

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

FORM 10-Q

(Mark One)

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.
For the quarterly period ended March 31, 2004.

or

Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.
For the transition period from _____ to _____.

Commission file number: 0-24020

SYPRIS SOLUTIONS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

61-1321992
(I.R.S. Employer
Identification No.)

101 Bullitt Lane, Suite 450
Louisville, Kentucky 40222
(Address of principal executive offices, including zip code)

(502) 329-2000
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes No .

As of April 26, 2004, the Registrant had 17,856,365 shares of common stock outstanding.

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PART I. FINANCIAL INFORMATION
ITEM 1. FINANCIAL STATEMENTS

SYPRIS SOLUTIONS, INC.
CONSOLIDATED INCOME STATEMENTS
(in thousands, except for per share data)

	Three Months Ended	
	March 31, 2004	March 30, 2003
	(Unaudited)	
Net revenue:		
Outsourced services	\$ 80,127	\$ 50,215
Products	9,249	8,700
Total net revenue	89,376	58,915
Cost of sales:		
Outsourced services	69,307	43,377
Products	5,592	5,587
Total cost of sales	74,899	48,964
Gross profit	14,477	9,951
Selling, general and administrative	8,158	6,149
Research and development	524	1,022
Amortization of intangible assets	126	21
Operating income	5,669	2,759
Interest expense, net	288	486
Other (income) expense, net	(58)	67
Income before income taxes	5,439	2,206
Income tax expense	2,040	827
Net income	\$ 3,399	\$ 1,379
Earnings per common share:		
Basic	\$ 0.23	\$ 0.10
Diluted	\$ 0.22	\$ 0.10
Dividends declared per common share	\$ 0.03	\$ 0.03
Weighted average shares outstanding:		
Basic	14,791	14,184
Diluted	15,593	14,407

The accompanying notes are an integral part of the consolidated financial statements.

SYPRIS SOLUTIONS, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except for share data)

	March 31, 2004	December 31, 2003
	(Unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 11,337	\$ 12,019
Accounts receivable, net	61,276	45,484
Inventory, net	64,520	61,932
Other current assets	9,534	11,370
	<hr/>	<hr/>
Total current assets	146,667	130,805
Property, plant and equipment, net	109,764	106,683
Goodwill	14,277	14,277
Other assets	12,608	11,730
	<hr/>	<hr/>
	\$ 283,316	\$ 263,495
	<hr/>	<hr/>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 35,632	\$ 29,598
Accrued liabilities	21,809	17,491
Current portion of long-term debt	8,000	3,200
	<hr/>	<hr/>
Total current liabilities	65,441	50,289
Long-term debt	5,000	53,000
Other liabilities	15,450	15,425
	<hr/>	<hr/>
Total liabilities	85,891	118,714
Stockholders' equity:		
Preferred stock, par value \$0.01 per share, 981,600 shares authorized; no shares issued	—	—
Series A preferred stock, par value \$0.01 per share, 18,400 shares authorized; no shares issued	—	—
Common stock, non-voting, par value \$0.01 per share, 10,000,000 shares authorized; no shares issued	—	—
Common stock, par value \$0.01 per share, 30,000,000 shares authorized; 17,398,365 and 14,283,323 shares issued and outstanding in 2004 and 2003, respectively	174	143
Additional paid-in capital	133,183	83,541
Retained earnings	66,414	63,443
Accumulated other comprehensive income (loss)	(2,346)	(2,346)
	<hr/>	<hr/>
Total stockholders' equity	197,425	144,781
	<hr/>	<hr/>
	\$ 283,316	\$ 263,495
	<hr/>	<hr/>

The accompanying notes are an integral part of the consolidated financial statements.

SYPRIS SOLUTIONS, INC.
CONSOLIDATED CASH FLOW STATEMENTS
(in thousands)

	Three Months Ended	
	March 31, 2004	March 30, 2003
	(Unaudited)	
Cash flows from operating activities:		
Net income	\$ 3,399	\$ 1,379
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	4,001	3,001
Other noncash charges	215	211
Changes in operating assets and liabilities:		
Accounts receivable	(15,959)	(1,853)
Inventory	(2,674)	559
Other current assets	1,836	1,639
Accounts payable	7,972	(3,087)
Accrued liabilities	3,149	(777)
Net cash provided by operating activities	1,939	1,072
Cash flows from investing activities:		
Capital expenditures	(8,875)	(4,073)
Changes in nonoperating assets and liabilities	233	392
Net cash used in investing activities	(8,642)	(3,681)
Cash flows from financing activities:		
Net decrease in debt under revolving credit agreements	(43,200)	(7,000)
Cash dividends paid	(428)	(425)
Proceeds from issuance of common stock	49,649	179
Net cash provided by (used in) financing activities	6,021	(7,246)
Net decrease in cash and cash equivalents	(682)	(9,855)
Cash and cash equivalents at beginning of period	12,019	12,403
Cash and cash equivalents at end of period	\$ 11,337	\$ 2,548

The accompanying notes are an integral part of the consolidated financial statements.

SYPRIS SOLUTIONS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(1) Nature of Business

Sypris is a diversified provider of outsourced services and specialty products. The Company performs a wide range of manufacturing, engineering, design, testing, and other technical services, typically under multi-year, sole-source contracts with corporations and government agencies in the markets for aerospace & defense electronics, truck components & assemblies, and for users of test & measurement equipment.

(2) Basis of Presentation

The accompanying unaudited consolidated financial statements include the accounts of Sypris Solutions, Inc. and its wholly-owned subsidiaries (collectively, "Sypris" or the "Company"), Sypris Electronics, LLC, Sypris Test & Measurement, Inc., Sypris Data Systems, Inc., and Sypris Technologies, Inc., and have been prepared by the Company in accordance with the rules and regulations of the Securities and Exchange Commission. All significant intercompany transactions and accounts have been eliminated. These unaudited consolidated financial statements reflect, in the opinion of management, all material adjustments (which include only normal recurring adjustments) necessary to fairly state the results of operations, financial position and cash flows for the periods presented, and the disclosures herein are adequate to make the information presented not misleading. Preparing financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses. Actual results for the three months ended March 31, 2004 are not necessarily indicative of the results that may be expected for the year ending December 31, 2004. These unaudited consolidated financial statements should be read in conjunction with the consolidated financial statements, and notes thereto, for the year ended December 31, 2003 as presented in the Company's Annual Report on Form 10-K.

(3) Stock-Based Compensation

Stock options are granted under various stock compensation programs to employees and non-employee directors. The Company accounts for stock option grants in accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees." For purposes of pro forma disclosures, the estimated fair value of the options is amortized to expense over the options' vesting period. The Company's pro forma information is as follows (in thousands, except for per share data):

	Three Months Ended	
	March 31, 2004	March 30, 2003
	(Unaudited)	
Net income	\$ 3,399	\$ 1,379
Pro forma stock-based compensation expense, net of tax	(372)	(380)
Pro forma net income	<u>\$ 3,027</u>	<u>\$ 999</u>
Earnings per common share:		
Basic – as reported	\$ 0.23	\$ 0.10
Basic – pro forma	\$ 0.20	\$ 0.07
Diluted – as reported	\$ 0.22	\$ 0.10
Diluted – pro forma	\$ 0.19	\$ 0.07

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There were no adjustments required to be made to net income for purposes of computing basic and diluted earnings per common share. A reconciliation of the weighted average shares outstanding used in the calculation of basic and diluted earnings per common share is as follows (in thousands):

	Three Months Ended	
	March 31, 2004	March 30, 2003
	(Unaudited)	
Shares used to compute basic earnings per common share	14,791	14,184
Dilutive effect of stock options	802	223
Shares used to compute diluted earnings per common share	15,593	14,407

(5) Inventory

Inventory consisted of the following (in thousands):

	March 31, 2004	December 31, 2003
	(Unaudited)	
Raw materials	\$ 21,187	\$ 22,394
Work in process	17,957	15,854
Finished goods	3,216	3,052
Costs relating to long-term contracts and programs, net of amounts attributed to revenue recognized to date	37,613	36,569
Progress payments related to long-term contracts and programs	(9,341)	(9,851)
LIFO reserve	(821)	(940)
Reserve for excess and obsolete inventory	(5,291)	(5,146)
	\$ 64,520	\$ 61,932

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(6) Segment Data

The Company's operations are conducted in two reportable business segments: the Electronics Group and the Industrial Group. There was no intersegment net revenue recognized in any of the periods presented. The following table presents financial information for the reportable segments of the Company (in thousands):

	Three Months Ended	
	March 31, 2004	March 30, 2003
	(Unaudited)	
Net revenue from unaffiliated customers:		
Electronics Group	\$ 40,925	\$ 35,689
Industrial Group	48,451	23,226
	<u>\$ 89,376</u>	<u>\$ 58,915</u>
Gross profit:		
Electronics Group	\$ 7,901	\$ 7,299
Industrial Group	6,576	2,652
	<u>\$ 14,477</u>	<u>\$ 9,951</u>
Operating income:		
Electronics Group	\$ 1,975	\$ 1,673
Industrial Group	5,188	1,892
General, corporate and other	(1,494)	(806)
	<u>\$ 5,669</u>	<u>\$ 2,759</u>

(7) Commitments and Contingencies

The Company is involved in certain litigation and contract issues arising in the normal course of business. While the outcome of these matters cannot, at this time, be predicted in light of the uncertainties inherent therein, management does not expect that these matters will have a material adverse effect on the consolidated financial position or results of operations of the Company.

As of March 31, 2004, the Company had outstanding purchase commitments of approximately \$7,112,000, primarily for the acquisition of manufacturing equipment.

(8) Income Taxes

The Company's effective tax rate for the three months ended March 31, 2004 was 37.5%. Reconciling items between the federal statutory income tax rate of 34.0% and the effective tax rate include state income taxes, partially offset by management's estimate for 2004 research and development tax credits and certain other permanent differences.

(9) Issuance of Common Stock

On March 17, 2004, the Company completed a public stock offering of 3,000,000 shares of its common stock at \$17.00 per share and generated proceeds, after underwriting discounts and estimated expenses, of approximately \$48,017,000. On April 8, 2004, an over-allotment option was exercised for 450,000 shares at \$17.00 per share and generated proceeds, after underwriting discounts and estimated expenses, of approximately \$7,203,000. The proceeds of the offering were used principally to repay debt.

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(10) Employee Benefit Plans

Pension expense consisted of the following (in thousands):

	Three Months Ended	
	March 31, 2004	March 30, 2003
		(Unaudited)
Service cost	\$ 66	\$ 11
Interest cost on projected benefit obligation	558	566
Net amortizations, deferrals, and other costs	314	56
Expected return on plan assets	(607)	(608)
	<u>\$ 331</u>	<u>\$ 25</u>

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ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Results of Operations

The table presented below, which compares our first quarter results of operations from 2004 to 2003, presents the results for each period, the change in those results from 2004 to 2003 in both dollars and percentage change and the results for each period as a percentage of net revenue. The columns present the following:

- The first two data columns in each table show the absolute results for each period presented.
- The columns entitled "Year Over Year Change" and "Year Over Year Percentage Change" show the change in results, both in dollars and percentages. These two columns show favorable changes as positive and unfavorable changes as negative. For example, when our net revenue increases from one period to the next, that change is shown as a positive number in both columns. Conversely, when expenses increase from one period to the next, that change is shown as a negative number in both columns.
- The last two columns in each table show the results for each period as a percentage of net revenue. In these two columns, the cost of sales and gross profit for each are given as a percentage of that segment's net revenue. These amounts are shown in italics.

In addition, as used in these tables, "NM" means "not meaningful."

Three Months Ended March 31, 2004 Compared to Three Months Ended March 30, 2003

	Three Months Ended		Year Over Year Change	Year Over Year Percentage Change	Results as Percentage of Net Revenue for the Three Months Ended	
	March 31, 2004	March 30, 2003	Favorable (Unfavorable)	Favorable (Unfavorable)	March 31, 2004	March 30, 2003
	(in thousands, except percentage data)					
Net revenue:						
Electronics Group	\$ 40,925	\$ 35,689	\$ 5,236	14.7%	45.8%	60.6%
Industrial Group	48,451	23,226	25,225	108.6	54.2	39.4
Total	89,376	58,915	30,461	51.7	100.0	100.0
Cost of sales:						
Electronics Group	33,024	28,390	(4,634)	(16.3)	80.7	79.5
Industrial Group	41,875	20,574	(21,301)	(103.5)	86.4	88.6
Total	74,899	48,964	(25,935)	(53.0)	83.8	83.1
Gross profit:						
Electronics Group	7,901	7,299	602	8.2	19.3	20.5
Industrial Group	6,576	2,652	3,924	148.0	13.6	11.4
Total	14,477	9,951	4,526	45.5	16.2	16.9
Selling, general and administrative	8,158	6,149	(2,009)	(32.7)	9.1	10.4
Research and development	524	1,022	498	48.7	0.6	1.8
Amortization of intangible assets	126	21	(105)	(500.0)	0.2	—
Operating income	5,669	2,759	2,910	105.5	6.3	4.7
Interest expense, net	288	486	198	40.7	0.3	0.9
Other (income) expense, net	(58)	67	125	NM	(0.1)	0.1
Income before income taxes	5,439	2,206	3,233	146.6	6.1	3.7
Income taxes	2,040	827	(1,213)	(146.7)	2.3	1.4
Net income	\$ 3,399	\$ 1,379	\$ 2,020	146.5%	3.8%	2.3%

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Backlog. Our backlog increased \$53.5 million to \$214.3 million at March 31, 2004, from \$160.8 million at March 30, 2003, on \$104.7 million in net orders in the first quarter of 2004 compared to \$66.0 million in net orders in the first quarter of 2003. We expect to convert approximately 85% of the backlog at March 31, 2004 to revenue during the next twelve months.

Backlog for our Electronics Group increased \$18.8 million to \$132.1 million at March 31, 2004, from \$113.3 million at March 30, 2003, on \$47.2 million in net orders in the first quarter of 2004 compared to \$34.1 million in net orders in the first quarter of 2003. We expect to convert approximately 76% of the backlog at March 31, 2004 to revenue during the next twelve months.

Backlog for our Industrial Group increased \$34.7 million to \$82.2 million at March 31, 2004, on \$57.5 million in net orders in the first quarter of 2004 compared to \$31.9 million in net orders in the first quarter of 2003. Backlog and net orders in the first quarter of 2004 increased primarily due to the Dana contract that closed on December 31, 2003. We expect to convert substantially all this backlog at March 31, 2004 to revenue during the next twelve months.

Net Revenue. The Electronics Group derives its revenue from manufacturing services, other outsourced services and product sales. Net revenue increased in the Electronics Group primarily due to higher revenue from manufacturing services and other outsourced services. Manufacturing services increased \$2.1 million primarily from services performed in 2004 on contracts from aerospace & defense customers awarded in 2003, partially offset by contracts completed during 2003. Net revenue from other outsourced services increased \$3.3 million in the first quarter of 2004 primarily due to an increase in calibration and engineering services.

Net revenue in the Industrial Group increased primarily due to higher volume resulting from the new Dana Corporation contract that started in January 2004. The contract with Dana for steer axles and drive train components for the light, medium and heavy-duty truck markets generated outsourced services revenue of \$18.7 million in the first quarter of 2004. Excluding the new Dana contract, our Industrial Group's net revenue increased \$6.5 million due to a general increase in demand for medium and heavy-duty trucks.

Gross Profit. Gross profit for our Electronics Group was higher primarily due to an increase in revenue for other outsourced services. Gross profit as a percentage of revenue for manufacturing services was lower due to a change in revenue mix consisting of increased manufacturing and other outsourced services in 2004.

Our Industrial Group's gross profit and gross profit as a percentage of revenue increased primarily due to revenue growth from the new Dana contract. Excluding the Dana contract, our Industrial Group experienced higher gross profit and gross profit as a percentage of revenue primarily due to increases in volume from the medium and heavy-duty truck markets and efficiencies achieved on that volume.

Selling, General and Administrative. Selling, general and administrative expense increased \$2.0 million primarily due to higher administrative costs related to additional infrastructure to support business growth, the new Dana contract and an increase in selling-related expenses. Selling, general and administrative expense as a percentage of revenue decreased from the prior year period.

Research and Development. The completion of the first release of Silver Phoenix, a new data system product line within our Electronics Group, drove the decrease in research and development costs. We began selling limited quantities of Silver Phoenix beginning in the second half of 2003. The majority of research and development costs during the first quarter of 2004 were related to future releases of this product.

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Amortization of Intangible Assets. Amortization of intangible assets was higher in the first quarter of 2004 primarily due to certain identifiable intangible assets acquired during 2003.

Interest Expense, Net. Interest expense decreased due to a lower weighted average interest rate. The weighted average interest rate decreased to 2.8% in the first quarter of 2004 from 6.4% in the first quarter of 2003 due to the July 2003 expiration of interest rate swap rate agreements with higher than market interest rates.

Income Taxes. Our effective income tax rate remained at 37.5% in the first quarter of 2004.

Liquidity, Capital Resources and Financial Condition

Net cash provided by operating activities increased \$0.8 million to \$1.9 million in the first quarter of 2004, primarily due to a \$2.0 million increase in earnings in the first quarter of 2004 compared to the first quarter of 2003, partially offset by an increase in working capital related to the new Dana contract.

Net cash used in investing activities increased \$4.9 million to \$8.6 million in the first quarter of 2004 driven by capital expenditures for our Electronics Group and Industrial Group totaling \$5.1 million and \$3.4 million, respectively. Capital expenditures for our Electronics Group were principally comprised of manufacturing, assembly and test equipment. Capital expenditures for our Industrial Group included forging, machining, and centralized tooling equipment in support of our truck components & assemblies operations.

During the first quarter of 2004, we generated \$6.0 million from financing activities compared to the use of \$7.2 million during the first quarter of 2003. During the first quarter of 2004, we received net proceeds of \$48.0 million for our public stock offering of 3,000,000 shares of common stock that closed in March. Proceeds from the offering were principally used to reduce debt. During the second quarter of 2004, we issued an additional 450,000 shares as a result of the underwriters' exercise of an over-allotment option, which generated proceeds, after underwriters discounts and estimated expenses, of approximately \$7.2 million.

We had total availability for borrowings and letters of credit under our revolving credit facility of \$112.0 million at March 31, 2004, which, when combined with our unrestricted cash balance of \$11.3 million, provides for total cash and borrowing capacity of \$123.3 million. Maximum borrowings on the revolving credit facility are \$125.0 million, subject to a \$15.0 million limit for letters of credit. The credit agreement includes an option to increase the amount of available credit to \$150.0 million from \$125.0 million, subject to the lead bank's approval. Borrowings under the revolving credit facility may be used to finance working capital requirements, acquisitions and for general corporate purposes, including capital expenditures. Most acquisitions require the approval of our bank group.

As a result of our repayment of debt with proceeds from the public stock offering, our principal commitment for the revolving credit facility decreased from the amounts disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2003. As of March 31, 2004, our principal commitment under the revolving credit facility was \$8.0 million due in 2004 and \$5.0 million due in 2008. We also had purchase commitments totaling approximately \$7.1 million at March 31, 2004, primarily for manufacturing equipment.

We believe that sufficient resources will be available to satisfy our cash requirements for at least the next twelve months. Cash requirements for periods beyond the next twelve months depend on our profitability, our ability to manage working capital requirements and our rate of growth. If we make significant acquisitions or if working capital and capital expenditure requirements exceed expected levels during the next twelve months or in subsequent periods, we may require additional external sources of capital. There can be no assurance that any additional required financing will be available through bank

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borrowings, debt or equity financings or otherwise, or that if such financing is available, it will be available on terms acceptable to us. If adequate funds are not available on acceptable terms, our business, results of operations and financial condition could be adversely affected.

Critical Accounting Policies

See the information concerning our critical accounting policies included under Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operation—Critical Accounting Policies in our Annual Report on Form 10-K for the fiscal year ended December 31, 2003. There have been no significant changes in our critical accounting policies during the first quarter of 2004.

Forward-looking Statements

This Form 10-Q may contain projections and other "forward-looking statements" within the meaning of Section 21E of the Securities Exchange Act of 1934, as they relate to, or may affect, the Company's future results. These statements only reflect management's current opinions and no assurance can be given that any of these results will actually occur. Important factors could cause performance to differ materially from projected results contained in, or based upon, these statements, including: the discovery of, or failure to discover, material issues during due diligence; the failure to agree on the final terms of definitive agreements, long-term supply agreements, collective bargaining agreements, or related agreements or any party's breach of, or refusal to close the transactions reflected in, those agreements; the ability to successfully manage growth or contraction in the economy, or the commercial vehicle or electronics markets; access to capital on favorable terms as needed for operations or growth; the ability to achieve expected annual savings and synergies from past and future business combinations; competitive factors and price pressures; availability of third party component parts at reasonable prices; inventory risks due to shifts in market demand and/or price erosion of purchased components; changes in product mix; program changes, delays, or cancellations by the government or other customers; concentrated reliance on major customers or suppliers; cost and yield issues associated with the Company's manufacturing facilities; revisions in estimated costs related to major contracts; labor relations; risks inherent in operating abroad, including foreign currency exchange rates; performance of our pension fund portfolios; changes in applicable law or in the Company's regulatory authorizations, security clearances, or other legal rights to conduct its business, deal with its work force or export goods and services; adverse regulatory actions, or other governmental sanctions; risks of litigation, including litigation with respect to environmental or asbestos-related matters, customer or supplier claims, or stockholders; the effects (including possible increases in the cost of doing business) resulting from future war and terrorists activities or political uncertainties; natural disasters, casualties, utility disruptions, or the failure to anticipate unknown risks and uncertainties present in the Company's businesses; dependence on current management; as well as other factors included in the Company's reports filed with the Securities and Exchange Commission.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to financial market risks, including changes in interest rates and foreign currency exchange rates. Borrowings under our credit agreement bear interest at a variable rate based on the prime rate, the London Interbank Offered Rate ("LIBOR"), or certain alternative short-term rates, plus a margin (1.0% at March 31, 2004) based upon our leverage ratio. An increase in interest rates of 100 basis points would result in additional interest expense approximating \$130,000 on an annualized basis, based upon our debt outstanding at March 31, 2004. Fluctuations in foreign currency exchange rates have historically had little impact on us because the vast majority of our transactions are denominated in U.S. dollars. Inflation has not been a significant factor in our operations in any of the periods presented, and it is not expected to affect operations in the foreseeable future.

ITEM 4. CONTROLS AND PROCEDURES

As of the end of the period covered by this quarterly report, an evaluation was performed under the supervision and with the participation of the Company's management, including the President and Chief Executive Officer (the "CEO") and the Chief Financial Officer (the "CFO"), of the effectiveness of the design and operation of the Company's disclosure controls and procedures. Based on that evaluation, the Company's management, including the CEO and CFO, concluded that the Company's disclosure controls and procedures were effective. There have been no significant changes in the Company's internal controls over financial reporting that occurred during the quarter ended March 31, 2004, that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

PART II. OTHER INFORMATION

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits:

<u>Exhibit Number</u>	<u>Description</u>
10.1	2004 Sypris Equity Plan effective as of April 27, 2004.
10.2	Sypris Solutions, Inc., Directors Compensation Program adopted on September 1, 1995, Amended and Restated on February 24, 2004.
10.3	Underwriting Agreement dated March 11, 2004 among Sypris Solutions, Inc. and Needham & Company.
31.1	CEO certification pursuant to Section 302 of Sarbanes—Oxley Act of 2002.
31.2	CFO certification pursuant to Section 302 of Sarbanes—Oxley Act of 2002.
32	CEO and CFO certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes—Oxley Act of 2002.

(b) Reports on Form 8-K filed or furnished with the Securities and Exchange Commission:

On January 2, 2004, we furnished a Current Report on Form 8-K, attaching a press release dated December 31, 2003, reporting the completion of the purchase of a manufacturing plant located in Morganton, North Carolina from Dana Corporation.

On January 5, 2004, we furnished a Current Report on Form 8-K, attaching a press release dated January 5, 2004, reporting the purchase of a manufacturing plant located in Morganton, North Carolina from Dana Corporation ("Dana") and the beginning of an 8-year supply contract to furnish Dana with a wide range of drive train components.

On January 15, 2004, we furnished a Current Report on Form 8-K, attaching a press release dated January 15, 2004, reporting the signing of a letter of intent with ArvinMeritor, Inc.

On February 5, 2004, we furnished a Current Report on Form 8-K, attaching a press release dated February 5, 2004, reporting our fourth quarter and year-end results of operations and financial condition.

On March 15, 2004, we filed a Current Report on Form 8-K, announcing the waiver by Needham & Company, Inc. of a lock-up agreement executed by one of our directors, Roger W. Johnson, and the resultant exercise and sale of stock options by such director.

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.

SYPRIS SOLUTIONS, INC.
(Registrant)

Date: April 30, 2004

By: /s/ David D. Johnson

(David D. Johnson)
Vice President & Chief Financial Officer

Date: April 30, 2004

By: /s/ Anthony C. Allen

(Anthony C. Allen)
Vice President & Chief Accounting Officer

2004 SYPRIS EQUITY PLAN

ARTICLE I. GENERAL

1.1 Purpose—The purpose of the 2004 Sypris Equity Plan (“Plan”) is to retain and to motivate directors, officers and other employees (“Associates”) of Sypris Solutions, Inc. and its subsidiaries (together with such subsidiaries, as appropriate in context, the “Company”).

1.2 Eligibility—The Company’s Compensation Committee (“Committee”) shall determine those Associates who may participate in the Plan (“Participants”).

1.3 Term—The Committee may grant awards under this Plan (“Awards”) from April 27, 2004, through April 27, 2014, and such Awards will survive the Plan’s expiration.

ARTICLE II. ADMINISTRATION

2.1 Interpretation—The Committee shall have complete authority to interpret the Plan or any Award, to prescribe, amend and rescind rules and regulations relating thereto, and to make all other determinations necessary or advisable for the administration of the Plan or any Award Agreements (including to establish or amend any rules regarding the Plan that are necessary or advisable to comply with, or qualify under, any applicable law, listing requirement, regulation or policy of any entity, agency, organization, governmental entity, or the Company, in the Committee’s sole discretion (“Rule”).

2.2 Authority—The Committee shall have final authority, in its sole discretion, to determine or interpret any of the following terms (collectively, “Terms”), with respect to both new and outstanding Awards, subject to applicable Rules:

- Ø eligibility criteria regarding any participation or exercise rights,
- Ø types of Awards, including those qualified under 26 USC §422 or its equivalent (“ISOs”),
- Ø amounts, classes, registration rights or restricted legends of related Shares,
- Ø timing and features of any rights, benefits or payments due to Participants under any Award (including voting, exercise, or dividend rights),
- Ø restrictions on assignment or transfer of any Awards or rights thereunder,
- Ø vesting and forfeiture terms,
- Ø convertibility or deferral rights,
- Ø the amounts, methods and forms of payment for amounts due from any Participant and for any taxes incident thereto,
- Ø Performance Objectives as described in Section 2.3, and

any other terms or conditions as the Committee specifies in written agreements, which shall govern the terms of each Award (and which need not be identical) (the “Award Agreements”). The Committee may condition Awards upon the Participant’s execution of Award Agreements, representations regarding resale, blank stock powers, and any other documents that it may specify. Shares may be deposited together with stock powers with any escrow agent (including the Company) as specified by the Committee.

2.3 Performance Objectives – “Performance Objectives” may be expressed in terms of (a) earnings per share, (b) Stock prices, (c) net income, (d) pre-tax income, (e) operating income, (f) return on equity or assets, (g) economic value added (h) sales, (i) cash flow from operating activities, (j) working capital, (k) other financial objectives, or (l) any combination of the foregoing, with respect to the Company, any of its subsidiaries, any of its divisions or any combination thereof. Performance Objectives may be absolute or relative (to prior performance of the Company or to the performance of one or more other entities or external indices) and may be expressed in terms of a progression within a specified range. Performance Objectives shall be established in writing by the Committee by the earlier of (x) the date on which a quarter of the performance period has elapsed or (y) the date which is ninety days after the commencement of the performance period, and in any event while the performance relating to the Performance Objectives remains substantially uncertain.

2.4 Amendments and Approvals—The Committee, at its discretion, may amend the Plan, its interpretations or any Award at any time, subject to applicable Rules. With respect to any amendment, action or approval hereunder, the Committee may require the approval of any other persons or entities, pursuant to applicable Rules.

2.5 Delegation—The Committee may delegate any portion of their responsibilities and powers to one or more persons selected by them, subject to applicable Rules. Such delegation may be revoked by the Committee at any time.

ARTICLE III. STOCK SUBJECT TO PLAN

3.1 Limit on Shares – The Committee shall limit Awards in the aggregate to a maximum of Three Million (3,000,000): (a) total shares of the Company’s \$.01 par value common stock (“Common Stock”), and (b) total shares of any other classes of the Company’s then authorized common stock as are determined by the Committee to be no more dilutive than the Common Stock (collectively, the “Stock” or, individually, the “Shares”); and no more than 50% of all Awards shall be ISOs. Such limits shall be increased only: (x) if approved by a majority of the Company’s stockholders, (y) pursuant to Article VI, or (z) if approved by the Committee to replace any acquired business’ equity plan with an appropriate number of additional Shares, pursuant to applicable Rules. 3.2 Unvested Shares—If any Awards under the Plan shall expire, be forfeited or cancelled without having been fully exercised or vested, the reserved but unused Shares subject thereto shall continue to be available for new Awards.

ARTICLE IV. TYPES OF AWARDS

4.1 Stock—The Committee may grant Awards of Stock to Participants on Terms specified in the Award Agreements.

4.2 Options—The Committee may grant Awards of options to purchase or sell Stock, to Participants on Terms specified in the Award Agreements. The purchase price under any such Award shall be the closing price of the Stock on the date of grant, and the sale price under any such Award shall be the closing price of the Stock on the date of the sale, unless the Committee designates another price in the Award Agreement; provided further that the fair market value (on each ISO’s Award date) of all ISOs’ Shares which first become exercisable by a Participant in any calendar year under all Company plans shall not exceed \$100,000. Awards above this limit or to non-employees shall be deemed separate, non-qualified Awards under 26 USC §422.

4.3 Appreciation Rights – The Committee may grant Awards of rights to receive all or a portion of the appreciation in the value of the Shares over a period of time, to Participants on Terms specified in the Award Agreements.

4.4 Other Awards—The Committee may grant Awards in tandem with, contingent upon, or convertible into, other Awards on Terms specified in the Award Agreements.

ARTICLE V. TERMINATION OF AWARDS

5.1 Unvested Rights—Every unvested, unexercised right under this Plan shall terminate and expire at the earlier of: the expiration date in the Award Agreement, or termination of the Participant’s employment, unless extended by the Committee.

5.2 Vested Rights—Every vested, unexercised right under this Plan shall terminate and expire (1) at the earlier of: (a) the expiration date in the Award Agreement, (b) thirty days after termination of employment, (c) three months after a Participant’s retirement, or (d) one year after a Participant’s death or disability, unless (2) extended by the Committee; provided that all of the foregoing shall be administered subject to the Committee’s Rules.

ARTICLE VI. ADJUSTMENT OF NUMBER OF SHARES

6.1 Stock Dividends—In the event that any stock dividend is declared on the Stock, the number of Shares in any Award Agreement and the maximum limit on Shares in Section 3.1 shall be adjusted by adding to each such Share the number of Shares which would be distributable thereon (or any equivalent value of Stock as determined by the Committee in its sole discretion) if such Share had been outstanding on the date fixed for determining the stockholders entitled to receive such dividend, with a corresponding adjustment in any consideration payable per share.

6.2 Reorganization—In the event that the outstanding Stock is exchanged for or changed into any different number or class of securities, whether through reorganization, recapitalization, stock split, reverse stock split, combination of shares, merger or consolidation, then there shall be substituted for each Share subject to any Award the number and class of securities for which each outstanding Share shall be so exchanged or into which each such Share shall be changed, with a corresponding adjustment in any consideration payable per Share or unit of such securities, and the maximum limit on Shares in Section 3.1 shall be adjusted to take into account such capital adjustment.

ARTICLE VII. Change in Control

7.1 Change in Control – A “Change in Control” includes any transaction (or series of transactions): (a) if the stockholders of the Company immediately before the transaction do not retain immediately after the transaction, in substantially the same proportions, direct or indirect beneficial ownership of more than 50% of the total combined voting power of the outstanding voting stock of the Company; (b) in which any person or group acquires, after the effective date of this Plan, more than 25% of the voting power of the Company’s voting securities; (c) in which substantially all of the assets of the Company are sold; or (d) any similar event determined by the Committee to constitute a change in the control of the Company. In the event of a Change in Control, the vesting date for all unvested or forfeitable rights in any Award shall be accelerated to the earlier of: (x) the date of such Change in Control or (y) any other date established by the

Committee in its discretion to allow Participants an effective opportunity to enjoy such rights under the circumstances.

ARTICLE VIII. MISCELLANEOUS

8.1 No Other Rights—Participation under the Plan shall not be construed as giving an employee any future right of employment with the Company. Subject to applicable Rules, acceptance of any Award shall constitute acceptance of the Company's right to terminate employment at will, and acceptance of all provisions of the Plan.

8.2 Exercises Causing Loss of Compensation Deduction—No part of an Award may be exercised to the extent the exercise would cause the Participant to have compensation which is nondeductible by the Company pursuant to applicable Rules. Any right not exercisable because of this limitation shall be exercisable in any subsequent year in which the exercise would not cause the loss of such deduction, subject to the Terms and all applicable Rules.

8.3 Governing Law—This Plan and all matters relating to the Plan shall be interpreted and construed under the laws of the State of Delaware using any dispute resolution methods selected by the Committee.

8.4 Termination of Plan—The Board of Directors may, at its discretion, terminate the Plan at any time for any reason. Termination of the Plan shall not affect unexpired outstanding options previously granted.

Dated this 24th day of February, 2004.

SYPRIS SOLUTIONS, INC.

By: _____ /s/ Jeffrey T. Gill

Jeffrey T. Gill
President & Chief Executive Officer

SYPRIS SOLUTIONS, INC.
DIRECTORS COMPENSATION PROGRAM
ADOPTED ON SEPTEMBER 1, 1995
AMENDED AND RESTATED ON FEBRUARY 24, 2004

Description of the Program

Name. The name of this benefit program shall be the “Directors Compensation Program.”

Purpose. The purpose of the Directors Compensation Program is to enable Sypris Solutions, Inc. (the “Company”) to attract, retain and motivate experienced directors by providing compensation that is competitive with compensation offered to directors of other similarly-situated public corporations in the United States.

Eligibility and Participation. Only “Eligible Directors,” defined as those members of the Board of Directors of the Company (the “Board”) who are not otherwise employed by the Company, its subsidiaries or any affiliate of the Company in any other capacity, are eligible to participate in the Directors Compensation Program. Any Eligible Director on the Board as of September 1, 1995 (the “Effective Date”) and thereafter shall be eligible for compensation under the Directors Compensation Program.

Compensation. Eligible Directors shall be compensated as set forth below:

(a) *Initial Election Grants and Annual Grants of Stock Options.* The Company shall grant each Eligible Director a nonqualified stock option for the purchase of: (i) up to 10,000 shares of the Company’s common stock, \$.01 par value (the “Common Stock”) at the time the Eligible Director is initially elected to serve on the Board (the “Initial Election Grant”); and (ii) up to 4,500 shares of the Company’s Common Stock at each annual stockholders’ meeting thereafter (the “Annual Grant”), so long as a Director is continuing to serve as a Director on the date of said annual stockholders’ meeting. In the event that an Eligible Director is initially elected to the Board at a time other than the date of the Company’s annual stockholders’ meeting, he or she shall receive an Annual Grant at the subsequent annual stockholders’ meeting for a pro rated number of shares to be determined by multiplying 4,500 by a fraction, the numerator of which shall be the number of full months which have elapsed since the date of the Director’s initial election and the next annual stockholders’ meeting and the denominator of which shall be 12. All such stock options shall be granted by the Company to the Eligible Directors pursuant to the Company’s Independent Directors’ Stock Option Plan (the “Option Plan”). Each of the options shall be: (i) granted on the dates each of the respective Eligible Directors is initially elected and on the date of each annual stockholders’ meeting; (ii) priced at the fair market value of the Company’s common stock, as determined in accordance with Section 7.C. of the Option Plan, on the respective date of grant; (iii) immediately exercisable by each of the Eligible Directors on the respective dates of grant; and (iv) subject to the terms and conditions of the Option Plan and any other terms and conditions which, in accordance with the Option Plan, are specified in the applicable Stock Option Agreement entered into by and between the Company and each of the Eligible Directors.

(b) *Annual Retainer.*

(i) *Amount.* Each Eligible Director shall receive an annual retainer in the amount of \$19,000 (the “Annual Retainer”). In the event that an Eligible Director is initially elected to the Board at a time other than the date of the Company’s annual stockholders’ meeting, he or she shall receive a prorated Annual Retainer (the “Prorated Annual Retainer”) the amount of which is to be determined by multiplying \$19,000 by a fraction, the numerator of which shall be the number of full months which have elapsed since the date of the Director’s initial election to the Board and the next annual stockholders’ meeting and the denominator of which shall be 12.

(ii) *Payment.* The Annual Retainer or the Prorated Annual Retainer, as applicable, shall be earned by the Eligible Directors and paid by the Company in equal quarterly installments for each Eligible Director. The quarterly installments of the Annual Retainer or Prorated Annual Retainer shall be payable, together with any attendance fees (defined below), in arrears by checks issued to each Eligible Director no later than the 15th calendar day following the end of each of the Company’s fiscal quarters during which the respective Eligible Director served on the Board. Alternatively, pursuant to Paragraph (d) below, each Eligible Director may elect to receive his or her Annual Retainer or Prorated Annual Retainer, together with any attendance fees, in the form of nonqualified stock options in lieu of cash.

(c) *Attendance Fees.*

(i) *Board Meetings.* Each Eligible Director shall receive the sum of \$1,450 for each meeting of the Board he or she attends in person or, alternatively, the sum of \$300 for each meeting of the Board in which he or she participates by telephone (collectively, the “Board Meeting Attendance Fees”). For purposes of the Directors Compensation Program, “attendance” shall not include execution of an action by written consent of the Board. Board Meeting Attendance Fees earned by each Eligible Director during a fiscal quarter shall be payable, together with the quarterly installment of the Annual Retainer or Prorated Annual Retainer, by a check issued no later than the 15th calendar day following the end of the fiscal quarter. Alternatively, pursuant to Paragraph (d) below, each Eligible Director may elect to receive his or her Board Meeting Attendance Fees in the form of nonqualified stock options in lieu of cash.

(ii) *Committee Meetings.* Eligible Directors are entitled to compensation for attending or participating in meetings of committees of the Board. Each Eligible Director who attends a committee meeting in person and serves as the chairperson of the meeting shall receive the sum of \$1,400 per meeting, and each of the other Eligible Directors who attend such a committee meeting in person shall receive the sum of \$1,000 per meeting. Alternatively, each Eligible Director who, as the chairperson or as a committee member, participates by telephone in committee meetings of the Board shall receive the sum of \$300 per meeting. (All of the aforementioned fees in this subparagraph shall hereafter be collectively referred to as the “Committee Meeting Attendance Fees”). For purposes of the Directors Compensation Program, “attendance” shall not include execution of an action by written consent for any committee. Committee Meeting Attendance Fees earned by each Eligible Director during a fiscal quarter shall be payable, together with the Annual Retainer or Prorated Annual Retainer and the Board Meeting Attendance Fees, by a check issued to the Eligible Director no later than the 15th calendar day following the end of the fiscal quarter. Alternatively, pursuant to Paragraph (d) below, each Eligible Director may elect to receive his or her Committee Meeting Attendance Fees in the form of nonqualified stock options in lieu of cash.

(d) *Form of Payment.* Each Eligible Director may elect to receive his or her Annual Retainer or Prorated Annual Retainer, Board Meeting Attendance Fees and Committee Meeting Attendance Fees in the form of nonqualified stock options in lieu of cash. The election to receive stock options in lieu of cash must be made by the Eligible Director before each January 1 and shall apply to the sum of the Annual Retainer, Prorated Annual Retainer, Board Meeting Attendance Fees and Committee Meeting Attendance Fees (collectively, the “Fees”) earned during the following calendar year. Eligible Directors initially elected to the Board other than at an annual stockholders’ meeting shall make the election no later than 10 calendar days after being elected to the Board and such election shall apply to Fees earned during the remainder of such calendar year. An Eligible Director who fails to make a timely election for the first calendar year such director is eligible to make an election shall be deemed to have elected to receive Fees in cash. An Eligible Director who fails to make an election for any subsequent calendar year shall be deemed to have made the same election such director made for the immediately preceding calendar year. Such elections, including deemed elections, shall be irrevocable for the calendar year for which made.

Any stock options issued to an Eligible Director in lieu of cash compensation shall be granted to the respective Eligible Director pursuant to the Option Plan on a quarterly basis, with each grant to be made on the first day following the end of each of the Company’s fiscal quarters (the “Date of Grant”). The number of shares to be granted under such options shall be determined by dividing the total of the quarterly installment of the Annual Retainer or Prorated Annual Retainer, as applicable, plus any Board Meeting Attendance Fees and any Committee Meeting Attendance Fees earned by the respective Eligible Director during the previous fiscal quarter by 33% of the fair market value of the Company’s Common Stock, as determined in accordance with Section 7.C. of the Option Plan, on the Date of Grant. The options shall be: (i) priced at the fair market value of the Company’s Common Stock, as determined in accordance with Section 7.C. of the Option Plan, on the Date of Grant; (ii) immediately exercisable by each of the Eligible Directors on the respective date of grant; and (iii) subject to the terms and conditions of the Option Plan and any other terms and conditions which, in accordance with the Option Plan, are specified in the applicable Stock Option Agreement entered into by and between the Company and each of the Eligible Directors.

Expense Reimbursement. Each Eligible Director shall be reimbursed for travel and other expenses incurred in the performance of his or her duties.

Administration. The Directors Compensation Program is administered by the Compensation Committee of the Board. The Committee members are selected by the Board and have no specific term of office.

Resignation from the Board of Directors. The resignation of any Eligible Director shall cause such director to be ineligible to receive any amount of the Annual Retainer or Prorated Annual Retainer installments not yet paid to him or her as of the date of resignation. Any attendance fees which have been earned by the Eligible Director in accordance with Paragraph (c) above prior to the date of resignation shall be paid in the same form and according to the same timetables described in Paragraph (c) above.

Program Termination or Modification. The Compensation Committee shall review the Directors Compensation Program on at least an annual basis and may make changes, alterations or modifications to the program which are deemed to be in the Company’s best interest. Any change, alteration or modification shall be made by a written instrument consented to by the Board. The Board may similarly

terminate the Directors Compensation Program at any time if, in the judgment of the Board, such termination is in the Company's best interest.

IN WITNESS WHEREOF, the Company has caused this Directors Compensation Program to be executed in its name and on its behalf on February 24, 2004.

SYPRIS SOLUTIONS, INC.

By: _____ /s/ Jeffrey T. Gill

Jeffrey T. Gill
President and CEO

3,000,000 Shares*

SYPRIS SOLUTIONS, INC.

Common Stock

UNDERWRITING AGREEMENT

March 12, 2004

Needham & Company, Inc.
Robert W. Baird & Co. Incorporated
Raymond James & Associates, Inc.
As Representatives of the several Underwriters
c/o Needham & Company, Inc.
445 Park Avenue
New York, New York 10022

Ladies and Gentlemen:

Sypris Solutions, Inc., a Delaware corporation (the "Company"), proposes to issue and sell 3,000,000 shares (the "Firm Shares") of the Company's common stock, \$.01 par value per share (the "Common Stock"), to you and to the several other Underwriters named in Schedule I hereto (collectively, the "Underwriters"), for whom you are acting as representatives (the "Representatives"). The Company has also agreed to grant to you and the other Underwriters an option (the "Option") to purchase up to an additional 450,000 shares of Common Stock, on the terms and for the purposes set forth in Section 1(b) (the "Option Shares"). The Firm Shares and the Option Shares are referred to collectively herein as the "Shares."

The Company confirms as follows its agreement with the Representatives and the several other Underwriters.

1. Agreement to Sell and Purchase.

(a) On the basis of the representations, warranties and agreements of the Company herein contained and subject to all the terms and conditions of this Agreement, (i) the Company agrees to issue and sell the Firm Shares to the several Underwriters and (ii) each of the Underwriters, severally and not jointly, agrees to purchase from the Company the respective number of Firm Shares set forth opposite that

* Plus an option to purchase up to an additional 450,000 shares to cover over-allotments.

Underwriter's name in Schedule I hereto, at the purchase price of \$ 16.10 for each Firm Share.

(b) Subject to all the terms and conditions of this Agreement, the Company grants the Option to the several Underwriters to purchase, severally and not jointly, up to 450,000 Option Shares at the same price per share as the Underwriters shall pay for the Firm Shares. The Option may be exercised only to cover over-allotments in the sale of the Firm Shares by the Underwriters and may be exercised in whole or in part at any time (but not more than once) on or before the 30th day after the date of this Agreement upon written or telegraphic notice (the "Option Shares Notice") by the Representatives to the Company no later than 12:00 noon, New York City time, at least two and no more than five business days before the date specified for closing in the Option Shares Notice (the "Option Closing Date"), setting forth the aggregate number of Option Shares to be purchased and the time and date for such purchase. On the Option Closing Date, the Company will issue and sell to the Underwriters the number of Option Shares set forth in the Option Shares Notice, and each Underwriter will purchase such percentage of the Option Shares as is equal to the percentage of Firm Shares that such Underwriter is purchasing, as adjusted by the Representatives in such manner as they deem advisable to avoid fractional shares.

2. Delivery and Payment

Delivery of the Firm Shares shall be made to the Representatives for the accounts of the Underwriters against payment of the purchase price by wire transfer payable in same-day funds to a bank account specified by the Company to the order of the Company at the office of Needham & Company, Inc., 445 Park Avenue, New York, New York 10022 (or the offices of its counsel, Piper Rudnick LLP, 1251 Avenue of the Americas, New York, New York 10020), at 10:00 a.m., New York City time, on the third (or, if the purchase price set forth in Section 1(a) hereof is determined after 4:30 p.m., Washington D.C. time, the fourth) business day following the commencement of the offering contemplated by this Agreement, or at such time on such other date, not later than seven business days after the date of this Agreement, as may be agreed upon by the Company and the Representatives (such date is hereinafter referred to as the "Closing Date").

To the extent the Option is exercised, delivery of the Option Shares against payment by the Underwriters (in the manner specified above) will take place at the offices specified above for the Closing Date at the time and date (which may be the Closing Date) specified in the Option Shares Notice.

Certificates evidencing the Shares shall be in definitive form and shall be registered in such names and in such denominations as the Representatives shall request at least two business days prior to the Closing Date or the Option Closing Date, as the case may be, by written notice to the Company. For the purpose of expediting the checking and packaging of certificates for the Shares, the Company agrees to make such certificates available for inspection at the offices specified above at least 24 hours prior to the Closing Date or the Option Closing Date, as the case may be.

The cost of original issue tax stamps and other transfer taxes, if any, in connection with the issuance and delivery of the Firm Shares and Option Shares by the Company to the respective Underwriters shall be borne by the Company. The Company will pay and save each Underwriter and any subsequent holder of the Shares harmless from any and all liabilities with respect to or resulting from any failure or delay in paying Federal and state stamp and other transfer taxes, if any, which may be payable or determined to be payable in connection with the original issuance or sale to such Underwriter of the Shares.

3. Representations and Warranties of the Company

The Company represents, warrants and covenants to each Underwriter that:

(a) The Company meets the requirements for use of Form S-3 and a registration statement (Registration No. 333-112760) on Form S-3 relating to the Shares, including a preliminary prospectus and such amendments to such registration statement as may have been required to the date of this Agreement, has been prepared by the Company under the provisions of the Securities Act of 1933, as amended (the "Act"), and the rules and regulations (collectively referred to as the "Rules and Regulations") of the Securities and Exchange Commission (the "Commission") thereunder, and has been filed with the Commission. The term "preliminary prospectus" as used herein means a preliminary prospectus, including the documents incorporated by reference therein, as contemplated by Rule 430 or Rule 430A of the Rules and Regulations included at any time as part of the registration statement. Copies of such registration statement and amendments and of each related preliminary prospectus have been delivered to the Representatives. If such registration statement has not become effective, a further amendment to such registration statement, including a form of final prospectus, necessary to permit such registration statement to become effective will be filed promptly by the Company with the Commission. If such registration statement has become effective, a final prospectus containing information permitted to be omitted at the time of effectiveness by Rule 430A of the Rules and Regulations will be filed promptly by the Company with the Commission in accordance with Rule 424(b) of the Rules and Regulations. The term "Registration Statement" means the registration statement as amended at the time it becomes or became effective (the "Effective Date"), including all documents incorporated by reference therein, financial statements and all exhibits and schedules thereto and any information deemed to be included by Rule 430A, and includes any registration statement relating to the offering contemplated by this Agreement and filed pursuant to Rule 462(b) of the Rules and Regulations. The term "Prospectus" means the prospectus, including the documents incorporated by reference therein, as first filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations or, if no such filing is required, the form of final prospectus, including the documents incorporated by reference therein, included in the Registration Statement at the Effective Date. Any reference herein to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to refer to and include the filing of any document under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), after the Effective Date, the date of any preliminary prospectus or the date of the Prospectus, as the case may be, and through and

including the Closing Date and, if later, the Option Closing Date and deemed to be incorporated therein by reference.

(b) No order preventing or suspending the use of any preliminary prospectus has been issued by the Commission, and no stop order suspending the effectiveness of the Registration Statement (including any related registration statement filed pursuant to Rule 462(b) under the Act) or any post-effective amendment thereto has been issued, and no proceeding for that purpose has been initiated or threatened by the Commission. On the Effective Date, the date the Prospectus is first filed with the Commission pursuant to Rule 424(b) (if required), at all times thereafter during the period through and including the Closing Date and, if later, the Option Closing Date and when any post-effective amendment to the Registration Statement becomes effective or any amendment or supplement to the Prospectus is filed with the Commission, the Registration Statement and the Prospectus (as amended or as supplemented if the Company shall have filed with the Commission any amendment or supplement thereto), including the financial statements included in the Prospectus, did and will comply in all material respects with all applicable provisions of the Act, the Exchange Act, the rules and regulations under the Exchange Act (the “Exchange Act Rules and Regulations”), and the Rules and Regulations. On the Effective Date and when any post-effective amendment to the Registration Statement becomes effective, no part of the Registration Statement, the Prospectus or any such amendment or supplement thereto did or will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading. At the Effective Date, the date the Prospectus or any amendment or supplement to the Prospectus is filed with the Commission and at the Closing Date and, if later, the Option Closing Date, the Prospectus did not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The foregoing representations and warranties in this Section 3(b) do not apply to any statements or omissions made in reliance on and in conformity with information relating to any Underwriter furnished in writing to the Company by the Representatives specifically for inclusion in the Registration Statement or Prospectus or any amendment or supplement thereto. The Company acknowledges that the statements set forth in the material included in the table under the first paragraph, the information related to the selling concession and dealer allowance in the second paragraph, paragraphs eight through thirteen and the last two paragraphs, in each case under the heading “Underwriting” in the Prospectus, constitute the only information relating to any Underwriter furnished in writing to the Company by the Representatives specifically for inclusion in the Registration Statement. In connection with this offering, some of the underwriters and selling group members, if any, or their affiliates may engage in passive market making transactions in our common stock on the Nasdaq National Market immediately prior to the commencement of sales in this offering, in accordance with Rule 103 of Regulation M under the Exchange Act. Passive market making may stabilize or maintain the market price of our common stock at a level above that which might otherwise prevail and, if commenced, may be discontinued at any time.

(c) The documents that are incorporated by reference in the preliminary prospectus and the Prospectus or from which information is so incorporated by reference, and any amendments thereto, when they became or become effective or were or are filed with the Commission, as the case may be, complied or will comply in all material respects with the requirements of the Act or the Exchange Act, as applicable, and the Rules and Regulations or the Exchange Act Rules and Regulations, as applicable; and any documents so filed and incorporated by reference subsequent to the Effective Date shall, when they are filed with the Commission, comply in all material respects with the requirements of the Act or the Exchange Act, as applicable, and the Rules and Regulations or the Exchange Act Rules and Regulations, as applicable.

(d) The Company does not own, and at the Closing Date and, if later, the Option Closing Date, will not own, directly or indirectly, any shares of stock or any other equity or long-term debt securities of any corporation or have any equity interest in any corporation, limited liability company, firm, partnership, joint venture, association or other entity, other than (i) the subsidiaries listed in Exhibit 21 to the Company's Form 10-K for the year ended December 31, 2003 and (ii) other subsidiaries individually and collectively not material to the Company and its business or financial condition (the "Subsidiaries"). The Company and each of its Subsidiaries is, and at the Closing Date and, if later, the Option Closing Date, will be, a corporation or limited liability company duly organized or formed, as the case may be, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation. The Company and each of its Subsidiaries has, and at the Closing Date and, if later, the Option Closing Date, will have, full power and authority to conduct all the activities conducted by it, to own or lease all the assets owned or leased by it and to conduct its business as described in the Registration Statement and the Prospectus. The Company and each of its Subsidiaries is, and at the closing Date and, if later, the Option Closing Date, will be, duly licensed or qualified to do business and in good standing as a foreign corporation or limited liability company, as the case may be, in all jurisdictions in which the nature of the activities conducted by it or the character of the assets owned or leased by it makes such license or qualification necessary, except to the extent that the failure to be so licensed or qualified or be in good standing would not materially and adversely affect the Company or its business, properties, condition (financial or other) or results of operations. All of the outstanding shares of capital stock, units or other ownership interests of each Subsidiary have been duly authorized and validly issued and are fully paid and nonassessable, and owned by the Company free and clear of all claims, liens, charges and encumbrances, except any lien or security interest in such shares, units or other ownership interests pursuant to the principal credit facility of the Company described in the Prospectus (the "Credit Facility"); there are no securities outstanding that are convertible into or exercisable or exchangeable for capital stock, units or other ownership interest of any Subsidiary. The Company and its Subsidiaries are not, and at the Closing Date and, if later, the Option Closing Date, will not be, engaged in any discussions or a party to any agreement or understanding, written or oral, regarding the acquisition of an interest in any corporation, firm, partnership, joint venture, association or other entity where such discussions, agreements or understandings would require amendment to the Registration Statement pursuant to applicable securities laws. Complete and correct copies of the certificate of incorporation and of the by-laws or other comparable governing documents

of the Company and each of its Subsidiaries and all amendments thereto have been delivered to the Representatives, and no changes therein will be made subsequent to the date hereof and prior to the Closing Date or, if later, the Option Closing Date.

(e) The Company has authorized, issued and outstanding capital stock as set forth under the caption "Capitalization" in the Prospectus as of the date set forth therein. All of the outstanding shares of capital stock of the Company have been duly authorized, validly issued and are fully paid and nonassessable and were issued in compliance with all applicable state and Federal securities laws; the Shares have been duly authorized and when issued and paid for as contemplated herein will be validly issued, fully paid and nonassessable; no preemptive or similar rights exist with respect to any of the Shares or the issue and sale thereof. The description of the capital stock of the Company incorporated by reference in the Registration Statement and the Prospectus is, and at the Closing Date and, if later, the Option Closing Date, will be, complete and accurate in all material respects. Except as set forth in the Prospectus, the Company does not have outstanding, and at the Closing Date and, if later, the Option Closing Date, will not have outstanding, any options to purchase, or any rights or warrants to subscribe for, or any securities or obligations convertible into, or any contracts or commitments to issue or sell, any shares of capital stock, or any such warrants, convertible securities or obligations. No further approval or authority of stockholders or the Board of Directors of the Company will be required for the issuance and sale of the Shares as contemplated herein. The certificates evidencing the Shares are in due and proper legal form and have been duly authorized for issuance by the Company.

(f) The financial statements and schedules included or incorporated by reference in the Registration Statement or the Prospectus present fairly the financial condition of the Company and its consolidated Subsidiaries as of the respective dates thereof and the results of operations and cash flows of the Company and its consolidated Subsidiaries for the respective periods covered thereby, all in conformity with United States generally accepted accounting principles applied on a consistent basis throughout the entire period involved, except as otherwise disclosed in the Prospectus. No other financial statements or schedules of the Company are required by the Act, the Exchange Act, the Exchange Act Rules and Regulations or the Rules and Regulations to be included in the Registration Statement or the Prospectus. Ernst & Young LLP (the "Accountants"), who have reported on such financial statements and schedules, are independent accountants with respect to the Company as required by the Act and the Rules and Regulations. The summary and selected consolidated financial and statistical data included in the Registration Statement present fairly the information shown therein as at the respective dates and for the respective periods specified and have been compiled on a basis consistent with the audited financial statements presented in the Registration Statement. There are no pro forma or as adjusted financial statements which are required to be included or incorporated by reference in the Registration Statement and the Prospectus in accordance with Regulation S-X which have not been included as so required.

(g) Subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus and prior to or on the Closing Date and,

if later, the Option Closing Date, except as set forth in or contemplated by the Registration Statement and the Prospectus, (i) there has not been and will not have been any change in the capitalization of the Company (other than in connection with the exercise of options to purchase the Company's Common Stock granted pursuant to the Company's stock option and equity incentive plans from the shares reserved therefor as described in the Registration Statement), or any material adverse change in the business, properties, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries, taken as a whole, arising for any reason whatsoever, (ii) neither the Company nor any of its Subsidiaries has incurred nor will any of them incur, except in the ordinary course of business as described in the Prospectus, any material liabilities or obligations, direct or contingent, nor has the Company or any of its Subsidiaries entered into nor will any of them enter into, except in the ordinary course of business as described in the Prospectus, any material transactions other than pursuant to this Agreement and the transactions referred to herein, and (iii) the Company has not and will not have paid or declared any dividends or other distributions of any kind on any class of its capital stock.

(h) The Company is not and will not become as a result of the transactions contemplated hereby an "investment company" as such term is defined in the Investment Company Act of 1940, as amended, and is not and will not be an entity "controlled" by an "investment company" within the meaning of such act.

(i) Except as set forth in the Registration Statement and the Prospectus, there are no actions, suits or proceedings pending or, to the knowledge of the Company, threatened against or affecting the Company, or any of its Subsidiaries or any of their officers in their capacity as such, nor to the knowledge of the Company is there any basis therefor, before or by any Federal or state court, commission, regulatory body, administrative agency or other governmental body, domestic or foreign, wherein an unfavorable ruling, decision or finding might materially and adversely affect the Company and its Subsidiaries taken as a whole or the business, properties, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries taken as a whole.

(j) The Company and each Subsidiary has, and at the Closing Date and, if later, the Option Closing Date, will have, performed in all material respects all the obligations required to be performed by it, and is not, and at the Closing Date, and, if later, the Option Closing Date, will not be, in default, under any contract or other instrument to which it is a party or by which its property is bound or affected, which default might reasonably be expected to materially and adversely affect the Company or the business, properties, condition (financial or other) or results of operations of the Company and its Subsidiaries taken as a whole. To the best knowledge of the Company, no other party under any contract or other instrument to which it or any of its Subsidiaries is a party is in default in any respect thereunder, which default might reasonably be expected to materially and adversely affect the Company and its Subsidiaries taken as a whole or the business, properties, condition (financial or other) or results of operations of the Company and its Subsidiaries taken as a whole. Neither the Company nor any of its Subsidiaries is, and at the Closing Date and, if later, the Option Closing Date, will be, in

violation of any provision of its certificate of incorporation or by-laws or other organizational documents.

(k) No consent, approval, authorization or order of, or any filing or declaration with, any court or governmental agency or body is required for the consummation by the Company of the transactions on its part contemplated herein, except such as have been obtained under the Act or the Rules and Regulations and such as may be required under foreign securities laws, state securities or Blue Sky laws or the by-laws and rules of the National Association of Securities Dealers, Inc. (the "NASD") in connection with the purchase and distribution by the Underwriters of the Shares.

(l) The Company has full corporate power and authority to enter into this Agreement. This Agreement has been duly authorized, executed and delivered by the Company and constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with the terms hereof except (i) as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles and (ii) to the extent that rights to indemnity or contribution under this Agreement may be limited by Federal and state securities laws or the public policy underlying such laws. The performance of this Agreement and the consummation of the transactions contemplated hereby will not result in the creation or imposition of any lien, charge or encumbrance upon any of the assets of the Company pursuant to the terms or provisions of, or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or give any party a right to terminate any of its obligations under, or result in the acceleration of any obligation under, the certificate or articles of incorporation, by-laws or other organizational documents of the Company or any of its Subsidiaries, any indenture, mortgage, deed of trust, voting trust agreement, loan agreement, bond, debenture, note agreement or other evidence of indebtedness, lease, contract or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company, any of its Subsidiaries or any of their properties is bound or affected, or violate or conflict with any judgment, ruling, decree, order, statute, rule or regulation of any court or other governmental agency or body applicable to the business or properties of the Company or any of its Subsidiaries.

(m) The Company and its Subsidiaries have good and, in the case of real property, marketable title to all properties and assets described in the Prospectus as owned by them, free and clear of all liens, charges, encumbrances or restrictions, except such as are described in the Prospectus or are not material to the business of the Company and its Subsidiaries taken as a whole. The Company and its Subsidiaries have valid, subsisting and enforceable leases for the properties described in the Prospectus as leased by them. The Company and its Subsidiaries own or lease all such properties as are necessary to their operations as now conducted or as proposed to be conducted, except where the failure to so own or lease would not materially and adversely affect the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company and, its Subsidiaries taken as a whole.

(n) There is no document, contract, permit or instrument of a character required to be described in the Registration Statement or the Prospectus or to be filed as an exhibit to the Registration Statement which is not described or filed or incorporated by reference as required. All such contracts to which the Company or any of its Subsidiaries is a party have been duly authorized, executed and delivered by the Company or such Subsidiary, constitute valid and binding agreements of the Company or such Subsidiary and are enforceable against and by the Company or such Subsidiary in accordance with the terms thereof except (i) as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles and (ii) to the extent that rights to indemnity or contribution under this Agreement may be limited by Federal and state securities laws or the public policy underlying such laws.

(o) No statement, representation, warranty or covenant made by the Company in this Agreement or made in any certificate or document required by Section 4 of this Agreement to be delivered to the Representatives was or will be, when made, inaccurate, untrue or incorrect in any material respect.

(p) The Company has not distributed and will not distribute prior to the later of (i) the Closing Date or, if later, the Option Closing Date, and (ii) completion of the distribution of the Shares, any offering material in connection with the offering and sale of the Shares other than any preliminary prospectuses, the Prospectus, the Registration Statement and other materials, if any, permitted by the Act. Neither the Company nor any of its directors, officers or controlling persons has taken, directly or indirectly, any action designed, or which might reasonably be expected, to cause or result, under the Act or otherwise, in, or which has constituted, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares.

(q) No holder of securities of the Company has rights to the registration of any securities of the Company because of the filing of the Registration Statement, which rights have not been waived by the holder thereof as of the date hereof.

(r) The Common stock is registered under Section 12(g) of the Exchange Act, and the Company has filed an application to list the Shares on the Nasdaq National Market ("NNM") and has received notification that the listing has been approved, subject to notice of issuance of the Shares. The Company has taken all necessary actions to ensure that, upon the NNM approving the Shares for inclusion, it will be in compliance with all applicable corporate governance requirements set forth in the Nasdaq Marketplace Rules that are then in effect and is actively taking steps to ensure that it will be in compliance with other applicable corporate governance requirements set forth in the Nasdaq Marketplace Rules not currently in effect upon the effectiveness of such requirements.

(s) Except as disclosed in or specifically contemplated by the Prospectus (i) the Company and its Subsidiaries have sufficient trademarks, trade names, patents, patent rights, mask works, copyrights, licenses, approvals and governmental

authorizations necessary to conduct their businesses as now conducted, and to the Company's knowledge, none of the foregoing intellectual property rights owned or licensed by the Company is invalid or unenforceable, (ii) the Company has no knowledge of any infringement by it or any of its Subsidiaries of trademarks, trade name rights, patents, patent rights, mask work rights, copyrights, licenses, trade secrets or other similar rights of others, where such infringement could have a material and adverse effect on the Company, and its Subsidiaries taken as a whole or the business, properties, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries taken as a whole, (iii) the Company is not aware of any infringement, misappropriation or violation by others of, or conflict by others with rights of the Company or any of its Subsidiaries with respect to, any of the foregoing intellectual property rights, and (iv) no claim has been made against the Company or any of its Subsidiaries, or to the best of the Company's knowledge, any employee of the Company or any of its Subsidiaries, regarding trademark, trade name, patent, mask work, copyright, license, trade secret or other infringement which could have a material and adverse effect on the Company and its Subsidiaries taken as a whole or the business, properties, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries taken as a whole.

(t) The Company and each of its Subsidiaries has filed all Federal, state, local and foreign income tax returns which have been required to be filed and has paid all taxes and assessments received by it to the extent that such taxes or assessments have become due. Neither the Company nor any of its Subsidiaries has any tax deficiency which has been or, to the best knowledge of the Company, might be asserted or threatened against it which could have a material and adverse effect on the business, properties, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries taken as a whole.

(u) The Company or its Subsidiaries owns or possesses all authorizations, approvals, orders, licenses, registrations, other certificates and permits of and from all governmental regulatory officials and bodies, necessary to conduct their respective businesses as contemplated in the Prospectus, except where the failure to own or possess all such authorizations, approvals, orders, licenses, registrations, other certificates and permits would not materially and adversely affect the Company and its Subsidiaries taken as a whole or the business, properties condition (financial or otherwise) or results of operations of the Company and its Subsidiaries taken as a whole. There is no proceeding pending or, to the knowledge of the Company, threatened (or any basis therefor known to the Company) which may cause any such authorization, approval, order, license, registration, certificate or permit to be revoked, withdrawn, cancelled, suspended or not renewed; and the Company and each of its Subsidiaries is conducting its business in compliance with all laws, rules and regulations applicable thereto (including, without limitation, all applicable Federal, state and local environmental laws and regulations) except where such noncompliance would not materially and adversely affect the Company, and its Subsidiaries taken as a whole or the business, properties condition (financial or otherwise) or results of operations of the Company and its Subsidiaries taken as a whole.

(v) The Company and each of its Subsidiaries maintains insurance of the types and in the amounts generally deemed adequate for its business, including, but not limited to, insurance covering real and personal property owned or leased by the Company and its Subsidiaries against theft, damage, destruction, acts of vandalism and all other risks customarily insured against, all of which insurance is in full force and effect.

(w) Neither the Company nor any of its Subsidiaries has nor, to the best of the Company's knowledge, any of its or their respective employees or agents at any time during the last five years (i) made any unlawful contribution to any candidate for foreign office, or failed to disclose fully any contribution in violation of law, or (ii) made any payment to any Federal or state governmental officer or official, or other person charged with similar public or quasi-public duties, other than payments required or permitted by the laws of the United States or any jurisdiction thereof.

(x) The books, records and accounts of the Company and its Subsidiaries accurately and fairly reflect, in reasonable detail, the transactions in, and dispositions of, the assets of, and the results of operations of, the Company and its Subsidiaries. The Company and each of its Subsidiaries maintains (i) systems of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorizations, (B) transactions are recorded as necessary to permit preparation of the Company's consolidated financial statements in accordance with United States generally accepted accounting principles and to maintain asset accountability, (C) access to assets is permitted only in accordance with management's general or specific authorization and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences, and (ii) disclosure controls and procedures (as defined in Rule 13a-14(c) under the Exchange Act).

(y) No labor disturbance by the employees of the Company or any Subsidiary exists or, to the best of the Company's knowledge, is imminent which, in either case (individually or in the aggregate), would materially and adversely affect the Company and its Subsidiaries taken as a whole or the business, properties, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries taken as a whole.

(z) No "prohibited transaction" (as defined in either Section 406 of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA") or Section 4975 of the Internal Revenue Code of 1986, as amended from time to time (the "Code")), "accumulated funding deficiency" (as defined in Section 302 of ERISA) or other event of the kind described in Section 4043(b) of ERISA (other than events with respect to which the 30-day notice requirement under Section 4043 of ERISA has been waived) has occurred or is expected to occur with respect to any employee benefit plan for which the Company, or any other entity which, with the Company, would be treated as one employer (as described in Code Section 414 ("ERISA Affiliate")) has or could have any

liability which would materially and adversely affect the Company and its Subsidiaries taken as a whole or the business, properties, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries taken as a whole; each employee benefit plan for which the Company or any ERISA Affiliate has or could have any liability is in compliance in all material respects with applicable law, including (without limitation) ERISA and the Code; neither the Company nor any ERISA Affiliate has incurred nor does any expect to incur any material liability under Title IV of ERISA with respect to the termination of, or withdrawal from, any pension plan subject to ERISA, including any multiemployer plan; and each plan for which the Company could have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which could cause the loss of such qualification.

(aa) There has been no storage, generation, transportation, handling, treatment, disposal, discharge, emission or other release of any kind of toxic or other wastes or other hazardous substances by, due to, or caused by, the Company or any Subsidiary (or, to the Company's knowledge, any other entity for whose acts or omissions the Company is or may be liable) upon any property now or previously owned or leased by the Company or any Subsidiary, or upon any other property, which would be a violation of or give rise to any liability under any applicable law, rule, regulation, order, judgment, decree or permit relating to pollution or protection of human health and the environment ("Environmental Law"), except as disclosed, or not required to be disclosed, in the Prospectus. Neither the Company nor any Subsidiary has agreed to assume, undertake or provide indemnification for any liability of any other person under any Environmental Law, including any obligation for cleanup or remedial action, except as disclosed, or not required to be disclosed, in the Prospectus. Except as disclosed, or not required to be disclosed, in the Prospectus, there is no pending or, to the best of the Company's knowledge, threatened administrative, regulatory or judicial action, claim or notice of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any Subsidiary.

(bb) Neither the Company nor, to the knowledge of the Company, any of its officers, directors or affiliates has taken or will take, directly or indirectly, any action designed or intended to stabilize or manipulate the price of any security of the Company, or which caused or resulted in, or which might in the future reasonably be expected to cause or result in, stabilization or manipulation of the price of any security of the Company.

(cc) No relationship, direct or indirect, exists between or among the Company on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company on the other hand, which is required to be described in the Prospectus and which is not so described.

(dd) Neither the Company nor any of its Subsidiaries own any "margin securities" as that term is defined in Regulation U of the Board of Governors of the Federal Reserve System (the "Federal Reserve Board"), and none of the proceeds of the sale of the Shares will be used, directly or indirectly, for the purpose of purchasing or

carrying any margin security, for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any margin security or for any other purpose which might cause any of the Shares to be considered a “purpose credit” within the meanings of Regulation T, U or X of the Federal Reserve Board.

(ee) The Company is in compliance in all material respects with all applicable provisions of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”) and all rules and regulations promulgated thereunder that are then in effect, is implementing the provisions thereof in accordance thereof, and is actively taking steps to ensure that it will be in compliance with other applicable provisions of the Sarbanes-Oxley Act not currently in effect upon the effectiveness of such provisions.

(ff) Neither the Company nor any of its Subsidiaries is a party to any contract, agreement or understanding with any person that would give rise to a valid claim against the Company or the Underwriters for a brokerage commission, finder’s fee or like payment in connection with the offering and sale of the Stock other than this Agreement.

4. Agreements of the Company

The Company covenants and agrees with the several Underwriters as follows:

(a) The Company will not, either prior to the Effective Date or thereafter during such period as the Prospectus is required by law to be delivered in connection with sales of the Shares by an Underwriter or dealer, file any amendment or supplement to the Registration Statement or the Prospectus, unless a copy thereof shall first have been submitted to the Representatives within a reasonable period of time prior to the filing thereof and the Representatives shall not have objected thereto in good faith.

(b) The Company will use its best efforts to cause the Registration Statement to become effective, and will notify the Representatives promptly, and will confirm such advice in writing, (i) when the Registration Statement has become effective and when any post-effective amendment thereto becomes effective, (ii) of any request by the Commission for amendments or supplements to the Registration Statement or the Prospectus or for additional information, (iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose or the threat thereof, (iv) of the happening of any event during the period mentioned in the second sentence of Section 4(e) that in the judgment of the Company makes any statement made in the Registration Statement or the Prospectus contain an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances in which they are made, not misleading and (v) of receipt by the Company or any representative or attorney of the Company of any other communication from the Commission relating to the Company, the Registration Statement, any preliminary prospectus or the Prospectus. If at any time the Commission shall issue any order suspending the effectiveness of the Registration Statement, the Company will make every

reasonable effort to obtain the withdrawal of such order at the earliest possible moment. If the Company has omitted any information from the Registration Statement pursuant to Rule 430A of the Rules and Regulations, the Company will comply with the provisions of and make all requisite filings with the Commission pursuant to said Rule 430A and notify the Representatives promptly of all such filings. If the Company elects to rely upon Rule 462(b) under the Act, the Company shall file a registration statement under Rule 462(b) with the Commission in compliance with Rule 462(b) by 10:00 p.m., Washington, D.C. time, on the date of this Agreement, and the Company shall at the time of filing either pay to the Commission the filing fee for such Rule 462(b) registration statement or give irrevocable instructions for the payment of such fee pursuant to the Rules and Regulations.

(c) The Company will furnish to each Representative, without charge, one signed copy of each of the Registration Statement and of any pre- or post-effective amendment thereto, including financial statements and schedules, and all exhibits thereto and will furnish to the Representatives, without charge, for transmittal to each of the other Underwriters, a copy of the Registration Statement and any pre- or post-effective amendment thereto, including financial statements and schedules but without exhibits.

(d) The Company will comply with all the provisions of any undertakings contained in the Registration Statement.

(e) On the Effective Date, and thereafter from time to time, so long as delivery of a prospectus by an Underwriter or dealer is, in the reasonable opinion of the Underwriters, required by the Act or the Rules and Regulations, the Company will deliver to each of the Underwriters, without charge, as many copies of the Prospectus or any amendment or supplement thereto as the Representatives may reasonably request. The Company consents to the use of the Prospectus or any amendment or supplement thereto by the several Underwriters and by all dealers to whom the Shares may be sold, both in connection with the offering or sale of the Shares and for any period of time thereafter during which the Prospectus is required by law to be delivered in connection therewith. If during such period of time any event shall occur the result of which in the judgment of the Company or counsel to the Underwriters results or would result in the Prospectus, as then amended or supplemented, including an untrue statement of material fact or omitting to state any material fact necessary in order to make any statement therein, in the light of the circumstances under which it was made, not misleading, or if it is necessary to supplement or amend the Prospectus to comply with the Act or other applicable securities laws, the Company will forthwith prepare and duly file with the Commission an appropriate supplement or amendment thereto, and will deliver to each of the Underwriters, without charge, such number of copies of such supplement or amendment to the Prospectus as the Representatives may reasonably request. The Company will not file any document under the Exchange Act or the Exchange Act Rules and Regulations before the termination of the offering of the Shares by the Underwriters, if such document would be deemed to be incorporated by reference into the Prospectus, that is not approved by the Representatives after reasonable notice thereof.

(f) Prior to any public offering of the Shares, the Company will cooperate with the Representatives and counsel to the Underwriters in connection with the registration or qualification of the Shares for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Representatives may request; provided, that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action which would subject it to taxation or general service of process in any jurisdiction where it is not now so subject.

(g) The Company will, so long as required under the Rules and Regulations, furnish to its stockholders as soon as practicable after the end of each fiscal year an annual report (including a balance sheet and statements of income, stockholders' equity and cash flow of the Company and its consolidated Subsidiaries, if any, certified by independent public accountants).

(h) During the period of three years commencing on the Effective Date, the Company will furnish to the Representatives and each other Underwriter who may so request a copy of such financial statements and other periodic and special reports as the Company may from time to time distribute generally to the holders of any class of its capital stock, and will furnish to the Representatives and each other Underwriter who may so request a copy of each annual or other report it shall be required to file with the Commission.

(i) The Company will make generally available to holders of its securities as soon as may be practicable but in no event later than the Availability Date (as defined below) an earnings statement (which need not be audited but shall be in reasonable detail) covering a period of 12 months commencing after the Effective Date which will satisfy the provisions of Section 11(a) of the Act (including Rule 158 of the Rules and Regulations). For the purpose of the preceding sentence, "Availability Date" means the 45th day after the end of the fourth fiscal quarter following the fiscal quarter that includes such Effective Date, except that if such fourth fiscal quarter is the last quarter of the Company's fiscal year, "Availability Date" means the 90th day after the end of such fourth fiscal quarter.

(j) Whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, the Company will pay or reimburse if paid by the Representatives all costs and expenses incident to the performance of the obligations of the Company under this Agreement and in connection with the transactions contemplated hereby, including but not limited to costs and expenses of or relating to (i) the preparation, printing and filing of the Registration Statement and exhibits to it, each preliminary prospectus, Prospectus and any amendment or supplement to the Registration Statement or Prospectus, (ii) the preparation and delivery of certificates representing the Shares, (iii) the printing of this Agreement, the Agreement Among Underwriters, any Selected Dealer Agreements, any Underwriters' Questionnaires, any Underwriters' Powers of Attorney, and any invitation letters to prospective Underwriters, (iv) furnishing (including costs of shipping and mailing) such copies of the Registration Statement, the Prospectus and any preliminary prospectus, and all amendments and supplements thereto, as may be requested for use in connection with the offering and sale of the Shares by the

Underwriters or by dealers to whom Shares may be sold, (v) the listing of the Shares on the NNM, (vi) any filings required to be made by the Underwriters with the NASD, and the reasonable fees, disbursements and other charges of counsel for the Underwriters in connection therewith, (vii) the registration or qualification of the Shares for offer and sale under the securities or Blue Sky laws of such jurisdictions designated pursuant to Section 4(f), including the reasonable fees, disbursements and other charges of counsel to the Underwriters in connection therewith, and the preparation and printing of preliminary, supplemental and final Blue Sky memoranda, (viii) fees, disbursements and other charges of counsel to the Company (but not those of counsel for the Underwriters, except as otherwise provided herein), (ix) the transfer agent for the Shares and (x) any travel expenses of the Company's officers, directors and employees and any other expenses of the Company in connection with attending or hosting meetings with prospective purchasers of the Shares.

(k) The Company will not at any time, directly or indirectly, take any action designed or which might reasonably be expected to cause or result in, or which will constitute, stabilization of the price of the shares of Common Stock to facilitate the sale or resale of any of the Shares.

(l) The Company will apply the net proceeds from the offering and sale of the Shares to be sold by the Company in the manner set forth in the Prospectus under "Use of Proceeds."

(m) During the period beginning from the date hereof and continuing to and including the date 90 days after the date of the Prospectus, without the prior written consent of Needham & Company, Inc., the Company will not (1) offer, sell, contract to sell, pledge, grant options, warrants or rights to purchase, or otherwise dispose of any equity securities of the Company or any other securities convertible into or exchangeable for its Common Stock or other equity security (other than pursuant to employee stock option or equity incentive plans disclosed in the Prospectus or pursuant to the conversion of convertible securities or the exercise of warrants in each case outstanding on the date of this Agreement), or (2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of shares of Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise.

(n) The Company will cause each of its officers, directors and certain stockholders designated by the Representatives to, enter into lock-up agreements with the Representatives to the effect that they will not, without the prior written consent of Needham & Company, Inc., sell, contract to sell or otherwise dispose of any shares of Common Stock or rights to acquire such shares according to the terms set forth in Schedule II hereto.

5. Conditions of the Obligations of the Underwriters

The obligations of each Underwriter hereunder are subject to the following conditions:

(a) Notification that the Registration Statement has become effective shall be received by the Representatives not later than 10:00 p.m., New York City time, on the date of this Agreement or at such later date and time as shall be consented to in writing by the Representatives and all filings required by Rule 424 and Rule 430A of the Rules and Regulations shall have been made. If the Company has elected to rely upon Rule 462(b), the registration statement filed under Rule 462(b) shall have become effective by 10:00 p.m., New York City time, on the date of this Agreement.

(b) (i) No stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall be pending or threatened by the Commission, (ii) no order suspending the effectiveness of the Registration Statement or the qualification or registration of the Shares under the securities or Blue Sky laws of any jurisdiction shall be in effect and no proceeding for such purpose shall be pending before or threatened by the Commission or the authorities of any such jurisdiction, (iii) any request for additional information on the part of the staff of the Commission or any such authorities shall have been complied with to the satisfaction of the staff of the Commission or such authorities, (iv) after the date hereof no amendment or supplement to the Registration Statement or the Prospectus shall have been filed unless a copy thereof was first submitted to the Representatives and the Representatives do not object thereto in good faith, and (v) the Representatives shall have received certificates, dated the Closing Date and, if later, the Option Closing Date and signed by the Chief Executive Officer and the Chief Financial Officer of the Company (who may, as to proceedings threatened, rely upon the best of their information and belief), to the effect of clauses (i), (ii) and (iii) of this paragraph.

(c) Since the respective dates as of which information is given in the Registration Statement and the Prospectus, (i) there shall not have been a material adverse change in the business, properties, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries taken as a whole, whether or not arising from transactions in the ordinary course of business, in each case other than as described in or contemplated by the Registration Statement and the Prospectus and (ii) the Company and the Subsidiaries shall not have sustained any material loss or interference with the business or properties of the Company and the Subsidiaries, taken as a whole, from fire, explosion, flood or other casualty, whether or not covered by insurance, or from any labor dispute or any court or legislative or other governmental action, order or decree, which is not described in the Registration Statement and the Prospectus, if in the judgment of the Representatives any such development makes it impracticable or inadvisable to consummate the sale and delivery of the Shares by the Underwriters at the initial public offering price.

(d) Since the respective dates as of which information is given in the Registration Statement and the Prospectus, there shall have been no litigation or other proceeding instituted against the Company, any of its Subsidiaries, or any of its or their officers or directors in their capacities as such, before or by any Federal, state or local

court, commission, regulatory body, administrative agency or other governmental body, domestic or foreign, in which litigation or proceeding an unfavorable ruling, decision or finding would, in the judgment of the Representatives, materially and adversely affect the business, properties, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries taken as a whole or, if, in the judgment of the Representatives, any such development makes it impracticable or inadvisable to consummate the sale and delivery of the Shares by the Underwriters at the public offering price.

(e) Each of the representations and warranties of the Company contained herein shall be true and correct in all respects (in the case of any representation and warranty containing a materiality or material adverse effect qualification) or in all material respects at the Closing Date and, with respect to the Option Shares, at the Option Closing Date, and all covenants and agreements contained herein to be performed on the part of the Company and all conditions contained herein to be fulfilled or complied with by the Company at or prior to the Closing Date and, with respect to the Option Shares, at or prior to the Option Closing Date, shall have been duly performed, fulfilled or complied with.

(f) The Representatives shall have received an opinion, dated the Closing Date and, with respect to the Option Shares, the Option Closing Date, satisfactory in form and substance to the Representatives and counsel for the Underwriters from Wyatt, Tarrant & Combs, LLP, counsel to the Company, with respect to the following matters:

(i) Each of the Company and its subsidiaries listed in Exhibit 21 to the Company's Form 10-K for the year ended December 31, 2003 (the "Principal Subsidiaries") is a corporation or other entity duly incorporated or formed, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; has full corporate or other entity power and authority to conduct all the activities conducted by it, to own or lease all the assets owned or leased by it and to conduct its business as described in the Registration Statement and Prospectus; and is duly licensed or qualified to do business and is in good standing, where applicable, as a foreign entity in all jurisdictions in which the nature of the activities conducted by it or the character of the assets owned or leased by it of which such counsel has knowledge after due inquiry makes such license or qualification necessary and where the failure to be licensed or qualified would have a material and adverse effect on the business or financial condition of the Company and Principal Subsidiaries, taken as a whole.

(ii) All of the outstanding shares of capital stock of the Company have been duly authorized, validly issued and are fully paid and nonassessable and, to such counsel's knowledge after due inquiry, were not issued in violation of or subject to any preemptive or, to such counsel's knowledge after due inquiry, similar rights.

(iii) The specimen certificate evidencing the Common Stock filed or incorporated by reference as an exhibit to the Registration Statement is in due and proper form under Delaware law, the Shares have been duly authorized and, when issued and paid for as contemplated by this Agreement, will be validly issued, fully paid and nonassessable; and no statutory or, to such counsel's knowledge after due inquiry, contractual preemptive or similar rights exist with respect to any of the Shares or the issue and sale thereof.

(iv) To such counsel's knowledge, the Company does not own or control, directly or indirectly, any shares of stock or any other equity or long-term debt securities of any corporation or have any equity interest in any corporation, firm, partnership, joint venture, association or other entity other than (i) the Principal Subsidiaries, and (ii) other subsidiaries individually and collectively not material to the Company and its business or financial condition. All of the outstanding shares of capital stock, units or other equity interests of each Principal Subsidiary have been duly authorized and validly issued and are fully paid and nonassessable, and are owned of record by the Company or one of the other Principal Subsidiaries to such counsel's knowledge after due inquiry free and clear of all claims, liens, charges and encumbrances, except for any lien or security interest in such shares, units or other equity interests pursuant to the Credit Facility; to such counsel's knowledge, there are no securities outstanding that are convertible into or exercisable or exchangeable for capital stock, units or other equity interest of any Principal Subsidiary.

(v) The authorized and outstanding capital stock of the Company is as set forth in the Registration Statement and the Prospectus in the column entitled "Actual" under the caption "Capitalization" (except for subsequent issuances, if any, pursuant to this Agreement or pursuant to reservations, agreements, employee benefit plans or the exercise of convertible securities, options or warrants referred to in the Prospectus). To such counsel's knowledge, except as disclosed in or specifically contemplated by the Prospectus, there are no outstanding options, warrants or other rights calling for the issuance of, and no commitments, plans or arrangements to issue, any shares of capital stock of the Company or any security convertible into or exchangeable or exercisable for capital stock of the Company. The description of the capital stock of the Company incorporated by reference in the Registration Statement and the Prospectus conforms in all material respects to the terms thereof.

(vi) To such counsel's knowledge, there are no legal or governmental proceedings pending or threatened to which the Company or any of its Principal Subsidiaries is a party or to which any of their respective properties is subject that are required to be described in the Registration Statement or the Prospectus but are not so described.

(vii) No consent, approval, authorization or order of, or any filing or declaration with, any court or governmental agency or body is required for the consummation by the Company of the transactions on its part contemplated under

this Agreement, except such as have been obtained or made under the Act or the Rules and Regulations and such as may be required under foreign or state securities or Blue Sky laws, as to which foreign or state securities or Blue Sky laws such counsel renders no opinion, or the by-laws and rules of the NASD in connection with the purchase and distribution by the Underwriters of the Shares.

(viii) The Company has full corporate power and authority to enter into this Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(ix) The execution and delivery of this Agreement, the compliance by the Company with all of the terms hereof and the consummation of the transactions contemplated hereby does not contravene any provision of United States Federal or Kentucky law, or the Delaware General Corporation Law, or the Certificate of Incorporation or By-Laws of the Company or the organizational and governing documents of any of its Subsidiaries, and to the best of such counsel's knowledge after due inquiry will not result in the creation or imposition of any lien, charge or encumbrance upon any of the assets of the Company or any of its Subsidiaries pursuant to the terms and provisions of, result in a breach or violation of any of the terms or provisions of, or constitute a default under, or give any party a right to terminate any of its obligations under, or result in the acceleration of any obligation under, any indenture, mortgage, deed of trust, voting trust agreement, loan agreement, bond, debenture, note agreement or other evidence of indebtedness, lease, contract or other agreement or instrument known to such counsel to which the Company or any of its Principal Subsidiaries is a party or by which the Company, any of its Principal Subsidiaries, or any of their respective properties is bound or affected, or violate or conflict with (i) any judgment, ruling, decree or order known to such counsel which breach, violation or conflict would have a material adverse effect on the Company and its Principal Subsidiaries, taken as a whole, or (ii) any United States Federal or Kentucky law or the Delaware General Corporation Law, or to such counsel's knowledge any other state statute, rule or regulation of any governmental agency or body, applicable to the business or properties of the Company or any of its Principal Subsidiaries which breach, violation or conflict would have a material adverse effect on the Company and its Principal Subsidiaries, taken as a whole.

(x) To such counsel's knowledge, there is no document or contract of a character required to be described in the Registration Statement or the Prospectus or to be filed as an exhibit to the Registration Statement which is not described or filed or incorporated by reference as required, and each description of such contracts and documents that is contained in the Registration Statement and Prospectus fairly presents in all material respects the information required under the Act and the Rules and Regulations.

(xi) The statements under the captions "Risk Factors—Our stock price may decline if additional shares are sold in the market after the offering" and "Risk Factors—Our anti-takeover provisions and the concentration of ownership of

our common stock may deter potential acquirers and may depress our stock price” (relating to shares eligible for future sale and anti-takeover provisions), “Certain Relationships and Related Transactions”, “Description of Capital Stock” and “Shares Eligible for Future Sale” in the Prospectus or incorporated by reference therein, insofar as the statements constitute a summary of documents referred to therein or matters of law, are accurate summaries and fairly and correctly present, in all material respects, the information called for with respect to such documents and matters of law (provided, however, that such counsel may rely on representations of the Company with respect to the factual matters contained in such statements, and provided further that such counsel shall state that nothing has come to the attention of such counsel which leads them to believe that such representations are not true and correct in all material respects).

(xii) The Company is not an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

(xiii) Such counsel has received oral notification from the NNM that the Shares have been duly authorized for listing on the NNM, subject to notice of issuance.

(xiv) To such counsel’s knowledge, no holder of securities of the Company has rights, which have not been waived, to require the Company to register with the Commission shares of Common Stock or other securities, as part of the offering contemplated hereby.

(xv) Based on a telephonic communication with the Commission, the Registration Statement has become effective under the Act, and to the best of such counsel’s knowledge, no stop order suspending the effectiveness of the Registration Statement has been issued and no proceeding for that purpose has been instituted or is pending, or threatened.

(xvi) The Registration Statement and the Prospectus, as of their respective effective or issue dates, appeared to be appropriately responsive in all material respects to the requirements of the Act and the Rules and Regulations (other than the financial statements, schedules and other financial data contained or incorporated by reference in the Registration Statement or the Prospectus, as to which such counsel need express no opinion).

(xvii) Such counsel has participated in conferences with officers and other representatives of the Company, representatives of the Representatives and representatives of the independent accountants of the Company, at which the contents of the Registration Statement and the Prospectus and related matters were discussed. Although such counsel is not passing upon, and is not assuming responsibility for, the accuracy, completeness or fairness of the statements contained in the Registration Statement or the Prospectus, on the basis of the foregoing, no facts have come to the attention of such counsel which leads such counsel to believe that, as of the Effective Date the Registration Statement (other

than the financial statements, schedules and other financial data contained or incorporated by reference therein, as to which such counsel need express no opinion), contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the Prospectus, or any amendment or supplement thereto, as of its date, contained any untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (other than the financial statements, schedules and other financial data contained or incorporated by reference therein, as to which such counsel need express no opinion).

(xviii) The documents incorporated by reference in the Prospectus (other than the financial statements, schedules and other financial data contained therein, as to which such counsel need express no opinion), subject to any amendments thereto and any subsequently filed documents which supersede such documents, when they were filed with the Commission appeared to be appropriately responsive in all material respects with the requirements of the Exchange Act and the Exchange Act Rules and Regulations.

In rendering such opinion, such counsel may rely, as to matters of local law, on opinions of counsel satisfactory in form and substance to the Representatives and counsel, for the Underwriters, provided that the opinion of counsel, to the Company shall state that they are doing so, that they have no reason to believe that they and the Underwriters are not entitled to rely on such opinions and that copies of such opinions are to be attached to the opinion.

(g) The Representatives shall have received an opinion, dated the Closing Date and the Option Closing Date, from Piper Rudnick LLP, counsel to the Underwriters, with respect to the Registration Statement, the Prospectus and this Agreement, which opinion shall be satisfactory in all respects to the Representatives.

(h) Concurrently with the execution and delivery of this Agreement, the Accountants shall have furnished to the Representatives a letter, dated the date of its delivery, addressed to the Representatives and in form and substance satisfactory to the Representatives, confirming that they are independent accountants with respect to the Company and its Subsidiaries as required by the Act and the Exchange Act and the Rules and Regulations and with respect to certain financial and other statistical and numerical information contained or incorporated by reference in the Registration Statement. At the Closing Date and, as to the Option Shares, the Option Closing Date, the Accountants shall have furnished to the Representatives a letter, dated the date of its delivery, which shall confirm, on the basis of a review in accordance with the procedures set forth in the letter from the Accountants, that nothing has come to their attention during the period from the date of the letter referred to in the prior sentence to a date (specified in the letter) not more than three days prior to the Closing Date and the Option Closing Date, as the case may be, which would require any change in their letter dated the date hereof if it were required to be dated and delivered at the Closing Date and the Option Closing Date

(i) At the Closing Date and, as to the Option Shares, the Option Closing Date, there shall be furnished to the Representatives a certificate, dated the date of its delivery, signed by each of the Chief Executive Officer and the Chief Financial Officer of the Company, in form and substance satisfactory to the Representatives, to the effect that;

(i) Each signer of such certificate has carefully examined the Registration Statement and the Prospectus (including any documents filed under the Exchange Act and deemed to be incorporated by reference into the Prospectus) and (A) as of the date of such certificate, such documents are true and correct in all material respects and do not omit to state a material fact required to be stated therein or necessary in order to make the statements therein not untrue or misleading in any material respect and (B) in the case of the certificate delivered at the Closing Date and the Option Closing Date, since the Effective Date no event has occurred as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein not untrue or misleading in any material respect.

(ii) Each of the representations and warranties of the Company contained in this Agreement were, when originally made, and are, at the time such certificate is delivered, true and correct.

(iii) Each of the covenants required to be performed by the Company herein on or prior to the date of such certificate has been duly, timely and fully performed and each condition herein required to be satisfied or fulfilled on or prior to the date of such certificate has been duly, timely and fully satisfied or fulfilled.

(j) On or prior to the Closing Date, the Representatives shall have received the executed agreements referred to in Section 4(n).

(k) The Shares shall be qualified for sale in such jurisdictions as the Representatives may reasonably request and each such qualification shall be in effect and not subject to any stop order or other proceeding on the Closing Date or the Option Closing Date.

(l) Prior to the Closing Date, the Shares shall have been duly authorized for listing on the NNM upon official notice of issuance.

6. Indemnification.

(a) Company will indemnify and hold harmless each Underwriter, the directors, officers, employees and agents of each Underwriter and each person, if any, who controls each Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, from and against any and all losses, claims, liabilities, expenses and damages (including any and all investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted), to which they, or any of them, may become subject under the Act, the Exchange Act or other Federal or state statutory law or regulation, at

common law or otherwise, insofar as such losses, claims, liabilities, expenses or damages arise out of or are based on any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus, the Registration Statement or the Prospectus or any amendment or supplement to the Registration Statement or the Prospectus, or the omission or alleged omission to state in such document a material fact required to be stated in it or necessary to make the statements in it not misleading in the light of the circumstances in which they were made, or arise out of or are based in whole or in part on any inaccuracy in the representations and warranties of the Company contained herein or any failure of the Company to perform its obligations hereunder or under law in connection with the transactions contemplated hereby; provided, however, that (i) the Company will not be liable to the extent that such loss, claim, liability, expense or damage arises from the sale of the Shares in the public offering to any person by an Underwriter and is based on an untrue statement or omission, or alleged untrue statement or omission made in reliance on and in conformity with information relating to any Underwriter furnished in writing to the Company by the Representatives, on behalf of any Underwriter, expressly for inclusion in the Registration Statement, the preliminary prospectus or the Prospectus and (ii) the Company will not be liable to any Underwriter, the directors, officers, employees or agents of such Underwriter or any person controlling such Underwriter with respect to any loss, claim, liability, expense, or damage arising out of or based on any untrue statement or omission or alleged untrue statement or omission or alleged omission to state a material fact in the preliminary prospectus which is corrected in the Prospectus if the person asserting any such loss, claim, liability, expense or damage purchased Shares from such Underwriter but was not sent or given a copy of the Prospectus at or prior to the written confirmation of the sale of such Shares to such person and if copies of the Prospectus were timely delivered to such Underwriter pursuant to Section 5 hereof. The Company acknowledges that the statements set forth in the third to last sentence of Section 3(b) of this Agreement constitute the only information relating to any Underwriter furnished in writing to the Company by the Representatives on behalf of the Underwriters expressly for inclusion in the Registration Statement, the preliminary prospectus or the Prospectus. This indemnity agreement will be in addition to any liability that the Company might otherwise have.

(b) Each Underwriter will indemnify and hold harmless the Company, each director of the Company, each officer of the Company who signs the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from the Company to each Underwriter, as set forth in Section 6(a), but only insofar as losses, claims, liabilities, expenses or damages arise out of or are based on any untrue statement or omission or alleged untrue statement or omission made in reliance on and in conformity with information relating to any Underwriter furnished in writing to the Company by the Representatives, on behalf of such Underwriter, expressly for use in the Registration Statement, the preliminary prospectus or the Prospectus. The Company acknowledges that the statements set forth in the third to last sentence of Section 3(b) of this Agreement constitute the only information relating to any Underwriter furnished in writing to the Company by the Representatives on behalf of the Underwriters expressly for inclusion in the Registration Statement, the preliminary

prospectus or the Prospectus. This indemnity will be in addition to any liability that each Underwriter might otherwise have.

(c) Any party that proposes to assert the right to be indemnified under this Section 6 shall, promptly after receipt of notice of commencement of any action against such party in respect of which a claim is to be made against an indemnifying party or parties under this Section 6, notify each such indemnifying party in writing of the commencement of such action, enclosing with such notice a copy of all papers served, but the omission so to notify such indemnifying party will not relieve it from any liability that it may have to any indemnified party under the foregoing provisions of this Section 6 unless, and only to the extent that, such omission results in the loss of substantive rights or defenses by the indemnifying party. If any such action is brought against any indemnified party and it notifies the indemnifying party of its commencement, the indemnifying party will be entitled to participate in and, to the extent that it elects by delivering written notice to the indemnified party promptly after receiving notice of the commencement of the action from the indemnified party, jointly with any other indemnifying party similarly notified, to assume the defense of the action, with counsel reasonably satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense, the indemnifying party will not be liable to the indemnified party for any legal or other expenses except as provided below and except for the reasonable costs of investigation incurred by the indemnified party in connection with the defense. The indemnified party will have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel will be at the expense of such indemnified party unless (i) the employment of counsel by the indemnified party has been, authorized in writing by the indemnifying party, (ii) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (iii) a conflict or potential conflict exists (based on advice of counsel) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party) or (iv) the indemnifying party has not in fact employed counsel reasonably satisfactory to the indemnified party to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm admitted to practice in such jurisdiction at any one time for all such indemnified party or parties. All such fees, disbursements and other charges will be reimbursed by the indemnifying party promptly as they are incurred. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on

behalf of an indemnified party. An indemnifying party will not be liable for any settlement of any action or claim effected without its written consent (which consent will not be unreasonably withheld or delayed).

(d) If the indemnification provided for in this Section 6 is applicable in accordance with its terms but for any reason is held to be unavailable to or insufficient to hold harmless an indemnified party under paragraphs (a), (b) and (c) of this Section 6 in respect of any losses, claims, liabilities, expenses and damages referred to therein, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable (including any investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted, but after deducting any contribution received by the Company from persons other than the Underwriters, such as persons who control the Company within the meaning of the Act, officers of the Company who signed the Registration Statement and directors of the Company, who also may be liable for contribution) by such indemnified party as a result of such losses, claims, liabilities, expenses and damages in such proportion as shall be appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. If, but only if, the allocation provided by the foregoing sentence is not permitted by applicable law, the allocation of contribution shall be made in such proportion as is appropriate to reflect not only the relative benefits referred to in the foregoing sentence but also the relative fault of the Company, on the one hand, and the Underwriters, on the other hand, with respect to the statements or omissions which resulted in such loss, claim, liability, expense or damage, or action in respect thereof, as well as any other relevant equitable considerations with respect to such offering. Such relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Representatives on behalf of the Underwriters, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section 6(d) were to be determined by pro rata allocation (even if the Underwriters were created as one entity for such purpose) or by any other method of allocation which does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss claim, liability, expense or damage, or action in respect thereof, referred to above in this Section 6(d) shall be deemed to include, for purposes of this Section 6(d), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 6(d), no Underwriter shall be required to contribute any amount in excess of the underwriting discounts received by it and no person found guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) will be entitled to contribution from any person who was not guilty of such

fraudulent misrepresentation. The Underwriters' obligations to contribute as provided in this Section 6(d) are several in proportion to their respective underwriting obligations and not joint. For purposes of this Section 6(d), any person who controls a party to this Agreement within the meaning of the Act will have the same rights to contribution as that party, and each director and each officer of the Company who signed the Registration Statement will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against any such party in respect of which a claim for contribution may be made under this Section 6(d), will notify any such party or parties from whom contribution may be sought, but the omission so to notify will not relieve the party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 6(d). No party will be liable for contribution with respect to any action or claim settled without its written consent (which consent will not be unreasonably withheld).

(e) The indemnity and contribution agreements contained in this Section 6 and the representations and warranties of the Company contained in this Agreement shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of the Underwriters, (ii) acceptance of any of the Shares and payment therefor or (iii) any termination of this Agreement.

7. Reimbursement of Certain Expenses

In addition to its other obligations under Section 6(a) of this Agreement, the Company hereby agrees to reimburse on a quarterly basis the Underwriters for all reasonable legal and other expenses incurred in connection with investigating or defending any claim, action, investigation, inquiry or other proceeding arising out of or based upon, in whole or in part, any statement or omission or alleged statement or omission, or any inaccuracy in the representations and warranties of the Company contained herein or failure of the Company to perform its or their respective obligations hereunder or under law, all as described in Section 6(a), notwithstanding the absence of a judicial determination as to the propriety and enforceability of the obligations under this Section 7 and the possibility that such payment might later be held to be improper; provided, however, that, to the extent any such payment is ultimately held to be improper, the persons receiving such payments shall promptly refund them.

8. Termination

The obligations of the several Underwriters under this Agreement may be terminated at any time on or prior to the Closing Date (or, with respect to the Option Shares, on or prior to the Option Closing Date), by notice to the Company from the Representatives, without liability on the part of any Underwriter to the Company if, prior to delivery and payment for the Firm Shares or Option Shares, as the case may be, in the sole judgment of the Representatives, (i) trading in any of the equity securities of the Company shall have been suspended by the Commission or by the NNM, (ii) trading in securities generally on the NNM shall have been suspended or limited or minimum or maximum prices shall have been generally established on such exchange, or additional

material governmental restrictions, not in force on the date of this Agreement, shall have been imposed upon trading in securities generally by such exchange, by order of the Commission or any court or other governmental authority, or by the NNM, (iii) a general banking moratorium shall have been declared by either Federal or New York State authorities or any material disruption of the securities settlement or clearance services in the United States shall have occurred or (iv) any material adverse change in the financial or securities markets in the United States or in political, financial or economic conditions in the United States or any outbreak or material escalation of hostilities involving the United States, a declaration of national emergency or war by the United States, or other calamity or crisis, either within or outside the United States, shall have occurred, the effect of which is such as to make it, in the sole judgment of the Representatives, impracticable or inadvisable to proceed with completion of the public offering or the delivery of and payment for the Shares.

If this Agreement is terminated pursuant to Section 9 hereof, the Company shall be under no liability to any Underwriter except as provided in Sections 4(j), 6 and 7 hereof; but, if for any other reason the purchase of the Shares by the Underwriters is not consummated or if for any reason the Company shall fail, refuse or be unable to perform its obligations hereunder, the Company will reimburse the several Underwriters for all out-of-pocket expenses (including the fees, disbursements and other charges of counsel to the Underwriters) incurred by them in connection with the offering of the Shares.

9. Substitution of Underwriters

If any one or more of the Underwriters shall fail or refuse to purchase any of the Firm Shares which it or they have agreed to purchase hereunder, and the aggregate number of Firm Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase is not more than one-tenth of the aggregate number of Firm Shares, the other Underwriters shall be obligated, severally, to purchase the Firm Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase, in the proportions which the number of Firm Shares which they have respectively agreed to purchase pursuant to Section 1 bears to the aggregate number of Firm Shares which all such non-defaulting Underwriters have so agreed to purchase, or in such other proportions as the Representatives may specify; provided that in no event shall the maximum number of Firm Shares which any Underwriter has become obligated to purchase pursuant to Section 1 be increased pursuant to this Section 9 by more than one-ninth of such number of Firm Shares without the prior written consent of such Underwriter. In any such case either the Representatives or the Company shall have the right to postpone the Closing Date, but in no event for longer than five business days, in order that the required changes, if any, in the Registration Statement and the Prospectus or in any other documents or arrangements may be effected. If any Underwriter or Underwriters shall fail or refuse to purchase any Firm Shares and the aggregate number of Firm Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase exceeds one-tenth of the aggregate number of the Firm Shares and arrangements satisfactory to the Representatives and the Company for the purchase of such Firm Shares are not made within 48 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Underwriter and the

Company for the purchase or sale of any Shares under this Agreement. Any action taken pursuant to this Section 9 shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

10. Miscellaneous

Notice given pursuant to any of the provisions of this Agreement shall be in writing and, unless otherwise specified, shall be mailed or delivered (a) if to the Company, at the office of the Company, 101 Bullitt Lane, Suite 450, Louisville, Kentucky 40222, Attention: Jeffrey T. Gill, with a copy to Wyatt, Tarrant & Combs, LLP, 500 West Jefferson Street, 28th Floor, Louisville, KY 40207, Attention: Robert A. Heath, Esq., or (b) if to the Underwriters, to the Representatives at the offices of Needham, & Company, Inc., 445 Park Avenue, New York, New York 10022, Attention: Corporate Finance Department, with a copy to Piper Rudnick LLP, 1251 Avenue of the Americas, New York, New York 10020, Attention: Michael Hirschberg, Esq. Any such notice shall be effective only upon receipt.

This Agreement has been and is made solely for the benefit of the several Underwriters, the Company, and the controlling persons, directors and officers referred to in Section 6, and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. The term "successors and assigns" as used in this Agreement shall not include a purchaser, as such purchaser, of Shares from any of the several Underwriters.

Any action required or permitted to be made by the Representatives under this Agreement may be taken by them jointly or by Needham & Company, Inc.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State.

This Agreement may be signed in two or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

The Company and the Underwriters each hereby waive any right they may have to a trial by jury in respect of any claim based upon or arising out of this Agreement or the transactions contemplated hereby.

[Remainder of page intentionally left blank.]

Please confirm that the foregoing correctly sets forth the agreement among the Company and the several Underwriters.

Very truly yours,

SYPRIS SOLUTIONS, INC.

By: /s/ David D. Johnson

Name: David D. Johnson
Title: Vice President

Confirmed as of the date first
above mentioned:

Needham & Company, Inc.
Robert W. Baird & Co. Incorporated
Raymond James & Associates, Inc.
Acting on behalf of themselves
and as the Representatives of
the other several Underwriters
named in Schedule I hereto.

By: Needham & Company, Inc.

By: Janice L. Triolo

Name: Janice L. Triolo
Title: Managing Director

SCHEDULE I
UNDERWRITERS

<u>Underwriters</u>	<u>Number of Firm Shares to be Purchased</u>
Needham & Company, Inc.	1,475,000
Robert W. Baird & Co. Incorporated	737,500
Raymond James & Associates, Inc.	737,500
Stifel, Nicolaus & Company, Incorporated	50,000
Total	3,000,000

CERTIFICATION PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT OF 2002

I, Jeffrey T. Gill, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Sypris Solutions, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 30, 2004

By: /s/ Jeffrey T. Gill

Jeffrey T. Gill
President & Chief Executive Officer

CERTIFICATION PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT OF 2002

I, David D. Johnson, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Sypris Solutions, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 30, 2004

By: /s/ David D. Johnson

David D. Johnson
Vice President & Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Sypris Solutions, Inc. (the "Company") on Form 10-Q for the period ending March 31, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned hereby certifies, pursuant to 18 U.S.C. Sec. 1350, as adopted pursuant to Sec. 906 of the Sarbanes-Oxley Act of 2002, in his capacity as an officer of Sypris Solutions, Inc., that to his knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: April 30, 2004

By: /s/ Jeffrey T. Gill
Jeffrey T. Gill
President & Chief Executive Officer

Date: April 30, 2004

By: /s/ David D. Johnson
David D. Johnson
Vice President & Chief Financial Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Sypris Solutions Inc. and will be retained by Sypris Solutions Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished to the Securities and Exchange Commission as an exhibit to the Form 10-Q and shall not be considered filed as part of the Form 10-Q.