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September 7, 2007

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Proposed Rule Relating to Exemption of Compensatory Employee Stock Options From Registration Under Section 12(g) of the Securities Exchange Act of 1934 – Release No. 34-56010; File No. S7-14-07

Dear Ms. Morris:

On behalf of Freescale Semiconductor, Inc. (the "Company"), I am responding to Release No. 34-56010 in which the Commission solicits comments regarding a proposed exemption of compensatory employee stock options from registration under Section 12(g) of the Securities Exchange of 1934 (the "Exchange Act").

The Company is one of the world's largest semiconductor companies. In December 2006, the Company was acquired by a consortium of private equity funds. In connection with the acquisition, the Company's outstanding shares of Class A and Class B common stock were cancelled and converted into the right to receive cash. In addition, substantially all of the Company's stock options, restricted stock units ("RSUs") and stock appreciation rights were converted into the right to receive cash. Due to certain provisions of French tax law, however, a small percentage of the Company's stock options and RSUs held by French employees of the Company remained outstanding following the completion of the transaction. We believe that the Company's experience with these types of equity-based compensatory securities makes the Company well-positioned to comment on the Commission's proposal.

We support the Commission's efforts to propose an exemption from registration under Section 12(g) of the Exchange Act for compensatory stock options. However, we believe the proposed exemption is too narrow. In particular, by limiting the exemption to stock options only, the Commission overlooks the emerging trends in equity-based compensation and ignores other instruments – such as RSUs – that are functional equivalents of stock options. Moreover, the restriction on arrangements that monetize stock options is impractical and will prevent many companies from gaining the benefit of the exemption.

The proposed exemption should be expanded to included RSUs.

We strongly urge the Commission to expand the scope of the proposed exemption to include RSUs. First, RSUs are nearly identical in form to stock options and do not warrant disparate treatment. Second, expanding the exemption would reflect the movement away from the use of stock options towards other forms of equity-based compensation. Third, the Commission has previously shown a willingness to exempt forms of equity-based compensation other than stock options from Section 12(g) of the Exchange Act. Lastly, limiting the exemption to stock options improperly incentivizes companies to use stock options over other forms of equity-based compensation.

There is minimal substantive difference between stock options and RSUs. RSUs are the contractual right to receive a share of Company stock at a future date. Like options, RSUs do not confer on the grantee any of the rights of a stockholder of the Company, either at the time RSUs are granted or during any period that such awards are outstanding. A grantee of an RSU is not entitled to vote on any matter submitted to the Company's stockholders and is not entitled to receive any dividends. No shares of common stock are issued or transferred to a grantee at the time of the grant of an RSU, nor is any entry made in the records of the security holders of the Company with respect to the grant of any RSU. Accordingly, no grantee of an RSU is listed on the records of the Company as the owner of any shares of common stock with respect to any such stock incentive. Only when (and if) shares of common stock are actually issued and transferred to a grantee following the relevant vesting period is the grantee identified on the records of the Company's security holders as the owner of record of the shares of common stock so issued. Similarly, the grantee becomes entitled to all of the rights of a stockholder with respect to such shares of common stock only following the issuance and transfer of such shares to the grantee.

RSUs are, therefore, best viewed as stock options with a zero exercise price. Both RSUs and stock options provide the holder with the right to receive a share of Company stock at some point in the future. While stock options typically have an exercise price equal to the market value at the time of grant, RSUs require only the performance of future services by the grantee, and carry no requirement that additional consideration be paid to the Company. This difference is not a meaningful distinction for purposes of the proposed exemption. The size of the exercise price, either as a stand-alone amount or relative to the market value of the underlying equity on the date of the grant, is not a condition of the proposed exemption.

If the Commission is unwilling to expressly extend the exemption to other forms of equity-based compensation, the Commission should adopt a definition of "stock option" broad enough to encompass all contractual rights to acquire shares that confer no rights to the grantee, as described above. Relief under the exemption should not turn on whether the Company's equity grants are called "RSUs" or "stock options," if such instruments are functionally and conceptually the same.

Companies are increasingly moving away from the use of stock options as the primary means of equity compensation. In particular, privately-held companies with significant growth

potential, such as companies in the technology sector, are adopting more sophisticated compensation packages to align employee incentives with long-term sustained company growth. See, e.g. Jeffrey L. London, *The Microsoft "Movement": Is Restricted Stock the Answer?*, Directorship, Nov. 1, 2003, *available at* www.allbusiness.com/human-resources/benefits-employee-ownership-stock-options/1084678-1.html. One alternative to stock options is RSUs. Unlike stock options, RSUs provide employees with immediate value and are less likely to lose all of their value. Stock options can be perceived as hit or miss compensation and may encourage employees to pursue short-term high-risk strategies instead of long-term sustained growth. See, e.g. Dodd S. Griffith, *Restricted Stock or Options? Rethinking Equity Incentive Plans*, New Hampshire Business Review, Sept. 2003. Limiting the proposed exemption to stock options fails to recognize the increasing importance placed on other forms of equity-based compensation.

Expanding the exemption would not be an express departure from the Commission's prior treatment of equity-based compensation under Section 12(g). The Commission has previously granted no-action relief under Section 12(g) of the Exchange Act for forms of compensation other than stock options. See Kinko's Inc., SEC No-Action Letter, Nov. 30, 1999. Although subsequent no-action letters have generally limited Section 12(g) relief to stock options, the Commission has not proffered a discernable justification for limiting the exemption in this manner. The Kinko's no-action letter exempts deferred share awards (RSUs) from Section 12(g) registration based on similar grounds to those underpinning the Commission's proposed rule. Like the proposed rule, the important points of analysis in the Kinko's letter are the exclusive use of the securities as compensation, the limited trading interest in the securities, the private nature of the issuer and the availability of certain information to the security holders. As demonstrated in the Kinko's letter, if the relevant security fulfills the conditions of the exemption, registration under Section 12(g) should not be required, irrespective of the actual form of the security.

Finally, limiting the exemption to stock options creates incentives for companies to use stock options instead of other forms of equity-based compensation. As discussed above, the use of stock options as the sole instrument of equity compensation has fallen out of favor due to the perception that such instruments may create incentives to sacrifice long-term sustainable growth for short-term high-risk strategies. Accordingly, the Commission's action to expressly limit the exemption to stock options and thereby encourage companies to grant only stock options deviates from the current trend towards a more balanced approach to compensation.

The proposed exemption's prohibition of arrangements that monetize stock options is unnecessary and will prevent many companies from benefiting from the exemption.

The proposed exemption contains the following restrictions:

(iv) The stock options and the shares issuable upon exercise of such stock options are restricted as to transfer by the optionholder or holder of the shares received on exercise of the option other than to persons who are family members...through gifts or domestic relations orders, or to an executor or guardian of the

> optionholder or holder of shares received on exercise of such stock option upon the death or disability of the optionholder or holder of shares until the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the [Exchange] Act; provided that the optionholder or holder of shares may transfer the options or shares to the issuer (or its designated affiliate if the issuer is unable to repurchase the options or shares) if applicable law prohibits a restriction on transfer;
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> (vi) There can be no market or available process or methodology that permits an optionholder or holder of shares received on exercise of an option to receive any consideration or compensation for the options, the shares issuable on exercise of the options, or shares of the same class of equity security as those underlying the options, except as permitted in paragraph (f)(1)(iv) of this section, until the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the [Exchange] Act;

The exemption's condition that there be no process or methodology permitting an optionholder or a holder of shares received on exercise to receive any consideration for the shares issued on exercise is unnecessarily restrictive and will significantly reduce the benefit of the exemption for private companies. Many companies that would use the proposed exemption are private companies that grant compensatory stock options and other forms of equity-based compensation. Such companies typically enter into stockholders' agreements with employee holders of shares that include, among other things, not only restrictions on transfer of the shares of stock acquired on exercise, but also buy-sell agreements that are operative upon certain changes in circumstances affecting the employee, including termination of employment. These buy-sell agreements consist of put and call rights and obligations requiring the sale of the shares back to the company at a price to be determined according to a contractual methodology or process set forth in the stockholders' agreement. Such agreements are important to enable companies to restrict the class of persons who invest in the company to qualified investors and employees, and thereby avoid additional issues arising under the securities laws, including Section 12(g). Conditioning the use of the exemption upon the absence of such agreements will prevent companies from entering into such agreements or, more likely, will substantially limit the number of companies that qualify for relief under the exemption.

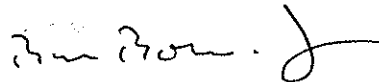
In addition, stockholders' agreements customarily include so-called "drag along" and "tag along" covenants requiring or permitting employee stockholders to sell their shares in a sale, merger or change of control transaction. Such covenants are important to assure that 100% of the company's capital stock will be delivered at the closing of any such transaction, and also to provide employees with the opportunity to share in a sale of the company. These provisions also constitute an important incentive that allows private companies to attract qualified and skilled employees by enabling them to share in a liquidity event of this type.

Moreover, the condition is not a necessary component of the exemption. The condition is "intended to limit the possibility for a trading market to develop for the compensatory employee

stock options…while the issuer is relying on the proposed exemption." Stockholder agreements' typically entered into by private companies and their employees are limited in scope and provide the company with the means to restrict the class of persons who are eligible to acquire and hold equity securities. Such agreements also function to restrict the trading interest in such securities and effectively limit the possibilities for a trading market to develop. A condition that prohibits such agreements is unnecessary and provides a disincentive for employees to accept such securities as a form of compensation.

As discussed above, the proposed exemption is unduly narrow, and the exemption's prohibition on monetizing arrangements is unnecessary. Accordingly, we urge the Commission to define the scope of the exemption more broadly, thereby expanding it to RSUs, and remove the exemption's prohibition on arrangements that monetize the securities to the extent such prohibition would extend to the types of stockholder covenants described above.

Very truly yours,



Mark Mouritsen
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