases”).¹

2. I submit this affidavit in support of the Debtors’ (a) voluntary petitions for relief under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and (b) “first-day” applications and motions, which are being filed concurrently herewith (collectively, the “First Day Motions”).² The relief sought by the Debtors in the First Day Motions seeks to

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are: Qimonda Richmond, LLC (7867) and Qimonda North America Corp. (4654).

² Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the First Day Motions. The First Day Motions include: (i) Debtors’ Motion for an Order Directing the Joint Administration of their Chapter 11 Cases; (ii) Debtors’ Motion Seeking Entry of a Declaratory Order Enforcing Sections 362 and 525 of the Bankruptcy Code; (iii) Debtors’ Motion for an Order Authorizing the Payment of Prepetition Employee Wages, Benefits, Business Expenses and Related Items; (iv) Debtors’ Motion for Entry of an Order (A) Authorizing Debtors to Continue Prepetition Insurance Coverage and Enter Into New Insurance Policies and (B) Authorizing and Directing Financial Institutions to Honor Related Checks and Electronic Payment Requests Relating Thereto; (v) Motion of Debtors for Entry of an Order (A) Authorizing Debtors to Honor Certain Prepetition Obligations Under Customer Programs and (B) Authorizing and Directing Financial Institutions to Honor All Related Checks and Electronic Payment Requests Relating Thereto; (vi) Motion of the Debtors for Entry of an Order (A) Authorizing, But Not Requiring, the Debtors to Remit and Pay Sales and Use Taxes and Certain Other Government Charges, and (B) Authorizing Banks and Other Financial Institutions to Receive, Process, Honor, and Pay Checks Issued and Electronic Payment Requests Made Relating to the foregoing; (vii) Motion of the Debtors for Entry of Interim and Final Orders Determining Adequate Assurance of Payment for Future Utility Services; (viii) Motion of the Debtors and Debtors In Possession for Entry of Interim and Final Orders Authorizing Debtors to (I) Continue Use of Existing Bank Accounts and Business Forms, (II) Open New Debtor In Possession Accounts and (III) Continue Performing Ordinary Course Intercompany Transactions; (ix) Application of the Debtors for an Order Authorizing the Retention and Employment of Simpson Thacher & Bartlett LLP as Counsel to the Debtors Pursuant to Sections 327(a), 328(a) And 330 of the Bankruptcy Code *Nunc Pro Tunc* to the Petition Date; (x) Debtors’ Application to Employ and Retain Richards, Layton & Finger, P.A. as Co-Counsel to the Debtors *Nunc Pro Tunc* to the Petition Date; (xi) Application of the Debtors for an Order Authorizing the Retention and Employment of Alvarez & Marsal

minimize the adverse effects of the commencement of these Chapter 11 Cases on their businesses.

3. I am authorized by each of the Debtors to submit this affidavit. In my capacity as President and Chief Financial Officer, I am familiar with the day-to-day operations, business and financial affairs of the Debtors. Except as otherwise indicated, all facts set forth in this affidavit are based upon personal knowledge, my review of relevant documents and/or my experience, knowledge and information concerning the Debtors' operations. If called upon to testify, I would testify competently to the facts set forth in this affidavit.

4. Part I of this affidavit provides an overview of the Debtors' business, the circumstances affecting the Debtors and the events leading to the Debtors' Chapter 11 filing. Part II sets forth relevant facts in support of the Debtors' First Day Motions.

Part I
Nature Of Debtors' Business And Statement Of
Circumstances Leading To Debtors' Chapter 11 Filing

A. The Chapter 11 Filings

5. On February 20, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief in this Court under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage their properties as debtors in possession. To enable the Debtors to operate efficiently following the Chapter 11 filings, concurrently with the filing of this affidavit, the Debtors are requesting various types of relief in "first-day" applications and motions filed with this Court.

North America, LLC as Restructuring and Financial Advisor to the Debtors Pursuant to Sections 327(a), 328(a) and 330 Of the Bankruptcy Code *Nunc Pro Tunc* to the Petition Date (xii) Debtors' Application For Entry Of An Order Approving the Retention of Epiq Bankruptcy Solutions, LLC as the Official Claims and Noticing Agent Pursuant to Section 156(C) of the Judicial Code and Rule 2002-1(F) of the Local Bankruptcy Rules.

6. The Debtors are a part of an international memory chip company that designs, develops, manufactures, markets and sells memory products. Qimonda AG (“QAG,” and collectively with all of its subsidiaries, the “Global Company”), a German company with headquarters in Munich, Germany, is the ultimate parent company of the Debtors. Although neither QAG nor any of its affiliates outside the United States is a debtor in these proceedings, or in any proceedings under the United States Bankruptcy Code, the Debtors’ situation is tied to the Global Company’s and thus an understanding of its situation will contribute to an understanding of the Debtors’ situation.

7. QAG is a majority-owned subsidiary of Infineon Technologies AG and its subsidiaries (collectively, “Infineon”), which owns 77.5% of QAG. The remaining 22.5% of the shares of QAG are publicly traded in the form of American Depositary Shares. Qimonda Holding B.V. (“QDutch”), a Dutch company, is a wholly-owned subsidiary of QAG and is the direct parent of QNA. QNA is the North American sales and marketing subsidiary of the Global Company, and is also the parent company of Qimonda Richmond LLC (“QR”). QR, as further described below, performs part of the manufacturing of products sold by the Global Company. QAG also is the direct parent of Qimonda Finance, LLC, a Delaware limited liability company (“QF”) that was created solely for purposes of a financing transaction not involving the Debtors. These Chapter 11 Cases do not involve QF or QNA’s non-U.S. direct and indirect parent companies or affiliates. A corporate organization chart for the Debtors (as defined below) is attached hereto as Exhibit A.

B. Background And Business Operations

8. The Global Company is one of the world’s leading suppliers of semiconductor memory products. The Global Company designs memory technologies and develops, manufactures, markets and sells a large variety of memory products on a module,

component and chip level, specializing in the production of dynamic random access memory (“DRAM”). The Global Company has operations, investments and customers located mainly in Europe, Asia and North America.

9. The Global Company began operations as a part of Siemens AG’s semiconductor group, whose roots in semiconductor research, development and manufacturing date back to 1952, four years after the invention of the transistor. In 1999, Siemens AG contributed substantially all of its semiconductor group to its subsidiary, Infineon. Following the formation of Infineon, the Global Company continued operations as the memory products segment of Infineon.

10. Effective on May 1, 2006, Infineon contributed substantially all of the assets, liabilities, operations and activities, as well as the employees, of its memory products segment to form the Global Company. This initial transfer excluded the memory products operations in Korea and Japan, as well as certain other operations, which were placed in trust for the Global Company pending their eventual contribution and transfer. Subsequently, the transfers were completed. On August 9, 2006, QAG was listed on the New York Stock Exchange with an offering price of \$13.

11. The Company divides its DRAM production into front-end and back-end production lines. The Company front-end facilities are located in Dresden, Germany and Richmond, Virginia, and the back-end facilities are located in Germany, Portugal, China and Malaysia. In the front-end process, electronic circuits are produced on a silicon wafer, which involves several hundred process steps over a period of approximately two months in a clean room environment. The Company’s Richmond, Virginia facility produced DRAM chips from 200 millimeter and 300 millimeter wafers. Because of the very small geometries involved in

wafer processing, highly complex and specialized equipment, materials and techniques are used. At the end of the front-end process the chips are tested on the wafer for functionality. The back-end manufacturing requires the packaging, assembling and testing of the chips.

12. Once chips are complete, they are held in the Global Company's distribution center, located in Singapore. In most cases, the Global Company ships products directly to customers from the distribution center. QNA is responsible for all sales to North American customers of the Global Company; many of those sales do not involve delivery of product in the U.S. but rather delivery from the Asian distribution center to a location as directed by the customer; in such sales, title is transferred electronically to QNA but QNA does not have possession of the goods being sold.

13. The Global Company's customers include the world's largest suppliers of computers and electronic devices. Its principal customers include major computing original equipment manufacturers in the PC and server markets, including HP, Dell, IBM, Sun Microsystems and Sony. It also sells a wide range of products to memory module manufacturers, such as Kingston, and to a number of distributors. More recently and as part of the Global Company's diversification strategy, the Global Company has added customers with a strong focus on the game console market, such as Microsoft, Sony and Nintendo, and the consumer and mobile applications market, such as LG, Spansion and SanDisk.

14. As of the Petition Date, the Debtors employed approximately 879 hourly and salaried workers although in the coming days, the Debtors anticipate further substantial reductions of their workforce. None of the Debtors' employees are covered by collective bargaining agreements with labor unions.

15. The Debtors primarily operate out of four facilities located in Cary, North Carolina, Richmond, Virginia, San Jose, California, and Houston, Texas.

C. The Debtors' Debt Structure

16. The Debtors' capital structure consists primarily of several lease transactions in which QR is the lessee; QNA does not have any debt.

17. Prior to the Petition Date, QR was encumbered by four leasing transactions and certain other security agreements: (i) a master lease agreement between Macquarie Electronics USA, Inc. and QR, dated as of September 28, 2007 (as subsequently amended, the "200mm Richmond Lease"); (ii) a master lease agreement between General Electric Capital Corporation, RBS Asset Finance, Inc. and QR, dated as of December 21, 2007 (as subsequently amended, the "300mm Richmond Lease"), (iii) a lease agreement between EMC Corporation and QR, dated as of December 31, 2007 (as subsequently amended, the "EMC Agreement"); (iv) a lease agreement between Overland Leasing Group LLC and QR, dated as of December 30, 2008 (as subsequently amended, the "Overland Agreement"); (v) a security agreement between Kingston Technology International Ltd. (and together with its affiliates, "Kingston") and QR, dated as of September 19, 2008 (as subsequently amended, the "Kingston Agreement"); and (vi) a security agreement between ABN AMRO Bank N.V. and QR, dated as of January 9, 2009 (the "ABN Agreement").³

18. The 200mm Richmond Lease is a leveraged lease agreement related to and secured by certain equipment used by the Debtors to produce the 200mm wafers. The balance

³ The Debtors had a \$34 million obligation related to an industrial revenue bond letter of credit issued by Citibank, N.A. to support the Richmond, Virginia industrial revenue bond. As of January 2, 2009, the Debtors had discharged their obligations thereunder.

on the lease is approximately \$166.4 million and payments related thereto are approximately \$5.88 million per month.

19. The 300mm Richmond Lease is a master lease agreement related to and secured by certain equipment used by the Debtors to produce the 300mm wafers. The balance on the lease is approximately \$86.0 million and payments related thereto are approximately \$2.14 million per month.

20. The EMC Agreement is a master lease agreement related to and secured by certain computer storage devices in Richmond, Virginia. The balance on the lease is approximately \$2.0 million and payments related thereto are approximately \$134,000 per month.

21. The Overland Agreement is a master lease agreement related to and secured by certain equipment used by the Debtors to produce the 300mm wafers.⁴ The balance on the lease is approximately \$12.5 million and payments related thereto are approximately \$428,700 per month.

22. The Kingston Agreement grants a security interest in certain 300mm equipment of QR as security for QAG's performance under a long term supply agreement between QAG and Kingston. The ABN Agreement grants a security interest in certain 300mm equipment of QR as security related to a QAG agreement.

D. Events Leading To Chapter 11 Filing

23. Towards the end of March 2007, prices for DRAM products fell precipitously, driven by seasonal demand weakness, the effects of an earlier build-up of inventories at original equipment manufacturers ahead of the introduction of the new Windows Vista computer operating system and capacity conversions from NAND to DRAM by some

⁴ The equipment related to the Overland Agreement is not encumbered by the 300mm Richmond Lease.

competitors, following severe price erosion in the NAND (*i.e.*, flash) memory market. During 2007 and through 2008, prices for DRAM fell further due to output growth across the industry driven mostly by capacity increases and technology conversions to more efficient technologies. According to market search firm, DRAMeXchange, average DRAM spot prices declined 85% in calendar year 2007 and 58% in calendar year 2008.

24. The Global Company attempted to combat the falling prices by refocusing on a diversification strategy, altering its product mix away from DRAMs for PC applications, which are less price stable, to DRAMs for infrastructure, graphics, consumer and mobile applications, which generally command higher and more stable prices. The Global Company also implemented various restructuring programs, which included relocating production facilities, the phasing out of its 200mm wafer supply from Infineon's manufacturing facility in Dresden, the consolidation of its research centers in North America and a comprehensive cost reduction program.

25. In December 2007, due to continued efforts to improve cost and efficiency, the Global Company announced plans to consolidate its U.S. research and development facilities in a single development center located in Cary, North Carolina. As a result, the Global Company's development center in Burlington, Vermont, was closed at the end of June 2008.

26. Due to the continued severity and decline in the market and decreased customer demand for end of life products and the 200mm wafers, in October 2008, the Debtors shut down part of its Richmond plant, laying off more than 1,000 workers.

27. On November 7, 2008, QAG was notified by the New York Stock Exchange ("NYSE") that it was not in compliance because the price of its American Depositary

Shares (“ADSs”) had fallen below \$1.00 over a consecutive thirty trading day period. Thereafter, on December 5, 2008, QAG was notified by the NYSE that it was not in compliance with the NYSE’s continued listing standards because its average global market capitalization fell below \$100 million over a consecutive thirty trading day period.

28. Throughout the market decline, the Global Company sought financing as a consequence of further price declines in the DRAM market and the Global Company’s need for continued productivity improvements. In December 2008, QAG announced a €325 million financing package lead by the German Free State of Saxony. The package included a €150 million loan from the German Free State of Saxony, a €100 million loan from a leading financial institution in Portugal and a €75 million loan from Infineon. In addition, QAG would have the opportunity to draw on a €280 million state guarantee by the Federal Republic of Germany and the Free State of Saxony. In return, QAG committed the further development of its R&D and manufacturing sites in Porto, Portugal and Dresden, Germany.

29. Despite intensive and complex negotiations and financial support committed by customers, QAG could not consummate the rescue financing package. On January 23, 2009, QAG filed an application with the local court in Munich, Germany to open insolvency proceedings under the insolvency laws of Germany. Under that proceeding, Dr. Michael Jaffé was named by as the preliminary insolvency administrator.

30. On February 3, 2009, the Debtors determined that, due to the QAG insolvency, which meant QAG was not purchasing output from QR, coupled with a lack of access to cash, the Debtors could no longer fund ongoing operations in Richmond, Virginia. As a consequence, the Debtors unexpectedly were required to ramp down all production in QR by completing wafer testing on existing inventory but not manufacturing any additional units. On

that day, due to the Debtors' inability to secure financing, approximately 500 of the Debtors' employees were laid off with another approximately 500 employees scheduled to leave over the following 30 days. By the end of April 2009, the Debtors intend to reach an idle state with a skeleton crew of 50 to 60 employees.

E. Financing Facilities

31. The Debtors plan to finance their operations going forward through cash flow from operations. As of the Petition Date, the Debtors have approximately \$10.3 million of cash. The Debtors believe that additional cash will be generated by continued sales of the Global Company's memory products by QNA in North America and through QR's completion of up to four additional purchase orders issued by QAG to QR. In the near term, based on additional cost cuts the Debtors are implementing, the Debtors believe they will have sufficient cash.

32. Prior to the Petition Date, the Debtors surveyed various postpetition financing alternatives with both new and existing lenders, engaging in a competitive process designed to result in obtaining the best available terms and conditions. The Debtors have significant unencumbered assets to support such a financing if appropriate terms and conditions can be met.

F. Restructuring Goals

33. Through the Chapter 11 process, the Debtors intend to locate a purchaser expeditiously for substantially all of QR's assets and consummate a transaction. The Debtors believe that QR's Richmond, Virginia operation is a state-of-the-art facility and could be a valuable asset to a strategic purchaser. In addition, the Debtors' other assets, including its customer lists and equipment, are potentially valuable properties that can be sold to a strategic purchaser. QNA may separate from QR and be included in a sale or reorganization of the Global Company.

Part II
Summary Of First Day Applications And Motions

34. An important and, in some cases, critical element in the Debtors' successful reorganization is approval of each of the First Day Motions and Applications submitted concurrently herewith. In furtherance of the objective of successful reorganization, the Debtors request that "first-day" orders of the types mentioned below be entered. Factual information in support of the First Day Motions and Applications is provided below.

A. Joint Administration Motion

35. The Debtors seek the joint administration of these Chapter 11 Cases, two in total, for procedural purposes only. I believe that it would be far more practical and expedient for the administration of these Chapter 11 Cases if the Court authorizes their joint administration. Many of the motions, hearings, and other matters involved in these Chapter 11 Cases will affect both of the Debtors, which are both affiliates of the Global Company. In addition, due to the integrated nature of the Global Company's operations, many parties with an interest in the proceedings of one Debtor will also be interested in the proceedings of the other. Hence, joint administration will reduce costs and facilitate the administrative process by avoiding the need for duplicate notices, applications, and orders. Doing so will not only be more efficient, but will also allow the process to be unencumbered by the procedural problems normally attendant to the administration of separate, albeit related, Chapter 11 cases. Moreover, no prejudice will befall any party by the joint administration of the Debtors' cases as the relief sought herein is solely procedural and is not intended to affect substantive rights.

B. Global Automatic Stay Motion

36. The Debtors seek the entry of an order restating the safeguards automatically afforded to them by sections 362 and 525 of the Bankruptcy Code. The Debtors,

as subsidiaries of the Global Company, routinely transact business with foreign suppliers and customers. These foreign suppliers and customers are not as familiar with the provisions and protections afforded to the Debtors by the Bankruptcy Code as the Debtors' domestic suppliers and customers. As such, the Debtors want to ensure that they are afforded all the protections of the Bankruptcy Code.

C. Applications to Retain Professionals

37. The Debtors have filed applications to retain professionals who will assist the Debtors in the administration of these Chapter 11 Cases. The Debtors seek authority to retain Simpson Thacher & Bartlett LLP ("Simpson Thacher") and Richards, Layton & Finger, P.A. ("RLF") as bankruptcy co-counsel. In addition, the Debtors seek authority to retain Alvarez and Marsal North America, LLC ("A&M") as restructuring and financial advisor and Epiq Bankruptcy Solutions, LLC ("Epiq") as the Court's notice, claims and balloting agent for these Chapter 11 Cases.

38. The Debtors have selected Simpson Thacher and RLF as bankruptcy co-counsel because it is my understanding that both Simpson Thacher and RLF have extensive experience with business reorganizations under Chapter 11 of the Bankruptcy Code. In addition, Simpson Thacher and RLF have been working closely with the Debtors to file these Chapter 11 cases and thus have extensive knowledge of the Debtors' financial affairs, capital structure and of the potential legal issues that may arise in the context of these proceedings. In addition, Simpson Thacher has represented the Debtors in their financing activities on multiple occasions. I believe that Simpson Thacher's and RLF's hourly rates are fair and reflect the experience of the professionals involved, in addition the complexity and time-pressures involved in the prosecution of multiple Chapter 11 cases.

39. The Debtors have selected A&M as restructuring and financial advisor because of A&M's extensive experience with business reorganizations under Chapter 11 of the Bankruptcy Code. Since February 3, A&M professionals have been working closely with the Debtors' management and other professionals to review strategic options, prepare cash flow projections and coordinate the professional services necessary to prepare and prosecute these Chapter 11 Cases. Thus, I believe that A&M possesses the requisite knowledge of the Debtors' business, financial affairs and capital structure assist the Debtors and their other professionals in maximizing the value of the Debtors' estates. I believe that A&M's hourly rates are fair and reflect the experience of the professionals involved, in addition the complexity and time-pressures involved in the prosecution of multiple Chapter 11 cases.

40. It is my understanding that Epiq is a data processing firm with extensive experience in noticing, claims processing, balloting and other administrative tasks in Chapter 11 cases. Given the need for the services described above and Epiq's experience in providing such services, I believe that retaining Epiq will expedite service of notices, streamline claims administration and balloting processes, and permit the Debtors to focus on maximizing value for all parties-in-interest. I believe that Epiq's proposed compensation is fair and reflects the experience of the professionals involved, in addition the complexity and time-pressures involved in the prosecution of multiple Chapter 11 cases.

D. Cash Management Motion

(a) The Debtors' Cash Management System and Bank Accounts

41. In the ordinary course of business, the Debtors maintain an integrated cash management system that provides mechanisms for collection, concentration, management and disbursement of funds used for their operations (the "Cash Management System"). The Cash Management System consists of numerous bank accounts (collectively, the "Bank Accounts")

held in various banks (collectively, the “Cash Management Banks”). The Cash Management System is used to receive incoming payments and make disbursements in the ordinary course of the Debtors’ business.

42. QNA and QR each maintain a concentration account at Citibank for general corporate purposes (for QNA, the “QNA Citibank Concentration Account” and for QR, the “QR Citibank Concentration Account,” and collectively, the “Citibank Concentration Accounts”). The Debtors also maintain three Citibank zero-balance accounts (collectively, the “ZBAs”) that are funded by each Debtor’s respective Citibank Concentration Account. The ZBAs exist solely to fund payroll in the case of QNA⁵ and to settle each Debtor’s accounts payable. QNA also maintains an account at Wachovia (the “QNA Wachovia Account”) that is funded from time to time by the Citibank Concentration Accounts. Both QNA and QR each maintain two ABN/AMRO accounts⁶ that are currently idle. As of the Petition Date, the Debtors have approximately \$10.3 million in their various accounts with the Cash Management Banks.

43. QNA is a beneficiary of an escrow account held at SunTrust Bank (the “SunTrust Escrow Account”) pursuant to the terms of the SunTrust Escrow Account Agreement (the “Escrow Agreement”). As described below, this account, which was established shortly prior to the initiation of these cases, receives third-party customer payments for products produced by the Global Company, and sold by QNA.

⁵ As described below, all of the Debtors’ employees are employed by QNA. QR has an inactive ZBA payroll account, which the Debtors are in the process of closing.

⁶ One account is in Euros and one is in Japanese yen.

(b) The Flow of Funds

44. Funds flow into and out of the Bank Accounts through three means: (a) written checks; (b) wire transfers; and (c) automatic clearing house payments (“ACH Payments”).⁷

45. The Debtors’ receive deposits from the sale of products to its customers (the “Customers”). QR is involved in the front-end process and is the first step in the production chain. When products are completed by QR, they are shipped to non-Debtor affiliates and title is transferred to QAG, giving rise to an intercompany receivable held by QR against QAG. QAG’s non-Debtor affiliates complete production through the back-end process. Ultimately, QNA markets and sells finished products to North American customers.⁸ At QNA’s direction, product is either shipped by QAG from a QAG distribution center to the third-party customers on QNA’s behalf (a “DC Sale”) or QNA purchases the products from QAG and ships directly to its customers or through QR⁹ (a “QNA Direct Sale”).

46. Prior to the initiation of the QAG insolvency proceedings, DC Sales generated accounts receivables, which when paid, were cash deposits into the QNA Citibank Concentration Account. Currently, however, cash received from third-party customers for DC Sales is now deposited in the SunTrust Escrow Account and allocated between QNA and QAG pursuant to the terms of the Escrow Agreement, which provides that 87% of proceeds are

⁷ ACH Payments are electronic funds transfers through a system run by a third-party administrator, the National Automated Clearing House Association and are generally used as a substitute for checks and to make electronic payments of a repetitive nature at a reduced cost as compared to wire transfers.

⁸ Certain other non-Debtor and non-U.S. subsidiaries of QAG market and sell product to non-North American customers.

⁹ Finished goods inventory for sale to third-party customers held at the Richmond facility is inventory of QNA.

remitted to QAG and 13% are deposited into the QNA Citibank Concentration Account. Cash received for a QNA Direct Sale is deposited into the QNA Citibank Concentration Account.

47. Since the initiation of the QAG insolvency proceedings, QR no longer receives an intercompany receivable from QAG; rather, on the day that title for goods transfers from QR to QAG, QAG wire transfers funds directly to the QR Citibank Concentration Fund.

48. The Debtors' two primary disbursements are the funding of payroll and the settlement of accounts payable. Checks for payroll are drawn on the QNA ZBA payroll account, which is funded through a clearing with the QNA Citibank Concentration Account prior to issuance or upon presentation of employee payroll checks. As QNA leases employees to QR for use in the Richmond facility, as discussed below, each payroll payment gives rise to an Intercompany Transaction (defined below) between QNA and QR.

49. For trade payables, both QNA and QR have ZBA accounts payable accounts, which are funded by the applicable Debtor's Citibank Concentration Account upon presentation of accounts payable checks.

50. Prior to the initiation QAG insolvency proceedings, QAG made daily sweeps of the Citibank Concentration Accounts to QAG accounts in London, and also made deposits into the Citibank Concentration Accounts, as necessary. QAG cash sweeps of the QNA Citibank Concentration Account and the QR Citibank Concentration Account were terminated on January 23, 2009 and in mid-December 2008, respectively.

(c) Existing Business Forms

51. As part of the Cash Management System, in the ordinary course of business, the Debtors use a variety of business forms, including, without limitation, checks,

letterhead, purchase orders and invoices. At this time, the Debtors have a sufficient stock of such forms on hand to continue operating in the ordinary course of business.

(d) Intercompany Claims and Intercompany Transactions

52. The Debtors and certain non-Debtor affiliates maintain business relationships with each other (the “Intercompany Transactions”) resulting in intercompany receivables and payables in the ordinary course of business (the “Intercompany Claims”). In connection with the daily operation of the Cash Management System, as funds are disbursed throughout the Cash Management System and as business is transacted between the Debtors and their non-Debtor affiliates, at any given time there may be Intercompany Claims owing by one Debtor to another Debtor or between a Debtor and a non-Debtor affiliate. The Debtors track all fund transfers in their accounting system and can ascertain, trace and account for Intercompany Transactions.

E. Utilities Motion

53. In the ordinary course of their business, the Debtors incur utility expenses for, among other things, water, sewer service, electricity, phone, high-speed internet, cable, and natural gas services provided by their utility providers (collectively, the “Utility Providers”).

54. Prior to the Petition Date, the Utility Providers provided utility service to the Debtors in Cary, North Carolina, Richmond, Virginia, San Jose, California, and Houston and Austin, Texas. Ordinarily, the Debtors pay each Utility Provider directly upon receipt of a monthly invoice for services provided during the immediately preceding month. On average, the Debtors spend approximately \$3,000,000 monthly on utility costs. As of the Petition Date, the Debtors had aggregate deposits with their Utility Providers of approximately \$250,000. Prior to the Petition Date, the Debtors had a history of timely payment of utility costs. Due to the timing of the Petition Date in relationship to the Utility Providers’ respective billing cycles, the Debtors

believe certain utility costs have been invoiced but have not been paid because payment is not yet due. Further, certain utility costs for services provided since the end of the last billing cycle have not been invoiced to the Debtors yet.

55. Uninterrupted utility services are essential to the Debtors' ongoing operations. Should the Utility Providers refuse or discontinue service, even for a brief period, the Debtors' business operations would be severely disrupted. The impact on the Debtors' business operations would be extremely harmful and would jeopardize the Debtors' ability to continue operations.

F. Insurance Motion

56. In the ordinary course of business, the Debtors maintain a number of insurance policies that provide coverage for, among other things, workers' compensation and employer's liability, general commercial liability, property damage, excess liability, commercial automotive liability, fiduciary and criminal liability and directors' and officers' liability (collectively, the "Policies"). It is my understanding that some of these Policies are required by various state and federal regulations.

57. The total annual premiums for the Policies in 2009 is approximately \$1,874,675, including broker fees, taxes and miscellaneous charges. With the exception of the Debtors' worker's compensation (the "Worker's Compensation Policy") and commercial automobile (the "Commercial Automobile Policy") insurance policies (the premiums for which the Debtors pay in monthly installments of approximately \$22,272), and the Debtors' directors' and officers' liability policy (the "D&O Policy") (the premiums for which the Debtors pay in a payment of approximately \$495,000), all of the Debtors' insurance premiums for 2009 were paid in full prior to the Petition Date.

58. The Debtors' general commercial liability (the "General Liability Policy") and umbrella liability (the "Umbrella Policy") insurance policies include a self-insured retention ("SIR") by which the Debtors pay for their own losses up to a specified dollar amount on a per-occurrence basis. The SIR for the General Liability Policy is \$500,000. The SIR for the Umbrella Policy is \$50,000. Payment of claims erodes the SIR. The insurers' duty to defend and indemnify the Debtors for claims based on any particular occurrence is triggered only once the policy's SIR has been fully eroded.

G. Employee Wages Motion

(a) The Debtors' Workforce

59. All of the Debtors' employees are employed by QNA. QNA, in turn, leases approximately 790 employees to QR. As of the Petition Date, QNA employed approximately 879 employees. This represents a reduction of approximately 1,989 employees since January of 2008.¹⁰ All of the current employees are full-time employees and QNA does not currently have any part-time employees.¹¹ QNA funds all of the Debtors' Employee Wage Claims, Employee Expense Obligations and Employee Benefit Obligations and invoices QR for the claims and expenses relating to the employees leased to QR. All references contained herein to payments being made by the Debtors refer to payments made by QNA.

¹⁰ The Debtors reduced their workforce by 468 in 2008, by 623 in January of 2009 and by 898 in February of 2009. As a result, the Debtors' payment of Employee Wage Claims, Employee Expense Obligations and Employee Benefit Obligations will be lower than the historical averages cited herein. The figures contained herein represent the Debtors' best efforts to estimate amounts due as of the Petition Date.

¹¹ The Debtors also make use of four independent contractors (the "Independent Contractors"). The Independent Contractors are employed to perform IT, accounting and other similar functions. The Independent Contractors are provided through temporary service agencies (the "Agencies"), including Robert Half Finance & Accounting, Vaco Staffing and NWN Corporation. The Debtors are invoiced by the Agencies and the Agencies pay the Independent Contractors directly. The Independent Contractors are not employees.

60. Approximately 449 of the employees are hourly wage earners ("Hourly Employees") and approximately 430 represent salaried personnel ("Salaried Employees"). Certain employees are also eligible to receive commissions in the form of incentive payments.

61. The Employees operate primarily out of four facilities located in Cary, North Carolina (the "Cary Facility"), Sandston, Virginia (the "Richmond Facility"), San Jose, California (the "San Jose Facility"), and Houston, Texas (the "Houston Facility").

62. The Employees located at the Cary Facility primarily perform support functions in the human resources, sales, legal, finance, IT and facilities departments. The Employees located at the Richmond Facility are involved in the manufacturing and production of the Debtors' products and also perform support functions in connection with the same. The Employees located at the San Jose Facility perform sales, marketing and logistical functions. Finally, the Employees located at the Houston Facility perform primarily sales functions.

(b) Prepetition Wages, Salary and Other Compensation

63. Prior to the Petition Date and in the ordinary course of their businesses, the Debtors paid or honored employee wages and salaries as well as other forms of compensation.

64. Employees are paid every other Friday for the two-week period ending one week before the pay date. The last pay date for employees was on February 13, 2009 in which the Debtors paid wages and salaries earned by employees through February 6, 2009.

65. The monthly average historical payroll for the Debtors' employees in a typical month was approximately \$12,776,092, or approximately \$6,383,046 per pay period. Due to a prepetition workforce reduction, these figures have declined and will continue to

decline. The Debtors estimate that approximately \$5.9 million in payroll (inclusive of payroll taxes), exists in accrued but unpaid payroll for employees as of the Petition Date.

66. All of the Debtors' payroll functions are administered by Automatic Data Processing ("ADP"), but the Debtors manage the actual disbursements of payroll funds to employees. ADP collectively charges the Debtors processing fees of approximately \$5,925 per payroll. As of the Petition Date, the Debtors owe approximately \$14,130 to ADP for payroll processing fees. Without the ability to pay any outstanding prepetition amounts to ADP, or to continue paying ADP in the ordinary course, ADP may refuse to process the Debtors' payroll, thereby jeopardizing the ultimate receipt of wages by the employees.

(c) Paid Time Off & Unplanned Time Off

67. The Debtors offer their full-time, salaried employees (collectively, the "Exempt Employees")¹² other forms of compensation, including vacation time, paid holidays, other earned time off (collectively, "Paid Time Off" or "PTO"). The Debtors' hourly employees (the "Non-Exempt Employees")¹³ receive PTO on the same level as the Exempt Employees with some limited exceptions described below. In addition, Non-Exempt Employees are eligible to accrue up to forty-eight hours of unplanned time off ("UPTO") per calendar year. Customarily, UPTO is used to cover time off for illnesses and medical appointments. These forms of compensation are usual, customary and necessary if the Debtors are to retain qualified employees to operate their businesses.

¹² Full-time salaried employees are those employees who work thirty-two or more hours per week. Part-time salaried employees are those employees who work between twenty and thirty-two hours per week. Interns who work at least twenty hours per week for a minimum of ten weeks are eligible to accrue for PTO.

¹³ Non-Exempt Employees are eligible to accrue overtime pay. Exempt Employees do not accrue overtime pay or UPTO.

68. All Exempt Employees and Non-Exempt Employees are eligible to accrue paid vacation time (“Vacation Time”). Vacation Time begins to accrue from an employee’s date-of-hire and is earned in specific increments based upon an employee’s length of service and are subject to certain caps (each a “PTO Cap”). Specifically, full-time employees¹⁴ accrue Vacation Time per pay period based on the following lengths of service:¹⁵

<u>Years of Service</u>	<u>Amount Accrued per Pay Period</u>	<u>Maximum Accrual PTO Cap</u>
0 – 3	7 hours and 41 minutes	200 hours
4 – 10	9 hours and 14 minutes	240 hours
11 – 20	10 hours and 46 minutes	280 hours
20 or more	12 hours and 18 minutes	320 hours

69. Employees may accrue PTO up to a maximum of that employee’s one-year PTO Cap. Paid holidays are also calculated as part of an employee’s accrued PTO and contribute to an employee’s PTO Cap.¹⁶ Once an employee reaches his or her PTO Cap, PTO will cease to accrue until the employee’s balance drops below the PTO Cap. With limited exceptions,¹⁷ and except as otherwise stated below, employees are not entitled to cash out their unpaid PTO, but the Debtors pay out accrued, unused PTO upon termination.

70. At any given point in time, it is continually accruing and Employees may be using PTO. The Debtors estimate that as of the Petition Date, the Debtors’ Employees have

¹⁴ Similar, albeit reduced, schedules of accrual exist for part-time employees and interns.

¹⁵ Employees at the San Jose Facility accrue PTO at the same rate as other full-time employees, part-time employees and interns, but pursuant to California law, employees at the San Jose Facility may accrue up to one and a half years of PTO. For example, the maximum accrual PTO Cap for full-time employees at the San Jose Facility are 300 hours, 360 hours, 420 hours and 450 hours per respective length of service.

¹⁶ In addition, the Debtors also allow for various leaves of absence for holidays, bereavement, jury duty and military leave. These leaves of absence are not calculated as part of an Employee’s PTO.

¹⁷ Any full-time, salaried employee, however, is permitted to cash out PTO if he or she voluntarily works on certain designated holidays.

accrued approximately \$5,639,371 in PTO and UPTO in the aggregate.¹⁸ Because of the difficulties associated with estimating PTO, this estimate is the maximum figure and assumes that no Employee used any PTO or UPTO in February. The Debtors expect that the actual accrued amount will be lower than their estimate.

71. All of the Debtors' employees who have worked at least ninety consecutive days are entitled to time off for illnesses and medical appointments ("Sick Time"). Exempt Employees receive paid Sick Time and unused Sick Time is not included in an Exempt Employee's PTO. Exempt Employees are paid in the ordinary course for their use of Sick Time, provided the use does not exceed increments of one or two days per incident. The utilization of larger increments of Sick Time is subject to the Debtors' disability plan guidelines.

72. Non-Exempt Employees are entitled to forty-eight hours of UPTO per calendar year in addition to their PTO. UPTO is accrued at a rate of approximately 1.85 hours per bi-weekly pay period and is used for sick time and other unforeseen absences. Non-Exempt Employees are required to apply UPTO or PTO to any illness-related absences. Also, as with the Exempt Employees, more lengthy absences are subject to the Debtors' disability plan guidelines.

73. Sick Time and UPTO may not be used to extend vacations or other leaves of absence. Unused Sick Time is transferable from year to year, but only Non-Exempt Employees are eligible to be paid for Sick Time as part of their UPTO, which is paid out only upon termination.

¹⁸ A portion of the UPTO represents Sick Time (defined below) accrued by Non-Exempt Employees.

(d) Incentive Payments & Severance

74. All employees are eligible to receive incentive payments (the “Incentive Payments”) as part of the standard salary structure. These Incentive Payments are accrued based on a combination of corporate and functional, individual, team and site goals. The Debtors remitted all Incentive Payments for the fiscal year ended 2008. As of the Petition Date, the Debtors estimate that Incentive Payments in the following amounts remain outstanding and owing to the employees: \$2.4 million related to 200mm DRAM manufacturing and support, \$110,000 related to design goals and \$600,000 related to other incentive goals.

75. Prior to the Petition Date, the Debtors instituted several severance and retention programs to stabilize its work force during the course of previous workforce reductions.

(e) Employee Expense Obligations

76. The Debtors routinely reimburse employees for certain expenses incurred within the scope of their employment, including expenses for travel, lodging, professional seminars and conventions, ground transportation, meals, supplies and miscellaneous expenses (collectively, “Business Expenses”). These expenses also include an (a) automobile allowance program (currently \$46,530.34 per month for forty-one employees with amounts outstanding as of the Petition Date of approximately \$21,475.54);¹⁹ (b) a relocation reimbursement program (currently \$22,690.67 is outstanding as of the Petition Date for four employees); and (c) a program for the reimbursement of tuition and related expenses (in accordance with applicable federal law, currently capped at \$5,250 per year for undergraduate studies and \$10,000 per year for graduate studies; approximately twenty-four employees receive tuition reimbursement with

¹⁹ Only certain Employees are eligible for the automobile allowance. Qualifying Employees are either executives or are required to travel as part of their job responsibilities. The Debtors issue the automobile allowances on a monthly basis and applicable Employees receive the allowances on a bi-weekly basis. All other Business Expenses are reimbursed after an employee submits an expense reimbursement request.

an aggregate amount of \$53,752.52 in reimbursable tuition expenses outstanding as of the Petition Date). The Debtors pay these amounts as they come due and estimate that only nominal amounts will remain outstanding in connection with these expenses as of the Petition Date.

77. In addition, the Debtors issued American Express cards to certain employees for the purpose of charging business-related expenses (the “Amex Reimbursement Program”). American Express bills the employee who incurred a particular charge or set of charges directly. That employee in turn submits an expense reimbursement form to the Debtors and the Debtors remit amounts owing and due under the credit card account directly to American Express. As of the Petition Date, approximately 164 employees are participating in the Amex Reimbursement Program. The Debtors pay approximately \$172,179 to American Express per month in connection with the Amex Reimbursement Program. The Debtors have remitted all sums due and owing for January 2009, but estimate that approximately \$150,000 in unreimbursed expenses in connection with the Amex Reimbursement Program may be outstanding as of the Petition Date.

78. The Debtors process expense reports weekly. Certain employees have not yet been reimbursed for Reimbursable Expenses previously incurred. The Debtors pay approximately \$164,334.17 on average to employees and third-parties with respect to Reimbursable Expenses each month. Although the Debtors cannot fully estimate the amount of Reimbursable Expenses outstanding as of the Petition Date because not all employees will have submitted Expense Reports as of the Petition Date, the Debtors expect the amount to be at or below the monthly average.

(f) Employee Benefit Obligations

79. The Debtors maintain various employee benefit plans and policies that provide eligible employees with medical, dental, vision, life insurance, disability, FSA, employee assistance and 401(k) plans. The Debtors also provide workers' compensation benefits to eligible employees.

80. The Debtors provide participating employees²⁰ and their dependents with a choice of several medical plan arrangements: (a) the Aetna Choice POS II Plan; (b) the Aetna Select Open Access Plan; (c) the Aetna Indemnity Plan; (d) plans administered by health maintenance organizations ("HMO Plans"); and (e) medical opt-out reimbursement, which is \$19.23 per pay period or \$500 over a 12 month period (collectively, the "Medical Plans"). The Medical Plans offer varying levels of coverage and medical benefits. As part of the Medical Plans, the Debtors also maintain a prescription drug programs. The prescription drug program offered in connection with the self-insured Medical Plans is administered by Express Scripts for the self-insured plans only and the HMO Plans include a self-administered prescription drug program. As of the Petition Date approximately 1,042 employees and COBRA participants and 4,098 dependents were covered under the Medical Plans.

81. The Medical Plans are funded through contributions by participating employees and the Debtors. The cost is borne primarily by the Debtors, but employees contribute through payroll deductions from their bi-weekly paychecks to pay for that month's coverage. The level of contributions by a participating employee and the Debtors varies depending on the program selected by the employee. The Medical Plans are self-insured,

²⁰ Employees who work at least thirty-two hours per week are eligible to participate in the Debtors' medical benefits programs.

however, fully-insured HMO Plans are offered to employees at the Richmond Facility through Aetna and to employees at the San Jose Facility through Kaiser Permanente HMO.

82. On average, in 2008, the Debtors paid approximately \$17,740 in the aggregate each month for employees and their dependents in connection with the Medical Plans. As of the Petition Date, the Debtors' unpaid premiums under the Medical Plans were approximately \$260,103 in the aggregate.

83. The Debtors also offer Medical Benefits to certain qualifying retirees (each a "Retiree" and together, the "Retirees"). The cost of Medical Benefits for Retirees depends on the individual Retiree. These benefits are also available to certain eligible dependents. The percentage paid by the Debtors and an individual Retiree varies based on a Retiree's length of service and age of retirement. For example, if a Retiree was an employee for seventeen years and retired at age sixty, the Debtors pay 57.8% of that Retiree's elected Medical Benefits.

84. As of the Petition Date, three Retirees were receiving Medical Benefits and the aggregate amount due in connection therewith is approximately \$28,416.²¹

85. In addition, the Debtors offer their employees the use of flexible spending accounts for various health care (the "Health Care FSA") and dependant care (the "Dependent Care FSA," and together with the Health Care FSA, the "FSA Programs") costs not otherwise covered by the Medical Plans. The flexible spending benefits are administered by Aetna. Expenses under the FSA Programs are limited to \$5,000 per year, per FSA Program. Aetna charges the Debtors approximately \$4.25 per participating employee per month in administrative fees to administer the accounts. There are approximately 673 employees participating in the

²¹ This figure is inclusive of payments due under the Dental Plans (defined below) and Vision Plans (defined below).

Health Care FSA and 72 employees participating in the Dependent FSA, leading to fees of approximately \$3,300 per month in the aggregate. The Debtors have paid all amounts owing under the FSA Programs through February 2009.

86. The Debtors provide employees with an Employee Assistance Program ("EAP Program"). The EAP Program offers assessments, referrals, counseling and life management services such as childcare, eldercare, financial services, legal services and pre-retirement services. The cost of administration of the EAP Program is borne by the Debtors. employees may speak with a specialist or obtain a referral free of charge, and employees receive discounts for legal and financial services available through the EAP Program.

87. The Debtors pay an average of \$2,400 per month on account of the EAP Program (\$2.14 per participating employee per month). The Debtors estimate that they owe approximately \$2,334 on account of the EAP Program as of the Petition Date.

88. The Debtors also offer their employees two choices of dental benefit plans (the "Dental Plans") through Aetna -- the Aetna Dental Premium PPO Plan (the "Premium Dental Plan") and the Aetna Dental Basic PPO Plan (the "Basic Plan"). Employees may also receive a bi-weekly opt-out reimbursement payment of \$1.92 per pay period or \$50.00 over a 12-month period. Until January 1, 2009, the cost of the Basic Plan was borne entirely by the Debtors. As of January 1, 2009, the Basic Plan is funded by the Debtors and the participating employees through payroll deductions to their bi-weekly paychecks. The Premium Dental Plan is funded by the Debtors and by the participating employee through payroll deductions to their bi-weekly paychecks. Approximately 1,044 employees and dependents and COBRA recipients participate in the Dental Plans. The Debtors pay approximately \$152 per month in connection with the Dental Plans.

89. The Debtors are current as of the Petition Date with regard to the Dental Plans, but will owe \$1,884.92 for the Basic Plan and \$3,106.98 for the Premium Dental Plan for March 2009.

90. The Debtors also offer vision plan coverage through the Medical Plans (the "Vision Plans"). Employees may purchase additional comprehensive vision coverage (the "Vision Service Plan") at rates of \$1.43 to \$4.30 per pay period depending on for whom coverage is sought. The cost of participation in the Vision Service Plan is borne entirely by the participating employee through payroll deductions to their bi-weekly paychecks. The Debtors pay approximately \$71.78 per month in connection with the Vision Plans. The Debtors are current as of the Petition Date with regard to Vision Plans, but will owe \$9,434.50 in connection with the Vision Plans in March 2009.

91. The Debtors provide full-time employees, i.e., employees who work at least thirty-two hours per week, with group life and accidental death and dismemberment insurance (respectively, the "Group Life Insurance" and the "AD&D Insurance"). The Debtors offer Group Life Insurance at two times an employee's base salary. The cost of Group Life and AD&D Insurance is borne by the Debtors. The Group Life and AD&D Insurance programs are administered by Aetna Life Insurance ("Aetna"). The Debtors pay to Aetna an average of \$12,582 per month on account of the two programs. The Debtors are current as of the Petition Date with regard to the Group Life Insurance and AD&D Insurance.

92. The Debtors also offer supplemental life insurance ("Supplemental Life Insurance") and additional AD&D insurance for business-related travel (the "Supplemental AD&D Insurance"). The Supplemental Life Insurance is also available for up to five times an employee's base salary to a maximum of \$750,000. Supplemental Life Insurance is available for

employees, spouses and children. The participating employee is responsible for all Supplemental Life Insurance premiums, which are paid through bi-weekly deductions from their paychecks. Aetna underwrites the Supplemental Life Insurance policy. Approximately 592 employees, 407 employee spouses, and 961 children of employees participate in the Supplemental Life Insurance program.

93. The Supplemental AD&D Insurance coverage is automatic and is equal to five times an employee's base pay, up to a maximum of \$500,000. The participating employee is responsible for all Supplemental AD&D Insurance premiums. Approximately 606 employees participate in the Supplemental AD&D Insurance program. Additionally, International SOS global contract provides emergency medical care, evacuation assistance, security notifications and other emergency assistance for employees of the Debtors' traveling on business. This program is funded by Qimonda, AG through a global contract. All employees are eligible for this program.

94. The Debtors also provide employees with short-term disability insurance ("STDI") and long-term disability insurance ("LTDI") through Prudential (together, the "Disability Insurance"). STDI is fully funded by the Debtors. Employees are eligible to participate in the Disability Insurance programs on the first full month following their first ninety consecutive days of employment. STDI pays Exempt Employees 100% of their salary for the first six weeks, and 70% of their gross salary starting on the seventh week of disability. Under the STDI, Non-Exempt Employees must use PTO and UPTO for the first seven days of disability. On the eighth day, Non-Exempt Employees receive 70% of their gross salary in disability payments. All of the Debtors' active employees participate in the STDI program. The Debtors currently have three employees receiving benefits pursuant to the STDI program. The

Debtors paid all amounts outstanding for February 2009 prior to the Petition Date, but approximately \$2,592 will come due for March 2009 in connection with STDI.

95. The Debtors offer a core LTDI plan (the "Core Plan") and a voluntary LTDI plan (the "VLTDI Plan"). The Core Plan offers an eligible employee 50% of his or her gross salary. The cost of the Core Plan is borne by the Debtors. An eligible employee may also purchase additional LTDI coverage of up to 20% of his or her gross salary.

96. All of the Debtors' employees participate in the LTDI program and approximately 191 employees participate in the VLTDI Plan. The Debtors currently have 10 employees that are receiving long-term disability pay, which is fully-insured and paid and administered by Reliance. As of the Petition Date, approximately \$4,933 remains outstanding in connection with the Core Plan and VLTDI Plan.

97. Eligible employees may contribute 1% to 50% of their 401(k) eligible compensation (the "401(k) Plan") through payroll deductions. The 401(k) Plan is managed by ING. ING charges fees of approximately \$250,000 per year. The Debtors contribute to the 401(k) Plan in two ways. First, the Debtors match an employee's 401(k) contribution dollar for dollar for the first 3% and \$0.50 per dollar for the second 3%, up to a maximum of 4.5%. In addition to the matching contributions (the "Matching Contributions"), the Debtors make core contributions of 3% of a participating employee's 401(k) plan eligible compensation (the "Core Contributions," and together with the Matching Contributions, the "401(k) Contributions").

98. On or about January 30, 2009, the Debtors ceased making Core Contributions. The Debtors will also cease making Matching Contributions for compensation paid on or after March 10, 2009, after the safe harbor notice period for Matching Contributions expires.

99. The Debtors withhold approximately \$467,500 per month for 401(k) purposes. There are no outstanding ING fees as of the Petition Date.

100. The Debtors provide workers' compensation benefits to all employees. These benefits are covered primarily under the Debtors' workers' compensation insurance program, which is administered by AON through Travelers Indemnity Co. of America. Failure to maintain this insurance in the various states in which the Debtors do business could result in administrative or legal proceedings against the Debtors and their officers and directors.

101. Because the Debtors pay workers' compensation claims on an installment basis, certain amounts remain outstanding as of the Petition Date. The Debtors estimate that there are approximately eleven open cases and payments totaling \$209,000 are outstanding as of the Petition Date.

(g) Withheld Funds

102. The Debtors routinely withhold from employee paychecks amounts that the Debtors are required to transmit to third parties. Examples of such withholdings include federal and state income taxes, social security, Medicare, garnishments and premiums for medical, dental and life insurance and 401(k) contributions

H. Prepetition Taxes Motion

103. In the ordinary course of business, the Debtors collect sales taxes from their customers and incur taxes, including, but not limited to Sales Taxes, Use Taxes (each as defined below) and other similar taxes necessary to operate their businesses (collectively, the "Sale and Use Taxes") on behalf of various federal, state and local taxing authorities, licensors or other government authorities (collectively, the "Authorities"). The Debtors pay the Sales and Use Taxes monthly, quarterly, or annually to the respective Authorities, in each case as required by applicable laws and regulations.

104. The Debtors collect from customers and remit an assortment of state and local sales and gross receipts taxes (collectively, the “Sales Taxes”) to various Authorities. On a periodic basis, the Debtors remit to the Authorities the Sales Taxes collected during the previous term.

105. The Debtors may also be responsible for the payment of use taxes (the “Use Taxes”) when they purchase tangible personal property from suppliers. Use Taxes arise when the Debtors purchase equipment from a supplier for use in a state in which the supplier has no business operations. Without such a nexus, the supplier is not obligated to collect or remit sales taxes. Nevertheless, the Debtors as the purchasers are obligated to self-assess and pay the Use Taxes to the states or local taxing jurisdictions wherein the personal property is used. The Debtors’ obligations to self-assess and pay Use Taxes also may arise in a number of states in which the Debtors have received authorization to self-assess and remit Use Taxes. The Debtors generally remit the Use Taxes to Authorities on a monthly, quarterly, or annual basis. The Debtors estimate that they owe up to \$200,000 in Sales and Use Taxes to certain of the Authorities for periods prior to and including the Petition Date.

I. Customer Programs Motion

106. Prior to the Petition Date and in the ordinary course of their businesses, the Debtors engaged in certain practices to develop and maintain positive reputations with their customers and in the marketplace for their products. Such practices include, among others, warranty programs, price protections, and customer rebates, each of which is described in greater detail below. Generally, the Customer Programs (as defined below) are designed to meet competitive pressures, ensure customer satisfaction, and generate goodwill for the Debtors, thereby enabling the Debtors to retain and attract customers, and enhance revenue and profitability.

107. The Debtors estimate the aggregate amount of outstanding prepetition obligations arising under their Customer Programs does not exceed \$14.5 million, although the Debtors reasonably expect their liability under these programs to be closer to \$11.5 million.

(a) Warranties

108. The Debtors warrant that their products are manufactured in accordance with good manufacturing practices, conform to applicable specifications, and are free of defects of workmanship (the “Warranty Program”). In order to assert a warranty claim, a customer must return the part to the Debtors for testing and verification of the defect. If the Debtors determine that a part is defective, the Debtors issue a “return materials authorization”, and at the Debtors’ option, they provide the customer with either a replacement product or a credit towards future purchases. The Debtors’ standard warranty term, which is offered to all customers, is twelve months for hardware and ninety days for software. Certain customers, such as original equipment manufacturers, require longer-term warranties, up to and including a limited lifetime warranty. The terms of certain of these warranties may extend far past the Petition Date. The warranty programs are critical to the Debtors’ market competitiveness. The Debtors estimate that they spend approximately \$844,593 per month honoring claims under the Warranty Program. The Debtors estimate that they have approximately \$2.57 million of outstanding prepetition obligations under the Warranty Program.

(b) Price Protection

109. The Debtors offer certain original equipment manufacturers price protection, in the form of guarantees, against unexpected declines in the dynamic random access memory “DRAM” market price (“Price Protection Program”) as an incentive for these manufacturers to purchase the Debtors’ DRAM products. Every price protection guarantee is

individually negotiated and includes both a set floor price and a specific time period. For example, if the Debtors sell a particular product for \$3.00, a price protection may include a floor price of \$2.80 for a two-week period. If the price of that product declines in that two week period (as measured by objective industry monitors or the Debtors' own sales price), the Debtors will pay the customer up to the full amount of the decline in price. The Price Protection Program is critical to the Debtors' market competitiveness. The Debtors estimate that they have approximately \$9.5 million of outstanding prepetition obligations under the Price Protection Program.

(c) Rebates

110. The Debtors also use various rebates (the "Rebate Program") and together with the Warranty Program and the Price Protection Program, the "Customer Programs" as a sales incentive as well as a negotiating tool to achieve more favorable contractual terms with certain customers. The amount of the rebates is a relatively small percentage of the overall price of the products and is within the normal range for such rebates in the DRAM industry. The Rebate Program is critical to the Debtors' market competitiveness. The Debtors estimate that they have approximately \$2.3 million of outstanding prepetition obligations under the Rebate Program.

Part III
Conclusion

To preserve the value of their business to the fullest extent possible, the Debtors' immediate objective is to maintain "business as usual" following the commencement of these Chapter 11 Cases by minimizing any adverse impact of the Chapter 11 filings on the Debtors' operations. For the reasons described herein and in the First Day Motions, I believe that the prospect for achieving these objectives for the benefit of creditors and other stakeholders will be substantially enhanced if this Court grants the relief requested in each of the First Day Motions.

Miriam Martinez

Miriam Martinez
President and Chief Financial Officer

EXHIBIT A

Summary Qimonda Corporate Structure Chart

