

Spansion Inc.
Form 8-K
October 09, 2007
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): October 7, 2007

Spansion Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

000-51666
(Commission File No.)

20-3898239
(I.R.S. Employer

Identification Number)

915 DeGuigne Drive

P.O. Box 3453

Sunnyvale, California 94088-3453

(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: (408) 962-2500

N/A

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(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2 below):

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement.

Merger Agreement

On October 8, 2007, Spansion Inc. (Spansion) and Saifun Semiconductors Ltd. (Saifun) issued a joint press release announcing that they and Atlantic Star Merger Sub Ltd., a wholly-owned subsidiary of Spansion (Merger Sub), had entered into an Agreement and Plan of Merger and Reorganization, dated as of October 7, 2007 (the Merger Agreement), pursuant to which Merger Sub would merge (the Merger) with and into Saifun, with Saifun surviving as a wholly-owned subsidiary of Spansion.

Subject to the terms and conditions of the Merger Agreement, which has been approved by the boards of directors of both companies, each Saifun shareholder will receive 0.7429 shares of Spansion common stock and approximately \$5.05 per share in cash (representing a distribution of a portion of Saifun s existing cash) for each Saifun Ordinary Share. Based on closing stock prices on October 5, the total consideration values Saifun at \$11.26 per share, for a total consideration of \$368 million on a fully-diluted basis, or approximately \$135 million net of cash acquired and cash distributed to Saifun shareholders. Saifun s stock options will convert upon completion of the Merger into stock options with respect to Spansion common stock, after giving effect to the exchange ratio in the Merger and the cash distribution.

The Merger Agreement contains customary covenants of Spansion and Saifun, including, among others, a covenant by Saifun to conduct its business in the ordinary course during the interim period between the execution of the Merger Agreement and consummation of the Merger and not to engage in certain kinds of transactions during such period. The board of directors of Saifun has adopted a resolution recommending the requisite approval of the Merger by its shareholders, and has agreed to hold a shareholder and any necessary creditor meetings to consider and vote upon the transactions contemplated by the Merger Agreement. Saifun has also agreed not to (i) solicit proposals relating to alternative business combination transactions or (ii) subject to certain exceptions, enter into discussions or an agreement concerning or provide confidential information in connection with any proposals for alternative business combination transactions.

Consummation of the Merger is subject to conditions, including, among others, (i) approval of the Merger by an Israeli court (which approval can only occur after the shareholders and, if required, creditors, of Saifun approve the Merger in accordance with Section 350 of the Israeli Companies Law), (ii) receipt of certain regulatory and tax approvals, (iii) the absence of any law or order prohibiting the closing, (iv) the accuracy of the representations and warranties of the other party at the time of execution of the Merger Agreement (most of which are subject to an overall material adverse effect qualification), and (iv) compliance in all material respects by the other party with its covenants.

The Merger Agreement contains certain termination rights for both Spansion and Saifun and further provides that, upon termination of the Merger Agreement under specified circumstances, Saifun may be required to pay Spansion a termination fee of \$8.0 million.

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The Merger Agreement contains representations and warranties of each of Spansion and Saifun. The assertions embodied in those representations and warranties were made for purposes of the Merger Agreement and are subject to qualifications and limitations agreed to by the respective parties in connection with negotiating the terms of the Merger Agreement. In addition, certain representations and warranties were made as of a specific date, may be subject to a contractual standard of materiality different from what might be viewed as material to stockholders, or may have been used for purposes of allocating risk between the respective parties rather than establishing matters of fact. Investors should read the Merger Agreement together with the other information concerning Spansion and Saifun that each company publicly files in reports and statements with the Securities and Exchange Commission.

Saifun's chief executive officer will continue to be employed by the combined companies, and will serve on the board of directors of Spansion after the closing of the transaction.

Copies of the Merger Agreement, the form of Voting Undertaking referred to below and the press release are attached hereto as exhibits and are hereby incorporated into this report by reference.

Voting Undertakings

Concurrently with entering into the Merger Agreement, certain shareholders of Saifun entered into a Voting Undertaking with Spansion (the "Voting Undertakings") pursuant to which they agreed to vote their shares of Saifun (i) for the adoption and approval of the Merger Agreement and the transactions contemplated thereby, including the Merger (the "Transactions"), (ii) against any action or agreement that would compete with, or materially impede, or interfere with or that would reasonably be expected to discourage the Transactions; or inhibit the timely consummation of the Transactions, and (iii) except for the Merger, against any alternative business combination transaction, or merger, consolidation, business combination, reorganization, recapitalization, liquidation or sale or transfer of any material assets of the Company or its Subsidiaries not permitted pursuant to the Merger Agreement.

Pursuant to the Voting Undertakings, the signing shareholders also agreed that if Saifun terminates the Merger Agreement under certain circumstances, and such shareholders subsequently receive consideration for their Saifun shares in an alternative business combination transaction, then the signing shareholders will pay to Spansion 50% of the difference between (i) the sum of the price they would have received in the Merger plus the portion of the cash distribution they would have received from Saifun and (ii) the price they actually receive in the alternative transaction (which payment will take the same form and proportion as the consideration they receive in the alternative transaction).

Lock-Up Agreement

Concurrently with execution of the Merger Agreement, the chief executive officer of Saifun entered into a Lock-Up Agreement with Spansion (the "Lock-Up Agreement") pursuant to which he agreed not to sell the Spansion shares he receives as a result of the Merger, subject to

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specified exceptions, for a period ending on the date that is two years after the completion of the Merger, subject to the exception that he may sell 50% of the aggregate Spansion shares he receives in the Merger after one year.

Affiliate Agreements

Concurrently with execution of the Merger Agreement, certain affiliates of Saifun entered into Affiliate Agreements (the Affiliate Agreements) pursuant to which such affiliates agreed not to make any sale, transfer or other disposition of Spansion securities that they receive as a result of the Merger in violation of the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

FORWARD-LOOKING STATEMENTS

Statements contained in this report that are not historical facts, including statements regarding the consummation of the transaction, and the timing thereof, the expected benefits of the transaction, the future market for the companies' products, future financial and operating results, plans, objectives, expectations and intentions, including plans with respect to future products and the continued support of Saifun customers after the closing of the transaction, are forward-looking statements as that item is defined in the Private Securities Litigation Reform Act of 1995. Forward-looking statements are inherently subject to risks and uncertainties that could cause actual results to differ materially from these forward-looking statements. Many of these risks and uncertainties cannot be predicted with accuracy and some might not even be anticipated. Some of the factors that could significantly impact the forward-looking statements in this report include the ability to obtain regulatory and other approvals of the transaction on the proposed terms and schedule; the risk that the businesses will not be integrated successfully; the risk that any synergies from the transaction may not be fully realized or may take longer to realize than expected; disruption from the transaction making it more difficult to maintain relationships with customers, employees or suppliers, the risk that Saifun business may not perform as expected, risks related to IP litigation involving either party and other risks, some of which are discussed in the companies' reports filed with the Securities and Exchange Commission under the caption Risk Factors and elsewhere. Any forward-looking statement is qualified by reference to these risks and factors. These risks and factors are not exclusive, and the companies undertake no obligation to publicly update or revise any forward-looking statements to reflect events or circumstances that may arise after the date of this release except as required by law. Additional information regarding these and other factors is contained in the companies' SEC filings, including, without limitation, Spansion's Form 10-K for the year ended December 31, 2006, and its Form 10-Q for the fiscal quarters ended July 1, 2007 and April 1, 2007, Saifun's Form 20-F for the year ended December 31, 2006 and Saifun's Forms 6-K. The companies' filings are available from the Securities and Exchange Commission or may be obtained on Spansion's website at www.Spansion.com and Saifun's website at www.Saifun.com, as applicable.

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Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

Exhibit No.	Description
2.1	Agreement and Plan of Merger and Reorganization, dated as of October 7, 2007, by and among Spansion Inc., Atlantic Star Merger Sub Ltd. and Saifun Semiconductors Ltd.
10.1	Form of Voting Undertaking
99.1	Press Release issued October 8, 2007, by Spansion Inc.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Spansion Inc.

Date: October 9, 2007

By: /s/ Robert C. Melendres

Name: Robert C. Melendres

Title: Executive Vice President, Chief Legal Officer and

Corporate Development

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