Spansion Inc.
Form S-8
February 26, 2013
As filed with the Securities and Exchange Commission on February 26, 2013

Registration No. 333-

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

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

SPANSION INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

20-3898239
(IRS Employer Identification No.)

915 DeGuigne Drive
P.O. Box 3453
Sunnyvale, California 94088
(Address of Principal Executive Offices) (Zip Code)

Spansion Inc. 2010 Equity Incentive Award Plan
(Full title of the plan)

John H. Kispert
President and Chief Executive Officer
Spansion Inc.
915 DeGuigne Drive, P.O. Box 3453
Sunnyvale, California 94088
(Name and address of agent for service)

(408) 962-2500

(Telephone number, including area code, of agent for service)

Copies to:
Robert W. Phillips
Latham & Watkins LLP
140 Scott Drive
Menlo Park, California 94025
(650) 328-4600

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

x Large accelerated filer	¨ Accelerated filer
¨ Non-accelerated filer (Do not check if a smaller reporting company)	¨ Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Class A Common Stock, par value, $0.001 per share	2,577,033 (2)	$11.72 (3)	$30,202,827	$4,120

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of the Registrant's Class A Common Stock that become issuable under the Spansion Inc. 2010 Equity Incentive Award Plan (the "Plan") by reason of any stock dividend, stock split, recapitalization, or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant's Class A Common Stock.

(2) Represents 2,577,033 additional shares of common stock reserved for future issuance under the Plan in accordance with the automatic increase provision in the Plan.

(3) This estimate is made pursuant to Rule 457(c) and 457(h) of the Securities Act for purposes of calculating the registration fee. The Proposed Maximum Offering Price Per Share is $11.72, which is the average of the high and low prices for the Registrant's common stock as reported on The New York Stock Exchange on February 20, 2013.

REGISTRATION OF ADDITIONAL SECURITIES

The Registrant filed with the Securities and Exchange Commission (the "Commission") the following registration statements on Form S-8 relating to shares of the Registrant's common stock, par value $0.001 per share, to be offered and sold under the Plan, and the contents of such registration statements are incorporated by reference in this registration statement: Registration Statement on Form S-8 filed May 10, 2010 (File No. 333-166715), Registration Statement on Form S-8 filed February 28, 2011 (File No. 333-172519) and Registration Statement on Form S-8 filed February 23, 2012 (File No. 333-179642). The Registrant is hereby registering an additional 2,577,033 shares of common stock issuable or that may become issuable under the Plan.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information called for in Part I of Form S-8 is not being filed with or included in this Form S-8 (by incorporation by reference or otherwise) in accordance with the rules and regulations of the Commission.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Commission are incorporated herein by reference:

- the Registrant's Annual Report on Form 10-K for the fiscal year ended December 30, 2012, filed with the Commission on February 25, 2013; and
- the description of the Class A Common Stock contained in the registration statement on Form 8-A, filed with the Commission on June 22, 2010 by the Registrant to register such securities under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

All documents that the Registrant subsequently files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment to the registration statement which indicates that all of the shares of common stock offered have been sold or which deregisters all of such shares then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of the filing of such documents; except as to any portion of any future annual or quarterly report to stockholders or document or current report furnished under Items 2.02 or 7.01 of Form 8-K that is not deemed filed under such provisions. For the purposes of this registration statement, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Under no circumstances will any information filed under current Items 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Registrant is a Delaware corporation. Subsection (b)(7) of Section 102 of the Delaware General Corporation Law (the "DGCL"), enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for violations of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law; (iii) under Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions); or (iv) for any transaction from which the director derived an improper personal benefit.

Section 145 of the DGCL authorizes a court to award, or a corporation's board of directors to grant, indemnity to officers, directors and other corporate agents in terms sufficiently broad to permit such indemnification under certain circumstances and subject to certain limitations.

As permitted by Section 145 of the DGCL, the Registrant's certificate of incorporation includes a provision that eliminates the personal liability of its directors for monetary damages for breaches of their fiduciary duties as directors and that provides for the indemnification of directors to the fullest extent permitted under Delaware law.

In addition, as permitted by Section 145 of the DGCL, the bylaws of the Registrant provide that:

- the Registrant shall indemnify its directors and officers for serving the Registrant in those capacities or for serving other business enterprises at the Registrant's request, to the fullest extent permitted by the DGCL;

- the Registrant is required to advance expenses, as incurred, to its directors and officers in connection with defending a proceeding, except that such director or officer shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification;

- the Registrant is not obligated pursuant to the bylaws to indemnify a person with respect to proceedings initiated by that person, except with respect to proceedings authorized by the Registrant's board of directors;

- the rights conferred in the bylaws are not exclusive, and the Registrant is authorized to enter into indemnification agreements with its directors, officers, employees and agents and to obtain insurance to indemnify such persons; and

- the Registrant may, in its discretion, indemnify employees and agents in those circumstances where indemnification is not required by law.

The Registrant has entered into separate indemnification agreements with each of its directors and executive officers that provide the maximum indemnity allowed to directors and executive officers by Section 145 of the DGCL and that allow for certain additional procedural protections. The Registrant intends to enter into indemnification agreements

with any new directors and executive officers in the future.

The indemnification provisions of the Registrant's certificate of incorporation and bylaws and the indemnification agreements entered into, or to be entered into, between the Registrant and its directors and executive officers may be sufficiently broad to permit indemnification of the Registrant's directors and executive officers for liabilities (including reimbursement of expenses incurred) arising under the Securities Act.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit No.	Description of Exhibit
5.1	Opinion of Latham & Watkins LLP.
10.1	Spansion Inc. 2010 Equity Incentive Award Plan, filed as Exhibit 10.1 to the Registrant's Registration Statement on Form S-8 (File No. 333-166715) filed with the Commission May 10, 2010, is hereby incorporated by reference.
10.2	Amendment to Spansion Inc. 2010 Equity Incentive Award Plan, filed as Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Commission on May 14, 2010, is hereby incorporated by reference.
23.1	Consent of Latham & Watkins LLP (included in Exhibit 5.1).
23.2	Consent of independent registered public accounting firm.
24.1	Power of attorney (included in the signature page to this Registration Statement).

Item 9. Undertakings.

a. The undersigned Registrant hereby undertakes:

1. To file, during any period in which offers or sales are being made pursuant to this Registration Statement, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

Provided, however, that: paragraphs (i) and (ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

2. That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

b. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan’s annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

h. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described under “Item 6—Indemnification of Directors and Officers,” or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Sunnyvale, state of California, on this 26th day of February, 2013.

SPANSION, INC.

By:	/s/ Randy W. Furr
Name:	Randy W. Furr
Title:	Corporate Executive Vice President and Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints John H. Kispert and Randy W. Furr, and each of them, as attorneys-in-fact, each with the power of substitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto and all documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that such attorneys-in-fact and agents or any of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date(s) indicated.

Signature	Title	Date
/s/ John H. Kispert John H. Kispert	Director, President and Chief Executive Officer (Principal Executive Officer)	February 26, 2013
/s/ Randy W. Furr Randy W. Furr	Corporate Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	February 26, 2013
/s/ Keith Barnes Keith Barnes	Director	February 26, 2013
/s/ Raymond Bingham Raymond Bingham	Chairman of the Board	February 26, 2013
/s/ Hans Geyer Hans Geyer	Director	February 26, 2013
/s/ Paul Mercadante Paul Mercadante	Director	February 26, 2013
/s/ William E. Mitchell William E. Mitchell	Director	February 26, 2013
/s/ Ajay Shah Ajay Shah	Director	February 26, 2013
/s/ Clifton Thomas Weatherford Clifton Thomas Weatherford	Director	February 26, 2013

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