



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEVEN R. NUSBAUM,)
)
 Plaintiff,)
)
 v.) Civil Action No. _____
)
 MICRON TECHNOLOGY, INC.,)
)
 Defendant.)

**VERIFIED COMPLAINT PURSUANT TO 8 DEL. C. § 220
TO COMPEL INSPECTION OF BOOKS AND RECORDS**

Plaintiff Steven R. Nusbaum (“Plaintiff”), by his undersigned attorneys, for this Verified Complaint against Defendant Micron Technology, Inc. (“Micron,” the “Company,” or “Defendant”), alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. Plaintiff, a beneficial owner of Micron common stock at all relevant times, brings this action pursuant to 8 *Del. C.* § 220 (“Section 220”) to enforce Plaintiff’s statutory right to inspect certain books and records of Defendant.
2. In particular, Plaintiff wishes to inspect books and records relating to meetings of Micron’s Board of Directors (the “Board”) dating from no earlier than January 1, 2016, through no later than March 19, 2019, inclusive, regarding

purported anti-competitive conduct by the Company regarding its Dynamic Random Access Memory (“DRAM”) products and materially false and misleading statements about the Chinese government’s investigation into such misconduct.

3. Plaintiff’s purpose in making the Demand (defined herein) is reasonably related to his interests as a Micron stockholder. Public information about Micron’s anti-competitive activities and materially false and misleading statements supplies a credible basis to suspect wrongdoing that warrants investigation, but that information is insufficient for Plaintiff’s purpose of investigating that wrongdoing and for his separate but related purpose of investigating the independence of each of the Company’s directors and officers. Accordingly, Plaintiff seeks a summary Order from this Court requiring the Company to produce the demanded books and records for inspection.

PARTIES

4. Plaintiff has been a continuous beneficial owner of Micron common stock since June 30, 2014.

5. Defendant Micron is a Delaware corporation with its principal executive offices located at 8000 South Federal Way, Boise, Idaho 83716-9632.

6. As stated in the Company's annual report for the fiscal year ended August 30, 2018, Form 10-K, filed with the U.S. Securities and Exchange Commission ("SEC") on October 15, 2018 (the "2018 10-K"):

Micron Technology, Inc., including its consolidated subsidiaries, is an industry leader in innovative memory and storage solutions. Through our global brands – Micron[®], Crucial[®], and Ballistix[®] – our broad portfolio of high-performance memory and storage technologies, including DRAM, NAND, NOR Flash and 3D XPoint memory, is transforming how the world uses information to enrich life. Backed by 40 years of technology leadership, our memory and storage solutions enable disruptive trends, including artificial intelligence, machine learning, and autonomous vehicles, in key market segments like cloud, data center, networking, and mobile.

SUBSTANTIVE ALLEGATIONS

7. DRAM chips are used in desktop computers, servers, laptops, tablets, televisions, printers, cameras, cellphones, and in industrial applications, among other things.

8. Micron, Samsung Electronics Co., Ltd. and its subsidiaries ("Samsung"), and Hynix, Inc. (f/k/a Hynix Semiconductor, Inc.) and its subsidiaries ("Hynix") collectively control approximately 95% of the world DRAM market.

9. Prices for DRAM chips had been steadily declining for approximately three decades. However, in 2017, they increased approximately 47% with a significant decrease in the expected rate of volume growth of DRAM chips.

10. On December 26, 2017, *Reuters* published an article entitled “China regulator flags greater scrutiny on chips after price surge.” The article stated “China’s economic regulator is paying close attention to a recent surge in the price of mobile phone storage chips and could look into possible price fixing by the firms that make them,” which included Micron.

11. The 2018 10-K disclosed, exactly five months after the fact, “[o]n May 15, 2018, the Chinese State Administration for Market Regulation (‘SAMR’) notified Micron that it was investigating potential collusion among DRAM suppliers in China.”

12. On May 24, 2018, Micron representatives met with antitrust officials from China’s Anti-Monopoly Bureau of the Ministry of Commerce. The Chinese officials “express[ed] concerns” about continued price increases for PC DRAM products at the meeting.

13. According an article published on June 1, 2018 in *Bloomberg*, Micron confirmed its sales offices in China were “visited” by SAMR on May 31, 2018, and the Company was cooperating with Chinese officials. However, the Company did not officially disclose the inspection, or raid on its offices until the 2018 10-K, which said “[o]n May 31, 2018, SAMR made unannounced visits to our sales

offices in Beijing, Shanghai, and Shenzhen to seek certain information as part of its investigation. We are cooperating with SAMR in its investigation.”

14. The Company was aware no later than May 15, 2018, it was being investigated by SAMR for potential DRAM price-fixing in China but failed to inform investors of this material fact until October 15, 2018, precisely five months later. However, the Company likely knew of the Chinese government’s interest on December 26, 2017, when *Reuters* reported “China’s economic regulator is paying close attention to a recent surge in the price of mobile phone storage chips and could look into possible price fixing by the firms that make them,” which includes Micron.

15. On November 19, 2018, the *Financial Times* published an article reporting SAMR had “found ‘massive evidence’ of anti-competitive behaviour” by Micron and that Micron had engaged in a price fixing conspiracy with Samsung and Hynix.

16. Micron did not respond to the *Financial Times* article.

17. Approximately half of Micron’s sales are in China.

18. The *Financial Times* article cited Kim Young-woo, an analyst at SK Securities, as saying China could impose fines of more than \$2.5 billion on Micron “in the worst-case scenario” if the Company is found to have fixed prices.

19. The Company is subject to numerous antitrust class action complaints in the United States alleging it conspired with Samsung and Hynix from at least June 1, 2016 to February 1, 2018 to inflate artificially prices of DRAM sold to direct and indirect purchasers in this country. *See, e.g., Jones, et al. v. Micron Tech., Inc., et al.*, No. 4:18-cv-02518-JSW (N.D. Cal.) (filed April 27, 2018).¹

20. Micron's Form 10-Q for the quarter ended February 28, 2019, filed with the SEC on March 21, 2019, stated "six cases have been filed in the following Canadian courts: Superior Court of Quebec, the Federal Court of Canada, and the Supreme Court of British Columbia. The substantive allegations in these cases are similar to those asserted in the cases filed in the United States."

21. The Company issued numerous materially false and misleading statements about competition at the same time it was being investigated for anti-competitive activities. For example, Micron stated in its Form 10-K for the fiscal

¹ Other subsequently-filed DRAM antitrust class actions that have been related to *Jones* include *Treanor v. Micron Tech., Inc., et al.*, No. 4:18-cv-03805-JSW; *onShore Networks of Ill., L.L.C. v. Micron Tech., Inc., et al.*, No. 4:18-cv-03905-JSW (N.D. Cal.); *Binz, et al. v. Micron Tech., Inc., et al.*, No. 4:18-cv-04090-JSW (N.D. Cal.); *Bryant v. Micron Tech., Inc., et al.*, No. 4:18-cv-04599-JSW (N.D. Cal.); *Calloway v. Micron Tech., Inc., et al.*, No. 4:18-cv-04672-JSW (N.D. Cal.); *Tech. House Call v. Micron Tech., Inc., et al.*, No. 4:18-cv-04742-JSW (N.D. Cal.); and *D'Amore, et al. v. Micron Tech., Inc., et al.*, No. 4:18-cv-05002-JSW (N.D. Cal.).

year ended August 31, 2017, filed with the SEC on October 26, 2017 (the “2017 10-K”):

The semiconductor memory and storage markets are highly competitive.

We face intense competition in the semiconductor memory and storage markets from a number of companies, including . . . Samsung . . . [and] . . . Hynix Some of our competitors are large corporations or conglomerates that may have greater resources to invest in technology, capitalize on growth opportunities, and withstand downturns in the semiconductor markets in which we compete. Consolidation of industry competitors could put us at a competitive disadvantage. In addition, some governments, such as China, have provided, and may continue to provide, significant financial assistance to some of our competitors or to new entrants. Our competitors generally seek to increase silicon capacity, improve yields, and reduce die size in their product designs which may result in significant increases in worldwide supply and downward pressure on prices. Increases in worldwide supply of semiconductor memory and storage also result from fabrication capacity expansions, either by way of new facilities, increased capacity utilization, or reallocation of other semiconductor production to semiconductor memory and storage production. Our competitors may increase capital expenditures resulting in future increases in worldwide supply. We and some of our competitors have plans to ramp, or are constructing or ramping, production at new fabrication facilities. Increases in worldwide supply of semiconductor memory and storage, if not accompanied by commensurate increases in demand, would lead to further declines in average selling prices for our products and would materially adversely affect our business, results of operations, or financial condition. If competitors are more successful at developing or implementing new product or process technology their products could have cost or performance advantages. The competitive nature of our industry could have a material adverse effect on our business, results of operations, or financial condition.

22. This statement was repeated in Micron’s Form 10-Q for the quarter ended November 30, 2017, filed with the SEC on December 20, 2017 and in its Form 10-Q for the quarter ended March 1, 2018, filed with the SEC on March 23, 2018.

23. These statements were materially false and misleading and omitted material facts because DRAM prices had been steadily declining for years only to rise 47% in 2017 with a significant decrease in the expected rate of volume growth. Micron’s competition with Samsung and Hynix was not “intense”; rather, it was intensely cooperative.

24. In addition, Micron was aware of SAMR’s investigation on May 15, 2018, at the latest, but failed to inform investors until October 15, 2018, five months after the fact. For example, the Company’s Form 10-Q for the quarter ended May 31, 2018, filed with the SEC on June 22, 2018, could have mentioned the SAMR investigation, but did not. Instead, the Form 10-Q made additional false statements, specifically:

We face intense competition in the semiconductor memory and storage markets from a number of companies, including . . . Samsung Electronics Co., Ltd. [and] SK Hynix Inc. . . . Some of our competitors are large corporations or conglomerates that may have greater resources to invest in technology, capitalize on growth opportunities, and withstand downturns in the semiconductor markets in which we compete. Consolidation of industry competitors could put us at a competitive disadvantage. In addition, some governments have

provided, and may continue to provide, significant assistance, financial or otherwise, to some of our competitors or to new entrants and may intervene in support of national industries and/or competitors. In particular, we face the threat of increasing competition as a result of significant investment in the semiconductor industry by the Chinese government and various state-owned or affiliated entities that is intended to advance China's stated national policy objectives. The activities by the Chinese government may restrict us from participating in the China market or may prevent us from competing effectively with Chinese companies.

Our competitors generally seek to increase silicon capacity, improve yields, and reduce die size in their product designs which may result in significant increases in worldwide supply and downward pressure on prices. Increases in worldwide supply of semiconductor memory and storage also result from fabrication capacity expansions, either by way of new facilities, increased capacity utilization, or reallocation of other semiconductor production to semiconductor memory and storage production. Our competitors may increase capital expenditures resulting in future increases in worldwide supply. We and some of our competitors have plans to ramp, or are constructing or ramping, production at new fabrication facilities. Increases in worldwide supply of semiconductor memory and storage, if not accompanied by commensurate increases in demand, would lead to further declines in average selling prices for our products and would materially adversely affect our business, results of operations, or financial condition. If competitors are more successful at developing or implementing new product or process technology, their products could have cost or performance advantages.

The competitive nature of our industry could have a material adverse effect on our business, results of operations, or financial condition.

25. This statement was materially false and misleading because: (1)

Micron did not face "intense competition" with Samsung and Hynix but rather had

been conspiring with those firms; and (2) it omitted any mention of the SAMR investigation.

26. Micron, its Chief Executive Officer Sanjay Mehrotra (“Mehrotra”), and its Chief Financial Officer (“CFO”) David A. Zinsner (“Zinsner”) are defendants in at least three stockholder securities fraud class actions alleging, among other things, they failed to disclose the Company’s DRAM price-fixing conspiracy and the Chinese government’s investigation thereof in violation of Sections 10(b) and 20(a) of the Securities Exchange Act and Rule 10b-5 promulgated thereunder. *Kniffin v. Micron Tech., Inc., et al.*, No. 1:19-cv-00678-WHP (S.D.N.Y.); *Rojvall v. Micron Tech., Inc., et al.*, No. 1:19-cv-00990-WHP (S.D.N.Y.); and *Pokoik v. Micron Tech., Inc., et al.*, No. 1:19-cv-02136-WHP (S.D.N.Y.).² The class period for *Kniffin* runs between June 22, 2018 and November 19, 2018, inclusive, while the class period for *Rojvall* and *Pokoik* runs between September 26, 2017 and November 19, 2018.

27. Micron is facing potential enormous liability from both the Chinese government’s investigation and the pending multiple antitrust and securities fraud actions. Micron admitted in its Form 10-Q for the quarter ended May 31, 2018 that

² The *Rojvall* and *Pokoik* complaints also name as a defendant Micron’s former CFO, Ernest E. Maddock.

the antitrust “complaints seek treble monetary damages, costs, interest, attorneys’ fees, and other injunctive and equitable relief. We are unable to predict the outcome of these matters and therefore cannot estimate the range of possible loss. The final resolution of these matters could result in significant liability and could have a material adverse effect on our business, results of operations, or financial condition.”

28. Micron’s financial reporting from at least September 26, 2017 through October 15, 2018 was materially false and misleading, because the Company failed to disclose, for example, the extent of the Chinese investigation into Micron’s anti-competitive activities, how these anti-competitive activities affected the Company’s financial results, and the possible substantial penalties resulting from the SAMR investigation. For example, as alleged in the initial antitrust class action complaint, “DRAM prices continued to climb, and then abruptly stopped in early 2018, just after China’s antitrust regulator, the NDRC, announced that it had begun an investigation into the DRAM industry due to the noticeable and sharp rise in the price of DRAM over the 18-month period from June 2016 to December 2017.” *Jones*, ECF No. 1, ¶ 134. However, the Company did not inform the investing public of the extent of the SAMR investigation until October 15, 2018. As a result, Micron’s financial results announced on September 26, 2017;

December 19, 2017; March 22, 2018; June 20, 2018; September 20, 2018 were materially false and misleading.

29. Micron's anti-competitive activities, the SAMR investigation, and the disclosure of "massive evidence" of improper conduct have had a negative effect on the Company and its stockholders. For example, Micron common stock closed at \$39.44 per share on the NasdaqGS Exchange on November 16, 2018. On November 19, 2018, the next trading day, after the publication of the *Financial Times* article, Micron shares lost \$2.61 per share, or 6.6%, to close at \$36.83 per share.

Plaintiff's Books and Records Demand

30. The Section 220 Demand Letter, sent to Micron by Plaintiff's counsel, was dated March 19, 2019. Exhibit A. Plaintiff's counsel attached to the Demand Letter a true and correct copy of Plaintiff's current brokerage account statement reflecting Plaintiff's beneficial ownership of Micron common stock at all relevant times. *Id.* Plaintiff's counsel also attached to the Demand Letter a special power of attorney executed by Plaintiff authorizing the Demand, along with Plaintiff's verification. *Id.*

31. The Demand Letter was sent on March 19, 2018, via FedEx overnight delivery to the Company's principal place of business in Boise, Idaho. The

Demand Letter was also served on the Company's Registered Agent in Delaware. According to FedEx's web site, the Demand Letter was received by the Company on March 20, 2019 at 9:28 a.m.

32. Plaintiff demanded that Micron³ provide him with the opportunity to inspect and copy the following books and records⁴ within the Company's possession, custody, and control during the usual hours of business within five (5) business days of receipt of the Demand Letter:

1. Minutes of all meetings of the Board of Directors of Micron⁵ (the "Board") from January 1, 2016 through November 19, 2018, inclusive, during which actual or projected demand for, supply of, prices for, and revenue generated by the Company's Dynamic Random Access Memory ("DRAM") products was on the agenda or was otherwise discussed at the meeting.
2. Minutes of all meetings of the Board from January 1, 2016 through November 19, 2018, inclusive, during which actual or projected demand for, supply of, and

³ "Micron" was defined to include "the Company's subsidiaries as defined at 8 *Del. C.* § 220(a)(2)."

⁴ The term "books and records" was to be "construed as broadly as possible under Delaware precedent."

⁵ The Demand Letter stated the phrase "all meetings of the Board of Directors of Micron" included, for the purposes of the letter, "all regular, special, and *ad hoc* meetings of the Board and all such meetings of regular, special, or *ad hoc* committees or subcommittees of the Board, whether held in person, telephonically, electronically, or otherwise, including, but not limited to, meetings of the Audit Committee and the Finance Committee."

prices for DRAM products manufactured by Samsung Electronics Co., Ltd. and its subsidiaries (collectively, “Samsung”) or Hynix, Inc. (f/k/a Hynix Semiconductor, Inc.) and its subsidiaries (collectively, “Hynix”) was on the agenda or was otherwise discussed at the meeting.

3. Minutes of all meetings of the Board from November 1, 2015, through November 19, 2018, inclusive, during which the potential or actual reduction of the supply (or the reduction of the rate of increase of the supply) or the increase of prices of DRAM products either worldwide or in any particular market was on the agenda or was otherwise discussed at the meeting.
4. Minutes of all meetings of the Board from June 1, 2016 through November 19, 2018, inclusive, during which the issue of limiting or slowing Micron’s DRAM production or manufacturing capacity, or the increase thereof, whether unilaterally or in direct or indirect coordination with Samsung and/or Hynix, was on the agenda or was otherwise discussed at the meeting.
5. Minutes of all meetings of the Board from June 1, 2016 through November 19, 2018, inclusive, during which the issue of increasing prices of Micron’s DRAM products, whether unilaterally or in direct or indirect coordination with Samsung and/or Hynix, was on the agenda or was otherwise discussed at the meeting.
6. Minutes of all meetings of the Board from June 1, 2016 through November 19, 2018, inclusive, during which pricing information of Samsung or Hynix DRAM products obtained through DRAMeXchange⁶ was on the agenda or was otherwise discussed at the meeting.

⁶ “The main purpose of the DXI index is to provide users with an easy to understand graphical representation of the DRAM industries market trend. The index is calculated by multiplying the mainstream DRAM chips with their

7. Minutes of all meetings of the Board from December 26, 2017 through November 19, 2018, inclusive, during which the article published by *Reuters* on December 26, 2017 entitled “China regulator flags greater scrutiny on chips after price surge,” which stated “China’s economic regulator is paying close attention to a recent surge in the price of mobile phone storage chips and could look into possible price fixing by the firms that make them,” <https://www.reuters.com/article/us-china-chips/china-regulator-flags-greater-scrutiny-on-chips-after-price-surge-idUSKBN1EL017>, and the contents of the article, were on the agenda or were otherwise discussed at the meeting.
8. Minutes of all meetings of the Board from May 15, 2018 through March 19, 2019, inclusive, during which the investigation by the Chinese State Administration for Market Regulation (“SAMR”) or any other agency of the Chinese government of potential collusion and other anticompetitive conduct by DRAM suppliers in China, and Micron in particular (the “SAMR Investigation”), including but not limited to: (a) the May 24, 2018 meeting between Micron representatives and antitrust officials from China’s Anti-Monopoly Bureau of the Ministry of Commerce at which the Chinese officials “express[ed] concerns” about continued price increases for PC DRAM products; (b) the inspection, or raid, of Micron’s sales offices in Beijing, Shanghai, and Shenzhen by SAMR on May 31, 2018; and (c) Micron’s purported “cooperat[ion] with SAMR in its

respective spot price. The calculation is performed under a logical framework, providing users with a powerful tool in gaining a detailed insight of the market performance.” https://dramexchange.com/Service/Faqs#b1_1. Micron could track and monitor its competitors’ prices and supply movements through DRAMeXchange, and they could do the same for Micron.

investigation,” was on the agenda or was otherwise discussed at the meeting.

9. Minutes of all meetings of the Board from November 19, 2018 through March 19, 2019, inclusive, during which the November 19, 2018 article in the *Financial Times* that reported SAMR had “found ‘massive evidence’ of anti-competitive behaviour” by Micron and that Micron had engaged in a price fixing conspiracy with Samsung and Hynix, was on the agenda or was otherwise discussed at the meeting.
10. Minutes of all meetings of the Board from May 15, 2018 through March 19, 2019, inclusive, during which actual or potential fines, penalties, forfeitures, or other consequences to Micron or its employees, contractors, agents, or representatives, whether financial or otherwise, resulting from the SAMR Investigation, including but not limited to actual or potential settlement of any criminal, civil, or administrative charges resulting from the SAMR Investigation, were on the agenda or were otherwise discussed at the meeting.
11. All Board agendas, packages, presentations, reports, exhibits, official correspondence and emails, recordings, summaries, memoranda, transcripts, notes, summaries of meetings, and resolutions for all of the above-described Board meetings.

33. The Demand Letter set forth Plaintiff’s desire to inspect the materials listed above for the following legitimate and proper purposes, all of which are reasonably related to Plaintiff’s interests as a stockholder of Micron:

1. To investigate potential wrongdoing, mismanagement, and breaches of fiduciary duties by the members of the Board, the Company’s executive officers, and/or others

in connection with Micron's anti-competitive behavior concerning DRAM supply and pricing;

2. To assess the ability of the Board to consider impartially a demand for action (including a request for permission to file a derivative lawsuit on the Company's behalf) related to such issues; and
3. To take appropriate action in the event the members of the Board did not properly discharge their fiduciary duties, including the preparation and filing of a stockholder derivative lawsuit, if appropriate.

34. The Demand Letter also said:

An additional purpose to those stated above is to take appropriate action in the event that the Board did not properly discharge its duties. This purpose, of course, relates to a stockholder's decision about how to act in the event the demanded inspection reveals impropriety or actionable conduct. Possible courses of conduct include making a demand on the Board to take action or initiating litigation against the Board on the Company's behalf. Both of these possible courses of action are well within a stockholder's rights under Delaware law, and thus, gathering information for this purpose is proper. Both the Delaware Supreme Court and the Delaware Court of Chancery have repeatedly urged prospective plaintiffs to use the "tools at hand," such as books and records requests, to obtain information before filing derivative claims.

35. Plaintiff designated Rigrodsky & Long, P.A. and the Grabar Law Office as his agents to conduct the demanded inspection.

36. More than 5 business days have passed since the demand was received by Micron.

37. As of the filing of this Complaint, Defendant has failed to respond to Plaintiff's lawful and proper Demand.

38. Accordingly, Plaintiff brings this action to enforce his rights under Section 220(c) based on Defendant's failure to provide books and records in response to Plaintiff's Demand.

CAUSE OF ACTION

(Inspection of Books and Records of Micron Pursuant to 8 *Del. C.* § 220(c))

39. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

40. Plaintiff has complied fully with all of the requirements under Section 220 concerning the form and manner of making a demand for inspection of Micron's books and records.

41. Through his Demand, Plaintiff has demonstrated a credible basis from which to infer that there are reasonable grounds to suspect mismanagement that warrant further investigation. Plaintiff's Demand is for a proper purpose and the documents identified in the Demand are essential for that purpose.

42. Micron has wrongfully failed to comply with the Demand.

43. Pursuant to Section 220, Plaintiff is entitled to apply to this Court for an Order compelling inspection of Micron's corporate books and records because

Micron has wrongfully refused to permit the inspection after Plaintiff complied with said statute concerning the form and manner of making a demand for inspection of such documents and articulated a proper purpose for the inspection.

44. Plaintiff therefore seeks relief from the Court pursuant to Section 220 to compel inspection of Micron's books and records without further delay.

45. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. An order summarily requiring Micron to permit immediately the inspection and copying of each and every requested book and record in un-redacted form as set forth in Plaintiff's March 19, 2019, Demand Letter;

B. An order directing Micron to pay Plaintiff's reasonable attorneys' fees and expenses in connection with the Demand and related litigation; and

C. Such other and further relief as this Court deems just and proper.

Dated: April 11, 2019

RIGRODSKY & LONG, P.A.

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