

ADVANCED MICRO DEVICES INC
Form PRER14A
January 12, 2009
Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

(Amendment No. 4)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

<input checked="" type="checkbox"/>	Preliminary Proxy Statement	<input type="checkbox"/>	Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
<input type="checkbox"/>	Definitive Proxy Statement		
<input type="checkbox"/>	Definitive Additional Materials		
<input type="checkbox"/>	Soliciting Material Pursuant to §240.14a-12		

ADVANCED MICRO DEVICES, INC.

(Name of Registrant as Specified In Its Certificate)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

Edgar Filing: ADVANCED MICRO DEVICES INC - Form PRER14A

- (1) Title of each class of securities to which transaction applies:
- (2) Aggregate number of securities to which transaction applies:
- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
- (4) Proposed maximum aggregate value of transaction:
- (5) Total fee paid:

.. Fee paid previously with preliminary materials.

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

- (1) Amount Previously Paid:
- (2) Form, Schedule or Registration Statement No.:
- (3) Filing Party:
- (4) Date Filed:

Table of Contents

ADVANCED MICRO DEVICES, INC.
ONE AMD PLACE
P.O. BOX 3453
SUNNYVALE, CALIFORNIA 94088-3453

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

We will hold a Special Meeting of Stockholders of Advanced Micro Devices, Inc. at the Hilton Austin Airport, 9515 Hotel Drive, Austin, Texas on _____, at _____ a.m. local time, for the following purposes:

1. To approve, pursuant to the Master Transaction Agreement, dated as of October 6, 2008, as amended by the Amendment to the Master Transaction Agreement, dated as of December 5, 2008, by and among us, an affiliate of Mubadala Development Company PJSC (*Mubadala*), and Advanced Technology Investment Company LLC, (i) the issuance to an affiliate of Mubadala of 58,000,000 shares of our common stock and warrants to purchase 35,000,000 shares of our common stock for an aggregate purchase price equal to (a) 58,000,000 multiplied by (b) the lesser of (A) the average of the closing prices per share of our common stock on the New York Stock Exchange (the *NYSE*) for the 20 trading days immediately prior to and including December 12, 2008 and (B) the average of the closing prices per share of our common stock on the NYSE for the 20 trading days immediately prior to the closing date of the transactions contemplated by the Master Transaction Agreement which warrants will be exercisable after the earlier of (a) public ground-breaking of Fab 4X in New York and (b) 24 months from the date of issuance and will have a 10-year term, and (ii) the issuance to an affiliate of Mubadala of 35,000,000 shares of our common stock upon exercise of the warrants (as adjusted pursuant to the terms of the warrants); and

2. To transact such other business as may properly come before the Special Meeting or any adjournment or postponement thereof. **The board of directors recommends that you vote FOR the issuance of 58,000,000 shares of our common stock and warrants to purchase 35,000,000 shares of our common stock (as well as the issuance of common stock upon the exercise thereof).**

By Order of the Board of Directors,

HARRY A. WOLIN

Secretary

This Proxy Statement is dated January _____, 2009 and will first be mailed to the stockholders of Advanced Micro Devices, Inc. on or about January _____, 2009.

WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING, YOUR VOTE IS IMPORTANT AND WE ENCOURAGE YOU TO SUBMIT A PROXY TO VOTE YOUR SHARES PROMPTLY. YOU MAY SUBMIT A PROXY TO VOTE YOUR SHARES VIA A TOLL-FREE TELEPHONE NUMBER OR THE INTERNET BY FOLLOWING THE INSTRUCTIONS CONTAINED ON THE PROXY CARD. YOU MAY ALSO SIGN, DATE AND MAIL THE PROXY CARD IN THE ENVELOPE PROVIDED. INSTRUCTIONS REGARDING METHODS OF SUBMITTING A PROXY ARE CONTAINED ON THE PROXY CARD.

IMPORTANT NOTICE REGARDING INTERNET AVAILABILITY OF PROXY MATERIALS FOR THE SPECIAL MEETING OF STOCKHOLDERS TO BE HELD ON ARE AVAILABLE ELECTRONICALLY AT WWW.PROXYVOTE.COM.

Table of Contents

TABLE OF CONTENTS

<u>QUESTIONS AND ANSWERS</u>	1
<u>PROPOSAL 1 ISSUANCE OF SHARES, WARRANTS AND WARRANT SHARES</u>	6
<u>Purpose of Stockholder Approval of Our Issuance of the Shares, the Warrants and the Warrant Shares to WCH</u>	6
<u>Effects on Our Stockholders of Our Issuance of the Shares, the Warrants and the Warrant Shares to WCH</u>	6
<u>The Parties</u>	7
<u>The Transactions</u>	7
<u>Our Purpose and Reasons for the Transactions</u>	8
<u>Financial Impact on Us of the Master Transaction Agreement, Including Our Issuance of the Shares, the Warrants and the Warrant Shares to WCH</u>	10
<u>Opinion of Our Financial Advisor</u>	10
<u>Opinion of the Financial Advisor of the Transaction Oversight Committee of Our Board of Directors</u>	16
<u>Interests of Certain Persons in the Transactions</u>	22
<u>Registration Rights Agreement</u>	23
<u>Required Vote</u>	23
<u>Recommendation of the Board of Directors</u>	23
<u>THE MASTER TRANSACTION AGREEMENT</u>	24
<u>Cash Contribution</u>	24
<u>Contribution of AMD Assets to The Foundry Company</u>	24
<u>Purchase Price</u>	25
<u>Assumed Liabilities</u>	25
<u>Retained Liabilities</u>	26
<u>Representations and Warranties</u>	26
<u>Covenants</u>	27
<u>No Solicitation by AMD</u>	28
<u>WCH Standstill Respecting AMD</u>	29
<u>WCH Transfer Restrictions on AMD Securities</u>	29
<u>Employees</u>	29
<u>Closing Conditions</u>	29
<u>Indemnification</u>	30
<u>Termination/Break-up Fee</u>	31
<u>THE SHAREHOLDERS AGREEMENT</u>	32
<u>Board of Directors</u>	32
<u>Officers</u>	32
<u>Voting</u>	32
<u>Certain Corporate Actions</u>	33
<u>Transfer Restrictions</u>	34
<u>Right of First Offer/Right of Last Look</u>	34
<u>Tag-Along Rights</u>	35
<u>Drag-Along Rights</u>	35
<u>AMD Change of Control</u>	35
<u>Rights to Purchase New Shares</u>	35
<u>Termination</u>	35
<u>THE FUNDING AGREEMENT</u>	36
<u>Annual Business Plan</u>	36
<u>Cash Reserve</u>	36
<u>Funding</u>	36
<u>Conditions to Funding</u>	37
<u>Annual Business Plan Deadlock Resolution</u>	37
<u>Termination</u>	38
<u>THE WAFER SUPPLY AGREEMENT</u>	39
<u>AMD Purchase Commitments</u>	39
<u>The Foundry Company Capacity Commitment</u>	39
<u>Management</u>	39

Table of Contents

<u>Sort Services</u>	39
<u>Pricing</u>	40
<u>Indemnification</u>	40
<u>Intellectual Property</u>	40
<u>Term; Termination</u>	40
<u>AGREEMENTS RELATED TO INTELLECTUAL PROPERTY</u>	41
<u>Patent Cross License Agreement</u>	41
<u>Non-Patent Intellectual Property and Technology Transfer Agreement</u>	41
<u>DESCRIPTION OF THE FOUNDRY COMPANY CONVERTIBLE SUBORDINATED NOTES</u>	42
<u>Class A Convertible Notes</u>	42
<u>Class B Convertible Notes</u>	43
<u>DESCRIPTION OF THE FOUNDRY COMPANY SHARE CAPITAL</u>	44
<u>Class A Ordinary Shares</u>	44
<u>Class B Ordinary Shares</u>	44
<u>Class A Preferred Shares</u>	44
<u>Class B Preferred Shares</u>	45
<u>DESCRIPTION OF AMD COMMON STOCK</u>	46
<u>DESCRIPTION OF THE WARRANTS</u>	47
<u>UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS</u>	50
<u>PRINCIPAL STOCKHOLDERS</u>	59
<u>SECURITY OWNERSHIP OF DIRECTORS AND EXECUTIVE OFFICERS</u>	61
<u>GENERAL AND OTHER MATTERS</u>	63
<u>INCORPORATION OF CERTAIN INFORMATION BY REFERENCE</u>	63
<u>AVAILABLE INFORMATION</u>	64

ANNEXES:

<u>Annex A Opinion of Merrill Lynch & Co.</u>
<u>Annex B Opinion of Morgan Stanley & Co. Incorporated</u>

EXHIBITS:

Exhibit A	Master Transaction Agreement
Exhibit B	Form of Shareholders Agreement
Exhibit C	Form of Funding Agreement
Exhibit D	Form of Wafer Supply Agreement
Exhibit E	Form of Warrant
Exhibit F	Amendment to Master Transaction Agreement

Table of Contents

ADVANCED MICRO DEVICES, INC.

PROXY STATEMENT

SPECIAL MEETING OF STOCKHOLDERS

QUESTIONS AND ANSWERS

1. Q: WHY AM I RECEIVING THESE MATERIALS?

A: The board of directors of Advanced Micro Devices, Inc. (*AMD*) is providing these proxy materials to you in connection with our Special Meeting to be held on _____ at the Hilton Austin Airport, 9515 Hotel Drive, Austin, Texas (the *Special Meeting*). As a stockholder, you are invited to attend the meeting and are entitled to and requested to vote on the items of business described in this proxy statement.

2. Q: WHO IS SOLICITING MY VOTE?

A: This proxy solicitation is being made by our board of directors. We have retained Georgeson Stockholder Communications, Inc., professional proxy solicitors, to assist us with this proxy solicitation. We will pay the entire cost of this solicitation, including Georgeson's fee, which we expect to be approximately \$12,000.

3. Q: WHEN WAS THIS PROXY STATEMENT MAILED TO STOCKHOLDERS?

A: The proxy statement was first mailed to stockholders on or about _____, 2009.

4. Q: WHAT MAY I VOTE ON?

A: You may vote on:

A proposal to issue, pursuant to a Master Transaction Agreement, dated as of October 6, 2008, as amended by the Amendment to Master Transaction Agreement, dated as of December 5, 2008 (as amended, the *Master Transaction Agreement*), by and among AMD, West Coast Hitech L.P., a wholly owned subsidiary of Mubadala (*WCH*), and Advanced Technology Investment Company LLC, a company wholly owned by the Government of Abu Dhabi (*ATIC*), to an affiliate of Mubadala (i) 58,000,000 shares of our common stock (the *Shares*) and warrants to purchase 35,000,000 shares of our

Edgar Filing: ADVANCED MICRO DEVICES INC - Form PRER14A

common stock (the **Warrants**) at an exercise price of \$0.01 per share (as adjusted pursuant to the terms of the Warrants), for an aggregate purchase price equal to (a) 58,000,000 multiplied by (b) the lesser of (A) the average of the closing prices per share of our common stock on the New York Stock Exchange (the **NYSE**) for the 20 trading days immediately prior to and including December 12, 2008 and (B) the average of the closing prices per share of our common stock on the NYSE for the 20 trading days immediately prior to the closing date of the transactions contemplated by the Master Transaction Agreement (the **Transactions**) which Warrants will be exercisable after the earlier of (a) public ground-breaking of Fab 4X in New York and (b) 24 months from the date of issuance and will have a 10-year term and (ii) 35,000,000 shares of our common stock upon the exercise of the Warrants (the **Warrant Shares**) (as adjusted pursuant to the terms of the Warrants); and

Table of Contents

Such other business as may properly be brought before the Special Meeting or any adjournment or postponement thereof.

5. Q: WHAT ARE THE TRANSACTIONS CONTEMPLATED BY THE MASTER TRANSACTION AGREEMENT?

A: Under the Master Transaction Agreement, AMD, Mubadala and ATIC intend to enter two distinct but related concurrent transactions. Mubadala (through its subsidiary WCH) will pay to AMD an aggregate purchase price equal to (a) 58,000,000 multiplied by (b) the lesser of (A) the average of the closing prices per share of our common stock on the NYSE for the 20 trading days immediately prior to and including December 12, 2008 and (B) the average of the closing prices per share of our common stock on the NYSE for the 20 trading days immediately prior to the closing date of the Transactions to acquire the Shares and the Warrants. At the same time, AMD and ATIC will enter into a joint venture to form The Foundry Company, a global, independent semiconductor foundry to be headquartered in the United States. AMD will contribute assets, including its manufacturing facilities, its manufacturing employees, and intellectual property rights to The Foundry Company. The Foundry Company will assume approximately \$1.2 billion in debt from AMD. ATIC will invest \$2.1 billion to purchase its stake in The Foundry Company, of which it will invest \$1.4 billion directly in the new entity and the remainder will be paid to AMD to purchase additional shares in The Foundry Company. ATIC's investment in The Foundry Company will be separate from Mubadala's investment in AMD, and ATIC will not acquire any shares of AMD.

6. Q: WHO WILL OWN THE FOUNDRY COMPANY JOINT VENTURE?

A: When the Transactions contemplated by the Master Transaction Agreement close (the *Closing*), AMD and ATIC will each own one half of the voting shares, and each will be entitled to elect four out of eight members of the board of directors of The Foundry Company. At the Closing, The Foundry Company will be owned 34.2% by AMD and 65.8% by ATIC on a fully converted to common basis. ATIC's ownership will increase over time based on the differences in securities held by AMD and ATIC, and depending on whether AMD elects to invest proportionately with ATIC in future capital infusions.

7. Q: WHO ARE MUBADALA AND ATIC?

A: Mubadala is an investment and development company wholly owned by the Government of Abu Dhabi. Mubadala's mandate is to generate sustainable economic benefits for Abu Dhabi through prudent commercially viable and profitable business ventures. Mubadala was established as an Abu Dhabi public joint stock company. ATIC is a limited liability company established under the laws of Abu Dhabi and wholly owned by the Government of Abu Dhabi. ATIC is focused on making significant investments in the advanced technology sector, both locally and internationally. Its mandate is to generate returns that deliver long-term benefits to the Emirate of Abu Dhabi. We have been informed by ATIC that it is anticipated that, prior to the Closing, ATIC will become an Abu Dhabi public joint stock company.

8. Q: WHY IS AMD ISSUING THE SHARES AND THE WARRANTS TO WCH?

A: The issuance of the Shares and Warrants to WCH is a condition to ATIC's obligations to enter into the joint venture to form The Foundry Company.

9. Q: WHY IS AMD SEEKING STOCKHOLDER APPROVAL FOR THE ISSUANCE OF THE SHARES, WARRANTS AND THE WARRANT SHARES?

Edgar Filing: ADVANCED MICRO DEVICES INC - Form PRER14A

A: Our common stock is listed on the NYSE, and we are therefore subject to the rules and regulations of the NYSE. Stockholder approval for the issuance of the Shares, the Warrants and the Warrant Shares is

Table of Contents

required by the rules of the NYSE and is a condition to closing of the Transactions. See Proposal 1 Issuance of Shares, Warrants and Warrant Shares Purpose of Stockholder Approval of Our Issuance of the Shares, the Warrants and the Warrant Shares to WCH elsewhere in this proxy statement.

10. Q: HOW DOES THE BOARD RECOMMEND I VOTE ON THE PROPOSAL?

A: The board of directors recommends that you vote **FOR** the issuance of the Shares, Warrants and Warrant Shares to WCH.

11. Q: WHY DOES THE BOARD RECOMMEND THAT I VOTE FOR THE PROPOSAL?

A: Our board of directors held various discussions and consulted with our management and financial, legal and other advisors and anticipates that the Transactions will benefit AMD and its stockholders. See Proposal 1 Issuance of Shares, Warrants and Warrant Shares Our Purpose and Reasons for the Transactions included elsewhere in this proxy statement.

12. Q: WHO IS ENTITLED TO VOTE?

A: Stockholders as of the close of business on _____, the record date for our Special Meeting, are entitled to vote on all items properly presented at the Special Meeting. On the record date, approximately _____ shares of our common stock were outstanding. Every stockholder is entitled to one vote for each share of common stock held as of the record date. A list of these stockholders will be available during ordinary business hours at the principal place of business of AMD, located at One AMD Place, Sunnyvale, California, from the Assistant Corporate Secretary of AMD and at AMD Austin, Lone Star, 7171 Southwest Parkway, Austin, Texas, 78735 from the Corporate Secretary of AMD, in each case at least 10 days before the Special Meeting. The list of stockholders will also be available at the time and place of the Special Meeting.

13. Q: IF I AM A STOCKHOLDER OF RECORD, HOW DO I VOTE?

A: If you are a stockholder of record, you may vote in person at the Special Meeting. We will give you a ballot when you arrive. If you complete and properly sign each proxy card you receive and return it to us in the prepaid envelope, it will be voted by one of the individuals indicated on the card (your proxy) as you direct. If you return your signed proxy card or submit a proxy over the Internet but do not mark the boxes showing how you wish your shares to be voted, your shares will be voted **FOR** the issuance of the Shares, Warrants and Warrant Shares to WCH, and in the discretion of the proxy holders for any other matter that may come before the Special Meeting.

Table of Contents

If you live in the United States or Canada, you may submit your proxy by following the Vote by Telephone instructions on the proxy card. If you have Internet access, you may submit your proxy from any location in the world by following the Vote by Internet instructions on the proxy card.

14. Q: WHO CAN ATTEND THE SPECIAL MEETING?

A: Only stockholders as of the close of business on _____, holders of proxies for those stockholders and other persons invited by us can attend. If your shares are held by your broker in _____ street name, you must bring a letter from your broker to the meeting showing that you were the direct or indirect (_____ beneficial) owner of the shares on _____ to attend the Special Meeting.

15. Q: CAN I VOTE AT THE MEETING?

A: Yes. If you held your shares in your own name on the record date, you may vote your shares in person at the Special Meeting. If you wish to vote your shares in person at the Special Meeting and they are held by your broker in _____ street name, you must obtain a proxy from the record holder and bring a letter from the broker to the meeting showing that you were the beneficial owner of the shares on _____.

16. Q: CAN I CHANGE MY VOTE AFTER I HAVE SUBMITTED A PROXY?

A: Yes. You may change your vote at any time before the voting concludes at the Special Meeting. You may do so by submitting a proxy on a later date on the Internet or by telephone (only your latest Internet or telephone proxy submitted prior to the meeting will be counted), or by signing and returning a new proxy card with a later date, or by attending the Special Meeting and voting in person. However, your attendance at the Special Meeting will not automatically revoke your proxy unless you vote again at the Special Meeting or specifically request in writing that your prior proxy be revoked.

17. Q: HOW DO I VOTE MY SHARES IF THEY ARE HELD IN STREET NAME?

A: If your shares are held by your broker in _____ street name, you will receive a form from your broker seeking instruction as to how your shares should be voted. We urge you to complete this form and instruct your broker how to vote on your behalf. You can also vote in person at the Special Meeting, but you must obtain a proxy from the record holder and bring a letter from the broker showing that you were the beneficial owner of your shares on _____.

18. Q: WHAT IS A QUORUM ?

A: For the purposes of the Special Meeting, a quorum is a majority of the outstanding shares. They may be present at the Special Meeting or represented by proxy. There must be a quorum for the Special Meeting to be held. If you submitted a proxy via the Internet, by telephone or by properly submitting a proxy card, even if you abstain from voting, your shares will be considered part of the quorum.

19. Q: HOW ARE MATTERS PASSED OR DEFEATED?

Edgar Filing: ADVANCED MICRO DEVICES INC - Form PRER14A

- A: You may vote **FOR**, **AGAINST** or **ABSTAIN** with respect to the proposal to approve the issuance of the Shares, Warrants and Warrant Shares to WCH. The proposal to approve the issuance of the Shares, Warrants and Warrant Shares to WCH requires the affirmative vote of a majority of the votes cast, provided that the total vote cast on the proposal represents over 50% of the outstanding common stock entitled to vote on the proposal. If you **ABSTAIN** from voting on the proposal, your shares will be counted for purposes of determining whether a quorum is present, but will not be counted as votes **FOR** or **AGAINST** the proposal. Broker non-votes will be counted for purposes of determining whether a quorum is present, but will not be counted as votes **FOR** or **AGAINST** the proposal. A broker non-vote occurs where the broker has not received instructions from the beneficial owner as to how such beneficial owner's shares are to be voted on the proposal and does not

Table of Contents

have discretionary authority to vote on the proposal. Under the NYSE rules, brokers do not have discretionary authority to vote on the proposal to approve the issuance of the Shares, Warrants and Warrant Shares to WCH. If you complete the voting instructions and submit your proxy, the persons named as proxies will follow your instructions. If you submit a proxy but do not specify your voting instructions, the persons named as proxies will vote your shares **FOR** the adoption of the proposal set forth in this proxy statement and in accordance with the discretion of the persons appointed as proxies on any other matters properly brought before the meeting for a vote.

20. Q: WHO WILL COUNT THE VOTES?

A: Proxies will be tabulated by Broadridge Financial Solutions, Inc., formerly known as ADP-ICS.

21. Q: IS MY VOTE CONFIDENTIAL?

A: Proxy cards, ballots and voting tabulations that identify individual stockholders are mailed or returned directly to Broadridge and handled in a manner that protects your voting privacy. Your vote will not be disclosed except (1) as needed to permit Broadridge to tabulate and certify the vote and (2) as required by law. However, comments written on the proxy card may be forwarded to management. In that case, your identity may not be kept confidential.

22. Q: WILL YOU WEBCAST THE SPECIAL MEETING?

A. Yes. The Special Meeting will be webcast live. You can access it by going to our Investor Relations Web site at: www.amd.com. The webcast will enable you to listen only to the Special Meeting. You will not be able to ask questions. The Special Meeting audio webcast will be available on our Web site for 10 days after the Special Meeting.

Table of Contents

PROPOSAL 1 ISSUANCE OF SHARES, WARRANTS AND WARRANT SHARES

Unless the context otherwise requires, references in this proxy statement to AMD, we, our or us refer to Advanced Micro Devices, Inc. and its consolidated subsidiaries.

We are asking our stockholders to consider and approve the issuance of the Shares and Warrants to WCH pursuant to the Master Transaction Agreement and the issuance of the Warrant Shares upon exercise of the Warrants.

Purpose of Stockholder Approval of Our Issuance of the Shares, the Warrants and the Warrant Shares to WCH

The approval of AMD's stockholders of the issuance of the Shares and the Warrants to WCH pursuant to the Master Transaction Agreement and the Warrant Shares upon the exercise of the Warrants is a condition to the Closing. The Master Transaction Agreement requires AMD to obtain stockholder approval in accordance with the NYSE rules because WCH currently owns approximately 8.05% of our outstanding common stock (based on 608,708,430 shares outstanding as of December 17, 2008) and thus is a substantial security holder as defined in the NYSE rules.

Effects on Our Stockholders of Our Issuance of the Shares, the Warrants and the Warrant Shares to WCH

Pursuant to the Master Transaction Agreement, WCH will purchase (i) 58,000,000 shares of our common stock and (ii) Warrants to purchase 35,000,000 shares of our common stock at an exercise price of \$0.01 per share (as adjusted pursuant to the terms of the Warrants) for an aggregate purchase price equal to (a) 58,000,000 multiplied by (b) the lesser of (A) the average of the closing prices per share of our common stock on the New York Stock Exchange (the *NYSE*) for the twenty (20) trading days immediately prior to and including December 12, 2008 and (B) the average of the closing prices per share of our common stock on the NYSE for the twenty (20) trading days immediately prior to the closing date of the Transactions. We will issue the Warrant Shares upon exercise by WCH of the Warrants. Upon issuance of the Shares at the Closing, WCH will own approximately 16.05% of the outstanding shares of our common stock, based on 608,708,430 shares outstanding as of December 17, 2008. If WCH exercises the Warrants in full when the Warrants become exercisable, WCH will own approximately 19.9% of our common stock on a fully diluted basis (including outstanding stock options and restricted stock units, based on 608,708,430 shares outstanding as of December 17, 2008). Stockholders should consider the following factors which may affect them, as well as the other information contained in this proxy statement, in evaluating the proposal to approve the issuance of the Shares and the Warrants pursuant to the Master Transaction Agreement and the issuance of the Warrant Shares upon exercise of the Warrants.

Possible effect on market price of our common stock. We are unable to predict the potential effects of the Transactions on the trading activity and market price of our common stock. We are also unable to predict the effects on the trading activity and market price of our common stock if the Transactions do not close. Sales by WCH of a substantial number of shares of our common stock in the public market, or the perception that such sales might occur, could cause the price of our common stock to decline. Other than securities law requirements, there are only limited restrictions on WCH's sales of the Shares, Warrants and Warrant Shares. See *The Master Transaction Agreement Transfer Restrictions* included elsewhere in this proxy statement.

WCH will increase its ownership in our common stock and will have a right to designate one person for election to our board of directors. Following the Closing and when the Warrants become exercisable, assuming exercise of the Warrants, WCH will beneficially own approximately 19.9% of our common stock on a fully diluted basis (including outstanding stock options and restricted stock units) and would be our largest stockholder. As a result of the Transactions, WCH will increase its ability to influence matters submitted to our stockholders for a vote. Pursuant to the Master Transaction Agreement, for so long as WCH and its permitted transferees beneficially own at least 10% of our outstanding common stock, WCH has the right to designate one person for election to our board of directors.

Table of Contents

Dilution. The issuance of the Shares and Warrant Shares to WCH will have a dilutive effect on an individual stockholder's percentage voting power. Our issuance of the Shares to WCH will also have a dilutive effect on our future net income per common share. Our issuance of the Warrants to WCH will have a dilutive effect on our future net income per common share when the Warrants become exercisable, and after the Warrants are exercised, the Warrant Shares issuable upon exercise of the Warrants will have a dilutive effect on our future net income per common share. In addition, the standstill provisions in the Master Transaction Agreement permit WCH to acquire additional shares of our common stock up to a limit of 22.5% in the aggregate of our voting securities during the five years after the Closing, and this ownership percentage limitation terminates after this five-year period.

The Parties

AMD. We are a global semiconductor company with facilities around the world. Our products consist of (i) x86 microprocessors, for the commercial and consumer markets, embedded microprocessors for commercial, commercial client and consumer markets and chipsets for desktop and notebook personal computers, professional workstations and servers and (ii) graphics, video and multimedia products for desktop and notebook computers, including home media PCs, professional workstations and servers and technology for game consoles.

Mubadala and WCH. WCH is an exempted limited partnership organized under the laws of the Cayman Islands. Mubadala owns all of the partnership interests in WCH. AMD and WCH are parties to a stock purchase agreement dated as of November 15, 2007, pursuant to which AMD issued and sold to WCH 49,000,000 shares of our common stock for an aggregate purchase price of \$622.3 million, less an expense reimbursement of approximately \$14.6 million (the **2007 Investment**). As a result of the 2007 Investment, WCH owns approximately 8.05% of the outstanding shares of our common stock, based on 608,708,430 shares outstanding as of December 17, 2008.

Mubadala is an investment and development company wholly owned by the Government of Abu Dhabi. Mubadala's mandate is to generate sustainable economic benefits for Abu Dhabi through prudent, commercially viable and profitable business ventures. Mubadala was established as an Abu Dhabi public joint stock company.

ATIC. ATIC is a limited liability company established under the laws of the Emirate of Abu Dhabi and wholly owned by the Government of Abu Dhabi. ATIC is focused on making significant investments in the advanced technology sector, both locally and internationally. Its mandate is to generate returns that deliver long-term benefits to the Emirate of Abu Dhabi. We have been informed by ATIC that it is anticipated that, prior to the Closing, ATIC will become an Abu Dhabi public joint stock company.

The Foundry Company. The Foundry Company, an exempted company incorporated under the laws of the Cayman Islands (**The Foundry Company**), will be a U.S.-headquartered, leading-edge semiconductor manufacturing joint venture between ATIC and AMD.

The Transactions

Pursuant to the Master Transaction Agreement, AMD and ATIC will form a manufacturing joint venture, The Foundry Company. AMD will contribute certain assets and liabilities to The Foundry Company in exchange for certain securities of The Foundry Company, ATIC will contribute cash to The Foundry Company and pay cash to AMD in exchange for certain securities of The Foundry Company, and WCH will purchase the Shares and the Warrants from AMD. As of September 27, 2008, the book value of the assets to be contributed by AMD to The Foundry Company was approximately \$4.0 billion out of AMD's approximately \$9.4 billion of assets. AMD will also transfer all non-patent intellectual property related exclusively to manufacturing and will transfer patents related to its manufacturing and microprocessor business that are approximately equal in value to those being retained. However, no patents related to AMD's graphics business will be transferred. The Foundry Company will manufacture semiconductor products and will provide certain foundry services to AMD and in the future will offer foundry services to other third-party customers.

Table of Contents

The Master Transaction Agreement contemplates that AMD, ATIC and The Foundry Company will enter into a Shareholders Agreement (the *Shareholders Agreement*), which sets forth the rights and obligations of AMD and ATIC as shareholders of The Foundry Company. In addition, a Funding Agreement among AMD, ATIC and The Foundry Company (the *Funding Agreement*) will provide for further equity funding of The Foundry Company by ATIC of a minimum of \$3.6 billion and up to \$6.0 billion over the five years after the Closing, and a Wafer Supply Agreement between AMD and The Foundry Company (the *Wafer Supply Agreement*) will govern the terms by which AMD will purchase products manufactured by The Foundry Company. The Foundry Company will manufacture semiconductor products using intellectual property transferred by AMD to The Foundry Company, and certain intellectual property licensed by AMD. For more information on these agreements, see The Shareholders Agreement, The Funding Agreement, The Wafer Supply Agreement and Agreements Related to Intellectual Property appearing elsewhere in this proxy statement.

Our Purpose and Reasons for the Transactions

The semiconductor industry is undergoing a profound transformation. Vertically integrated companies are abandoning plans to invest in new capacity and manufacturing technology while announcing plans to outsource a growing percentage of their wafer requirements. Captive volumes can no longer support the cost of building leading-edge capacity and process technology investments.

Our board of directors held various discussions and consulted with our management and financial, legal and other advisors and believes that the Transactions will benefit AMD stockholders in a number of ways:

We will increase our cash balance by approximately \$0.8 billion as a result of the sale of the Shares and Warrants. In addition, although we will consolidate the accounts of The Foundry Company after the Closing, because we will be transferring the subsidiary that owes \$1.2 billion of indebtedness to The Foundry Company at Closing, we will no longer be obligated to repay that \$1.2 billion of indebtedness after the Closing.

We believe we will greatly reduce any future manufacturing capital expenditures as well as process technology costs. ATIC has committed to provide additional equity funding to The Foundry Company of at least \$3.6 billion and up to \$6.0 billion over the five years after the Closing. We will have the right, but not the obligation, to fund the capital requirements of The Foundry Company in an amount pro-rata to our interest in the fully converted shares of The Foundry Company.

We will have a 50% voting interest prior to a reconciliation event (as defined in the Shareholders Agreement), following which our voting interest will equal our economic interest (approximately 34.2% fully converted to common interest at the Closing) in The Foundry Company. The Foundry Company's manufacturing capabilities will allow our management to focus on the research and development of products rather than manufacturing and processing.

As a shareholder of The Foundry Company, we expect to be able to take advantage of the shift by integrated device manufacturers (*IDMs*) to a fabless business model. We believe the number of IDMs foregoing their own manufacturing capabilities will continue to increase, which would result in higher demand for foundry services. The Foundry Company should, and is designed to, be in a position to capitalize on this trend by meeting customers' demand volumes.

Merrill Lynch & Co. (*Merrill Lynch*) has provided an opinion to our board of directors that as of December 5, 2008 and based upon the assumptions made, matters considered and limits of its review, the Consideration to be received by AMD pursuant to the Master Transaction Agreement was fair from a financial point of view to AMD. *Consideration* for purposes of Merrill Lynch's opinion consists of AMD's receipt of Class A Preferred Shares of The Foundry Company and one Class A Ordinary Share of The Foundry Company, cash paid to AMD for the Shares and Warrants, cash paid to AMD from ATIC for Class B Preferred Shares of The Foundry Company, assumption of approximately \$1.2 billion of debt owed to third parties by AMD or a subsidiary of AMD (the *Third-Party Debt*) by The

Table of Contents

Foundry Company, and extinguishment of Business accounts receivable owed by AMD to the Business by The Foundry Company.

Morgan Stanley & Co. Incorporated (*Morgan Stanley*) has provided an opinion to the Transaction Oversight Committee of our board of directors (the *Transaction Oversight Committee*) that as of December 5, 2008, and based upon and subject to the various considerations set forth in the opinion, the Consideration to be received by AMD in connection with the Transactions was fair from a financial point of view to AMD. For the purposes of Morgan Stanley's opinion *Consideration* was defined as, in the aggregate: (i) the equity securities of The Foundry Company received by AMD and the extinguishment of certain intercompany accounts relating to AMD's semiconductor manufacturing business in exchange for the contribution by AMD of certain assets related to its semiconductor manufacturing business, and certain related liabilities including, without limitation, \$1.2 billion in third-party debt, to The Foundry Company; (ii) \$700 million in cash received by AMD from ATIC in exchange for the transfer of an approximately 21.9% interest in The Foundry Company from AMD to ATIC, resulting in AMD owning approximately 34.2% of The Foundry Company on a fully converted basis and a 50% voting interest in The Foundry Company; and (iii) an aggregate purchase price equal to (a) 58,000,000 multiplied by (b) the lesser of (A) the average of the closing prices per share of AMD common stock on the NYSE for the 20 trading days immediately prior to and including December 12, 2008 and (B) the average of the closing prices per share of AMD common stock on the NYSE for the 20 trading days immediately prior to the closing date of the Transactions received by AMD from WCH in exchange for the Shares and the Warrants. The Transaction Oversight Committee was established by our board of directors to independently review and evaluate the Transactions. The Transaction Oversight Committee was comprised of independent (as defined under NYSE rules and regulations) and disinterested directors.

In its review of the proposed transactions, our board of directors also identified and considered a number of potentially negative factors and risks related to the Transactions, including:

the risk that the Transactions might not be completed in a timely manner or at all, and the possible negative effect of public announcement and pendency of the Transactions on our business, results of operations and financial condition;

the risk that the anticipated benefits and synergies of the joint venture might not be fully realized, might not be realized on a timely basis or might not be realized at all;

the effect of public announcement of the Transactions on our stock price, including as a result of dilution in the percentage ownership of our existing stockholders as a result of the Transactions;

the risk that provisions in the Master Transaction Agreement and related agreements may have the effect of discouraging other persons potentially interested in a business combination with us from pursuing that business combination, even if more favorable to our stockholders than the Transactions, including the restrictions on our ability to solicit offers for alternative business transactions and the requirement that we pay a termination fee of \$50 million to WCH upon termination of the Master Transaction Agreement as a result of change of control proposals for us;

the restrictions imposed by the Master Transaction Agreement on the conduct of our business in the period prior to the Closing;

we will no longer have direct control over the manufacture of our wafers which will be manufactured by The Foundry Company;

if The Foundry Company is sold, liquidated or dissolved, we may not be able to have The Foundry Company, or find another company to, manufacture wafers for us of suitable quality and in sufficient quantities, on acceptable terms or at all;

Edgar Filing: ADVANCED MICRO DEVICES INC - Form PRER14A

the possibility of management and employee disruption associated with the Transactions and transfer of assets to The Foundry Company; and

the right of WCH and ATIC to terminate the Master Transaction Agreement under certain circumstances, including a material adverse effect on us or on the proposed business of The Foundry

Table of Contents

Company, if the Closing has not occurred by March 7, 2009, or if the Transactions have not been approved by certain regulatory authorities, including the Committee on Foreign Investment in the United States (*CFIUS*).

Financial Impact on Us of the Master Transaction Agreement, Including Our Issuance of the Shares, the Warrants and the Warrant Shares to WCH

The proceeds we receive from our issuance of the Shares and the Warrants to WCH will be recorded on our consolidated balance sheet as stockholders' equity. We will use the proceeds for general corporate purposes, which may include reducing our outstanding indebtedness, increasing our working capital, acquisitions and capital expenditures. Our issuance of the Shares to WCH will have a dilutive effect on our future net income per common share. Our issuance of the Warrants to WCH will have dilutive effect on our future net income per common share when the Warrants become exercisable, and after the Warrants are exercised, the Warrant Shares issuable upon exercise of the Warrants will have a dilutive effect on our future net income per common share.

We will consolidate the accounts of The Foundry Company as required by FASB Interpretation No. 46R, *Consolidation of Variable Interest Entities, An Interpretation of ARB No. 51 (FIN 46R)*. Based on the structure of the Transactions, pursuant to the guidance in FIN 46R, The Foundry Company is a variable-interest entity and we are deemed to be the primary beneficiary and are, therefore, required to consolidate the accounts of The Foundry Company. Upon the Closing, the accounts of The Foundry Company will include (i) the assets and liabilities we contributed to The Foundry Company, recorded at their historical costs, in exchange for securities of The Foundry Company and (ii) the cash invested by ATIC directly into The Foundry Company in exchange for securities of The Foundry Company. Upon consolidation, intercompany transactions and profits will be eliminated and ATIC's noncontrolling interest, represented by its equity interests in The Foundry Company, will not be recorded on our consolidated balance sheet as stockholders' equity due to the right that ATIC has to put those securities back to us in the event of a change of control of AMD.

Our net income per common share will consist of our consolidated net income adjusted for (i) the portion of The Foundry Company's earnings or losses attributable to ATIC, based on ATIC's proportional ownership interest in The Foundry Company's Class A Preferred Shares, and (ii) the non-cash cumulative dividend attributable to us, based on our proportional ownership interest in The Foundry Company's Class A Preferred Shares.

Opinion of Our Financial Advisor

AMD retained Merrill Lynch to act as its financial advisor with respect to the establishment of a joint venture, The Foundry Company, with ATIC and WCH under the terms of the Master Transaction Agreement. Pursuant to the Master Transaction Agreement (i) AMD would transfer certain assets to The Foundry Company, and The Foundry Company would assume certain liabilities, including the Third-Party Debt, in each case related to AMD's front-end semiconductor manufacturing or fabrication facilities, properties and assets (excluding assets, facilities and properties related to back-end manufacturing functions such as assembly, test, mark and packaging) (the *Business*), (ii) ATIC would contribute \$1.4 billion in cash to The Foundry Company and pay \$700 million in cash to AMD, (iii) The Foundry Company would issue to AMD Class A Preferred Shares of The Foundry Company representing approximately 34.2% of The Foundry Company's outstanding ordinary shares on a fully converted basis as well as one Class A Ordinary Share and would issue to ATIC Class A and Class B Preferred Shares of The Foundry Company and Class A and Class B Convertible Notes of The Foundry Company, in the principal amount of approximately \$1.0 billion (subject to adjustment under certain circumstances), which when taken together, on an as converted basis, would represent approximately 65.8% of The Foundry Company's outstanding ordinary shares, as well as one Class A Ordinary Share, (iv) AMD would issue to WCH 58,000,000 shares of AMD's common stock at a per share price equal to the lower of (a) the average closing prices of AMD common stock for the 20 trading days immediately prior to and including December 12, 2008 and (b) the average closing prices of AMD common stock for the 20 trading days prior to the closing date of the Transactions and AMD would receive from WCH such purchase price in cash in exchange for such shares, (v) AMD would issue to WCH Warrants to purchase 35,000,000 shares of AMD's common stock

Table of Contents

with a \$0.01 per share exercise price and 10-year expiration, (vi) AMD would extinguish any and all intercompany liabilities between it and the Business on or prior to Closing, and (vii) AMD, ATIC, WCH and The Foundry Company would enter into a number of related commercial agreements, including, without limitation, the Funding Agreement that commits ATIC under certain conditions to fund the build-out of The Foundry Company's semiconductor manufacturing facilities in New York and Dresden and the Wafer Supply Agreement that governs the pricing, volume and other commitments (including exclusivity commitments by AMD) between AMD and The Foundry Company for the supply of wafers.

In connection with the Transactions, AMD requested that Merrill Lynch evaluate the fairness, from a financial point of view, of the Consideration (as defined below) to be received by AMD pursuant to the Transactions. **Consideration** for purposes of Merrill Lynch's opinion consists of AMD's receipt of Class A Preferred Shares of The Foundry Company and one Class A Ordinary Share, cash paid to AMD for shares of AMD Common Stock and the Warrants, cash paid to AMD from ATIC for Class B Preferred Shares of The Foundry Company, assumption of the Third-Party Debt by The Foundry Company, and extinguishment of Business accounts receivable owed by AMD to the Business by The Foundry Company. At the meeting of the AMD board of directors on December 5, 2008, Merrill Lynch rendered its oral opinion to the board of directors, which opinion was subsequently confirmed in writing, that as of December 5, 2008, based upon the assumptions made, matters considered and limits of such review, as set forth in its opinion, the Consideration to be received by AMD pursuant to the Transactions was fair from a financial point of view.

The full text of Merrill Lynch's opinion is attached as Annex A and is incorporated into this document by reference in its entirety. The opinion sets forth material information relating to such opinion, including the assumptions made, matters considered and qualifications and limitations on the scope of review undertaken by Merrill Lynch in rendering its opinion. We encourage you to read the entire opinion carefully. The summary of the opinion of Merrill Lynch set forth below is qualified in its entirety by reference to, and should be reviewed together with, the full text of the opinion.

Merrill Lynch's opinion is addressed to the AMD board of directors and addresses only the fairness, as of the date of the opinion, from a financial point of view, of the Consideration to be received by AMD pursuant to the Master Transaction Agreement. The opinion is for the use and benefit of AMD's board of directors, does not address the merits of the underlying decision by AMD to engage in the Master Transaction Agreement and does not constitute a recommendation to any stockholder as to how such stockholder should vote on the transaction or any matter related to the Master Transaction Agreement. In addition, the opinion does not address the fairness to, or any other consideration of, the holders of any class of securities, creditors or other constituencies of AMD. The opinion makes no comment on, and indicates that no implication should be drawn as to, the parties' reasons for entering into the Amendment and expresses no view or opinion as to their rights and obligations under the Master Transaction Agreement prior to the Amendment to Master Transaction Agreement. In rendering the opinion, Merrill Lynch expressed no view or opinion with respect to the fairness (financial or otherwise) of the commercial agreements contemplated by the Master Transaction Agreement or the trading price of AMD's common stock at any date subsequent to the date of the opinion, including without limitation the closing date for the Transactions or of the amount or nature or any other aspect of any compensation payable to or to be received by any officers, directors, or employees of any parties to the Master Transaction Agreement, or any class of such persons, relative to the Consideration to be received by AMD pursuant to the Master Transaction Agreement.

In arriving at its opinion, Merrill Lynch, among other things:

reviewed certain publicly available business and financial information relating to AMD and the Business that Merrill Lynch deemed to be relevant;

reviewed certain information, including financial forecasts, relating to the business, earnings, cash flow, assets, liabilities and prospects of AMD, the Business and The Foundry Company furnished to Merrill Lynch by AMD;

conducted discussions with members of senior management and representatives of AMD and the Business concerning the matters described in bullets 1 and 2 above;

Table of Contents

reviewed the market prices and valuation multiples for certain publicly traded companies that Merrill Lynch deemed to be relevant to AMD, the Business and The Foundry Company;

reviewed the results of operations of AMD and the Business and the financial forecasts for AMD, the Business and The Foundry Company and compared them with those of certain publicly traded companies that Merrill Lynch deemed to be relevant;

compared the proposed financial terms of the Master Transaction Agreement (as amended by the Amendment to Master Transaction Agreement) with the financial terms of certain other transactions that Merrill Lynch deemed to be relevant;

participated in certain discussions and negotiations among representatives of AMD, the Business, The Foundry Company, ATIC and WCH and their financial and legal advisors;

reviewed the Master Transaction Agreement dated as of October 6, 2008 as well as the Ancillary Agreements (as such term is defined in the Master Transaction Agreement);

reviewed a draft of the Amendment to Master Transaction Agreement dated December 4, 2008; and

reviewed such other financial studies and analyses and took into account such other matters as Merrill Lynch deemed necessary, including Merrill Lynch's assessment of general economic, market and monetary conditions.

In preparing its opinion, Merrill Lynch assumed and relied on the accuracy and completeness of all information supplied or otherwise made available to it, discussed with or reviewed by or for it, or publicly available, and Merrill Lynch did not assume any responsibility for independently verifying such information or undertaking an independent evaluation or appraisal of any of the assets or liabilities of AMD or The Foundry Company, nor was Merrill Lynch furnished with any such evaluation or appraisal. Merrill Lynch did not evaluate the solvency or fair value of AMD or The Foundry Company under any state or federal laws relating to bankruptcy, insolvency or similar matters. In addition, Merrill Lynch did not assume any obligation to conduct any physical inspection of the properties or facilities of AMD or The Foundry Company. With respect to the financial forecast information furnished to or discussed with Merrill Lynch by AMD, Merrill Lynch assumed that such information was reasonably prepared and reflected the best currently available estimates and judgment of AMD's management as to the expected future financial performance of AMD, the Business and The Foundry Company, as the case may be. Merrill Lynch also assumed that the final form of the Amendment to Master Transaction Agreement and Ancillary Agreements would be substantially similar to the last draft Merrill Lynch reviewed.

Merrill Lynch's opinion was necessarily based upon market, economic and other conditions as they existed and could be evaluated on the date of the opinion, and upon the information made available to Merrill Lynch as of the date of the opinion.

Merrill Lynch's Financial Analyses

At the meeting of AMD's board of directors held on December 5, 2008, Merrill Lynch presented certain financial analyses accompanied by delivery of its written materials in connection with the delivery of its oral opinion at that meeting and its subsequent written opinion. The following is a summary of the material financial analyses performed by Merrill Lynch in arriving at its opinion.

Comparable Public Trading Multiples Analysis

Merrill Lynch compared selected financial and trading data for four publicly traded semiconductor foundry companies that Merrill Lynch deemed to be relevant to its analysis of the Business and The Foundry Company. These companies were:

Chartered Semiconductor Manufacturing Ltd.

United Microelectronics Corporation

Table of Contents

Semiconductor Manufacturing Incorporated

Taiwan Semiconductor Manufacturing Corporation, Ltd.

For each of the companies identified above, Merrill Lynch calculated various valuation multiples, including:

The ratio of enterprise value to the estimated revenue, for calendar year 2009;

The ratio of enterprise value to the estimated earnings before interest, taxes, depreciation and amortization (*EBITDA*), for calendar year 2009;

The ratio of enterprise value to the book value of assets; and

The ratio of market value to the book value of equity.

Based upon its analysis of the full ranges of multiples calculated for the companies identified above and its consideration of various factors and judgments about current market conditions and the characteristics of such companies (including qualitative factors and judgments involving non-mathematical considerations), Merrill Lynch determined relevant ranges of multiples for such companies (which relevant ranges were narrower than the full ranges of such multiples). The relevant ranges of such multiples, as determined by Merrill Lynch, are set forth in the table below.

For purposes of its analysis, Merrill Lynch calculated the enterprise value as the market capitalization plus total debt, minority interests and preferred stock, less cash and cash equivalents. To calculate these trading multiples, Merrill Lynch used revenue and EBITDA projections reported by independent research analyst reports and First Call estimates and closing trading prices of equity securities of each identified company on December 3, 2008. First Call is an online aggregator of independent research analyst estimates managed by Thomson Financial. For book value of asset and book value of equity, Merrill Lynch used the latest public filings for each identified company. For the Business, Merrill Lynch used revenue, book value of assets, and book value of equity projections based, separately, on estimates reported by internal management projections.

	Comparable Company Relevant Multiple Range		Implied Enterprise Value of the Business (\$ in billions)		Implied Multiple based on Consideration
Research Estimates:					
CY2009 Enterprise Value / Revenue	0.50x	1.10x	\$0.7	\$1.6	2.17x
CY2009 Enterprise Value / EBITDA	1.5x	3.0x	\$0.1	\$0.2	37.6x
Enterprise Value / Book Value of Assets	0.20x	0.40x	\$0.7	\$1.5	0.83x
Market Value / Book Value of Equity	0.20x	0.60x	\$1.4	\$2.0	1.26x

Merrill Lynch observed that the implied multiples based on the Consideration to be received by AMD pursuant to the Master Transaction Agreement were above the range of the comparable public trading multiples projected for calendar year 2009 based on management's estimated revenue and EBITDA for the Business. In addition, Merrill Lynch observed that the implied multiples based on the Consideration to be received by AMD pursuant to the Master Transaction Agreement were above the range of the comparable trading multiples for book value of assets and book value of equity of the Business. Merrill Lynch also observed that the Consideration to be received by AMD pursuant to the Master Transaction Agreement was above the range of the implied enterprise value of the Business derived from the application of the relevant comparable public trading multiples projected for calendar year 2009 based on management's estimated revenue and EBITDA for the Business. In addition, Merrill Lynch observed that the Consideration to be received by AMD pursuant to the Master Transaction Agreement was above the range of the implied enterprise value of the Business derived from the application of the relevant transaction multiples to estimated book value of equity and book value of assets for the Business based on management estimates.

Edgar Filing: ADVANCED MICRO DEVICES INC - Form PRER14A

It should be noted that no company used in the above analysis is identical to the Business or The Foundry Company. In evaluating companies identified by Merrill Lynch as comparable to the Business or The Foundry

Table of Contents

Company, Merrill Lynch made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond the control of AMD or The Foundry Company, such as the impact of competition on the business of AMD or The Foundry Company and the industry generally, industry growth and the absence of any material change in the financial condition and prospects of AMD or The Foundry Company or the industry or in the financial markets in general. A complete analysis involves complex considerations and judgments concerning differences in financial and operating characteristics of the comparable companies and other factors that could affect the public trading values of such comparable companies.

Comparable Transaction Analysis

Using publicly available research analyst estimates and other publicly available information, Merrill Lynch examined the following transactions in the semiconductor manufacturing industry which Merrill Lynch deemed to be relevant. The precedent transactions that Merrill Lynch considered to be relevant were:

Acquiror

Tower Semiconductor Ltd.
Chartered Semiconductor Manufacturing Ltd.
Vanguard International Semiconductor Corporation
Acquiror Technology
ON Semiconductor Corporation
Micron Technology

Target

Jazz Technologies, Inc.
Hitachi Semiconductor Singapore Fab
Winbond Electronics
Jazz Semiconductor
LSI Gresham Fab
Toshiba DRAM

For each of the transactions identified above, Merrill Lynch calculated various valuation multiples, including the ratio of market value to the book value of equity for the identified target company based on the period in which the relevant transaction was announced.

Based upon its analysis of the full ranges of multiples calculated for the transactions identified above and its consideration of various factors and judgments about current market conditions and the characteristics of such transactions and the companies involved in such transactions (including qualitative factors and judgments involving non-mathematical considerations), Merrill Lynch determined relevant ranges of multiples for such transactions (which relevant ranges were narrower than the full ranges of such multiples). The relevant range of such multiples, as determined by Merrill Lynch, was 1.00x to 1.10x, as set forth in the table below.

All calculations of multiples paid in the transactions identified above were based on public information available at the time of public announcement of such transactions. Merrill Lynch's analysis did not take into account different market and other conditions during the period in which the selected transactions occurred.

The following table summarizes the derived relevant range of multiples for the transactions identified above and the ranges of enterprise value of the Business, implied by such multiples:

	Multiple Range		Implied Enterprise Value of the Business (\$ in billions)		Implied Multiple based on Consideration
Market Value / Book Value of Equity	1.00x	1.10x	\$2.7	\$2.9	1.26x

Merrill Lynch observed that the implied multiples based on the Consideration received by AMD pursuant to the Master Transaction Agreement were above the range of the comparable transaction multiples for book value of equity. Merrill Lynch also observed that the Consideration to be received by AMD was above the range of the implied enterprise value of the Business derived from the application of the relevant transaction multiples to estimated book value of equity for the Business based on management estimates.

It should be noted that no transaction utilized in the analysis above is identical to the Master Transaction Agreement. A complete analysis involves complex considerations and judgments concerning differences in

Table of Contents

financial and operating characteristics of the companies involved in these transactions and other factors that could affect the transaction multiples in such transactions to which the Master Transaction Agreement is being compared.

Discounted Cash Flow Analysis

Merrill Lynch performed a discounted cash flow analysis of The Foundry Company for the period January 1, 2009 through December 31, 2020 based on management projections. Merrill Lynch calculated ranges of enterprise value based upon the sum of the discounted net present value of The Foundry Company's eleven year stream of projected unlevered free cash flows plus the discounted net present value of the terminal value based on a range of multiples applied to The Foundry Company's projected 2020 EBITDA. In its discounted cash flow analysis, Merrill Lynch performed sensitivities based upon the attainment of varying amounts of third-party customer revenue and applied what it considered to be appropriate discount rates ranging from 20.0% to 30.0% and terminal value multiples of estimated calendar year 2020 EBITDA ranging from 2.0x to 5.0x, both of which ranges were based on attainment of third-party customer revenue.

Using the discount rates and terminal value multiples of estimated calendar year 2020 EBITDA referred to above, Merrill Lynch calculated the following range of discounted cash flow values for The Foundry Company (\$ in billions):

	Low	High
Implied discounted cash flow values for The Foundry Company	\$ (1.4)	\$ 2.0

Merrill Lynch observed that the Consideration to be received by AMD pursuant to the Master Transaction Agreement was above the range of discounted cash flow values based on management's guidance.

General

The summary set forth above does not purport to be a complete description of the analyses performed by Merrill Lynch in arriving at its opinion. The fact that any specific analysis has been referred to in the summary above or in this proxy statement is not meant to indicate that such analysis was given more weight than any other analysis. The preparation of a fairness opinion is a complex process involving various determinations as to the most appropriate and relevant methods of financial analysis and the application of those methods to the particular circumstances; therefore, such an opinion is not readily susceptible to partial analysis or summary description. No company, business or transaction used in such analyses as a comparison is identical to the Business, The Foundry Company or the Master Transaction Agreement, nor is an evaluation of such analyses entirely mathematical. In arriving at its opinion, Merrill Lynch did not attribute any particular weight to any analysis or factor considered by it, but rather made qualitative judgments as to the significance and relevance of each analysis and factor. Accordingly, Merrill Lynch believes that its analyses must be considered as a whole and that selecting portions of its analyses and of the factors considered by it, without considering all factors and analyses, would, in the view of Merrill Lynch, create an incomplete and misleading view of the analyses underlying Merrill Lynch's opinion.

Some of the summaries of financial analyses above include information presented in tabular format. In order to fully understand Merrill Lynch's analyses, the tables must be read together with the text of each summary. The tables alone do not constitute a complete description of the analyses. Considering the data described above without considering the full narrative description of the financial analyses, including the methodologies and assumptions underlying the analyses, could create a misleading or incomplete view of Merrill Lynch's analyses.

The analyses performed by Merrill Lynch include analyses based upon forecasts of future results, which results may be significantly more or less favorable than those upon which Merrill Lynch's analyses were based. Because the analyses are inherently subject to uncertainty, being based upon numerous factors and events, including, without limitation, factors relating to general economic and competitive conditions beyond the control of the parties or their respective advisors, neither Merrill Lynch nor any other person assumes responsibility if future results or actual values are materially different from those contemplated above.

Table of Contents

AMD retained Merrill Lynch based upon Merrill Lynch's experience and expertise. Merrill Lynch is an internationally recognized investment banking firm with substantial experience in transactions similar to the proposed transactions. Merrill Lynch, as part of its investment banking business, is continually engaged in the valuation of businesses and securities in connection with business combinations and acquisitions and for other purposes.

Under the terms of the engagement letter between Merrill Lynch and AMD, Merrill Lynch agreed to provide financial advisory services to AMD, including an opinion as to the fairness from a financial point of view of the Consideration to be received pursuant to the Master Transaction Agreement, and AMD agreed to pay Merrill Lynch a customary fee, a significant portion of which is contingent upon consummation of the Master Transaction Agreement. In addition, AMD has agreed to indemnify Merrill Lynch and its affiliates (and their respective directors, officers, agents, employees and controlling persons) against certain liabilities and expenses, including certain liabilities under the federal securities laws, related to or arising out of Merrill Lynch's engagement.

Merrill Lynch and its affiliates have, in the past, provided financial advisory and financing services to AMD and/or its affiliates and may continue to do so in the future and have received, and may receive, fees for the rendering of such services. In addition, in the ordinary course of its business, Merrill Lynch or its affiliates may actively trade AMD shares and its other securities for its own account and for the accounts of customers and, accordingly, may at any time hold a long or short position in such securities.

Opinion of the Financial Advisor of the Transaction Oversight Committee of Our Board of Directors

The Transaction Oversight Committee of AMD retained Morgan Stanley to provide it with financial advisory services and a financial opinion in connection with a possible joint venture related to its semiconductor foundry business. The Transaction Oversight Committee selected Morgan Stanley to act as its financial advisor based on Morgan Stanley's qualifications, expertise and reputation and its familiarity with AMD. At the meeting of the Transaction Oversight Committee on December 5, 2008, Morgan Stanley rendered its oral opinion, subsequently confirmed in writing, that as of December 5, 2008, and based upon and subject to the various considerations set forth in the opinion, the **Consideration** to be received by AMD in connection with the Transactions was fair from a financial point of view to AMD. For the purposes of Morgan Stanley's opinion and for this section of the proxy statement **Consideration** was and is, respectively, defined as, in the aggregate: (i) the equity securities of The Foundry Company received by AMD and the extinguishment of certain intercompany accounts relating to AMD's semiconductor manufacturing business in exchange for the contribution by AMD of certain assets related to its semiconductor manufacturing business, and certain related liabilities including, without limitation, \$1.2 billion in third-party debt, to The Foundry Company; (ii) \$700 million in cash received by AMD from ATIC in exchange for the transfer of an approximately 21.9% interest in The Foundry Company from AMD to ATIC, resulting in AMD owning approximately 34.2% of the Foundry Company on a fully converted basis and a 50% voting interest in The Foundry Company; and (iii) approximately \$123 million received by AMD from WCH in exchange for the Shares and the Warrants (such approximate amount representing the average closing prices of AMD common stock for the period from November 14, 2008 through December 3, 2008, multiplied by 58 million shares).

The full text of Morgan Stanley's opinion is attached as Annex B and is incorporated into this proxy statement by reference in its entirety. The opinion sets forth, among other things, the assumptions made, procedures followed, matters considered and limitations on the scope of the review undertaken by Morgan Stanley in rendering its opinion. We encourage you to read the entire opinion carefully. Morgan Stanley's opinion is directed to the Transaction Oversight Committee and addresses only the fairness from a financial point of view of the Consideration to be received by AMD pursuant to the Transactions as of the date of the opinion. It does not address any other aspects of the Transactions and does not constitute a recommendation to any holder of AMD common stock as to how to vote at any stockholders' meeting to be held in connection with the Transactions. The summary of the opinion of Morgan Stanley set forth below is qualified in its entirety by reference to, and should be reviewed together with, the full text of the opinion.

Table of Contents

In connection with rendering its opinion, Morgan Stanley, among other things:

reviewed certain publicly available financial statements and other business and financial information of AMD;

reviewed certain internal financial statements and other financial and operating data concerning AMD;

reviewed certain financial projections of AMD and The Foundry Company prepared by the management of AMD;

reviewed certain financial projections of The Foundry Company jointly prepared by the managements of AMD and WCH, respectively;

discussed the past and current operations and financial condition and the prospects of AMD and The Foundry Company, including information relating to certain strategic, financial and operational benefits anticipated from the Transactions, with senior executives of AMD and WCH, respectively;

reviewed the pro forma impact of the Transactions on AMD's earnings per share, cash flow, consolidated capitalization and financial ratios;

compared the operations and financial forecasts for The Foundry Company with that of certain publicly-traded companies comparable with The Foundry Company;

reviewed the financial terms, to the extent publicly available, of certain transactions comparable to the Transactions;

compared the financial performance of AMD and the prices and trading activity of the AMD Common Stock with that of certain other publicly-traded companies comparable with AMD, and their securities;

participated in certain discussions and negotiations among representatives of AMD and WCH and their financial and legal advisors;

reviewed the Master Transaction Agreement and certain related documents; and

performed such other analyses and considered such other factors as it deemed appropriate.

In arriving at its opinion, Morgan Stanley assumed and relied upon, without independent verification, the accuracy and completeness of the information that was publicly available or supplied or otherwise made available to Morgan Stanley by AMD and WCH, and formed a substantial basis for its opinion. With respect to the financial projections, including information relating to certain strategic, financial and operational benefits anticipated from the Transactions, Morgan Stanley assumed that they had been reasonably prepared on bases reflecting the best currently available estimates and judgments of the respective managements of AMD and WCH of the future financial performance of AMD and The Foundry Company, as applicable. In addition, Morgan Stanley assumed that the Transactions will be consummated in accordance with the terms set forth in the Master Transaction Agreement without any waiver, amendment or delay of any terms or conditions, including, among other things, that ATIC will obtain financing in accordance with the terms set forth in the Master Transaction Agreement and related agreements. Morgan Stanley assumed that in connection with the receipt of all the necessary governmental, regulatory or other approvals and

Edgar Filing: ADVANCED MICRO DEVICES INC - Form PRER14A

consents required for the proposed Transactions, no delays, limitations, conditions or restrictions will be imposed that would have a material adverse effect on the contemplated benefits expected to be derived in the proposed Transactions. Morgan Stanley relied upon, without independent verification, the assessment by AMD of:

the future, potential financial performance of each of AMD and The Foundry Company;

the likely terms and conditions of The Foundry Company's future customer contracts;

the timing of, and risks associated with, the creation of The Foundry Company; and

the validity of, and risks associated with, AMD's and The Foundry Company's existing and future technologies, intellectual property, products, services and business models.

Table of Contents

In connection with the analysis of the Consideration, Morgan Stanley took into consideration the provision of certain future financing to The Foundry Company by ATIC and AMD and other factors deemed appropriate. Morgan Stanley is not a legal, tax or regulatory advisor. Morgan Stanley is a financial advisor only and relied upon, without independent verification, the assessment of AMD and WCH and their legal, tax or regulatory advisors with respect to legal, tax or regulatory matters. Morgan Stanley's opinion only addressed the fairness, from a financial point of view, of the Consideration to be received by AMD in connection with the Transactions. Morgan Stanley's opinion did not address the fairness of any non-financial aspects of the Transactions. Morgan Stanley expressed no opinion with respect to the fairness of the amount or nature of the compensation to any of AMD's, WCH's or ATIC's officers, directors or employees, or any class of such persons, relative to the Consideration to be received by AMD in the Transactions. Morgan Stanley did not make any independent valuation or appraisal of the assets or liabilities of AMD or The Foundry Company, nor was Morgan Stanley furnished with any such appraisals. Morgan Stanley's opinion was necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to Morgan Stanley as of December 5, 2008. Events occurring after December 5, 2008 may affect this opinion and the assumptions used in preparing it, and Morgan Stanley did not assume any obligation to update, revise or reaffirm its opinion.

The following is a brief summary of the material analyses performed by Morgan Stanley in connection with its oral opinion and the preparation of its written opinion letter dated December 5, 2008. The various analyses summarized below were based on closing market prices as of December 3, 2008, the second to last full trading day prior to the meeting of the Transaction Oversight Committee to consider and approve the Transactions and each of the transaction documents and recommend, among other things, that the full board of directors of AMD approve the Transactions and the execution and delivery of the transaction documents to which AMD is a party. Some of these summaries of financial analyses include information presented in tabular format. In order to fully understand the financial analyses used by Morgan Stanley, the tables must be read together with the text of each summary. The tables alone do not constitute a complete description of the financial analyses. Rather, the analyses listed in the tables and described below must be considered as a whole; considering any portion of such analyses and of the factors considered, without considering all analyses and factors, could create a misleading or incomplete view of the process underlying Morgan Stanley's fairness opinion.

Comparable Company Analysis

Morgan Stanley performed a comparable company analysis, which attempts to provide a range of implied aggregate values for The Foundry Company by comparing it to similar companies. Morgan Stanley compared certain financial information of The Foundry Company with publicly available I/B/E/S consensus estimates for companies that shared similar business characteristics and/or offer semiconductor foundry services of the nature to be offered by The Foundry Company. These companies included the following:

Taiwan Semiconductor Manufacturing Company Ltd.

Chartered Semiconductor Manufacturing Ltd.

Semiconductor Manufacturing International Corporation

United Microelectronics Corporation

For purposes of this analysis, Morgan Stanley analyzed the following statistics of each of these companies for comparison purposes: (i) the ratio of aggregate value (defined as market capitalization plus total debt less cash and cash equivalents) to estimated revenue for calendar years 2009 and 2010, (ii) the ratio of aggregate value to EBITDA for calendar years 2009 and 2010, (iii) the ratio of price to book value, defined as shareholders' equity, and (iv) the ratio of price to net tangible assets, defined as shareholders' equity less goodwill and less other intangible assets.

Table of Contents

Based on the analysis of the relevant metrics for each of the comparable companies, Morgan Stanley selected representative ranges of financial multiples of the comparable companies and applied these ranges of multiples to the relevant The Foundry Company financial statistic. For purposes of estimated calendar years 2009 and 2010 The Foundry Company estimates, Morgan Stanley utilized AMD management projections. Based on The Foundry Company's expected capitalization as a result of the Transactions, Morgan Stanley calculated the estimated implied aggregate value of The Foundry Company as of December 3, 2008 as follows:

Calendar Year End Financial Statistic	Comparable Company Representative Multiple Range		Implied Aggregate Value of The Foundry Company (\$ Billions)	
	Aggregate Value to Estimated 2009 Revenue	0.3x	1.5x	\$
Aggregate Value to Estimated 2010 Revenue	0.2x	1.2x	\$	0.4 \$2.7
Aggregate Value to Estimated 2009 EBITDA	0.7x	4.5x	\$	0.1 \$0.4
Aggregate Value to Estimated 2010 EBITDA	0.6x	3.0x	\$	0.3 \$1.7
Price / Book Value	0.1x	0.6x	\$	1.2 \$2.0
Price / Net Tangible Assets	0.2x	0.5x	\$	1.5 \$2.1

The management of AMD informed Morgan Stanley, and Morgan Stanley noted for purposes of its analysis, that pursuant to the contemplated Transactions, the value of net tangible assets to be contributed by AMD to The Foundry Company was \$2.1 billion. Furthermore, the management of AMD informed Morgan Stanley, and Morgan Stanley noted for purposes of its analysis, that pursuant to the contemplated Transactions: (i) the net value of AMD's initial stake in The Foundry Company (calculated as 56.1% of the ordinary shares of the company on a fully converted basis), plus (ii) the cash to be received by AMD for the sale of approximately 21.9% of its initial stake in The Foundry Company (calculated on a fully converted basis) to ATIC, plus (iii) \$1.2 billion in third-party debt of AMD transferred to The Foundry Company, plus (iv) the value of certain intercompany accounts which will be retired, minus (v) the value of the warrants granted to WCH, minus (vi) the theoretical value associated with WCH's option to receive 58 million newly issued shares of AMD common stock at the lesser of (x) the average of the closing prices per share of AMD common stock for the 20 trading days immediately prior to and including December 12, 2008 and (y) the average of the closing prices per share of AMD common stock for the 20 trading days immediately prior to the closing of the Transactions would be \$3.1 billion in the aggregate (the *Foundry Company Consideration*).

No company utilized in the comparable company analysis is identical to The Foundry Company. In evaluating comparable companies, Morgan Stanley made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond the control of The Foundry Company and AMD, such as the impact of competition on the businesses of AMD and The Foundry Company and the industry generally, industry growth and the absence of any adverse material change in the financial condition and prospects of AMD, The Foundry Company or the industry or in the financial markets in general. Mathematical analysis (such as determining the average or median) is not in itself a meaningful method of using peer group data.

Discounted Cash Flow Analysis

As part of its analysis, and in order to estimate a range of aggregate present values for The Foundry Company, Morgan Stanley performed a discounted cash flow analysis. A discounted cash flow analysis is designed to provide insight into the value of a company as a function of its future cash flows and terminal value. Morgan Stanley relied on cash flow projections for calendar years 2009 through 2013 for The Foundry Company provided by the management of AMD. Morgan Stanley estimated a range of terminal values calculated in 2013 based on EBITDA exit multiples of 3.5x to 4.5x applied to 2014 EBITDA. Terminal value refers to the estimate of the value of all future cash flows from an asset at a particular point in time. Morgan Stanley discounted the unlevered free cash flow streams and the estimated range of terminal values to a present value, as of December 31, 2008, based on (i) a discount rate range of 15% to 25% for the portion of The Foundry Company's unlevered free cash flow associated with manufacturing AMD microprocessors, (ii) a discount rate

Table of Contents

range of 25% to 30% for the unlevered free cash flow associated with The Foundry Company's business focused on third-party semiconductor customers other than AMD, and (iii) a discount rate of 25% for the terminal value. Based on these projections and assumptions, the discounted cash flow analysis of The Foundry Company yielded an implied aggregate valuation range of approximately \$1.2 billion to \$3.4 billion. Morgan Stanley noted that the value of net tangible assets contributed by AMD was \$2.1 billion and the value of the Foundry Company Consideration to be received by AMD pursuant to the Master Transaction Agreement was \$3.1 billion.

Analysis of Precedent Transactions

Morgan Stanley performed a precedent transactions analysis, which is designed to imply a range of aggregate values of a company based on publicly available financial terms of selected transactions that share certain characteristics with the planned Transactions, involving companies with some similarities to The Foundry Company. In connection with its analysis, Morgan Stanley compared publicly available statistics for two categories of transactions. The first category consisted of 6 selected semiconductor fabrication plant acquisition transactions occurring between January 1, 2004 and December 3, 2008, in which the target assets were involved in the manufacturing of semiconductor wafers. The following is a list of these transactions:

Selected Semiconductor Fabrication Plant Acquisitions	
Target	Acquiror
Fabrication Facilities of Winbond Electronics Corp.	Vanguard International Semiconductor Corporation
Gresham, Oregon Fabrication Facilities of LSI Logic Corporation	ON Semiconductor Corporation
Hitachi Semiconductor Singapore Pte Ltd	Chartered Semiconductor Manufacturing Ltd.
Jazz Technologies, Inc.	Acquicor Technology Inc.
Jazz Technologies, Inc.	Tower Semiconductor Ltd.
Semiconductor Manufacturing International Corp.	Datang Telecom Technology & Industry Holdings Co., Ltd.

Morgan Stanley also compared publicly available statistics for 7 selected precedent transactions involving asset intensive semiconductor and technology manufacturing transactions between January 1, 2001 and December 3, 2008, for which the transaction values were greater than \$1 billion. The following is a list of these transactions:

Selected Asset Intensive Semiconductor and Technology Manufacturing Transactions	
Target	Acquiror
Agere Systems, Inc.	LSI Logic Corporation
ChipPAC, Inc.	ST Assembly Test Services Ltd.
Freescale Semiconductor, Inc.	Investor Group
International Rectifier Corporation	Vishay Intertechnology, Inc.
SCI Systems, Inc.	Sanmina Corporation
Siliconix, Inc.	Vishay Intertechnology, Inc.
Soletron Corporation	Flextronics International Ltd.

For each transaction listed above, Morgan Stanley noted the following financial statistics where available: (i) the ratio of aggregate value of the transaction to next twelve months estimated revenue; (ii) the ratio of aggregate value of the transaction to next twelve months estimated EBITDA; (iii) the ratio of aggregate value to total assets; and (iv) the ratio of price to book value.

Table of Contents

Based on the analysis of the relevant metrics for each transaction listed above, Morgan Stanley selected representative ranges of implied financial multiples of the transactions and applied these ranges of financial multiples to the relevant financial statistic for The Foundry Company. For purposes of estimated next twelve month The Foundry Company estimates, Morgan Stanley utilized calendar year 2009 projections provided by AMD management. The following table summarizes Morgan Stanley's analysis:

Precedent Transactions Financial Statistic	Representative Range		Implied Aggregate Value of The Foundry Company (\$ Billions)	
Aggregate Value to Estimated Next Twelve Months Revenue	0.9x	1.6x	\$	1.3 \$2.3
Aggregate Value to Estimated Next Twelve Months EBITDA	3.5x	8.0x	\$	0.3 \$0.7
Aggregate Value to Total Assets	0.7x	1.2x	\$	2.6 \$4.4
Price to Book Value	0.9x	1.5x	\$	2.5 \$3.5

Morgan Stanley noted that the value of net tangible assets contributed by AMD was \$2.1 billion and the value of the Foundry Company Consideration to be received by AMD pursuant to the Master Transaction Agreement was \$3.1 billion.

No company or transaction utilized in the precedent transactions analysis is identical to The Foundry Company or the Transactions. In evaluating the precedent transactions, Morgan Stanley made judgments and assumptions with regard to general business, market and financial conditions and other matters, which are beyond the control of AMD and The Foundry Company, such as the impact of competition on the business of AMD, The Foundry Company or the industry generally, industry growth and the absence of any adverse material change in the financial condition of AMD, The Foundry Company or the industry or in the financial markets in general, which could affect the public trading value of the companies and the aggregate value of the transactions to which they are being compared.

Miscellaneous

In connection with the review of the Transactions by AMD's Transaction Oversight Committee, Morgan Stanley performed a variety of financial and comparative analyses for purposes of rendering its opinion. The preparation of a financial opinion is a complex process and is not necessarily susceptible to a partial analysis or summary description. In arriving at its opinion, Morgan Stanley considered the results of all of its analyses as a whole and did not attribute any particular weight to any analysis or factor it considered. Morgan Stanley believes that selecting any portion of its analyses, without considering all analyses as a whole, would create an incomplete view of the process underlying its analyses and opinion. In addition, Morgan Stanley may have given various analyses and factors more or less weight than other analyses and factors, and may have deemed various assumptions more or less probable than other assumptions. As a result, the ranges of valuations resulting from any particular analysis described above should not be taken to be Morgan Stanley's view of the actual value of The Foundry Company. In performing its analyses, Morgan Stanley made numerous assumptions with respect to industry performance, general business and economic conditions and other matters. Many of these assumptions are beyond the control of AMD or The Foundry Company. Any estimates contained in Morgan Stanley's analyses are not necessarily indicative of future results or actual values, which may be significantly more or less favorable than those suggested by such estimates.

Morgan Stanley conducted the analyses described above solely as part of its analysis of the fairness of the Consideration to be received by AMD pursuant to the Transactions from a financial point of view to AMD and in connection with the delivery of its opinion dated December 5, 2008 to the Transaction Oversight Committee. These analyses do not purport to be appraisals or to reflect the prices at which shares of common stock of AMD might actually trade.

Table of Contents

The Consideration was determined through arm's length negotiations between AMD, WCH and ATIC and was approved by the Transaction Oversight Committee. Morgan Stanley provided advice to the Transaction Oversight Committee during these negotiations. Morgan Stanley did not, however, recommend any specific consideration to AMD or the Transaction Oversight Committee or that any specific consideration constituted the only appropriate consideration for the Transactions.

Morgan Stanley's opinion and its presentation to the Transaction Oversight Committee was one of many factors taken into consideration by the Transaction Oversight Committee in deciding to approve the Transactions and each of the transaction documents and recommend, among other things, that the full board of directors of AMD approve the Transactions and the execution and delivery of the transaction documents to which AMD is a party. Consequently, the analyses as described above should not be viewed as determinative of the opinion of the Transaction Oversight Committee with respect to the Consideration or of whether AMD's board of directors would have been willing to agree to different consideration.

AMD's Transaction Oversight Committee retained Morgan Stanley based upon Morgan Stanley's qualifications, experience and expertise. Morgan Stanley is an internationally recognized investment banking and advisory firm. Morgan Stanley, as part of its investment banking and financial advisory business, is continuously engaged in the valuation of businesses and securities in connection with mergers and acquisitions, joint ventures, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for corporate, estate and other purposes. In the ordinary course of Morgan Stanley's trading, brokerage, investment management and financing activities, Morgan Stanley or its affiliates may at any time hold long or short positions, and may trade or otherwise effect transactions, for its own account or for the accounts of customers in the debt or equity securities or senior loans of AMD or any other parties, commodities or currencies involved in the Transactions. In the past, Morgan Stanley or its affiliates have provided financial advisory and financing services for AMD and funds affiliated with WCH and ATIC and have received fees in connection with such services. Morgan Stanley may also seek to provide such services to AMD, The Foundry Company, WCH and ATIC in the future and may receive fees for the rendering of these services.

Under the terms of its engagement letter, Morgan Stanley provided the Transaction Oversight Committee advisory services and a financial opinion in connection with the Transactions, and AMD has agreed to pay Morgan Stanley a fee for its services which was contingent upon the earliest to occur of the rendering of this financial opinion, the termination of discussions relating to the Transactions, the termination of the Transactions, the closing of the Transactions, or March 31, 2009. The Transaction Oversight Committee has also agreed to reimburse Morgan Stanley for its expenses, including attorneys' fees, incurred in connection with its services. In addition, AMD has agreed to indemnify Morgan Stanley and any of its affiliates, their respective directors, officers, agents and employees and each person, if any, controlling Morgan Stanley or any of its affiliates against certain liabilities and expenses, including certain liabilities under the federal securities laws, relating to or arising out of Morgan Stanley's engagement.

Interests of Certain Persons in the Transactions

Hector de J. Ruiz Foundry Company Employment Agreement. Hector de J. Ruiz is currently Chairman of our board of directors and Executive Chairman of AMD. In connection with the Transactions, on October 6, 2008, AMD signed, on behalf of The Foundry Company, an employment agreement between AMD and Dr. Ruiz (the ***Ruiz Foundry Company Employment Agreement***), pursuant to which Dr. Ruiz will serve as a non-voting, non-director Chairman of the board of directors of The Foundry Company (the ***The Foundry Company Board***), to be effective upon the Closing. The term of the Ruiz Foundry Company Employment Agreement is two years, commencing on the Closing (the ***Ruiz Employment Term***). In the event that the Closing does not occur pursuant to the terms of the Master Transaction Agreement, the Ruiz Foundry Company Employment Agreement will be automatically null and void.

Under the Ruiz Foundry Company Employment Agreement Dr. Ruiz's base salary at The Foundry Company will be \$1,150,000 per year and during the Ruiz Employment Term, Dr. Ruiz will be eligible for a

Table of Contents

target annual bonus opportunity of 200% of his base salary, with a maximum annual bonus opportunity at 400% of his base salary, subject to achievement of applicable performance goals established by The Foundry Company Board in consultation with Dr. Ruiz. In the event that Dr. Ruiz's employment is terminated by The Foundry Company without Cause (as such term is defined in the Ruiz Foundry Company Employment Agreement) or Dr. Ruiz resigns for Good Reason (as such term is defined in the Ruiz Foundry Company Employment Agreement), The Foundry Company will pay to Dr. Ruiz, subject to compliance with a non-competition and non-solicitation provisions and execution of a release of claims, an amount equal to his base salary and the target annual bonuses remaining payable to Dr. Ruiz for the remainder of the Ruiz Employment Term, payable in a lump sum. If Dr. Ruiz's employment is terminated due to disability or death, Dr. Ruiz or his beneficiaries, as applicable, are eligible to receive the same amounts as if Dr. Ruiz had been terminated without Cause; provided that no release of claims is required in the event that Dr. Ruiz's employment is terminated due to death.

The foregoing description of the Ruiz Foundry Company Employment Agreement is qualified in its entirety by reference to the full text of the Ruiz Foundry Company Employment Agreement, which was filed as Exhibit 10.2 to AMD's Form 8-K, filed with the Securities and Exchange Commission (the "SEC") on October 10, 2008 and incorporated by reference herein.

Hector de J. Ruiz Bonus Payment. In connection with the Transactions, our board of directors approved a transaction bonus payable by AMD to Dr. Ruiz in cash equal to \$3,000,000 (subject to applicable withholdings), to be paid on the Closing, subject to (i) Dr. Ruiz's continued employment with AMD through the Closing, (ii) Dr. Ruiz's separation from service with AMD at the Closing and (iii) Dr. Ruiz becoming the non-voting, non-director Chairman of The Foundry Company Board on the Closing.

Douglas Grose Foundry Company Employment Agreement. Douglas Grose is currently our Senior Vice President, Manufacturing & Supply Chain Management, but is not one of our executive officers. In connection with the Transactions, on October 6, 2008, AMD signed, on behalf of The Foundry Company, an employment agreement between AMD and Mr. Grose (the "*Grose Employment Agreement*"), pursuant to which Mr. Grose will serve as the Chief Executive Officer of The Foundry Company, to be effective upon the Closing. The term of the Grose Employment Agreement is for three years, commencing on the Closing (the "*Grose Employment Term*"); provided that on the second anniversary of the Closing and each subsequent anniversary, the Grose Employment Term will be automatically renewed for a one-year period unless Mr. Grose is provided with a 90-day prior written notice of non-renewal. In the event that the Closing does not occur pursuant to the terms of the Master Transaction Agreement, the Grose Employment Agreement will be automatically null and void.

Registration Rights Agreement

Pursuant to the terms of a customary registration rights agreement, we will agree to register the resale of the Shares and the Warrant Shares by WCH and its permitted transferees. See "Description of the Warrants-Registration Rights" included elsewhere in this proxy statement.

Required Vote

If a quorum for the Special Meeting is present, the affirmative vote of a majority of the votes cast by holders of our common stock present in person or represented by proxy at the Special Meeting will be required to approve the issuance of the Shares, the Warrants and the Warrant Shares, provided that the total votes cast on the proposal represent over 50% of the outstanding stock entitled to vote on the proposal.

Recommendation of the Board of Directors

Our board of directors has unanimously approved the issuance of the Shares and Warrants pursuant to the Master Transaction Agreement and the Warrant Shares upon exercise of the Warrants and determined that the Transactions are advisable and in the best interests of the stockholders and recommends that you vote FOR Proposal 1.

Table of Contents**THE MASTER TRANSACTION AGREEMENT**

Pursuant to the Master Transaction Agreement, AMD will contribute to The Foundry Company certain assets necessary for The Foundry Company to conduct its business of manufacturing semiconductor products, in exchange for certain securities of The Foundry Company and the assumption of specified AMD liabilities by The Foundry Company.

Cash Contribution

Upon the Closing, ATIC will contribute approximately \$1.4 billion in cash to The Foundry Company in exchange for securities of The Foundry Company, comprising one Class A Ordinary Share, 218,190 Class A Preferred Shares, 172,760 Class B Preferred Shares, \$201,810,000 aggregate principal amount of Class A Convertible Notes and \$807,240,000 aggregate principal amount of Class B Convertible Notes, and will pay \$700 million in cash to AMD in exchange for the transfer by AMD of 700,000 Class B Preferred Shares to ATIC. See Description of The Foundry Company Share Capital and Description of The Foundry Company Convertible Subordinated Notes appearing elsewhere in this proxy statement. Upon Closing, AMD will contribute The FoundryCo Assets (as defined below) in exchange for securities of The Foundry Company, comprising one Class A Ordinary Share, 1,090,950 Class A Preferred Shares and 700,000 Class B Preferred Shares, and the assumption of certain liabilities by The Foundry Company. In addition, AMD will sell to WCH 58,000,000 shares of AMD common stock and warrants to purchase 35,000,000 shares of AMD common stock at an exercise price of \$0.01 per share (as adjusted pursuant to the terms of the Warrants) for an aggregate purchase price equal to (a) 58,000,000 multiplied by (b) the lesser of (A) the average of the closing prices per share of AMD common stock on the NYSE for the 20 trading days immediately prior to and including December 12, 2008 and (B) the average of the closing prices per share of AMD common stock on the NYSE for the 20 trading days immediately prior to the closing date of the Transactions.

Contribution of AMD Assets to The Foundry Company

AMD will contribute certain assets to The Foundry Company, including ownership interests of the groups of German subsidiaries owning Fab 30/38 and Fab 36 (the *Dresden Subsidiaries*), ownership interests of certain other subsidiaries (collectively, the *Transferred Foundry Company Subsidiaries*) and partnership interests in certain joint ventures (collectively, the *Transferred Foundry Company JV Entities*). AMD will also contribute the following assets necessary for The Foundry Company to carry on its business (collectively, the *FoundryCo Assets*):

- (1) all assets to be transferred to The Foundry Company that are not owned or controlled by the Transferred The Foundry Company Subsidiaries, as set forth on Exhibit C to the Master Transaction Agreement and all assets owned or controlled by the Transferred Foundry Company Subsidiaries that are not Excluded Assets (as such term is defined in the Master Transaction Agreement);
- (2) the Owned Real Property and all rights of AMD and its subsidiaries with respect to the Leased Real Property (as each such term is defined in the Master Transaction Agreement);
- (3) all furniture, fixtures, equipment, machinery and other tangible personal property used or held for use by AMD and its subsidiaries necessary for The Foundry Company to carry on its business as currently conducted by AMD (other than those to be used in connection with AMD's provision of services under the Transition Services Agreement (as such term is defined in the Master Transaction Agreement)), in each case as described in Exhibit C to the Master Transaction Agreement, and not otherwise included in clause (1) above;
- (4) all vehicles owned by AMD and its subsidiaries at Closing (as such term is defined in the Master Transaction Agreement) and necessary for The Foundry Company to carry on its business as currently conducted by AMD, in each case as described in the Master Transaction Agreement, the Ancillary Agreements (as such term is defined in the Master Transaction Agreement) and The Foundry Company Business Plan (as such term is defined in the Master Transaction Agreement);
- (5) the Transferred Inventories (as such term is defined in the Master Transaction Agreement);

Table of Contents

- (6) copies of all books of account, general, financial, Tax (as such term is defined in the Master Transaction Agreement) and personnel records, invoices, shipping records, supplier lists, correspondence and other documents, records and files and any rights thereto owned, associated with or employed by AMD and its subsidiaries at the Closing and related to the proposed operations of The Foundry Company or necessary for The Foundry Company to carry on its business as currently conducted, in each case as described in the Master Transaction Agreement, the Ancillary Agreements and The Foundry Company Business Plan;
- (7) all of AMD's and its subsidiaries' right, title and interest in, to and under the Transferred IP Agreements (as such term is defined in the Master Transaction Agreement), copies and tangible embodiments thereof in whatever form or medium, and all rights to sue and recover damages for past, present and future infringement, dilution, misappropriation, violation, unlawful imitation or breach thereof;
- (8) the Owned Intellectual Property (as such term is defined in the Master Transaction Agreement);
- (9) all claims, causes of action, choses in action, rights of recovery and rights of setoff of any kind (including rights to insurance proceeds and rights under and pursuant to all warranties, representations and guarantees made by suppliers of products, materials or equipment, or components thereof) pertaining to, arising out of and inuring to the benefit of AMD and its subsidiaries, related to the proposed operations of The Foundry Company, or necessary for The Foundry Company to carry on its business as currently conducted, in each case as described in the Master Transaction Agreement, the Ancillary Agreements and The Foundry Company Business Plan, other than Excluded Assets (as such term is defined in the Master Transaction Agreement);
- (10) all rights of AMD and its subsidiaries under the Material FoundryCo Contracts (as such term is defined in the Master Transaction Agreement) exclusively or primarily related to The Foundry Company's business; and
- (11) all Authorizations (as such term is defined in the Master Transaction Agreement) held or used by AMD or its subsidiaries necessary for The Foundry Company to carry on its business as currently conducted by AMD, in each case as described in the Master Transaction Agreement, the Ancillary Agreements and The Foundry Company Business Plan, to the extent transferable.

Purchase Price

The purchase price paid by ATIC is based upon an assumed value of the assets that AMD is contributing to The Foundry Company equal to the product of (x) 0.85 multiplied by (y) the Initial Valuation Net Tangible Assets (as hereinafter defined). **Initial Valuation Net Tangible Assets** means the combined assets of the Transferred Foundry Company Subsidiaries less the combined liabilities of the Transferred Foundry Company Subsidiaries. ATIC's ownership percentage in The Foundry Company will be adjusted after the Closing to the extent there is a difference between the statement of Initial Valuation Net Tangible Assets delivered in connection with the signing of the Master Transaction Agreement and the statement of Initial Valuation Net Tangible Assets delivered after the Closing and to the extent that such difference exceeds a specified amount. Any adjustment will be effected through the issuance of additional, or cancellation of, The Foundry Company convertible notes.

Assumed Liabilities

The Foundry Company will assume certain liabilities relating to the contributed assets (**Assumed Liabilities**), including the assumption of approximately \$1.2 billion of debt of the Dresden Subsidiaries. Assumed liabilities will also include: (i) any liabilities related to the operation of The Foundry Company post-Closing; (ii) any amounts payable by The Foundry Company and any other liabilities of The Foundry Company that accrue or relate to the period after the Closing under any contract included in the FoundryCo Assets; (iii) any liabilities arising out of or based upon events or circumstances occurring after the Closing in connection with or resulting from the operation of The Foundry Company other than as set forth in the Master Transaction

Table of Contents

Agreement or the Ancillary Agreements; (iv) accrued vacation related to U.S. Transferred Employees (as hereinafter defined) moving over to The Foundry Company; and (v) liabilities of AMD and its subsidiaries that are included in the Closing Statement of Initial Valuation Net Tangible Assets (as such term is defined in the Master Transaction Agreement) and that relate to any amounts payable by The Foundry Company following the Closing for any service by a Transferred Employee with AMD or a subsidiary of AMD through the Closing.

Retained Liabilities

AMD is retaining: (i) any liabilities of AMD or its subsidiaries incurred by AMD or its subsidiaries in connection with the conduct of their business (excluding The Foundry Company operations post-Closing); (ii) any liabilities of AMD or any of the remaining AMD subsidiaries arising out of the operation of their businesses occurring or incurred post-Closing; (iii) any liabilities of AMD or any of the remaining AMD subsidiaries arising under the Master Transaction Agreement or the other transaction documents; (iv) any intercompany payables and any liabilities of AMD or any of the remaining AMD subsidiaries to any of their respective affiliates other than obligations of The Foundry Company and any of the remaining AMD subsidiaries under the Master Transaction Agreement or other transaction documents; (v) any liabilities of AMD or its subsidiaries to the extent related to the assets not being contributed to The Foundry Company; (vi) any liabilities of AMD or its subsidiaries relating to claims pending at Closing, or claims made after Closing that arise out of the conduct or operation of the FoundryCo Assets before Closing; and (vii) any other liabilities otherwise designated as an excluded liability in the Master Transaction Agreement or on any schedule to the Master Transaction Agreement.

Representations and Warranties

AMD makes representations and warranties to ATIC and WCH relating to AMD, including:

organization and good standing;

authorization of agreements;

capitalization;

fair representation of financial statements;

no material adverse change in its business;

no material defaults under any material contract;

absence of legal proceedings and labor disputes;

ownership of intellectual property;

possession of authorizations necessary to conduct its business; and

filing of tax returns and payment of material taxes.

Edgar Filing: ADVANCED MICRO DEVICES INC - Form PRER14A

AMD also makes representations and warranties with respect to the securities to be issued to WCH including the authorization of shares, warrants and shares issuable upon exercise of the warrants by WCH and that such securities will be validly issued, fully paid and non-assessable.

AMD makes representations and warranties to ATIC and The Foundry Company relating to The Foundry Company, including:

organization and good standing and capitalization of the Transferred Foundry Company Subsidiaries and the absence of indebtedness of the Transferred Foundry Company Subsidiaries;

good title to the FoundryCo Assets and upon Closing, The Foundry Company will own the FoundryCo Assets free and clear of any encumbrances;

representations relating to certain financial statements;

Table of Contents

absence of undisclosed liabilities;

good title to inventories that are to be transferred to The Foundry Company;

absence of certain changes with respect to the FoundryCo Assets and the Transferred Foundry Company Subsidiaries from June 28, 2008 to October 6, 2008;

absence of litigation and governmental orders;

compliance with environmental laws and related permits and licenses and absence of environmental liabilities;

enforceability and effectiveness of material contracts relating to the FoundryCo Assets;

the operation of the FoundryCo Assets and the Transferred Foundry Company Subsidiaries will not infringe third-party intellectual property rights;

good title to the real property it is transferring to The Foundry Company;

representations relating to employment plans and labor matters;

absence of tax liens or tax audits with respect to tax matters; and

absence of receivables transferred to The Foundry Company as of Closing.

ATIC and WCH make representations and warranties to AMD relating to ATIC and WCH, including their due organization, authorization of agreements, absence of conflicts, proceedings and further requirements, and as to their investment sophistication and accredited investor status.

Covenants

AMD agrees to comply with affirmative and negative covenants in the Master Transaction Agreement until the Closing. AMD agrees that it and its subsidiaries will conduct its business relating to the operations and ownership of the FoundryCo Assets in its ordinary course in accordance with past practices and that it will not undertake certain actions without ATIC's prior written consent, including to:

adopt or propose any change in its governing documents;

merge or consolidate with, or sell a substantial portion of its capital stock or assets to any third party, subject to the No Solicitation by AMD provisions described on the following page;

declare, make or pay any dividends or other distributions with respect to any of its capital stock;

reclassify or recapitalize any of its capital stock, subject to certain exceptions;

acquire any corporations and the such, incur any indebtedness or enter into any material contracts;

not make any capital expenditures in excess of \$10 million related to the FoundryCo Assets not reflected in The Foundry Company s interim operating budget;

change its accounting policies;

not take certain actions relating to inventories and purchasing/payment policies with respect to the FoundryCo Assets and the Transferred Foundry Company Subsidiaries;

not sell or lease any material assets or property that constitutes FoundryCo Assets;

not issue any equity securities of any Transferred Foundry Company Subsidiary;

not take any action that would constitute a material default under any material contract; and

not make or change any material tax election of The Foundry Company.

Table of Contents

In addition, AMD agrees to, among other things, to:

take all appropriate action to form The Foundry Company;

prepare and deliver audited carve-out financial statements of The Foundry Company to ATIC and WCH;

provide access to information to ATIC and WCH relating to the FoundryCo Assets, the Assumed Liabilities and the Transferred Foundry Company Subsidiaries;

obtain stockholder approval of the issuance of the Shares, the Warrants and the Warrant Shares to WCH pursuant to NYSE rules;

use commercially reasonable efforts to obtain required consents and authorizations under material contracts to consummate the Transactions; and

notify ATIC and WCH of certain events.

AMD agrees to comply with certain post-Closing covenants pursuant to the Master Transaction Agreement, including to:

cause one representative designated by WCH to be appointed and elected to its board of directors, for so long as WCH and its permitted transferees beneficially own, in the aggregate, at least 10% of our outstanding common stock;

retain the books and records of AMD relating to the FoundryCo Assets and the Assumed Liabilities, the Transferred Foundry Company Subsidiaries and the Transferred Foundry Company JV Entities and their operations for a period of 10 years following Closing; and

cause the Shares and the Warrant Shares to be listed on the NYSE.

No Solicitation by AMD

Between signing the Master Transaction Agreement and the earlier of Closing or termination of the Master Transaction Agreement, AMD has agreed that AMD will not solicit any other proposal or enter into any agreement with a third party relating to an alternative transaction or a change of control of AMD. However, our board of directors may (i) participate in discussions, conversations, negotiations or other communications with a third party regarding, and furnish information to, any person that has made, in writing, a bona fide AMD Change of Control Proposal (as defined below) and (ii) enter into an agreement with any third person relating to a change of control of AMD, if our board of directors has: (A) determined, in its good faith judgment that failure to furnish such information or enter into such discussions or such agreement would be inconsistent with its fiduciary obligations to AMD and our stockholders under applicable law; (B) provided written notice to ATIC and WCH of the identity of the person making, and the material terms of any such proposal, and of AMD's intent to furnish information or enter into discussions with such person at least three business days prior to taking any such action; (C) obtained from such person an executed confidentiality agreement on customary terms; and (D) promptly provided to ATIC and WCH any non-public information concerning AMD or any of our subsidiaries provided to any such person which was not previously provided to ATIC and WCH. **AMD Change of Control Proposal** means any proposal or offer made by any third person relating to a transaction between the third person and AMD, our stockholders or any of our subsidiaries with respect to (a) a merger, reorganization, share exchange, consolidation, business combination, recapitalization, dissolution, liquidation or similar transaction involving AMD in which AMD's stockholders immediately prior to such transaction will own less than 50% of the voting securities of the surviving corporation outstanding immediately after such transaction, (b) any purchase of an equity interest (including by means of a tender or exchange offer) representing an amount equal to or greater than a 50% voting or economic interest in AMD,

or (c) any purchase of assets, securities or ownership interests representing an amount equal to or greater than 50% of the consolidated assets of AMD and our subsidiaries taken as a whole (including stock of our subsidiaries).

Table of Contents

WCH Standstill Respecting AMD

For a period of five years (or sooner, if WCH and its transferees cease to own at least 10% of AMD's voting securities), WCH, ATIC and their transferees and affiliates will not, without AMD's consent, seek to acquire more than 22.5% of the voting securities of AMD, or initiate, or induce or attempt to induce any third person to initiate, any extraordinary corporate transaction involving AMD (including a merger, sale of assets, restructuring or liquidation), or to seek to or participate in any attempt to cause a change of control of the management or board of directors of AMD, or take any other similar actions, including a public announcement of any such plans, or advise, assist or encourage any other persons in connection with any of the foregoing.

ATIC and WCH also agree during such period not to request that AMD waive any of the foregoing provisions, although ATIC or WCH may ask AMD whether AMD would wish to entertain a proposal for the acquisition of AMD, but may not make such a proposal absent AMD's affirmative response to such question. The standstill does not prevent ATIC or WCH from voting any securities at their sole discretion on matters submitted to the stockholders of AMD for a vote, or from voting in favor of, or tendering any AMD securities held by any of them into, any extraordinary transaction involving AMD or a substantial portion of its securities or assets.

WCH Transfer Restrictions on AMD Securities

Until such time WCH and its permitted transferees beneficially own, in the aggregate, less than 10% of the outstanding shares of our common stock, WCH and such permitted transferees may only resell shares of our common stock (i) in connection with a bona fide pledge or transfer in connection with a financing transaction secured by a pledge of WCH's AMD common stock, (ii) by means of an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the *Securities Act*), or (iii) pursuant to Rule 144 promulgated under the Securities Act. Notwithstanding the foregoing, WCH or its permitted transferees may sell or transfer AMD common stock to any other permitted transferee.

Employees

The Foundry Company will extend, or will cause its applicable subsidiaries to extend, offers of employment to certain AMD employees (the *Transferred Employees*) at least 30 days prior to Closing and will hire, or cause its applicable subsidiaries to hire, such Transferred Employees effective as of Closing. The Foundry Company will be responsible for all liabilities, salaries, benefits and similar employer obligations that arise after Closing under The Foundry Company's compensation and benefit plans and policies for all Transferred Employees.

Closing Conditions

The Closing is contingent upon the satisfaction by AMD of, or the waiver by ATIC and WCH of, among other things:

the absence of a breach of representations, warranties or covenants that would result in a material adverse effect on AMD or The Foundry Company;

receipt of material consents;

receipt of certain government approvals, including Hart Scott Rodino antitrust approval from the United States and merger control clearances from certain foreign regulatory authorities;

the absence of proceedings or litigation that would result in a material adverse effect on AMD or The Foundry Company;

that the economic incentives and subsidies currently made available to AMD and its subsidiaries by governmental authorities in the European Union, the Federal Republic of Germany or the State of Saxony and the State of New York remain available to The Foundry Company and its subsidiaries

Table of Contents

without financial penalty or change that would be materially adverse to The Foundry Company and its subsidiaries and no governmental authority has notified any party that such governmental authority intends to seek to terminate the availability of such economic incentives and subsidies, and that, with respect to The Foundry Company's proposed facility in Saratoga County, New York, the economic development agreement between the State of New York and AMD will have been assigned to The Foundry Company, and The Foundry Company will have qualified for the same ongoing New York State tax benefits that have been previously approved for AMD;

receipt of notice from CFIUS to the effect that a review or investigation of the Transactions has been concluded and that a determination has been made that there are no unresolved U.S. national security concerns, or the lack of action by the President of the United States to block or prevent the consummation of the Transactions under Exon-Florio, with the applicable time period for the President to take such action having expired;

the receipt by ATIC of certain legal opinions by counsel to AMD;

the continuing effectiveness of AMD's Participation Agreement with IBM;

the absence of an agreement or ongoing discussions with a third party regarding a change of control of AMD;

the absence of a material adverse effect on AMD or The Foundry Company since December 5, 2008;

the requisite AMD stockholder approval of the issuance of the Shares, the Warrants and the Warrant Shares under NYSE rules and regulations; and

the valid appointment or election of the representative designated by WCH to AMD's board of directors, effective as of Closing.

Indemnification

The representations and warranties of AMD generally survive until the two-year anniversary of the Closing. AMD agrees to indemnify ATIC and The Foundry Company for, among other things, (i) any breach of a representation, warranty or covenant, (ii) any third-party claim arising out of any AMD action, condition or obligation occurring or existing prior to Closing, (iii) claims arising out of AMD's Patent Cross-License Agreement with Intel Corporation, dated as of May 4, 2001 (as may be amended, the *Intel Patent Cross License Agreement*), and the Agreement between Intel Corporation and AMD dated October 1, 1976, as amended or supplemented to date, (iv) environmental claims relating to hazardous materials on the real property located in the towns of Malta and Stillwater, New York (commonly known as the Luther Forest Technology Campus) that is subject to an option agreement dated October 12, 2007 between AMD and the Luther Forest Technology Campus Economic Development Corporation, (v) environmental claims relating to hazardous materials on the Malta Rocket Fuel Area, a portion of the Luther Forest Technology Campus designated by the United States Environmental Protection Agency as a Superfund site, (vi) any amounts payable by The Foundry Company under guarantees related to indebtedness of certain transferred joint venture entities, (vii) any amounts payable by The Foundry Company or any of its subsidiaries following the Closing for the repayment of investment grants and subsidies received by AMD or any of its subsidiaries prior to the Closing if such repayment obligations relate to (A) a failure by AMD or any of its subsidiaries to make, prior to the Closing, capital expenditures required by such investment grants or subsidies or (B) a failure by AMD or any of its subsidiaries to maintain required fixed asset levels at or prior to the Closing and (viii) any retained liabilities. AMD's liability for breaches of representations and warranties is capped at \$700 million and AMD will have no such liability in the event that the aggregate amount of indemnifiable ATIC/The Foundry Company losses is less than \$21 million. The Foundry Company agrees to indemnify AMD and ATIC for any breach of a covenant or agreement by The Foundry Company, for any assumed liabilities and for the operation of The Foundry Company and its assets following Closing.

Table of Contents

Termination/Break-up Fee

The Master Transaction Agreement may be terminated at any time prior to Closing:

by either ATIC or WCH in the event that a material adverse effect on AMD or The Foundry Company occurs, AMD has breached a representation or warranty of AMD in a manner that is likely to cause a material adverse effect on AMD or The Foundry Company, AMD has not complied with the covenants contained in the Master Transaction Agreement in such a way that it results in a material adverse effect on AMD or The Foundry Company or AMD is involved in a liquidation, bankruptcy or insolvency proceeding;

by any of AMD, ATIC or WCH if Closing has not occurred by March 7, 2009;

by any of AMD, ATIC or WCH in the event that any governmental authority has issued a final and nonappealable order to restrain, enjoin or render illegal the Transactions;

by ATIC or WCH upon a change of control of AMD;

by ATIC or WCH if representatives of the U.S. Department of the Treasury and/or any other lead agency designated by CFIUS for the Transactions (at least one of whom serves at the rank of Deputy Assistant Secretary or higher), acting on behalf of CFIUS, inform the parties either that CFIUS will refer the transaction to the President of the United States for decision, or that the CFIUS clearance would be conditioned upon certain mitigation agreements with CFIUS containing terms that are inconsistent with the provisions of the Master Transaction Agreement; or

by the mutual written consent of AMD, ATIC and WCH.

If the Master Transaction Agreement is terminated by reason of a change of control event of AMD or if a change of control of AMD occurs within 12 months of termination for other specified reasons, AMD will pay to WCH a fee of \$50 million. If the Master Transaction Agreement is terminated because of a material breach by AMD of its non-solicitation covenant, then AMD will pay WCH \$50 million plus WCH's and ATIC's respective expenses.

The foregoing description of the Master Transaction Agreement is qualified in its entirety by reference to the full text of the Master Transaction Agreement and the Amendment to Master Transaction Agreement, attached hereto as *Exhibit A* and *Exhibit F*, respectively.

Table of Contents

THE SHAREHOLDERS AGREEMENT

The rights and obligations of AMD and ATIC, as shareholders of The Foundry Company (each, a *Foundry Company Shareholder*), are set forth in the Shareholders Agreement.

Board of Directors

The Foundry Company board of directors (the *The Foundry Company Board*) will consist of eight directors, and, because AMD and ATIC each own 50% of the shares entitled to vote in the election of directors and pursuant to the Shareholders Agreement, AMD and ATIC will each be entitled to designate for nomination four directors. The 50/50 ownership of the voting shares and rights of each of AMD and ATIC to designate four directors will not change until the occurrence of the Reconciliation Event.

Reconciliation Event means the earlier of (i) such time when AMD has secured for The Foundry Company the right to make unlimited volumes of products, including microprocessors, for AMD and its subsidiaries, regardless of whether The Foundry Company is a Subsidiary or Affiliate of AMD for purposes of the Intel Patent Cross License Agreement, or (ii) such time when The Foundry Company Board determines that The Foundry Company no longer needs to be a Subsidiary of AMD as defined in Section 1.22 of the Intel Patent Cross License Agreement. For the avoidance of doubt, notwithstanding any provision of the Shareholders Agreement or any other document related to the Transactions, prior to the Reconciliation Event, The Foundry Company will in no event be under any obligation (contractually or otherwise) to directly or indirectly distribute more than 70% of its profits to any person or entity.

Only after a Reconciliation Event, the number of directors a Foundry Company Shareholder may designate will be adjusted as follows: (i) a Foundry Company Shareholder holding 30% or more but less than 40% of the fully diluted shares will be entitled to designate three directors; (ii) a Foundry Company Shareholder holding 20% or more but less than 30% of the fully diluted shares will be entitled to designate two directors; (iii) a Foundry Company Shareholder holding 10% or more but less than 20% of the fully diluted shares will be entitled to designate one director; and (iv) a Foundry Company Shareholder holding less than 10% of the fully diluted shares will have no right to designate any directors. To the extent the number of directors a Foundry Company Shareholder is entitled to nominate is reduced as a result of a decrease in such Foundry Company Shareholder's ownership of The Foundry Company, then, so long as the other Foundry Company Shareholder owns at least a majority of the fully diluted shares of The Foundry Company, such other Foundry Company Shareholder will be entitled to designate all of the remaining directors.

Officers

The initial Chief Executive Officer of The Foundry Company will be Douglas Grose, and ATIC will designate the initial Chief Financial Officer. The other officers of The Foundry Company will be appointed by a committee of The Foundry Company Board. Hector de J. Ruiz will be Chairman of The Foundry Company Board, which is a non-director and non-voting position.

Voting

The share capital of The Foundry Company at the Closing will consist of (i) Class A Ordinary Shares (the *Class A Ordinary Shares*), of which two shares will be outstanding (one issued to each of AMD and ATIC); (ii) Class B Ordinary Shares (the *Class B Ordinary Shares*); (iii) Class A Preferred Shares (the *Class A Preferred Shares*) and (iv) Class B Preferred Shares (the *Class B Preferred Shares*). Prior to the Reconciliation Event, the Class A Preferred Shares, the Class B Preferred Shares and the Class B Ordinary Shares will be non-voting and only the Class A Ordinary Shares will have voting rights of one vote per Class A Ordinary Share. Following the Reconciliation Event, the Class A Ordinary Shares will be automatically redeemed and the voting rights of the Class A Preferred Shares, the Class B Preferred Shares and the Class B Ordinary Shares will be given effect.

Table of Contents

Certain Corporate Actions

The Foundry Company will not take certain actions unless all of the members of The Foundry Company Board approve such actions, which include, but are not limited to:

implementing material changes in the purpose or scope of The Foundry Company's activities or engaging in any material activity unrelated to The Foundry Company's business that materially adversely affects The Foundry Company's ability to perform its obligations to AMD under the Wafer Supply Agreement;

changing the number of directors on The Foundry Company Board;

amending The Foundry Company's charter or bylaws;

entering into certain change of control transactions or any sale of all or substantially all of the assets of The Foundry Company and its subsidiaries, other than to The Foundry Company or any of its subsidiaries or, following termination of the earliest of (i) the date that is 10 years after Closing, (ii) such time as the Abu Dhabi cluster is meeting certain wafer production volume requirements or (iii) the termination of the Transition Period (as such term is defined in the Funding Agreement) under the Funding Agreement (the ***Restricted Period***), to a permitted transferee; *provided, however*, that any such transaction with a permitted transferee is on terms that are fair from a financial point of view to all Foundry Company Shareholders;

entering into certain acquisitions, joint ventures, transfers, sales or disposals of any assets with a value in excess of \$25 million singly or \$50 million in the aggregate, other than with The Foundry Company or any of its subsidiaries or, following termination of the Restricted Period, with a permitted transferee; *provided, however*, that any such transaction with a permitted transferee is on terms that are fair from a financial point of view to all Foundry Company Shareholders;

approving any material amendment, modification or revision to The Foundry Company's initial five-year capital plan;

approving any annual business plan or any material amendment, modification or revision of any annual business plan;

issuing, repurchasing or redeeming any of The Foundry Company shares or other equity interest not reflected in the annual business plan, its Articles of Association or any incentive plan;

declaring dividends or other distributions to Foundry Company Shareholders;

entering into or amending the documents related to the Transactions, any incentive plan or any other Foundry Company contract worth more than \$15 million;

selling, licensing, assigning, transferring or engaging in certain other activities with respect to The Foundry Company's intellectual property;

Edgar Filing: ADVANCED MICRO DEVICES INC - Form PRER14A

prosecuting, commencing or settling litigation in excess of \$10 million;

making any loan, investment or expenditure (or series of related expenditures) not reflected in the annual business plan involving more than \$5 million singly or \$10 million in the aggregate;

incurring certain indebtedness or subjecting any of The Foundry Company's properties or assets to certain liens, claims or encumbrances which would result in an increase of 5% or more of the total indebtedness contemplated in the annual business plan;

consummating any public offering of securities;

appointing or terminating The Foundry Company's Chief Executive Officer or Chief Financial Officer;

determining when the Reconciliation Event has occurred; and

entering into any related party transactions involving more than \$25 million.

Table of Contents

In addition, the Shareholders Agreement provides that if any Foundry Company Shareholder (and its permitted transferees) owns at least 75% of the fully diluted shares of The Foundry Company, then such Foundry Company Shareholder will be entitled to resolve any deadlock of The Foundry Company Board with respect to certain actions, and if any Foundry Company Shareholder (and its permitted transferees) owns at least 90% of the fully diluted shares of The Foundry Company, then such Foundry Company Shareholder will be entitled to resolve any deadlock with respect to certain additional actions. Notwithstanding the foregoing, a Foundry Company Shareholder will never be entitled to break a Foundry Company Board deadlock with respect to:

changing the number of directors on The Foundry Company Board; or

determining when the Reconciliation Event has occurred.

In addition, prior to the Reconciliation Event, a Foundry Company Shareholder will also not be entitled to break a Foundry Company Board deadlock with respect to:

amending The Foundry Company's charter or bylaws;

issuing, repurchasing or redeeming any of The Foundry Company shares or other equity interest not reflected in the annual business plan, its Articles of Association or any incentive plan; or

declaring dividends or other distributions to Foundry Company Shareholders, if, in each such case, such action would cause The Foundry Company to fail to constitute a Subsidiary of AMD under the Intel Patent Cross License Agreement.

Transfer Restrictions

Class A Ordinary Shares. Each of AMD and ATIC will own one Class A Ordinary Share. Class A Ordinary Shares are the only voting securities of The Foundry Company prior to the Reconciliation Event. The Foundry Company Class A Ordinary Shares are non-transferable.

Other Foundry Company Securities. With respect to the other securities of The Foundry Company (Class A Preferred Shares, Class B Preferred Shares, the Class B Ordinary Shares and the Convertible Notes), no Foundry Company Shareholder may sell any of such Foundry Company securities, without the consent of the other Foundry Company Shareholder, if (i) prior to the Reconciliation Event, the sale of such securities would cause The Foundry Company to fail to constitute a Subsidiary of AMD under the Intel Patent Cross License Agreement, (ii) such sale is made to Intel or any of its affiliates or (iii) such sale is made to a competitor of The Foundry Company.

In addition, each Foundry Company Shareholder agrees not to sell, transfer or encumber any such Foundry Company securities prior to the Restricted Period.

The following transfers of such securities of The Foundry Company are exempt from the above transfer restrictions: (a) transfers with the prior written consent of the other Foundry Company Shareholder; (b) a transfer to a permitted transferee or to the other Foundry Company Shareholder; (c) the sale of up to 25% of a Foundry Company Shareholder's fully diluted shares in an initial public offering of The Foundry Company (*IPO*); and (d) in each year following the IPO, the sale of up to 25% of a Foundry Company Shareholder's fully diluted shares through a public offering or Rule 144 under the Securities Act. However, AMD's rights to sell such securities of The Foundry Company as set forth in (c) and (d) above will be suspended until the Reconciliation Event has occurred.

Right of First Offer/Right of Last Look

Following the end of the Restricted Period, a Foundry Company Shareholder who wishes to sell securities of The Foundry Company to a third party must notify The Foundry Company and the other Foundry Company

Table of Contents

Shareholder of the offer, and the non-selling Foundry Company Shareholder will have 30 days to purchase the offered securities. In addition, a Foundry Company Shareholder cannot consummate a sale of securities of The Foundry Company to a third party without offering such securities for sale to the other Foundry Company Shareholder at least 10 business days prior to the contemplated consummation of the sale of such securities to the third party.

Tag-Along Rights

Following the end of the Restricted Period, no Foundry Company Shareholder may sell more than 10% of its fully diluted securities of The Foundry Company unless the other Foundry Company Shareholder is offered the right and option to sell the same percentage of securities held by it. This right terminates upon an IPO.

Drag-Along Rights

Following the end of the Restricted Period, if a Foundry Company Shareholder holding at least 75% of the fully diluted shares of The Foundry Company proposes to sell all of its securities of The Foundry Company to a third party, such Foundry Company Shareholder will have the right to require the other Foundry Company Shareholder to sell all of its securities of The Foundry Company to the third party for the same consideration and on the same terms. This right terminates upon an IPO.

AMD Change of Control

In the event of a change of control of AMD without ATIC's prior written consent: (i) all transfer restrictions with respect to securities of The Foundry Company held by ATIC and its permitted transferees will terminate; (ii) if such change of control occurs prior to the IPO, ATIC will have the right to require The Foundry Company to consummate the IPO and to register ATIC's securities of The Foundry Company in connection with such IPO; (iii) (A) ATIC will have a put right to sell all of its securities of The Foundry Company to AMD if the change of control occurs within 24 months of the Closing or (B) if the change of control occurs after the Reconciliation Event, ATIC will have the option to purchase all of the securities of The Foundry Company held by AMD and its permitted transferees, in each case at fair market value; (iv) until the end of 2013, as long as ATIC owns any securities of The Foundry Company, ATIC has the right to require AMD or any counterparty to an AMD change of control transaction to assume a portion of ATIC's funding commitment under the Funding Agreement based on the percentage of fully diluted shares held by AMD on each Funding Date (as such term is defined in the Funding Agreement); and (v) as long as ATIC owns any securities of The Foundry Company, ATIC has the right to require any counterparty to an AMD change of control transaction to guarantee all of AMD's obligations under the documents related to the Transactions.

Rights to Purchase New Shares

The Foundry Company must offer each Foundry Company Shareholder the right to purchase its pro rata share of any securities of The Foundry Company in the event The Foundry Company proposes to issue new shares to a third party. This right terminates upon an IPO.

Termination

The Shareholders' Agreement may be terminated (i) upon dissolution of The Foundry Company, (ii) by the written agreement of all parties to the Shareholders' Agreement, (iii) at the election of a Foundry Company Shareholder upon certain events of bankruptcy of the other Foundry Company Shareholder or (iv) with respect to any Foundry Company Shareholder, at such time a Foundry Company Shareholder ceases to own any securities of The Foundry Company.

The foregoing description of the Shareholders' Agreement is qualified in its entirety by reference to the full text of the Shareholders' Agreement, attached hereto as *Exhibit B*.

Table of Contents

THE FUNDING AGREEMENT

The Funding Agreement provides for the further funding of The Foundry Company. Pursuant to the Funding Agreement, ATIC has committed to additional equity funding of a minimum of \$3.6 billion and up to \$6.0 billion over the five years after the Closing.

Annual Business Plan

The Foundry Company management team must present its annual business plan (the *Annual Business Plan*) to The Foundry Company Board for approval on or prior to mid-November of each fiscal year, which date will be prior to the end of the seventh fiscal week of the fourth fiscal quarter of The Foundry Company. The Annual Business Plan must include estimates of the sources and uses of funds necessary to conduct The Foundry Company's business by fiscal quarter as well as estimated third-party debt financing. In the event The Foundry Company Board does not approve the Annual Business Plan within a certain time frame, the Funding Agreement sets forth procedures by which a resolution to any deadlock may be obtained, and the conditions under which ATIC may continue its funding commitments despite the deadlock.

Cash Reserve

The Foundry Company must maintain a cash reserve amount equal to at least \$1 billion at all times during the term of the Funding Agreement, provided, however, that this requirement shall no longer apply upon the earlier of (i) The Foundry Company entering into a Transition Period (as defined below) or (ii) the end of Phase II (as defined below).

Funding

At each equity funding, the equity securities to be issued by The Foundry Company will consist of 20% of Class A Preferred Shares and 80% of Class B Preferred Shares. See *Description of The Foundry Company Share Capital* elsewhere in this proxy statement. Under certain circumstances, The Foundry Company will issue convertible notes to ATIC in lieu of Class A and Class B Preferred Shares. See *Description of Foundry Company Convertible Subordinated Notes* elsewhere in this proxy statement. The aggregate amount of equity funding to be provided by the Foundry Company Shareholders in any fiscal year depends on the time period of such funding (Phase I, II or III) and the amounts set forth in the five-year capital plan of The Foundry Company. The Phases are defined as follows:

Phase I: the period commencing on the date of the Funding Agreement and ending on the last day of the fiscal year ending in 2010.

Phase II: the period commencing the first day of the fiscal year ending in 2011 and ending the last day of the fiscal year ending in 2013.

Phase III: the period commencing the first day of the fiscal year ending in 2014 and ending on the date the Funding Agreement is terminated pursuant to the terms thereof.

The Foundry Company is required to obtain specified third-party debt in any given fiscal year, as set forth in the five-year capital plan. To the extent that The Foundry Company obtains more than the specified amount of third-party debt, ATIC may reduce its funding commitment accordingly. To the extent that The Foundry Company is not able to obtain the full amount of third-party debt, ATIC is not obligated to make up the difference.

AMD will have the right, but not the obligation, to provide additional capital funding to The Foundry Company in response to future capital calls on a pro rata basis with ATIC. To the extent that AMD chooses not to participate in an equity funding, subject to the satisfaction of certain conditions to funding, ATIC is obligated to purchase all of the securities of The Foundry Company in such equity funding that AMD was entitled to purchase.

Table of Contents

Conditions to Funding

ATIC's obligation to provide funding is subject to certain conditions, including, among other things, the accuracy, in all material respects, of The Foundry Company's representations and warranties in the Funding Agreement, the absence of a material adverse effect of The Foundry Company, the absence of a material adverse effect on AMD that could reasonably be expected to materially and adversely affect AMD's performance of its obligations under the Wafer Supply Agreement, and the absence of a material breach or default by The Foundry Company or AMD under the provisions of any document related to the Transactions (the **General Funding Conditions**).

With respect to Phase I, ATIC's obligation to provide funding is subject to certain additional conditions, including, among other things: (i) the continuing effectiveness of AMD's IBM Participation Agreement; (ii) the availability of New York and Dresden subsidies in amounts not materially different than contemplated in the five-year capital plan; and (iii) if the Reconciliation Event has not occurred, AMD's continuing compliance with its covenants under the Shareholders' Agreement with respect to the Intel Patent Cross License Agreement (the **Phase I Funding Conditions**).

With respect to Phase II, in addition to the conditions for Phase I, ATIC's obligation to provide funding is subject to certain additional conditions, including, among other things: (i) AMD will have secured for The Foundry Company AMD-specific Have Made rights (defined as the right of AMD to have unlimited volumes of products, including microprocessors, made for AMD and its subsidiaries by The Foundry Company); (ii) The Foundry Company will have achieved targets for cumulative revenue and cumulative gross margin; and (iii) The Foundry Company will have achieved certain strategic milestones relating to the groundbreaking and build out of the Abu Dhabi fab and to AMD technology and the timing of the receipt by The Foundry Company of third party customer interest and revenue (the **Phase II Funding Conditions**).

With respect to Phase III, in addition to the conditions for Phase I, ATIC's obligation to provide funding is subject to the approval of the Annual Business Plan for the applicable fiscal year.

Annual Business Plan Deadlock Resolution

In the event the Foundry Company Shareholders have not approved the proposed Annual Business Plan on or prior to December 23rd of the fiscal year in which the proposed Annual Business Plan was submitted to The Foundry Company Board (a **Business Plan Deadlock**), the following resolution procedures will apply:

Phase I Business Plan Deadlock. In the event of a Business Plan Deadlock as a result of not being able to approve the Annual Business Plan for the fiscal year ending in 2010, ATIC will be obligated to, and AMD may if it elects to, continue to fund at the original funding level set forth in the five-year capital plan (the **Original Funding Level**), through the end of Phase I, subject to the satisfaction or waiver of the General Funding Conditions and the Phase I Funding Conditions. If at the end of such fiscal year, the Annual Business Plan for the fiscal year ending in 2011 is approved in accordance with the Funding Agreement and the Shareholders' Agreement, then funding will be at the Original Funding Level, subject to the satisfaction or waiver of the General Funding Conditions and the Phase I Funding Conditions. If at the end of such fiscal year, the Annual Business Plan for the Fiscal Year ending in 2011 is not so approved, then the provisions for Phase II Business Plan Deadlock will apply.

Phase II Business Plan Deadlock. In the event of a Business Plan Deadlock with respect to any fiscal year of Phase II, ATIC will continue to provide funding in an amount at least equal to an amount which is intended to be sufficient to both (i) continue to meet AMD's volume requirements as set forth in the Wafer Supply Agreement and (ii) continue to build out both Fab 38 in Dresden and Fab 4x in New York to the capacities required to ensure continued availability of 100% of the Dresden and New York subsidies (such amount not to exceed \$3.582 billion) (the **Minimum Funding Level**) and up to the Original Funding Level, subject to satisfaction or waiver of the General Funding Conditions and the Phase II Funding Conditions, until either

Table of Contents

(A) approval of the Annual Business Plan, in which case ATIC's funding commitment will revert to the Original Funding Level, subject to satisfaction or waiver of General Funding Conditions and the Phase II Funding Conditions, or (B) ATIC notifies The Foundry Company that it has elected to have The Foundry Company enter into the transition period, which is the period beginning on the date of ATIC's election to have The Foundry Company enter into the transition period and ending on the later of (x) 12 months after such date and (y) the last day of fiscal year ending in 2013 (the ***Transition Period***), in which case the Transition Period Business Plan Deadlock provisions (as set forth below) will become effective immediately upon such notice. In the event ATIC does not elect to have The Foundry Company enter into the Transition Period, ATIC will provide The Foundry Company with notice of the amount of funding ATIC is committing to fund for the following fiscal quarter, The Foundry Company will include such amount in any funding notice delivered with respect to such following fiscal quarter, and the general funding procedures set forth in the Funding Agreement will otherwise continue to apply.

Phase III Business Plan Deadlock. In the event of a Business Plan Deadlock with respect to any fiscal year of Phase III, ATIC will continue to provide funding in an amount at least equal to an amount sufficient to meet AMD's MPU volume requirements for such period (the ***Transition Funding Level***) and up to an amount equal to an amount sufficient to meet AMD's MPU volume requirements for such fiscal year as set forth in the Wafer Supply Agreement, including additional funding up to, at ATIC's election (i) the level of funding as set forth in the most recently approved Annual Business Plan or (ii) the level of funding sufficient to continue to build out the next fabs after Fab 4x, subject to satisfaction or waiver of the General Funding Conditions and the Phase III Funding Conditions (other than the approval of the Annual Business Plan), until either (A) approval of the Annual Business Plan, in which case ATIC's funding commitment will revert to the level set forth in such approved Annual Business Plan, subject to satisfaction or waiver of the General Funding Conditions and the Phase III Funding Conditions, or (B) ATIC notifies The Foundry Company that it has elected to have The Foundry Company enter into the Transition Period, in which case the Transition Period Business Plan Deadlock provisions (as set forth below) will become effective immediately upon such notice.

Transition Period Business Plan Deadlock. If ATIC elects to have The Foundry Company enter into the Transition Period: (i) prior to any request for equity funding from the Foundry Company Shareholders, The Foundry Company's management must first comply with the provisions relating to third-party debt financing set forth in the Funding Agreement; (ii) general funding procedures set forth in the Funding Agreement continue to apply; (iii) ATIC will only be obligated to provide funding through the Transition Period at the Minimum Funding Level in the case of a Transition Period during Phase II and at the Transition Funding Level in the case of a Transition Period during Phase III, in each case subject to the satisfaction or waiver of the General Funding Conditions and the Phase I Funding Conditions on or prior to any funding date; (iv) the Foundry Company Shareholders will jointly pursue, in good faith, transition options during the Transition Period, including without limitation, winding-down, selling or liquidating The Foundry Company; and (v) upon termination of the Transition Period, ATIC will have the option to purchase in cash any or all securities of The Foundry Company held by AMD and its permitted transferees at a price equal to their fair market value.

Termination

The Funding Agreement will terminate upon the earlier of (i) a written agreement by the parties and (ii) the termination of the Transition Period.

The foregoing description of the Funding Agreement is qualified in its entirety by reference to the full text of the Funding Agreement, attached hereto as ***Exhibit C***.

Table of Contents

THE WAFER SUPPLY AGREEMENT

AMD will purchase products manufactured by The Foundry Company pursuant to the terms of the Wafer Supply Agreement.

AMD Purchase Commitments

MPU Products. AMD will purchase all of its and its subsidiaries' microprocessor unit (*MPU*) products from The Foundry Company sales subsidiaries, subject to limited exceptions. Notwithstanding the foregoing, if AMD acquires a third-party business that manufactures MPU products, AMD will have up to two years to transition the manufacture of such MPU products to The Foundry Company. Additionally, AMD and its subsidiaries may use another foundry company as a second source for certain of its quarterly MPU product wafer requirements, and may source additional amounts from such foundry company to the extent The Foundry Company is unable to deliver products to AMD sufficient to meet AMD's material customer commitments. AMD's ability to source MPU requirements with such foundry company terminates: (i) upon the occurrence of a specified event; or (ii) subject to a wind-down period, if such foundry company undergoes a change of control resulting in another entity controlling a majority of such company's assets or equity interests related to the manufacture of products on behalf of AMD.

GPU Products. Once The Foundry Company establishes a 32 nm qualified process, AMD will purchase from The Foundry Company sales entities, where competitive, specified percentages of its and its subsidiaries' graphics processor unit (*GPU*) requirements, which percentage will increase linearly over a five-year period. AMD agrees not to sell, transfer or dispose of all or substantially all of its or its subsidiaries' assets related to GPU products and related technology to any third party without The Foundry Company's consent, unless the transferee agrees to be bound by the terms of the Wafer Supply Agreement, including its minimum purchase obligations, where competitive, with respect to GPU products.

The Foundry Company Capacity Commitment

After reviewing forecasts provided by AMD, as agreed by the parties, The Foundry Company will allocate such additional capacity sufficient to produce the MPU product volumes set forth in rolling, binding forecasts. The parties will establish capacity requirements in advance for GPU products. The Foundry Company will use commercially reasonable efforts to fill any capacity allocated to but unutilized by AMD with production for third parties so as to offset and reduce AMD's fixed cost reimbursement obligations to The Foundry Company; provided that such efforts will not be required if there exists any unutilized capacity that has not been allocated to AMD.

Management

A partnership committee comprised of an equal number of members appointed by each party will manage the relationship. Unresolved disputes will be escalated to executive officers of each party for resolution.

Sort Services

At AMD's request, The Foundry Company will provide sort services to AMD on a product by product basis. Sort equipment for MPU products will be assigned to The Foundry Company on the effective date; in the event any sort equipment is no longer usable to provide sort services to AMD or The Foundry Company's other customers, The Foundry Company will dispose of such equipment and the parties will determine the amount reimbursable to The Foundry Company or AMD. Additional AMD equipment may be consigned, and AMD will bear all the maintenance and operational costs for such equipment.

Table of Contents

Pricing

The price for MPU products is related to a certain percentage of The Foundry Company's MPU-specific total cost of goods sold. The price for GPU products will be determined on a product-by-product basis by the parties. AMD will also be responsible for certain other cost reimbursements to The Foundry Company.

Indemnification

The Foundry Company provides AMD and its affiliates, officers, directors, employees, agents, successors and assigns with an intellectual property infringement indemnity covering The Foundry Company's method of manufacturing the products, except for the methods specifically transferred to The Foundry Company on the effective date. AMD provides The Foundry Company and its affiliates, officers, directors, employees, agents, successors and assigns with an intellectual property infringement indemnity covering The Foundry Company's manufacture of wafers for AMD in compliance with any AMD product designs or specifications, use of AMD's equipment, materials, methods and technologies as used by AMD immediately prior to the effective date, and use of property furnished by AMD in accordance with applicable standards and instructions.

Intellectual Property

AMD grants The Foundry Company and applicable The Foundry Company subsidiaries and any permitted assignees a non-exclusive, non-transferable, royalty-free right and license to: (i) make products and import and sell such products to AMD; and (ii) reproduce any documentation provided by AMD to enable The Foundry Company to manufacture such products for AMD.

Term; Termination

The Wafer Supply Agreement will be in effect no longer than 15 years after the Closing. The Wafer Supply Agreement may be terminated at any time upon mutual written consent and may expire earlier upon the occurrence of certain events. The Wafer Supply Agreement may also be terminated if and when a business plan deadlock exists and ATIC elects to enter into a transition period pursuant to the Funding Agreement. The Foundry Company will use commercially reasonable efforts to assist AMD to transition the supply of products to another provider, and continue to fulfill purchase orders for up to two years following the termination or expiration of the Wafer Supply Agreement. During such transition period, pricing for MPU products will remain as set forth in the Wafer Supply Agreement, but AMD's purchase commitments to The Foundry Company will no longer apply.

The foregoing description of the Wafer Supply Agreement is qualified in its entirety by reference to the full text of the Wafer Supply Agreement, attached hereto as *Exhibit D*.

Table of Contents

AGREEMENTS RELATED TO INTELLECTUAL PROPERTY

In connection with the Transactions, AMD and The Foundry Company will also enter into intellectual property related arrangements.

Patent Cross License Agreement

Pursuant to a Patent Cross License Agreement (the *Patent Cross License Agreement*), AMD and The Foundry Company will each grant to the other a non-exclusive license under patents which were filed by a party (or are otherwise acquired by a party) within a certain number of years following the effective date of the Patent Cross License Agreement. AMD and The Foundry Company are also entering into arrangements under which all issued patents and pending patent applications of AMD and its subsidiaries (other than patents and applications owned by ATI Technologies LLC and its wholly owned subsidiaries) will be divided between AMD and The Foundry Company. The Foundry Company will take ownership of its allocation of patents and applications subject to pre-existing rights, licenses or immunities granted to third parties relating to such patents and applications. The patents and patent applications owned by each party after the division will be licensed to the other party pursuant to the Patent Cross License Agreement.

Non-Patent Intellectual Property and Technology Transfer Agreement

Pursuant to a Non-Patent Intellectual Property and Technology Transfer Agreement, AMD will assign to The Foundry Company all of its right, title and interest in technology and non-patent intellectual property rights used exclusively in the manufacture, sorting and/or intermediate (WIP) testing of semiconductor products. Technology and non-patent intellectual property rights used exclusively in the design and/or post-delivery testing of semiconductor products will be retained by AMD. Technology and non-patent intellectual property rights used both in the manufacture, sorting and/or intermediate (WIP) testing of semiconductor products and in the design and/or post-delivery testing of semiconductor products will be jointly owned by AMD and The Foundry Company.

Table of Contents

DESCRIPTION OF THE FOUNDRY COMPANY CONVERTIBLE SUBORDINATED NOTES

At Closing, in consideration for ATIC's cash contribution to The Foundry Company, The Foundry Company will issue convertible subordinated notes convertible into Class A Preferred Shares (the ***Class A Convertible Notes***) and Class B Preferred Shares (the ***Class B Convertible Notes***) to ATIC. In addition, prior to the Reconciliation Event, to the extent that the issuance of any securities to ATIC in connection with an equity funding of The Foundry Company would cause The Foundry Company to fail to constitute a Subsidiary of AMD, as such term is defined in the Intel Patent Cross License Agreement, The Foundry Company will instead issue to ATIC (i) additional Class A Convertible Notes in an aggregate principal amount equal to the aggregate purchase price for the Class A Preferred Shares that would have been issued to ATIC but for such provision, and (ii) additional Class B Convertible Notes in an aggregate principal amount equal to the aggregate purchase price for the Class B Preferred Shares that would have been issued to ATIC but for such provision. The principal terms of the Class A Convertible Notes and the Class B Convertible Notes are set forth below.

Class A Convertible Notes

Interest. The Class A Convertible Notes accrue interest at a rate of 4% per annum, compounded semiannually, and payable semiannually in additional Class A Convertible Notes.

Maturity. The Class A Convertible Notes mature upon the later of (i) 10 years from the date of issuance or (ii) the date of the Reconciliation Event.

Security. The Class A Convertible Notes are the unsecured obligations of The Foundry Company.

Ranking. The Class A Convertible Notes will constitute a subordinated obligation of The Foundry Company and will rank subordinated in right of payment to any current or future senior indebtedness of The Foundry Company.

Redemption. The Class A Convertible Notes are not redeemable by The Foundry Company without the noteholder's consent.

Conversion. The Class A Convertible Notes are convertible, in whole or in part, in multiples of \$1,000, into The Foundry Company Class A Preferred Shares at the option of the holder at any time prior to the close of business on the business day immediately preceding the maturity date, at the Conversion Ratio (as defined below) in effect on the date of conversion, if (i) such conversion would not cause The Foundry Company to fail to constitute a Subsidiary of AMD under the Intel Patent Cross License Agreement or (ii) the Reconciliation Event has occurred.

On or after the Reconciliation Event, the Class A Convertible Notes will automatically convert into Class A Preferred Shares of The Foundry Company upon the earlier of (i) a Foundry Company IPO, (ii) certain change of control transactions of The Foundry Company or (iii) the close of business on the business day immediately preceding the maturity date.

The ***Conversion Ratio*** for each \$1,000 principal amount of Class A Convertible Notes will be a number obtained by dividing (1) \$1,000 by (2) the applicable Class A Convertible Notes Conversion Price (as hereinafter defined) in effect at the time of conversion. The ***Class A Convertible Notes Conversion Price*** will initially be the per share price of the Class A Preferred Shares at the time the Class A Convertible Note was issued, subject to customary anti-dilution adjustments. The Foundry Company will deliver cash in lieu of any fractional shares upon conversion.

Events of Default. The following constitute an event of default under the Class A Convertible Notes:

any default in the payment of principal or interest on the Class A Convertible Notes;

any default in the delivery of Class A Preferred Shares upon the conversion of any Class A Convertible Notes, which default has not been cured within 10 days;

Table of Contents

the liquidation, dissolution or winding up of The Foundry Company; or

certain events of bankruptcy or insolvency.

If an event of default occurs and is continuing, then the outstanding principal amount of the Class A Convertible Notes, together with any accrued and unpaid interest, will become immediately due and payable at the request of the holder.

Class B Convertible Notes

Interest. The Class B Convertible Notes accrue interest at a rate of 11% per annum, compounded semiannually, and payable semiannually in additional Class B Convertible Notes.

Maturity. The Class B Convertible Notes mature upon the later of (i) 10 years from the date of issuance or (ii) the date of the Reconciliation Event.

Security. The Class B Convertible Notes are the unsecured obligations of The Foundry Company.

Ranking. The Class B Convertible Notes will constitute a subordinated obligation of The Foundry Company and will rank subordinated in right of payment to any current or future senior indebtedness of The Foundry Company.

Redemption. The Class B Convertible Notes are not redeemable by The Foundry Company without the noteholder's consent.

Conversion. The Class B Convertible Notes are convertible, in whole or in part, in multiples of \$1,000, into The Foundry Company Class B Preferred Shares at the option of the holder at any time prior to the close of business on the business day immediately preceding the maturity date, at the Conversion Ratio (as defined below) in effect on the date of conversion, if (i) such conversion would not cause The Foundry Company to fail to constitute a Subsidiary of AMD under the Intel Patent Cross License Agreement or (ii) the Reconciliation Event has occurred.

On or after the Reconciliation Event, the Class B Convertible Notes will automatically convert into The Foundry Company Class B Preferred Shares upon the earlier of (i) a Foundry Company IPO, (ii) certain change of control transactions of The Foundry Company or (iii) the close of business on the business day immediately preceding the maturity date.

The **Conversion Ratio** for each \$1,000 principal amount of Class B Convertible Notes will be a number obtained by dividing (1) \$1,000 by (2) the applicable Class B Convertible Notes Conversion Price (as hereinafter defined) in effect at the time of conversion. The **Class B Convertible Notes Conversion Price** will initially be the per share price of the Class B Preferred Shares at the time the Class B Convertible Note was issued, subject to customary anti-dilution adjustments. The Foundry Company will deliver cash in lieu of any fractional shares upon conversion.

Events of Default. The following constitute an event of default under the Class B Convertible Notes:

any default in the payment of principal or interest on the Class B Convertible Notes;

any default in the delivery of Class B Preferred Shares upon the conversion of any Class B Convertible Notes, which default has not been cured within 10 days;

the liquidation, dissolution or winding up of The Foundry Company; or

certain events of bankruptcy or insolvency.

Edgar Filing: ADVANCED MICRO DEVICES INC - Form PRER14A

If an event of default occurs and is continuing, then the outstanding principal amount of the Class B Convertible Notes, together with any accrued and unpaid interest, will become immediately due and payable at the request of the holder.

Table of Contents

DESCRIPTION OF THE FOUNDRY COMPANY SHARE CAPITAL

Class A Ordinary Shares

The Foundry Company will issue two Class A Ordinary Shares, one to each of AMD and ATIC. The Class A Ordinary Shares will carry one vote each and will be the only voting securities of The Foundry Company prior to the Reconciliation Event. Following the Reconciliation Event, the Class A Ordinary Shares will be redeemed by The Foundry Company. The Class A Ordinary Shares are non-transferable.

Class B Ordinary Shares

The Foundry Company will issue Class B Ordinary Shares at the Closing. The Class B Ordinary Shares will be non-voting until the Reconciliation Event. Following the Reconciliation Event, each holder of Class B Ordinary Shares will be entitled to one vote per Class B Ordinary Share.

Class A Preferred Shares

The Class A Preferred Shares to be issued by The Foundry Company in connection with any equity funding under the Funding Agreement will have the following principal terms:

Ranking. The Class A Preferred Shares will rank senior in right of payment to the Ordinary Shares of The Foundry Company and junior in right of payment to the Class B Preferred Shares of The Foundry Company for purposes of dividends, distributions and upon a Liquidation Event (as defined below).

Accretion. The Class A Preferred Shares will not be entitled to any dividend or pre-determined accretion in value.

Liquidation Preference. In the event of the liquidation, dissolution or winding up of The Foundry Company (a **Liquidation Event**), each Class A Preferred Share will be entitled to receive, after the distribution to the holders of the Class B Preferred Shares but prior to any distribution to the holders of Ordinary Shares, out of the remaining assets of The Foundry Company, if any, an amount equal to the initial purchase price per share of the Class A Preferred Shares. Upon completion of the above distributions to the holders of Preferred Shares, all of the remaining assets of The Foundry Company, if any, will be distributed pro rata among the holders of Ordinary Shares.

Conversion. Each Class A Preferred Share will be convertible, at the option of the holder thereof, into Class B Ordinary Shares at the then applicable Class A Conversion Rate (as hereinafter defined) upon a Liquidation Event. Each Class A Preferred Share will automatically convert into Class B Ordinary Shares at the then applicable Class A Conversion Rate upon the earlier of (i) a Foundry Company IPO or (ii) a change of control transaction of The Foundry Company. The **Class A Conversion Rate** will initially be 100 Class B Ordinary Shares for each Class A Preferred Share converted, subject to customary anti-dilution adjustments.

Redemption. The Class A Preferred Shares will not be redeemable by The Foundry Company.

Voting Rights. The Class A Preferred Shares will be non-voting until the Reconciliation Event. Following the Reconciliation Event, each Class A Preferred Share will vote on an as-converted basis with the Ordinary Shares, voting together as a single class, with respect to any question upon which holders of Ordinary Shares have the right to vote.

Table of Contents

Class B Preferred Shares

The Class B Preferred Shares to be issued by The Foundry Company in connection with any equity funding will have the following principal terms:

Ranking. The Class B Preferred Shares will rank senior in right of payment to all other classes or series of equity securities of The Foundry Company for purposes of dividends, distributions and upon a Liquidation Event.

Accretion. Each Class B Preferred Share will be deemed to accrete in value at a rate of 12% per year, compounded semiannually, of the initial purchase price per such share (the sum of the initial purchase price per such share plus the amount of value accreted on such share is hereinafter referred to as the **Accreted Value**). Such Accreted Value will accrue daily from and after the issue date of such share and will be taken into account upon certain distributions to the holders of Class B Preferred Shares.

In the event that the aggregate Accreted Value in respect of all Class B Preferred Shares held by ATIC, when taken together with any Class A Preferred Shares held by ATIC, would cause the aggregate economic interest of ATIC in The Foundry Company to exceed thresholds required for The Foundry Company to remain a Subsidiary of AMD under the Intel Patent Cross License Agreement, such excess amount of the Accreted Value will be converted into Class B Convertible Notes that will only be payable in the event that Accreted Value is actually paid in the form of cash or Ordinary Shares and that any such payment does not cause the economic interest thresholds required for the Foundry Company to remain a Subsidiary of AMD under the Intel Patent Cross License Agreement to be exceeded.

Liquidation Preference. In the event of a Liquidation Event, each Class B Preferred Share will be entitled to receive, prior to any distribution to the holders of any other classes or series of equity securities, an amount equal to the Accreted Value of such share. Upon completion of the above distribution to the holders of Class B Preferred Shares, each Class A Preferred Share will be entitled to receive its liquidation preference amount out of any remaining assets of The Foundry Company. Upon completion of the above distributions to the holders of Preferred Shares, all of the remaining assets of The Foundry Company, if any, will be distributed pro rata among the holders of Ordinary Shares.

Conversion. Each Class B Preferred Share will be convertible, at the option of the holder thereof, into Class B Ordinary Shares at the then applicable Class B Conversion Rate (as hereinafter defined) upon a Liquidation Event. Each Class B Preferred Share will automatically convert into Class B Ordinary Shares at the then applicable Class B Conversion Rate upon the earlier of (i) a Foundry Company IPO or (ii) a change of control transaction of The Foundry Company. The **Class B Conversion Rate** will initially be 100 Class B Ordinary Shares for each Class B Preferred Share converted, subject to customary anti-dilution adjustments. Notwithstanding the foregoing, if the resulting fair market value of the Class B Ordinary Shares to be received upon such conversion would be less than the Accreted Value of such Class B Preferred Share, then the holder of such Class B Preferred Share will receive additional Class B Ordinary Shares upon such conversion in order to cause the fair market value of the total amount of Class B Ordinary Shares to be received upon such conversion to equal the Accreted Value of such Class B Preferred Share.

Redemption. The Class B Preferred Shares will not be redeemable by The Foundry Company.

Voting Rights. The Class B Preferred Shares will be non-voting until the Reconciliation Event. Following the Reconciliation Event, each Class B Preferred Share will vote on an as-converted basis with the Ordinary Shares, voting together as a single class, with respect to any question upon which holders of Ordinary Shares have the right to vote.

Table of Contents

DESCRIPTION OF AMD COMMON STOCK

Pursuant to the Master Transaction Agreement, we will sell and issue, and WCH will purchase 58,000,000 shares of our common stock and warrants to purchase 35,000,000 shares of our common stock at an exercise price of \$0.01 per share (as adjusted pursuant to the terms of the Warrants) for an aggregate purchase price equal to (a) 58,000,000 multiplied by (b) the lesser of (A) the average of the closing prices per share of our common stock on the NYSE for the 20 trading days immediately prior to and including December 12, 2008 and (B) the average of the closing prices per share of our common stock on the NYSE for the 20 trading days immediately prior to the closing date of the Transactions.

Our authorized capital stock consists of 1,500,000,000 shares of common stock, par value \$0.01 per share, and 1,000,000 shares of preferred stock, \$0.10 par value per share. As of December 17, 2008, 608,708,430 shares of common stock were issued and outstanding. There are no shares of preferred stock issued and outstanding.

The holders of common stock are entitled to one vote per share on all matters to be voted on by stockholders, including the election of directors. Stockholders are not entitled to cumulative voting rights, and, accordingly, the holders of a majority of the shares voting for the election of directors can elect the entire board if they choose to do so and, in that event, the holders of the remaining shares will not be able to elect any person to the board of directors.

The holders of common stock are entitled to receive such dividends, if any, as may be declared from time to time by the board of directors, in its discretion, from funds legally available therefor and subject to prior dividend rights of holders of any shares of preferred stock which may be outstanding. However, the terms of certain of our borrowing arrangements restrict our ability to declare or pay dividends on our common stock in certain circumstances. Upon liquidation or dissolution of the company subject to prior liquidation rights of the holders of preferred stock, the holders of common stock are entitled to receive on a pro rata basis the remaining assets of the company available for distribution. Holders of common stock have no preemptive or other subscription rights, and there are no conversion rights or redemption or sinking fund provisions with respect to such shares. All outstanding shares of common stock are fully paid and non-assessable.

Table of Contents

DESCRIPTION OF THE WARRANTS

Pursuant to the Master Transaction Agreement, we will sell and issue, and WCH will purchase 58,000,000 shares of our common stock and warrants to purchase 35,000,000 shares of our common stock at an exercise price of \$0.01 per share (as adjusted pursuant to the terms of the Warrants) for an aggregate purchase price equal to (a) 58,000,000 multiplied by (b) the lesser of (A) the average of the closing prices per share of our common stock on the NYSE for the 20 trading days immediately prior to and including December 12, 2008 and (B) the average of the closing prices per share of our common stock on the NYSE for the 20 trading days immediately prior to the closing date of the Transactions.

The following is a summary of the material terms and provisions of the Warrants.

Exercise of Warrants. The Warrants will be exercisable in whole or in part at the option of the warrant holder at any time after the earlier of (i) public ground-breaking of the New York wafer fab and (ii) 24 months from the date of their issuance; *provided, however*, that upon an AMD Change of Control Transaction (as hereinafter defined), the Warrants will become immediately exercisable and will automatically be exercised through a cashless exercise. **AMD Change of Control Transaction** means a transaction or a series of transactions with or among any third person, on the one hand, and AMD, its stockholders or any of its subsidiaries, on the other hand, with respect to (A) a consolidation or merger or similar transaction of AMD in which AMD stockholders immediately prior to such transaction own less than 50% of the voting securities of the surviving corporation outstanding immediately after such transaction, (B) any purchase of an equity interest resulting in any third person beneficially owning greater than a 50% voting or economic interest in AMD or (C) any purchase of assets, securities or ownership interests resulting in any third person owning greater than 50% of the consolidated assets of AMD and its subsidiaries taken as a whole.

The warrant holder may exercise the Warrants by delivery to AMD of a written notice of its intent to exercise the Warrants. The warrant holder then will purchase through a cashless exercise, and AMD will issue, such number of Warrant Shares indicated in such notice five business days after the delivery of such notice to AMD. Notwithstanding the foregoing, no notice of exercise will be required in connection with the automatic exercise of the Warrants upon an AMD Change of Control Transaction. In the case of an automatic exercise upon an AMD Change of Control Transaction, the warrant holder will purchase, and AMD will issue, the total number of Warrant Shares purchasable under the Warrants through a cashless exercise.

Exercise Price of the Warrants. The Warrants will be exercisable for common stock at a purchase price of \$0.01 per share of common stock (as adjusted pursuant to the terms of the Warrants).

Adjustments for Stock Splits and Combinations. If we at any time or from time to time after the date on which the Warrants were first issued (or, if any Warrant was issued upon partial exercise of, or in replacement of, another warrant of like tenor, then the date on which such original warrant was first issued) (either such date being referred to as the **Original Issue Date**) effect a subdivision of our outstanding common stock, the number of shares of common stock issuable upon exercise of the Warrants will be proportionately increased. If we at any time or from time to time after the Original Issue Date combine the outstanding shares of our common stock, the number of shares of common stock issuable upon exercise of the Warrants will be proportionately decreased.

Adjustment for Dividends and Distributions in Common Stock. In the event we at any time or from time to time after the Original Issue Date make or issue, or fix a record date for the determination of holders of our common stock entitled to receive, a dividend or other distribution payable in additional shares of our common stock, then and in each such event the number of shares of common stock issuable upon exercise of the Warrants will be adjusted as of the time of such issuance or, in the event such a record date will have been fixed, as of the close of business on such record date, so that, after giving effect to such adjustment, each holder of a Warrant will be entitled to receive an additional number of shares of our common stock upon exercise that such holder would have been entitled to receive had such Warrant been exercised immediately prior to such event.

Table of Contents

Notwithstanding the foregoing, if such record date has been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the number of shares of common stock issuable upon exercise of the Warrants will be recomputed accordingly as of the close of business on such record date and thereafter the number of shares of common stock issuable upon exercise of the Warrants will be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

Adjustment for Other Dividends and Distributions. In the event we at any time or from time to time after the Original Issue Date make or issue, or fix a record date for the determination of holders of our common stock entitled to receive, a dividend or other distribution payable in our securities (other than a distribution of shares of our common stock) or in cash or other property, then and in each such event the number of shares of common stock issuable upon exercise of each Warrant will be increased as of the time of such issuance or, in the event such a record date has been fixed, as of the close of business on such record date, to a number determined by multiplying the number of shares of common stock issuable upon exercise of such Warrant immediately prior to such event by a fraction, the numerator of which will be the Current Market Value (as defined below) per share of common stock on the date of such event, and the denominator of which will be such Current Market Value per share of common stock less the fair market value (as determined in the reasonable good faith discretion of our board of directors) of such securities, cash or other property to be distributed with respect to each share of common stock on the date of such event. **Current Market Value** will mean the average of the daily closing prices on the NYSE of our common stock over the ten consecutive trading day period ending on the business day immediately preceding such event.

Notwithstanding the foregoing, if such record date has been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the number of shares of common stock issuable upon exercise of the Warrants will be recomputed accordingly as of the close of business on such record date and thereafter the number of shares of common stock issuable upon exercise of the Warrants will be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

Adjustment for Reclassification, Exchange or Subdivision. If our common stock is changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above), then and in each such event the holder of each Warrant will have the right thereafter to exercise such Warrant into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change by holders of the number of shares of common stock into which such Warrant might have been exercised immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

Adjustment in Exercise Price. Upon each adjustment in the number of shares of common stock issuable upon exercise of a Warrant, the exercise price for such Warrant will be adjusted to the product obtained by multiplying the applicable exercise price immediately prior to such adjustment by a fraction, the numerator of which will be the number of shares of common stock issuable upon exercise of such Warrant immediately prior to such adjustment and the denominator of which will be the number of shares of common stock issuable upon exercise of such Warrant immediately thereafter; *provided, however*, that in no event will the exercise price be less than the par value of the common stock.

Registration Rights. The issuance and sale of the Warrants and Warrant Shares will not be registered under the Securities Act, and these securities will bear a legend specifying that such securities may not be transferred, sold or otherwise disposed of unless a registration statement relating to such securities is in effect under applicable federal and state securities laws or pursuant to an available exemption from registration. At or prior to the Closing, AMD will put up a resale registration statement (the **Shelf Registration Statement**) registering the resale of the Shares and the Warrant Shares by WCH and its permitted transferees, as well as the shares of our common stock acquired by WCH in November 2007, pursuant to a registration rights agreement between AMD and WCH (the **Registration Rights Agreement**). Pursuant to the Registration Rights Agreement, AMD will use

Table of Contents

its reasonable best efforts to keep the Shelf Registration Statement effective under the Securities Act until all such securities are sold to the public, whether pursuant to the Shelf Registration Statement or pursuant to Rule 144. AMD will bear all fees and expenses incurred in connection with the filing of the Shelf Registration Statement and its obligations under the Registration Rights Agreement. In addition, AMD will indemnify WCH, or any person who controls WCH, and each affiliate of WCH, against any losses caused by any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading.

Notice of Certain Events. If at any time after the Warrants are first issued, AMD (i) enters into an AMD Change of Control Transaction, (ii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of AMD or (iii) declares a dividend on its common stock payable in cash or other property, then, in each case, AMD will provide the warrant holder with at least 30 days prior written notice before the applicable record date or effective date of such transaction, as the case may be, in order to provide the warrant holder the ability to exercise the Warrants and participate in such transaction as a holder of common stock.

Expiration. The Warrants expire upon the 10th anniversary of their issuance.

The foregoing description of the Warrants is qualified in its entirety by reference to the full text of the form of Warrant, attached hereto as ***Exhibit E***.

Table of Contents**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

Pursuant to a Master Transaction Agreement dated October 6, 2008, as amended on December 5, 2008, entered into by Advanced Micro Devices, Inc. (AMD or the Company), Advanced Technology Investment Company LLC (ATIC) and West Coast Hitech L.P., acting through its general partner, West Coast Hitech G.P., Ltd (WCH) (as amended, the Master Transaction Agreement), AMD and ATIC will form a manufacturing joint venture, The Foundry Company. AMD will contribute certain manufacturing-related assets and liabilities to The Foundry Company in exchange for securities of The Foundry Company consisting of one Class A Ordinary Share, Class A Preferred Shares and Class B Preferred Shares, and ATIC will contribute cash to The Foundry Company and pay cash to AMD in exchange for securities of The Foundry Company consisting of one Class A Ordinary Share, Class A Preferred Shares, Class B Preferred Shares, Class A Convertible Notes and Class B Convertible Notes (collectively, the Convertible Notes). The Foundry Company will manufacture semiconductor products and will provide certain foundry services to AMD and, in the future, expects to offer foundry services to other third-party customers.

The Master Transaction Agreement contemplates that AMD, ATIC and The Foundry Company will enter into a Shareholders Agreement (the Shareholders Agreement), which sets forth the rights and obligations of AMD and ATIC as shareholders of The Foundry Company. In addition, a Funding Agreement among AMD, ATIC and The Foundry Company will provide for further equity funding of The Foundry Company by ATIC of a minimum of \$3.6 billion and up to \$6.0 billion over the five years after the closing of the transactions contemplated by the Master Transaction Agreement (the Closing), and a Wafer Supply Agreement between AMD and The Foundry Company will govern the terms by which AMD will purchase products manufactured by The Foundry Company. The Foundry Company will manufacture semiconductor products using intellectual property transferred by AMD to The Foundry Company and certain intellectual property licensed to AMD. Immediately following the Closing, the Company and ATIC will be the only shareholders of The Foundry Company, each of which will have equal voting rights, and The Foundry Company will be owned 34.2 percent by the Company and 65.8 percent by ATIC on a fully converted to common share basis.

In addition, pursuant to the Master Transaction Agreement, WCH will purchase (i) 58,000,000 shares of AMD s common stock and (ii) warrants to purchase 35,000,000 shares of AMD common stock at an exercise price of \$0.01 per share (the Warrants) for an aggregate purchase price equal to 58,000,000 multiplied by the lower of (A) the average closing prices per share of the Company s common stock on the New York Stock Exchange (NYSE) during the 20 trading days immediately prior to and including December 12, 2008 or (B) the average closing prices per share of the Company s common stock on the NYSE during the 20 trading days immediately prior to the Closing. The Warrants are exercisable after the earlier of (a) public ground-breaking of Fab 4X in New York and (b) 24 months from the date of issuance.

For accounting purposes, AMD will consolidate the accounts of The Foundry Company as required by FASB Interpretation No. 46R, *Consolidation of Variable Interest Entities, An Interpretation of ARB No. 51 (FIN 46R)* because The Foundry Company is deemed to be a variable-interest entity and AMD is deemed to be the primary beneficiary. Upon the Closing, the accounts of The Foundry Company will include (i) the assets and liabilities contributed by AMD to The Foundry Company recorded at their historical costs in exchange for certain securities of The Foundry Company and (ii) the cash contributed by ATIC to The Foundry Company in exchange for certain securities of The Foundry Company. Upon consolidation, intercompany transactions and profits will be eliminated. Pursuant to the requirements of FASB Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements - An Amendment of ARB No.51*, which AMD will be required to apply as of the beginning of fiscal 2009, ATIC s non-controlling interest, represented by its equity interests in The Foundry Company, will be recorded on AMD s consolidated balance sheet outside stockholders equity due to a put right that ATIC has pursuant to the Shareholders Agreement to sell all of its securities of The Foundry Company to AMD in the event of a change of control of AMD within 24 months of the Closing. The Company s net income (loss) per common share will consist of its consolidated net income (loss), as adjusted for (i) the portion of The Foundry Company s earnings or losses attributable to ATIC, which will be based on ATIC s proportional

Table of Contents

ownership interest in The Foundry Company's Class A Preferred Shares, and (ii) the non-cash accretion of Class B Preferred Shares attributable to the Company, based on the Company's proportional ownership interest of The Foundry Company's Class A Preferred Shares.

The following unaudited pro forma condensed consolidated balance sheet as of September 27, 2008 and the unaudited pro forma condensed statements of operations for the fiscal year ended December 29, 2007 and the nine months ended September 27, 2008 are based on the historical financial statements of AMD after giving effect to the transactions contemplated by the Master Transaction Agreement and the assumptions and adjustments described in the accompanying notes to the unaudited pro forma condensed consolidated financial statements.

The unaudited pro forma condensed consolidated balance sheet is presented as if the transactions contemplated by the Master Transaction Agreement had been completed on September 27, 2008. The unaudited pro forma condensed consolidated statements of operations for the fiscal year ended December 29, 2007 and the nine months ended September 27, 2008 are presented as if the transactions contemplated by the Master Transaction Agreement had been completed at the beginning of fiscal 2007 and carried forward through September 27, 2008.

The pro forma information is prepared pursuant to the requirements of Article 11 of U.S. Securities and Exchange Commission Regulation S-X and is presented solely for informational purposes. The pro forma information is not necessarily indicative of the results of operations or financial position that might have been achieved by AMD for the periods or dates indicated nor is it necessarily indicative of the future results of operations or financial position of AMD.

Table of Contents

Unaudited Pro Forma Condensed Consolidated Balance Sheet

At September 27, 2008

(In millions, except par value amounts)

	AMD Consolidated as Reported	Reclassification of Discontinued Operations (See Note 1)	AMD Consolidated as Adjusted	Pro Forma Adjustments	AMD Pro Forma Consolidated
(In millions, except par value amounts)					
ASSETS					
Current assets:					
Cash and cash equivalents (See Note 3)	\$ 1,108	\$	\$ 1,108	\$ 2,224(a)(1), (a)(2)	\$ 3,332
Marketable securities	233		233		233
Total cash and cash equivalents and marketable securities	1,341		1,341	2,224	3,565
Accounts receivable, net	620	12	632		632
Inventories	844	7	851		851
Deferred income taxes	20		20		20
Prepaid expenses and other current assets	240	6	246		246
Assets of discontinued operations	232	(98)	134		134
Total current assets	3,297	(73)	3,224	2,224	5,448
Property, plant and equipment, net	4,440	4	4,444		4,444
Acquisition related intangible assets, net	224		224		224
Goodwill	945	69	1,014		1,014
Other assets	535		535		535
Total assets	\$ 9,441	\$	\$ 9,441	\$ 2,224	\$ 11,665
LIABILITIES AND STOCKHOLDERS EQUITY					
Current liabilities:					
Accounts payable	\$ 737	\$ 7	\$ 744	\$	\$ 744
Accrued compensation and benefits	143	2	145		145
Accrued liabilities	850	2	852		852
Income taxes payable	27		27		27
Deferred income on shipments to distributors	65		65		65
Current portion of long-term debt and capital lease obligations	266		266		266
Other short-term obligations	94		94		94
Other current liabilities	199		199		199
Liabilities of discontinued operations	11	(11)			
Total current liabilities	2,392		2,392		2,392
Deferred income taxes	4		4		4
Long-term debt and capital lease obligations, less current portion (See Note 3)	4,874		4,874	1,009(a)(2)	5,883
Other long-term liabilities	657		657		657
Minority interest in consolidated subsidiaries (See Note 3)	175		175	1,091(a)(2)	1,266
Commitments and contingencies					
Stockholders' equity:					
Capital stock:	6		6	1(a)(1)	7

Edgar Filing: ADVANCED MICRO DEVICES INC - Form PRER14A

Common stock, par value \$0.01; 1,500 shares
 authorized on September 27, 2008; shares issued:
 616 on September 27, 2008; shares outstanding:
 608 on September 27, 2008 (See Note 3)

Capital in excess of par value (See Note 3)	6,078		6,078	123(a)(1)	6,201
Treasury stock, at cost (7 shares on September 27, 2008)	(97)		(97)		(97)
Retained earnings (deficit)	(4,774)		(4,774)		(4,774)
Accumulated other comprehensive income	126		126		126
Total stockholders' equity	1,339		1,339	124	1,463
Total liabilities and stockholders' equity	\$ 9,441	\$	\$ 9,441	\$ 2,224	\$ 11,665

See accompanying notes to unaudited pro forma condensed consolidated financial statements.

Table of Contents

Unaudited Pro Forma Condensed Consolidated Statement of Operations

For the nine months ended September 27, 2008

(In millions except per share amounts)

	AMD Consolidated as Reported	Reclassification of Discontinued Operations (See Note 1)	AMD Consolidated as Adjusted	Pro Forma Adjustments	AMD Pro Forma Consolidated
	(In millions except per share amounts)				
Net revenue	\$ 4,581	\$ 65	\$ 4,646	\$	\$ 4,646
Cost of sales	2,376	29	2,405		2,405
Gross margin	2,205	36	2,241		2,241
Research and development	1,319	64	1,383		1,383
Marketing, general and administrative	984	2	986		986
Amortization of acquired intangible assets and integration charges	89	18	107		107
Impairment of goodwill and acquired intangible assets		405	405		405
Restructuring charges	39	1	40		40
Operating income (loss)	(226)	(454)	(680)		(680)
Interest income	32		32		32
Interest expense (See Note 3)	(277)		(277)	(73)(c)(1)	(350)
Other income (expense), net	(15)		(15)		(15)
Income (loss) before minority interest, equity in loss of Spansion Inc. and other and income taxes	(486)	(454)	(940)	(73)	(1,013)
Minority interest in consolidated subsidiaries (See Note 3)	(27)		(27)	2(c)(2)	(25)
Equity in net loss of Spansion Inc. and other	(33)		(33)		(33)
Income (loss) from continuing operations before income taxes	(546)	(454)	(1,000)	(71)	(1,071)
Provision (benefit) for income taxes	(1)		(1)		(1)
Income (loss) from continuing operations	\$ (545)	\$ (454)	\$ (999)	\$ (71)	\$ (1,070)
Per share data, basic and diluted:					
Income (loss) from continuing operations per share	\$ (0.90)		\$ (1.65)		\$ (1.71)
Shares used in per share calculation, basic and diluted:	607		607		665

See accompanying notes to unaudited pro forma condensed consolidated financial statements.

Table of Contents

Unaudited Pro Forma Condensed Consolidated Statement of Operations

For the fiscal year ended December 29, 2007

(In millions, except per share amounts)

	AMD Consolidated as Reported	Reclassification of Discontinued Operations (See Note 1)	AMD Consolidated as Adjusted	Pro Forma Adjustments	AMD Pro Forma Consolidated
(In millions except per share amounts)					
Net revenue	\$ 5,694	\$ 164	\$ 5,858	\$	\$ 5,858
Cost of sales	3,551	118	3,669		3,669
Gross margin	2,143	46	2,189		2,189
Research and development	1,700	71	1,771		1,771
Marketing, general and administrative	1,347	13	1,360		1,360
Amortization of acquired intangible assets and integration charges	165	71	236		236
Impairment of goodwill and acquired intangible assets	605	527	1,132		1,132
Operating income (loss)	(1,674)	(636)	(2,310)		(2,310)
Interest income	73		73		73
Interest expense (See Note 3)	(367)		(367)	(97)(b)(1)	(464)
Other income (expense), net	(7)		(7)		(7)
Income (loss) before minority interest, equity in loss of Spansion Inc. and other and income taxes	(1,975)	(636)	(2,611)	(97)	(2,708)
Minority interest in consolidated subsidiaries (See Note 3)	(35)		(35)	19(b)(2)	(16)
Equity in net loss of Spansion Inc. and other	(155)		(155)		(155)
Income (loss) from continuing operations before income taxes	(2,165)	(636)	(2,801)	(78)	(2,879)
Provision (benefit) for income taxes	31	(4)	27		27
Income (loss) from continuing operations	\$ (2,196)	\$ (632)	\$ (2,828)	\$ (78)	\$ (2,906)
Per share data, basic and diluted:					
Income (loss) from continuing operations per share	\$ (3.94)		\$ (5.07)		\$ (4.86)
Shares used in per share calculation, basic and diluted:	558		558		616
See accompanying notes to unaudited pro forma condensed consolidated financial statements.					

Table of Contents

Notes to Unaudited Pro Forma Condensed Consolidated Financial Statements

1. Basis of Presentation

The unaudited pro forma condensed consolidated balance sheet as of September 27, 2008 and the unaudited pro forma condensed consolidated statements of operations for the fiscal year ended December 29, 2007 and the nine months ended September 27, 2008 are based on the historical financial statements of AMD after giving effect to the transactions described in Note 2 below and the assumptions and adjustments described elsewhere in these notes to the unaudited pro forma condensed consolidated financial statements. The unaudited pro forma condensed consolidated balance sheet is presented as if the transactions described in Note 2 had been completed on September 27, 2008. The unaudited pro forma condensed consolidated statements of operations for the fiscal year ended December 29, 2007 and the nine months ended September 27, 2008 are presented as if the transactions had been completed at the beginning of fiscal 2007 and carried forward through September 27, 2008.

During the second quarter of 2008, the Company decided to divest its Digital Television and Handheld business units and classified them as discontinued operations. Accordingly, the condensed consolidated statements of operations, as reported, reflect elimination of the operations of the Company's Digital Television and Handheld businesses from the Company's income (loss) from continuing operations and the condensed consolidated balance sheet, as reported, presents the assets and liabilities of those businesses as assets and liabilities of discontinued operations.

During the fourth quarter of 2008, the Company determined that based on the ongoing negotiations related to the divestiture of its Handheld business unit, the discontinued operation classification criteria for this business unit were no longer met. Accordingly, the pro forma condensed consolidated statements of operations and balance sheet, as adjusted, have been adjusted to reclassify the operations, assets and liabilities of the Company's Handheld business unit back to the continuing operations.

The pro forma information is prepared pursuant to the requirements of Article 11 of U.S. Securities and Exchange Commission Regulation S-X and is presented solely for informational purposes. The pro forma information is not necessarily indicative of the results of operations or financial position that might have been achieved by AMD for the periods or dates indicated, and is not necessarily indicative of the future results of operations or financial position of AMD. The pro forma information is based on estimates and assumptions set forth in these notes, which AMD management believes are reasonable.

2. The Transactions

Pursuant to the Master Transaction Agreement, AMD and ATIC will form a manufacturing joint venture, The Foundry Company. AMD will contribute certain manufacturing-related assets and liabilities to The Foundry Company in exchange for securities of The Foundry Company consisting of one Class A Ordinary Share, Class A Preferred Shares and Class B Preferred Shares, and ATIC will contribute cash to The Foundry Company and pay cash to AMD in exchange for securities of The Foundry Company consisting of one Class A Ordinary Share, Class A Preferred Shares, Class B Preferred Shares and the Convertible Notes. The Foundry Company will manufacture semiconductor products and will provide certain foundry services to AMD and, in the future, expects to offer foundry services to other third-party customers.

Immediately following the Closing, the Company and ATIC will be the only shareholders of The Foundry Company, each of which will have equal voting rights, and The Foundry Company will be owned 34.2 percent by the Company and 65.8 percent by ATIC on a fully converted to common share basis.

In addition, pursuant to the Master Transaction Agreement, WCH will purchase 58,000,000 shares of the Company's common stock and the Warrants for an aggregate purchase price equal to 58,000,000 multiplied by the lower of (A) the average closing prices per share of the Company's common stock on the NYSE during the 20 trading days immediately prior to and including December 12, 2008 or (B) the average closing prices per

Table of Contents

share of the Company's common stock on the NYSE during the 20 trading days immediately prior to the Closing. The Warrants are exercisable after the earlier of (a) public ground-breaking of Fab 4X in New York and (b) 24 months from the date of issuance.

For accounting purposes, AMD will consolidate the accounts of The Foundry Company as required by FASB Interpretation No. 46R, *Consolidation of Variable Interest Entities, An Interpretation of ARB No. 51* (FIN 46R) because The Foundry Company is a variable-interest entity and AMD is deemed to be the primary beneficiary. Upon the Closing, the accounts of The Foundry Company will include (i) the assets and liabilities contributed by AMD to The Foundry Company, recorded at their historical costs, in exchange for certain securities of The Foundry Company and (ii) the cash contributed by ATIC to The Foundry Company in exchange for certain securities of The Foundry Company. Upon consolidation, intercompany transactions and profits will be eliminated. Pursuant to the requirements of FASB Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements - An Amendment of ARB No. 51*, which AMD will be required to apply as of the beginning of fiscal 2009, ATIC's non-controlling interest, represented by its equity interests in The Foundry Company, will be recorded on AMD's consolidated balance sheet outside stockholders' equity due to a put right that ATIC has pursuant to the Shareholders' Agreement to sell all of its securities of The Foundry Company to AMD in the event of a change of control of AMD within 24 months of the Closing. The Company's net income (loss) per common share will consist of its consolidated net income (loss), as adjusted for (i) the portion of The Foundry Company's earnings or losses attributable to ATIC, which will be based on ATIC's proportional ownership interest in The Foundry Company's Class A Preferred Shares, and (ii) the non-cash accretion of Class B Preferred Shares attributable to the Company, based on the Company's proportional ownership interest of The Foundry Company's Class A Preferred Shares.

The carrying values of the assets and liabilities to be transferred by AMD to The Foundry Company pursuant to the Master Transaction Agreement, as of September 27, 2008, are summarized in the following table. As indicated in the previous paragraph, these assets and liabilities will continue to be consolidated by the Company after the Closing. The actual carrying values of the assets and liabilities that will be transferred by the Company upon the Closing will be different than those set forth in the table below.

Summary of the Assets and Liabilities to Be Transferred to The Foundry Company

Carrying values as of September 27, 2008	
(\$ in millions)	
Current assets	\$ 665
Property, plant and equipment, net	3,292
Other non-current assets	78
Total assets	4,035
Current liabilities	849
Long-term debt and capital lease obligations	751
Payable to AMD, minority interest, and other	825
Net assets transferred by the Company	\$ 1,610

Under the Master Transaction Agreement, the cash consideration that WCH and ATIC will pay and the securities that they will receive are as follows:

Cash to be paid by WCH to AMD for the purchase of 58 million shares of AMD common stock and Warrants: estimated to be \$124 million, assuming a \$2.15 per share price (which was the average of the closing prices per share of the Company's common stock on the NYSE during the 20 trading days immediately prior to and including December 12, 2008)

Table of Contents

Cash to be paid by ATIC to The Foundry Company for 4% Class A Convertible Subordinated Notes of The Foundry Company, convertible into 201,810 Class A Preferred Shares: \$202 million

Cash to be paid by ATIC to The Foundry Company for 11% Class B Convertible Subordinated Notes of The Foundry Company, convertible into 807,240 Class B Preferred Shares: \$807 million

Cash to be paid by ATIC to The Foundry Company for 218,190 Class A Preferred Shares of The Foundry Company: \$218 million

Cash to be paid by ATIC for 872,760 Class B Preferred Shares of The Foundry Company: \$873 million, which includes \$700 million paid to the Company for 700,000 Class B Preferred Shares of The Foundry Company. The Class B Preferred Shares are, by their terms, deemed to accrete in value at a rate of 12% per year, compounded semiannually. This accreted value will be taken into account upon certain distributions to the holders or upon conversion of the Class B Preferred Shares.

Upon Closing, the Company and ATIC will hold 1,090,950, or 83.3%, and 218,190, or 16.7%, respectively, of The Foundry Company Class A Preferred Shares and ATIC will own 100% of the Class B Preferred Shares and the Convertible Notes.

3. Pro Forma Adjustments

The unaudited pro forma condensed consolidated balance sheet gives effect to the transactions described in Note 2 as if they had occurred on September 27, 2008. The unaudited pro forma condensed consolidated statements of operations for the fiscal year ended December 29, 2007 and the nine months ended September 27, 2008, are presented as if the transactions described in Note 2 had been completed at the beginning of fiscal 2007 and carried forward through September 27, 2008.

a) Explanations of the adjustments to the unaudited pro forma condensed consolidated balance sheet as of September 27, 2008 are as follows (in millions):

(1) To record the cash received from WCH for the purchase of the Company's common stock and the Warrants:

Line Item	Increase (Decrease)
Cash	\$ 124
Capital stock	\$ 1
Capital in excess of par value	\$ 123

(2) To record the cash received from ATIC for securities of The Foundry Company:

Line Item	Increase (Decrease)
Cash	\$ 2,100
Long-term debt and capital lease obligations	\$ 1,009 ⁽¹⁾
Minority interests in consolidated subsidiaries	\$ 1,091 ⁽²⁾

(1) Represents cash received by The Foundry Company from ATIC for issuance of the Convertible Notes, which are treated as debt.

(2) Represents cash received by The Foundry Company from ATIC for the Class A Preferred Shares and the Class B Preferred Shares, which are treated as minority interests in consolidated subsidiaries.

b) Explanations of the adjustments to the unaudited pro forma condensed consolidated statement of operations for the fiscal year ended December 29, 2007 are as follows (in millions):

Table of Contents

(1) To record the additional interest expense associated with the Convertible Notes for the fiscal year ended December 29, 2007:

Line Item	Increase (Decrease)
Interest expense	\$ 97

(2) To record the minority interest allocation of The Foundry Company's operating results to ATIC based on its 16.7% Class A Preferred Share ownership:

Line Item	Increase (Decrease)
Minority interest in consolidated subsidiaries	(\$ 19)

c) Explanations of the adjustments to the unaudited pro forma condensed consolidated statement of operations for the nine months ended September 27, 2008 are as follows (in millions):

(1) To record the additional interest expense associated with the Convertible Notes for the nine months ended September 27, 2008:

Line Item	Increase (Decrease)
Interest expense	\$ 73

(2) To record the minority interest allocation of The Foundry Company's operating results to ATIC based on its 16.7% Class A Preferred Share ownership:

Line Item	Increase (Decrease)
Minority interest in consolidated subsidiaries	(\$ 2)

4. Unaudited Pro Forma Income (Loss) from Continuing Operations per Share

The following table sets forth the computation of income (loss) from continuing operations and shares used in deriving the unaudited pro forma basic and diluted income (loss) from continuing operations per share (in millions):

	Nine Months Ended September 27, 2008	Year Ended December 29, 2007
	(In millions except per share data)	
<i>Numerator: Pro Forma Income (Loss) from Continuing Operations</i>		
Pro forma income (loss) from continuing operations	\$ (1,070)	\$ (2,906)
Accretion of Class B Preferred Shares attributable to AMD based on AMD's ownership interest in The Foundry Company's Class A Preferred Shares	(65)	(87)
Adjusted pro forma income (loss) from continuing operations	\$ (1,135)	\$ (2,993)
<i>Denominator: Weighted Average Shares</i>		
Historical AMD basic and diluted, as reported	607	558
Incremental shares issued in the transactions	58	58

Edgar Filing: ADVANCED MICRO DEVICES INC - Form PRER14A

Pro forma combined basic and diluted	665	616
<i>Per Share Data, Basic and Diluted</i>		
Adjusted pro forma income (loss) from continuing operations	\$ (1.71)	\$ (4.86)

Table of Contents**PRINCIPAL STOCKHOLDERS**

The following table shows each person or entity we know to be the beneficial owner of more than five percent of our common stock as of December 17, 2008.

Name and Address of Beneficial Owner	Number of Shares Owned	Percent of class⁽¹⁾
Oppenheimer Funds, Inc. ⁽²⁾ Two World Financial Center 225 Liberty Street, 11 th Floor New York, New York 10281	62,395,002 (shared voting and shared dispositive power as to all shares)	10.25%
West Coast Hitech L.P. ⁽³⁾ P.O. Box 309 GT Ugland House, South Church Street George Town Grand Cayman, Cayman Islands	49,000,000 (shared voting and shared dispositive power as to all shares)	8.05%
Capital World Investors ⁽⁴⁾ 333 South Hope Street Los Angeles, California 90071	42,287,620 (sole voting and dispositive power as to all shares)	6.95%
FMR LLC ⁽⁵⁾ 82 Devonshire Street Boston, Massachusetts 02109	39,354,745 (sole dispositive power as to all shares and sole voting power as to 1,813,088 shares)	6.46%
AXA ⁽⁶⁾ 25, avenue Matignon 75008 Paris, France	36,429,023 (sole voting power as to 32,450,216 shares; shared voting power as to 67,159 shares; sole dispositive power as to 36,362,165 shares; and, shared dispositive power as to 66,858 shares)	5.98%
Maverick Capital, Ltd. ⁽⁷⁾ 300 Crescent Court, 18 th Floor Dallas, Texas 75201	33,779,082 (sole voting and dispositive power as to all shares)	5.55%

(1) Based on 608,708,430 shares of common stock outstanding as of December 17, 2008.

(2) This information is based on Amendment No. 4 of the Schedule 13G/A filed with the SEC on January 4, 2008 by Oppenheimer Funds, Inc. (Oppenheimer) and includes 40,000,000 of common stock owned by Oppenheimer Global Opportunities Fund (Oppenheimer Global). Oppenheimer is an investment advisor and disclaims beneficial ownership of all shares pursuant to Rule 13d-4 of the Exchange Act of 1934. Oppenheimer Global, an investment company located at 6803 S. Tucson Way, Centennial, CO, has shared dispositive and voting power over 40,000,000 shares of common stock.

(3) This information is based on a Schedule 13D filed with the SEC on October 16, 2008 by Mubadala Development Company PJSC (Mubadala), West Coast Hitech L.P., and West Coast Hitech G.P. Ltd. pursuant to a joint filing agreement. Mubadala is a public joint stock company incorporated in the Emirate of Abu Dhabi, United Arab Emirates and is wholly owned by the Government of the Emirate of Abu Dhabi. Mubadala disclaims beneficial ownership of all shares pursuant to Rule 13d-4 of the Exchange Act. The 49,000,000 shares are held as of record by West Coast Hitech, L.P., a Cayman Islands limited partnership of which West Coast Hitech G.P., Ltd., a Cayman Islands corporation and wholly owned subsidiary of Mubadala, is the general partner.

Edgar Filing: ADVANCED MICRO DEVICES INC - Form PRER14A

- (4) This information is based on a Schedule 13G filed with the SEC on February 11, 2008 by Capital World Investors. Capital World Investors is a division of Capital Research and Management and is an investment advisor. Capital World Investors disclaims beneficial ownership of these shares. The number of shares beneficially owned by Capital World Investors includes, as of December 31, 2007, 111,015 shares resulting from the assumed conversion of \$111,015,000 principal amount of our 6.00% Convertible Senior Notes due 2015.
- (5) This information is based on Amendment No. 1 of the Schedule 13G/A filed with the SEC on January 10, 2008 by FMR LLC (FMR), Fidelity Management & Research Company (Fidelity), and Edward C. Johnson

Table of Contents

3d pursuant to a joint filing agreement. Fidelity, a wholly owned subsidiary of FMR, is an investment advisor and the beneficial owner of 37,479,859 shares of our common stock. Edward C. Johnson 3d and FMR, through its control of Fidelity and the funds, each has sole power to dispose of the 37,479,859 shares owned by the funds. Strategic Advisers, Inc., a wholly owned subsidiary of FMR and an investment adviser, is the beneficial owner of 408 shares of our common stock. Pyramis Global Advisors, LLC (PGALLC), an indirect wholly owned subsidiary of FMR and an investment adviser, is the beneficial owner of 34,300 shares of our common stock. Edward C. Johnson 3d and FMR, through its control of PGALLC, each has sole dispositive power and the sole power to vote or to direct the voting of 34,300 shares of common stock owned by the institutional accounts or funds advised by PGALLC. Pyramis Global Advisors Trust Company (PGATC), an indirect wholly owned subsidiary of FMR, is the beneficial owner of 1,494,767 shares of our common stock as a result of its serving as investment manager of institutional accounts owning such shares. Edward C. Johnson 3d and FMR, through its control of PGATC, each has sole dispositive power over 1,494,767 shares and sole power to vote or to direct the voting of 1,438,667 shares of common stock owned by the institutional accounts managed by PGATC. Fidelity International Limited (FIL) and various foreign-based subsidiaries provide investment advisory and management services to a number of non-U.S. investment companies and certain institutional investors. FIL is the beneficial owner of 345,411 shares of our common stock. FMR and FIL are of the view that they are not required to attribute to each other the beneficial ownership of securities beneficially owned by the other corporation within the meaning of Rule 13d-3 of the Exchange Act. FIL has sole dispositive power over 345,411 shares owned by the International Funds. FIL has sole power to vote or direct the voting of 339,713 shares and no power to vote or direct the voting of 5,698 shares of common stock held by the International Funds.

- (6) This information is based on Amendment No. 6 of the Schedule 13G/A filed with the SEC Commission on February 14, 2008 (the AXA Schedule 13G/A) by AXA Financial, Inc.; AXA, which owns AXA Financial Inc.; and AXA Assurances I.A.R.D. Mutuelle, AXA Assurances Vie Mutuelle, AXA Courtage Assurance Mutuelle (collectively, the Mutuelles AXA), which as a group, control AXA. Alliance Bernstein L.P. and AXA Equitable Life Insurance Company are subsidiaries of AXA Financial, Inc. and operate under independent management and make independent voting and investment decisions. Each of Mutuelles AXA, as a group, and AXA expressly declares that the filing of this Schedule 13G/A will not be construed as an admission that it is the beneficial owner of these securities for purposes of Section 13(d) of the Exchange Act. The AXA stock ownership, based on information provided in the AXA Schedule 13G/A, is as follows:

	(i) Deemed to have Sole Power to Vote or to Direct the Vote	(ii) Deemed to have Shared Power to Vote or to Direct the Vote	(iii) Deemed to have Sole Power to Dispose or to Direct the Disposition	(iv) Deemed to have Shared Power to Dispose or to Direct the Disposition
The Mutuelles AXA, as a group	0	0	0	0
AXA	0	0	0	0
AXA Entity or Entities:				
AXA Investment Managers Paris (France)	10,413	0	10,413	0
AXA Financial, Inc., a holding company 1290 Avenue of the Americas New York, New York 10104	0	0	0	0
Subsidiaries of AXA Financial, Inc.:				
Alliance Bernstein L.P., an investment adviser	31,869,047	67,159	35,632,672	66,858
AXA Equitable Life Insurance Company, an insurance company and investment adviser	570,756	0	719,080	0
	32,450,216	67,159	36,362,165	66,858

- (7) This information is based on Schedule 13G filed with the SEC on February 14, 2008 by Maverick Capital Ltd., Maverick Capital Management, LLC and Lee S. Ainslie III of 767 Fifth Ave., 11th Floor, New York, New York, 10153 pursuant to a joint filing agreement. Maverick Capital Ltd. is an investment advisor. Maverick Capital Management, LLC is the General Partner of Maverick Capital, Ltd. Mr. Ainslie is the manager of Maverick Capital Management, LLC and is granted sole investment discretion pursuant to Maverick Capital Management, LLC's regulations.

Table of Contents**SECURITY OWNERSHIP OF DIRECTORS AND EXECUTIVE OFFICERS**

The table below shows the number of shares of our common stock beneficially owned as of December 17, 2008, by our current directors, by our Chief Executive Officer, our Chief Financial Officer, our only other executive officers as of the end of our last fiscal year, Mario A. Rivas, who would have been a Named Executive Officer if he had been our executive officer at the end of our last fiscal year, and by all of our directors and executive officers as a group. Except as otherwise indicated, each person has sole investment and voting power with respect to the shares shown as beneficially owned. Ownership information is based upon information provided by the individuals.

Name	Amount and Nature of Beneficial Ownership ⁽¹⁾⁽²⁾	Percent of Class ⁽³⁾
Dr. Hector de J. Ruiz ⁽⁴⁾	5,122,453	*
Derrick R. Meyer ⁽⁵⁾	811,716	*
Dr. W. Michael Barnes	118,892	*
John E. Caldwell	49,996	*
Bruce L. Claflin	132,082	*
Frank Clegg	4,166	*
H. Paulett Eberhart	87,972	*
Robert B. Palmer	205,916	*
Morton L. Topfer	277,082	*
Thomas M. McCoy ⁽⁶⁾	630,196	*
Mario A. Rivas ⁽⁷⁾	43,872	*
Robert J. Rivet ⁽⁸⁾	1,064,139	*
All directors and executive officers as a group (12 persons)	8,517,870	1.40%

* Less than 1%.

- (1) Some of the individuals may share voting power with regard to the listed shares with their spouses.
(2) Includes beneficial ownership of the following number of shares that may be acquired because stock options are vested or will vest, or restricted stock units will vest, by February 15, 2009 (within 60 days of December 17, 2008) pursuant to our 2004 Equity Incentive Plan:

	Shares
Dr. Hector de J. Ruiz	4,621,133
Dr. W. Michael Barnes	101,626
John E. Caldwell	37,496
Bruce L. Claflin	115,416
Frank M. Clegg	0
H. Paulett Eberhart	70,140
Derrick R. Meyer	653,587
Robert B. Palmer	105,806
Morton L. Topfer	72,916
Thomas M. McCoy	555,391
Mario A. Rivas	29,787
Robert J. Rivet	968,119
All directors and executive officers as a group (12 persons)	7,322,417

- (3) Based on 608,708,430 shares of common stock outstanding as of December 17, 2008.
(4) Includes 510,320 shares held by 2000 Ruiz Family Trust, of which Dr. Ruiz is the trustee, and 1,600,000 stock options, all of which are exercisable as of December 17, 2008, held by Ruiz Ventures L.P.
(5) Mr. Meyer is a member of our board and also the President and Chief Executive Officer of AMD.

Table of Contents

- (6) Mr. McCoy is the Executive Vice President, Legal Corporate and Public Affairs Officer of AMD.
- (7) Mr. Rivas was the former Executive Vice President, Computing Solutions, AMD. He resigned from this position effective May 9, 2008.
- (8) Mr. Rivet is the Chief Operations and Administrative Officer, Executive Vice President and Chief Financial Officer of AMD.

Table of Contents

GENERAL AND OTHER MATTERS

The board of directors knows of no matter, other than those referred to in this proxy statement, which will be presented at the Special Meeting. However, if any other matters are properly brought before the Special Meeting or any of its adjournments or postponements, the person or persons voting the proxies will vote them in accordance with their judgment on such matters.

A representative of Ernst & Young LLP, our independent registered public accounting firm, is expected to be present at the Special Meeting and will have an opportunity to make a statement if he or she so desires. He or she will also be available to respond to appropriate questions from stockholders.

The cost of preparing, assembling, and mailing this proxy statement and the enclosed proxy card will be paid by us. Additional solicitation by mail, Internet, telephone, telegraph or personal solicitation may be done by our directors, officers and regular employees. Such persons will receive no additional compensation for such services. Brokerage houses, banks and other nominees, fiduciaries and custodians nominally holding shares of common stock of record will be requested to forward proxy soliciting material to the beneficial owners of such shares, and will be reimbursed by us for their reasonable expenses.

Under the rules of the SEC, for stockholder proposals to be considered for inclusion in the proxy statement for our 2009 Annual Meeting, they must be submitted in writing to our Corporate Secretary, Advanced Micro Devices, Inc., 5204 E. Ben White Blvd., M/S 562, Austin, Texas, 78741 on or before November 20, 2008. In addition, our bylaws provide that for directors to be nominated or other proposals to be properly presented at the 2009 Annual Meeting, an additional notice of any nomination or proposal must be received by us between February 7, 2009 and March 9, 2009. If our 2009 Annual Meeting is not within 30 days of May 8, 2009, the date of our 2008 Annual Meeting, to be timely, the notice by the stockholder must not be later than the close of business on the tenth day following the earlier of the day on which the first public announcement of the date of the 2009 Annual Meeting was made or the notice of the meeting was mailed. The public announcement of an adjournment or postponement of the 2009 Annual Meeting will not trigger a new time period (or extend any time period) for the giving of a stockholder notice.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

We have elected to incorporate the following information by reference into this proxy statement:

Item 7A Quantitative and Qualitative Disclosures About Market Risk and Item 9 Changes in and Disagreements With Accountants on Accounting and Financial Disclosure contained in Part II of our Annual Report on Form 10-K for the fiscal year ended December 29, 2007, which we filed with the SEC on February 26, 2008;

Item 1 Financial Statements, Item 2 Management's Discussion and Analysis of Financial Condition and Results of Operations and Item 3 Quantitative and Qualitative Disclosures About Market Risk contained in Part I of our Quarterly Report on Form 10-Q for the quarterly period ended September 27, 2008, which we filed with the SEC on November 6, 2008; and

Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations and Item 8 Financial Statements and Supplementary Data contained in Exhibit 99.1 to our Current Report on Form 8-K that we filed with the SEC on January 9, 2009.

We will provide, without charge, to each person to whom this proxy statement is delivered, upon written or oral request of such person and by first class mail or other equally prompt means within one business day of receipt of such request, a copy of any and all of the information that we have incorporated by reference into this proxy statement (not including exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that this proxy statement incorporates). Requests for any or all of this information should be directed to the Assistant Corporate Secretary at Advanced Micro Devices, Inc. at One AMD Place, P.O. Box 3453, Sunnyvale, California 94088-3453 or by calling (408) 749-4000.

Table of Contents

AVAILABLE INFORMATION

We are subject to the informational requirements of the Exchange Act and in accordance therewith file periodic reports, proxy statements and other information with the SEC relating to our business, financial condition and other matters. We are required to disclose in such proxy statements certain information, as of particular dates, concerning our directors and officers, their remuneration, stock options granted to them, the principal holders of our securities and any material interest of such persons in transactions with us. Such reports, proxy statements and other information may be inspected at the SEC's public reference facilities at 100 F Street, NE, Washington, DC 20549. Please call the SEC at 1-800-SEC-0330 for information on the operation of the public reference room. Copies of such material can also be obtained at prescribed rates by writing to the SEC's Public Reference Section at the address set forth above or by accessing the SEC's web site at www.sec.gov. You may also obtain copies of these documents without charge by writing to the Assistant Corporate Secretary at Advanced Micro Devices, Inc., One AMD Place, P.O. Box 3453, Sunnyvale, California 94088-3453.

Table of Contents

Global Markets & Investment Banking

ANNEX A

December 5, 2008

Board of Directors

Advanced Micro Devices, Inc.

One AMD Place

Sunnyvale, CA 94088-3453

Members of the Board of Directors:

Advanced Micro Devices, Inc. (Discovery), Advanced Technology Investment Company LLC (Oyster), West Coast Hitech L.P. (Pearl) and FoundryCo (as defined below) propose to enter into an amendment (the Amendment), a draft of which we have reviewed dated December 5, 2008, to the Master Transaction Agreement (the Agreement), pursuant to which (i) Discovery would transfer certain assets to a newly-formed corporation incorporated under the laws of the Cayman Islands (FoundryCo), and FoundryCo would assume certain liabilities, including approximately \$1.2 billion of debt owed to third parties by Discovery or a subsidiary of Discovery (the Third-Party Debt), in each case related to Discovery s front-end semiconductor manufacturing or fabrication facilities, properties and assets (excluding assets, facilities and properties related to back-end manufacturing functions such as assembly, test, mark and packaging) (the Business), (ii) Oyster would contribute \$1.4 billion in cash to FoundryCo and pay \$700 million in cash to Discovery, (iii) FoundryCo would issue to Discovery FoundryCo Class A Preferred Shares representing approximately 34.2% of FoundryCo s outstanding ordinary shares on a fully-converted basis as well as one Class A Ordinary Share and would issue to Oyster FoundryCo Class A and Class B Preferred Shares and FoundryCo Class A and Class B Convertible Notes, in the principal amount of approximately \$1.0 billion (subject to adjustment under certain circumstances), which when taken together, on an as converted basis, would represent approximately 65.8% of FoundryCo s outstanding ordinary shares as well as one Class A Ordinary Share, (iv) Discovery would issue to Pearl 58 million shares of Discovery s common stock at a per share price equal to the lower of (a) the average closing price of Discovery s common stock for the 20 trading days immediately prior to and including December 12, 2008 and (b) the average closing price of Discovery s common stock for the 20 trading days prior to the closing date for the transaction) and Discovery would receive from Pearl such purchase price in cash in exchange for such shares (the Common Stock Sale), (v) Discovery would issue to Pearl warrants to purchase 35 million shares of Discovery s common stock with a \$0.01 per share exercise price and 10 year expiration (the Warrants), (vi) Discovery would extinguish any and all intercompany liabilities between it and the Business on or prior to closing, and (vii) Discovery, Oyster, Pearl and FoundryCo would enter into a number of related commercial agreements (the Commercial Agreements), including, without limitation, the FoundryCo amended Funding Agreement that commits Oyster under certain conditions to fund the build-out of FoundryCo s semiconductor manufacturing facilities in New York and Dresden and the Wafer Supply Agreement that governs the pricing, volume and other commitments (including exclusivity commitments by Discovery) between Discovery and FoundryCo for the supply of wafers.

You have asked us whether, in our opinion, the Consideration (as defined below) to be received by Discovery pursuant to the transactions contemplated by the Agreement (as amended by the Amendment) is fair from a financial point of view to Discovery. Consideration for this purpose consists of Discovery s receipt of FoundryCo Class A Preferred Shares and the one Class A Ordinary Share, cash paid to Discovery for shares of Discovery Common Stock and the Warrants, cash paid to Discovery from Oyster for FoundryCo Class B Preferred Shares, assumption of the Third-Party Debt by FoundryCo, and extinguishment of Business accounts receivable owed by Discovery to the Business by FoundryCo.

Table of Contents

Global Markets & Investment Banking

In arriving at the opinion set forth below, we have, among other things:

- (1) Reviewed certain publicly available business and financial information relating to Discovery and the Business that we deemed to be relevant;
- (2) Reviewed certain information, including financial forecasts, relating to the business, earnings, cash flow, assets, liabilities and prospects of Discovery, the Business and FoundryCo furnished to us by Discovery;
- (3) Conducted discussions with members of senior management and representatives of Discovery and the Business concerning the matters described in clauses 1 and 2 above;
- (4) Reviewed the market prices and valuation multiples for certain publicly traded companies that we deemed to be relevant to Discovery, Business and FoundryCo;
- (5) Reviewed the results of operations of Discovery and the Business and the financial forecasts for Discovery, the Business and FoundryCo and compared them with those of certain publicly traded companies that we deemed to be relevant;
- (6) Compared the proposed financial terms of the Agreement (as amended by the Amendment) with the financial terms of certain other transactions that we deemed to be relevant;
- (7) Participated in certain discussions and negotiations among representatives of Discovery, the Business, FoundryCo, Pearl and Oyster and their financial and legal advisors;
- (8) Reviewed the Agreement dated as of October 6, 2008 as well as the Ancillary Agreements, as defined in the Agreement (as amended by the Amendment);
- (9) Reviewed a draft of the Amendment dated December 4, 2008; and
- (10) Reviewed such other financial studies and analyses and took into account such other matters as we deemed necessary, including our assessment of general economic, market and monetary conditions.

In preparing our opinion, we have assumed and relied on the accuracy and completeness of all information supplied or otherwise made available to us, discussed with or reviewed by or for us, or publicly available, and we have not assumed any responsibility for independently verifying such information or undertaken an independent evaluation or appraisal of any of the assets or liabilities of Discovery or been furnished with any such evaluation or appraisal, nor have we evaluated the solvency or fair value of Discovery or FoundryCo under any state or federal laws relating to bankruptcy, insolvency or similar matters. In addition, we have not assumed any obligation to conduct any physical inspection of the

Edgar Filing: ADVANCED MICRO DEVICES INC - Form PRER14A

properties or facilities of Discovery or FoundryCo. With respect to the financial forecast information furnished to or discussed with us by Discovery, we have assumed, at your direction, that they have been reasonably prepared and reflect the best currently available estimates and judgment of Discovery's management as to the expected future financial performance of Discovery, the Business and FoundryCo. We have also assumed that the final form of the Amendment and the Ancillary Agreements will be substantially similar to the last drafts reviewed by us.

Our opinion is necessarily based upon market, economic and other conditions as they exist and can be evaluated on, and on the information made available to us as of, the date hereof.

We are acting as financial advisor to Discovery in connection with the Transaction and will receive a fee from Discovery for our services, a significant portion of which is contingent upon the consummation of the

A-2

Table of Contents

Global Markets & Investment Banking

transactions contemplated by the Agreement. In addition, Discovery has agreed to indemnify us for certain liabilities arising out of our engagement.

We have, in the past, provided financial advisory and financing services to Discovery and may continue to do so and have received, and may receive, fees for the rendering of such services. Merrill Lynch was financial advisor to Discovery in Pearl's common stock investment in Discovery in November 2007, co-manager in Discovery's convertible notes offering in April 2007, and sole manager in Discovery's common stock offering in January 2006. In addition, in the ordinary course of our business, we or our affiliates may actively trade Discovery shares and other securities of Discovery for our own account and for the accounts of customers and, accordingly, may at any time hold a long or short position in such securities.

This opinion is for the use and benefit of the Board of Directors of Discovery. Our opinion does not address the merits of the underlying decision by Discovery to engage in the Agreement and does not constitute a recommendation to any stockholder as to how such stockholder should vote on any matter related to the transactions contemplated by the Agreement. In addition, you have not asked us to address, and this opinion does not address, the fairness to, or any other consideration of, the holders of any class of securities, creditors or other constituencies of Discovery. Furthermore, by delivering this opinion we make no comment on, and no implication should be drawn as to, the parties' reasons for entering into the Amendment and we express no view or opinion as to their rights and obligations under the Agreement prior to the Amendment. In rendering this opinion, we express no view or opinion with respect to the fairness (financial or otherwise) of the amount or nature or any other aspect of any compensation payable to or to be received by any officers, directors, or employees of any parties to the Agreement, or any class of such persons, relative to the Consideration. We also express no view or opinion with respect to the fairness (financial or otherwise) of the Commercial Agreements or the trading price of the Company's common stock at any date subsequent to the date hereof, including without limitation the closing date for the transaction. Our opinion has been authorized for issuance by the U.S. Fairness Opinion (and Valuation Letter) Committee of Merrill Lynch.

On the basis of and subject to the foregoing, we are of the opinion that, as of the date hereof, the Consideration to be received by Discovery pursuant to the Agreement (as amended by the Amendment) is fair from a financial point of view.

Very truly yours,

/s/ Merrill Lynch, Pierce, Fenner & Smith Incorporated

MERRILL LYNCH, PIERCE, FENNER & SMITH

INCORPORATED

Table of Contents

ANNEX B

December 5, 2008

Transaction Oversight Committee of the

Board of Directors

Advanced Micro Devices, Inc.

One AMD Place

Sunnyvale, CA 94088-3453

Members of the Transaction Oversight Committee of the Board:

We understand that Advanced Micro Devices, Inc. (AMD or the Company), Advanced Technology Investment Company LLC (Oyster), an entity wholly owned by the Government of the Emirate of Abu Dhabi, and West Coast Hitech L.P., (Pearl), an entity affiliated with Mubadala Development Company and controlled by the Government of the Emirate of Abu Dhabi, have entered into a Master Transaction Agreement dated October 6, 2008 (the Master Transaction Agreement), and propose to enter into an Amendment to the Master Transaction Agreement substantially in the form of the draft Amendment to the Master Transaction Agreement dated December 4, 2008 (the Amendment), and such Master Transaction Agreement as amended by the Amendment, the Master Agreement). The Master Agreement provides, among other things, for: (i) the contribution by AMD of certain assets related to its semiconductor manufacturing business (the FoundryCo Assets), and certain related liabilities including, without limitation, \$1.2 billion in third-party debt (the FoundryCo Liabilities) to a subsidiary to be formed by AMD (FoundryCo), in exchange for an approximately 56.1% initial interest and a 50% voting interest in FoundryCo, and the extinguishment of certain intercompany accounts relating to such business; (ii) the contribution by Oyster of \$1.4 billion in cash to FoundryCo in exchange for a 43.9% initial economic interest and a 50% voting interest in FoundryCo; (iii) the contribution by Oyster of \$700 million in cash to AMD in exchange for the transfer of an approximately 21.9% interest in FoundryCo from AMD to Oyster, resulting in AMD owning 34.2% on a fully converted basis, and a 50% voting interest in FoundryCo and Oyster owning 65.8% on a fully converted basis, and a 50% voting interest in FoundryCo; (iv) the issuance by AMD to Pearl of 58 million newly issued shares of common stock, par value \$0.01 per share, of AMD (the AMD Common Stock) and warrants to purchase 35 million shares of AMD Common Stock for \$0.01 per share for an aggregate amount equal to (a) 58 million multiplied by (b) the lesser of (x) the average of the closing prices per share of AMD Common Stock for the twenty (20) trading days immediately prior to and including December 12, 2008 and (y) the average of the closing prices per share of AMD Common Stock for the twenty (20) trading days immediately prior to the Transaction (as defined below) closing date.; (v) the provision of certain future financing to FoundryCo by Oyster and AMD (the Funding Commitment); and (vi) the execution of certain related commercial agreements including, among other things, with respect to the provision of certain wafer fabrication foundry services by FoundryCo to AMD and certain related purchase and exclusivity commitments by AMD to FoundryCo. The actions contemplated by clauses (i) through (vi) above are referred to collectively herein as the Transaction . The consideration received by AMD pursuant to the actions described in clauses (i), (iii) and (iv) are referred to herein in the aggregate as the Consideration . The terms of the Transaction are more fully described in the Master Agreement.

You have asked for our opinion as to whether the Consideration to be received by AMD in connection with the Transaction is fair from a financial point of view to AMD.

For purposes of the opinion set forth herein, we have:

- 1) reviewed certain publicly available financial statements and other business and financial information of AMD;
- 2) reviewed certain internal financial statements and other financial and operating data concerning AMD;
- 3) reviewed certain financial projections of AMD and FoundryCo prepared by the management of AMD;

Table of Contents

- 4) reviewed certain financial projections of FoundryCo jointly prepared by the managements of AMD and Pearl, respectively;
- 5) discussed the past and current operations and financial condition and the prospects of AMD and FoundryCo, including information relating to certain strategic, financial and operational benefits anticipated from the Transaction, with senior executives of AMD and Pearl, respectively;
- 6) reviewed the pro forma impact of the Transaction on AMD's earnings per share, cash flow, consolidated capitalization and financial ratios;
- 7) compared the operations and financial forecasts for FoundryCo with that of certain publicly-traded companies comparable with FoundryCo;
- 8) reviewed the financial terms, to the extent publicly available, of certain transactions comparable to the Transaction;
- 9) compared the financial performance of AMD and the prices and trading activity of the AMD Common Stock with that of certain other publicly-traded companies comparable with AMD, and their securities;
- 10) participated in certain discussions and negotiations among representatives of AMD and Pearl and their financial and legal advisors;
- 11) reviewed the Master Agreement and certain related documents; and
- 12) performed such other analyses and considered such other factors as we have deemed appropriate.

We have assumed and relied upon, without independent verification, the accuracy and completeness of the information that was publicly available or supplied or otherwise made available to us by AMD and Pearl, and formed a substantial basis for this opinion. With respect to the financial projections, including information relating to certain strategic, financial and operational benefits anticipated from the Transaction, we have assumed that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the respective managements of AMD and Pearl of the future financial performance of AMD and FoundryCo, as applicable. In addition, we have assumed that the Transaction will be consummated in accordance with the terms set forth in the Master Agreement without any waiver, amendment or delay of any terms or conditions, including, among other things, that Oyster will obtain financing in accordance with the terms set forth in the Master Agreement and related agreements. Morgan Stanley has assumed that in connection with the receipt of all the necessary governmental, regulatory or other approvals and consents required for the proposed Transaction, no delays, limitations, conditions or restrictions will be imposed that would have a material adverse effect on the contemplated benefits expected to be derived in the proposed Transaction. We have relied upon, without independent verification, the assessment by the Company of (i) the future, potential financial performance of each of AMD and FoundryCo; (ii) the likely terms and conditions of FoundryCo's future customer contracts, if any; (iii) the ability of FoundryCo to acquire and retain customers; (iv) the timing of, and risks associated with, the creation of FoundryCo; and (v) the validity of, and risks associated with, FoundryCo's existing and future technologies, intellectual property, products, services and business models. In connection with our analysis of the Consideration, we have taken into consideration the Funding Commitment and other factors that we deemed appropriate. We are not legal, tax or regulatory advisors. We are financial advisors only and have relied upon, without independent verification, the assessment of AMD and Pearl and their legal, tax or regulatory advisors with respect to legal, tax or regulatory matters. Our opinion only addresses the fairness, from a financial point of view, of the Consideration to be received by the Company in connection with the Transaction. Our opinion does not address the fairness of any non-financial aspects of the Transaction. We express no opinion with respect to the fairness of the amount or nature of the compensation to any of AMD's, Pearl's or Oyster's officers, directors or employees, or any class of such persons, relative to the Consideration to be received by AMD in the Transaction. We have not made any independent valuation or appraisal of the assets or liabilities of the Company, nor have we been furnished with any such appraisals. Our opinion is necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to us as of, the date hereof. Events occurring after the date hereof may affect this opinion and the assumptions used in preparing it, and we do not assume any obligation to update, revise or reaffirm this opinion.

Table of Contents

We have acted as financial advisor to the Transaction Oversight Committee of the Board of Directors of AMD in connection with the Transaction and will receive a fee upon the rendering of this financial opinion. In the two years prior to the date hereof, we have provided financial advisory and financing services for AMD and Pearl and have received fees in connection with such services. Morgan Stanley may also seek to provide such services to AMD and Pearl in the future and expects to receive fees for the rendering of these services.

Please note that Morgan Stanley is a global financial services firm engaged in the securities, investment management and individual wealth management businesses. Our securities business is engaged in securities underwriting, trading and brokerage activities, foreign exchange, commodities and derivatives trading, prime brokerage, as well as providing investment banking, financing and financial advisory services. Morgan Stanley, its affiliates, directors and officers may at any time invest on a principal basis or manage funds that invest, hold long or short positions, finance positions, and may trade or otherwise structure and effect transactions, for their own account or the accounts of its customers, in debt or equity securities or loans of Pearl, AMD, Oyster or any other company, or any currency or commodity, that may be involved in this Transaction, or any related derivative instrument.

This opinion has been approved by a committee of Morgan Stanley investment banking and other professionals in accordance with our customary practice. This opinion is for the information of the Transaction Oversight Committee of the Board of Directors of AMD and may not be used for any other purpose without our prior written consent, except that a copy of this opinion may be included in its entirety in any filing the Company is required to make with the Securities and Exchange Commission in connection with this Transaction if such inclusion is required by applicable law. In addition, this opinion does not in any manner address the prices at which the AMD Common Stock will trade following consummation of the Transaction and Morgan Stanley expresses no opinion or recommendation as to how the stockholders of AMD should vote at the stockholders' meeting to be held in connection with the Transaction.

Based on and subject to the foregoing, we are of the opinion on the date hereof that the Consideration to be received by AMD in connection with the Transaction is fair from a financial point of view to AMD.

Very truly yours,

MORGAN STANLEY & CO. INCORPORATED

By: /s/ NICHOLAS OSBORNE
Nicholas Osborne

Managing Director

Table of Contents

Exhibit A

EXECUTION COPY

MASTER TRANSACTION AGREEMENT

By and Among

ADVANCED MICRO DEVICES, INC.,

ADVANCED TECHNOLOGY INVESTMENT COMPANY LLC

and

WEST COAST HITECH L.P.

Dated as of October 6, 2008

Table of Contents

TABLE OF CONTENTS

	Page
ARTICLE I	
DEFINITIONS	
SECTION 1.01. Certain Defined Terms	1
SECTION 1.02. Interpretation and Rules of Construction	1
ARTICLE II	
THE CLOSING	
SECTION 2.01. Contribution of FoundryCo Assets	2
SECTION 2.02. Assumption and Exclusion of Liabilities	2
SECTION 2.03. Closing	3
SECTION 2.04. Closing Deliveries by Discovery.	3
SECTION 2.05. Closing Deliveries by FoundryCo	4
SECTION 2.06. Closing Deliveries by Oyster	5
SECTION 2.07. Closing Deliveries by Pearl to Discovery	6
SECTION 2.08. Adjustment of Purchase Price	6
ARTICLE III	
REPRESENTATIONS AND WARRANTIES	
OF DISCOVERY TO OYSTER AND PEARL RELATING TO DISCOVERY	
SECTION 3.01. Organization, Authority and Qualification of Discovery	9
SECTION 3.02. Good Standing of Subsidiaries	9
SECTION 3.03. Authorization of Agreements; Enforceability	10
SECTION 3.04. Absence of Further Requirements	10
SECTION 3.05. Capitalization	10
SECTION 3.06. Discovery SEC Documents	10
SECTION 3.07. Financial Statements	10
SECTION 3.08. Independent Accountants	11
SECTION 3.09. Stock Options	11
SECTION 3.10. No Material Adverse Change in Business	11
SECTION 3.11. Absence of Defaults and Conflicts	11
SECTION 3.12. Absence of Proceedings	11
SECTION 3.13. Absence of Labor Dispute	12
SECTION 3.14. Intellectual Property	12
SECTION 3.15. Possession of Authorizations	12
SECTION 3.16. Title to Property	12
SECTION 3.17. Environmental Laws	12
SECTION 3.18. ERISA	12
SECTION 3.19. Foreign Corrupt Practices Act	12
SECTION 3.20. Tax Returns	12
SECTION 3.21. Insurance	12
SECTION 3.22. Internal Controls	13
SECTION 3.23. Compliance with the Sarbanes-Oxley Act	13
SECTION 3.24. Money Laundering Laws	13
SECTION 3.25. Brokers	13

Table of Contents

	Page
ARTICLE IV	
REPRESENTATIONS AND WARRANTIES	
OF DISCOVERY TO OYSTER AND FOUNDRYCO RELATING TO FOUNDRYCO	
SECTION 4.01. Organization, Authority and Qualification of FoundryCo	13
SECTION 4.02. Capitalization of FoundryCo.	14
SECTION 4.03. FoundryCo Assets	14
SECTION 4.04. Transferred FoundryCo Subsidiaries	15
SECTION 4.05. Financial Information; Books and Records	16
SECTION 4.06. Absence of Undisclosed Liabilities	16
SECTION 4.07. Transferred FoundryCo JV Entities.	17
SECTION 4.08. Transferred Inventories	17
SECTION 4.09. Absence of Certain Changes	18
SECTION 4.10. Litigation; Governmental Orders	19
SECTION 4.11. Compliance with Laws	20
SECTION 4.12. Environmental and Other Permits and Licenses; Related Matters	20
SECTION 4.13. Material Contracts	20
SECTION 4.14. Intellectual Property	22
SECTION 4.15. Real Property	23
SECTION 4.16. Tangible Personal Property	24
SECTION 4.17. Suppliers	24
SECTION 4.18. Employee Benefit Matters	24
SECTION 4.19. Labor Matters	26
SECTION 4.20. Employee Confidentiality and Assignment of Inventions	27
SECTION 4.21. Certain Interests	27
SECTION 4.22. Insurance	27
SECTION 4.23. Certain Business Practices	28
SECTION 4.24. Tax Matters	28
SECTION 4.25. Receivables	28

ARTICLE V

REPRESENTATIONS AND WARRANTIES

OF DISCOVERY TO PEARL RELATING TO THE DISCOVERY SHARES AND WARRANTS

SECTION 5.01. Authorization of the Discovery Shares, Warrants, and Warrant Shares	29
SECTION 5.02. Private Placement	29
SECTION 5.03. Absence of Manipulation	29
SECTION 5.04. Investment Company Act	29
SECTION 5.05. Not a Real Property Holding Company	29

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF OYSTER TO DISCOVERY RELATING TO OYSTER

SECTION 6.01. Due Organization of Oyster	29
SECTION 6.02. Authorization of Agreements; Enforceability	29
SECTION 6.03. Absence of Conflicts	30
SECTION 6.04. Absence of Proceedings	30
SECTION 6.05. Absence of Further Requirements	30
SECTION 6.06. Investment Representations	30

Table of Contents

	Page
ARTICLE VII	
REPRESENTATIONS AND WARRANTIES OF PEARL TO DISCOVERY RELATING TO PEARL	
SECTION 7.01. Due Organization of Pearl	31
SECTION 7.02. Authorization of Agreements; Enforceability	31
SECTION 7.03. Absence of Conflicts	31
SECTION 7.04. Absence of Proceedings	31
SECTION 7.05. Absence of Further Requirements	31
SECTION 7.06. Investment Representations	31
ARTICLE VIII	
COVENANTS TO BE PERFORMED PRIOR TO CLOSING	
SECTION 8.01. Conduct of Discovery Business Prior to the Closing	32
SECTION 8.02. Organization of FoundryCo; Capital Structure	34
SECTION 8.03. FoundryCo Executive Committee	34
SECTION 8.04. Preparation of Carve Out Financial Statements	34
SECTION 8.05. Access to Information	35
SECTION 8.06. NYSE Required Approval	35
SECTION 8.07. Authorizations; Notices and Consents	35
SECTION 8.08. Notice of Developments	36
SECTION 8.09. No Solicitation	36
SECTION 8.10. Discovery Indebtedness	37
SECTION 8.11. Bulk Transfer Laws	37
SECTION 8.12. Related Party Transactions	37
SECTION 8.13. Conveyance Taxes	37
SECTION 8.14. Further Action	37
SECTION 8.15. Risk of Loss	37
ARTICLE IX	
POST-CLOSING COVENANTS	
SECTION 9.01. Pearl Director Designee	38
SECTION 9.02. Access to Information	38
SECTION 9.03. Further Assurances	38
SECTION 9.04. Authorization for Listing	39
SECTION 9.05. Standstill	39
SECTION 9.06. Restrictions on Resale of Discovery Shares	40
SECTION 9.07. Confidentiality of Proprietary Information	40
SECTION 9.08. Settlement of Claims by Discovery	41
SECTION 9.09. German Registration	41
ARTICLE X	
EMPLOYEE MATTERS	
SECTION 10.01. Offers and Transfers of Employment.	42
SECTION 10.02. Transferred Employees	42
SECTION 10.03. Equity Awards Held by Transferred Employees	42
ARTICLE XI	
CONDITIONS TO CLOSING	
SECTION 11.01. Conditions to Obligations of Discovery	43
SECTION 11.02. Conditions to Obligations of Oyster	44
SECTION 11.03. Conditions to Obligations of Pearl	45

Table of Contents

	Page
ARTICLE XII	
SURVIVAL AND INDEMNIFICATION	
SECTION 12.01. Survival of Representations and Warranties	47
SECTION 12.02. Indemnification of Oyster and FoundryCo by Discovery	47
SECTION 12.03. Indemnification of Pearl by Discovery	49
SECTION 12.04. Indemnification of Discovery by FoundryCo	49
SECTION 12.05. Indemnification of Oyster by FoundryCo	50
SECTION 12.06. Limits on Indemnification	50
SECTION 12.07. Notice of Loss; Third Party Claims	51
SECTION 12.08. Tax Treatment	52
ARTICLE XIII	
TERMINATION	
SECTION 13.01. Termination	52
SECTION 13.02. Effect of Termination	53
SECTION 13.03. Expenses	53
ARTICLE XIV	
GENERAL PROVISIONS	
SECTION 14.01. Notices	54
SECTION 14.02. Public Announcements	55
SECTION 14.03. Severability	55
SECTION 14.04. Entire Agreement	55
SECTION 14.05. Assignment	55
SECTION 14.06. Amendment	55
SECTION 14.07. Waiver	55
SECTION 14.08. Third Party Beneficiaries	55
SECTION 14.09. Governing Law; Arbitration	56
SECTION 14.10. Currency	57
SECTION 14.11. No Presumption Against Drafting Party	57
SECTION 14.12. Counterparts	57
APPENDIX A DEFINED TERMS	
SCHEDULE 2.08 Statement of Principles for Initial Valuation Net Tangible Assets	
SCHEDULE A Schedule of Minimum Required Authorizations and Consents	
SCHEDULE B Disclosure Schedule	

Table of Contents

EXHIBIT A	Form of FoundryCo Joinder
EXHIBIT B	Form of FoundryCo Memorandum and Articles of Association
EXHIBIT C	Schedule of FoundryCo Assets
EXHIBIT D	Schedule of Excluded Assets
EXHIBIT E	Schedule of Assumed Liabilities
EXHIBIT F	Form of Registration Rights Agreement
EXHIBIT G	Form of Deed of Contribution
EXHIBIT H	Form of Assumption Agreement
EXHIBIT I	Form of FoundryCo Convertible Notes
EXHIBIT J	Form of Warrants
EXHIBIT K	Form of Wafer Supply Agreement
EXHIBIT L	Initial Capitalization Table of FoundryCo
EXHIBIT M	Form of Legal Opinion of Latham & Watkins LLP
EXHIBIT N	Form of Legal Opinion of the general counsel of Discovery
EXHIBIT O	Form of Legal Opinion of Richards Layton & Finger
EXHIBIT P	Form of Legal Opinion of Walkers
EXHIBIT Q	Form of Legal Opinion of Shearman & Sterling LLP
EXHIBIT R	Form of Legal Opinion of Maples & Calder
EXHIBIT S	Form of Funding Agreement