

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10822 / August 25, 2020

SECURITIES EXCHANGE ACT OF 1934
Release No. 89656 / August 25, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4161 / August 25, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19927

In the Matter of

**SUPER MICRO
COMPUTER, INC.,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Super Micro Computer, Inc. (“Super Micro” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

Summary

1. Super Micro Computer, Inc., a producer of computer servers headquartered in California, engaged in improper accounting—prematurely recognizing revenue and understating expenses from at least fiscal year (“FY”) 2015 through FY 2017.² As a result, Super Micro filed with the Commission materially misstated financial statements in its annual, quarterly and current reports during the period.

2. Super Micro’s executives pushed employees to maximize end-of-quarter revenue and minimize expenses, without devising and maintaining sufficient internal accounting controls to record revenue and expenses in conformity with U.S. Generally Accepted Accounting Principles (“GAAP”). Super Micro improperly accelerated revenue recognition and reporting by: (1) recognizing revenue before delivering the goods to customers; (2) sending goods to customers prior to the customer-specified delivery date; (3) improperly changing the shipment terms to a large Super Micro customer in order to recognize revenue upon shipment rather than when the goods were delivered to the customer; (4) recognizing revenue with respect to transactions that included customer acceptance terms before the customers had accepted the goods; (5) sending incomplete or mis-assembled goods to customers at the end of quarters; (6) recognizing revenue on sales to a large distributor upon shipment, when the revenue should have been recognized when Super Micro received payment from the distributor; (7) holding the bill of lading for certain

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² Each of Super Micro’s quarterly reports on Form 10-Q and annual reports on Form 10-K beginning with the period ended September 30, 2014 through the period ended March 31, 2017 contained materially misstated financial statements. The Company’s current reports on Form 8-K, announcing the financial and operational results for each of these periods, along with the current report filed on August 3, 2017, announcing results for the year ended June 30, 2017, also contained materially misstated financial information.

overseas customers and thus preventing the customers from taking possession of the goods as a means to ensure payment, but nevertheless improperly recognizing the revenue upon shipment; and (8) recognizing certain extended warranty revenue at the time of sale, rather than amortizing the revenue over the length of the warranty.

3. Super Micro also improperly under-reported certain expenses by misusing its cooperative marketing program to pay a variety of unrelated expenses, such as warehousing costs for goods at quarter end, shipping costs, and product repair costs. Super Micro employees also submitted claims for funds to which Super Micro was not entitled in connection with a vendor's cooperative marketing program. In addition, Super Micro over-valued inventory and under-stated expenses by failing to reduce inventory and record an associated expense in instances where Super Micro no longer held the inventory for sale.

4. Accordingly, Super Micro violated certain antifraud, reporting, books and records, and internal accounting controls provisions of the federal securities laws.

Respondent

5. Super Micro is a global producer of computer servers and equipment, incorporated in Delaware, with its principal place of business in San Jose, California. Super Micro's securities are registered under Section 12(b) of the Exchange Act. The company's fiscal year ends on June 30. Super Micro's shares currently trade on the NASDAQ Global Select Market. Because of Super Micro's pervasive accounting, reporting and internal accounting control issues, Super Micro was unable to file periodic reports for nearly two years and, as a result, trading in the company's stock was suspended in August 2018 and the stock was then delisted from March 2019 through January 2020. During the relevant period, Super Micro offered and sold stock to its employees pursuant to registration statements on Forms S-8 dated April 26, 2007 and April 22, 2016.

Facts

A. Premature Revenue Recognition and Reporting

6. In determining whether to recognize and report revenue during the relevant period, GAAP required public companies to consider whether (1) the revenue is realized or realizable; and (2) the revenue is earned. Consistent with GAAP, Super Micro's revenue recognition policy provides that revenue is realized and earned when all of the following criteria are met: (a) persuasive evidence of an arrangement exists; (b) delivery has occurred or services have been rendered; (c) the seller's price to the buyer is fixed or determinable; and (d) collectability is reasonably assured.

7. Super Micro executives pressed employees to maximize revenue at the end of quarters but failed to devise and maintain sufficient internal accounting controls with respect to proper revenue recognition. For instance, Super Micro delegated responsibility for identifying sales terms that may affect revenue recognition to salespeople without training them on revenue recognition. During the period from at least FY 2015 through the end of FY 2017, Super Micro

systemically recognized, recorded in its books and records, and reported revenue prematurely by engaging in the following improper practices.

Premature Revenue Recognition Prior to Customer Delivery

8. Super Micro engaged in a number of transactions where it recognized revenue prior to customer delivery in order to maximize revenue at the end of quarters. In certain instances, Super Micro employees sent goods to warehouses or other storage facilities controlled by third parties at quarter-end and paid for the storage fees until the goods were delivered to its customer. In other instances, Super Micro asked its freight forwarders to hold the goods until the date that the customer was prepared to accept the goods, rather than ship and deliver them on the date agreed to with the customer. There also were instances where Super Micro recorded revenue although goods remained at its own warehouse.

9. For example, Super Micro asked a distributor customer to agree to accept approximately \$104,000 of goods before the end of FY 2015 in order to recognize revenue during that period. The customer, however, did not need additional product at the time and did not have space for the product. Super Micro ultimately arranged to pay for trailers where the goods would be stored. At least some of the goods remained in the trailers for approximately six months.

10. In addition, a different customer requested that Super Micro deliver nearly \$800,000 worth of goods by mid-January 2015. Super Micro requested that its freight forwarder pick up the goods before the end of December 2014, and improperly recorded the sale in the second quarter of FY 2015. Super Micro employees instructed its freight forwarder to unload the goods at the freight forwarder's dock and then deliver the goods to the customer two weeks later.

11. In another instance, a Super Micro salesperson stored a small amount of goods in her car when Super Micro's customer was unable to pick up the goods by the end of the quarter, yet Super Micro improperly recognized the revenue on the last day of the quarter.

12. In all of these transactions and other similar transactions, Super Micro improperly recorded revenue upon shipment from its own facility but prior to customer delivery or, in a few instances, before the goods even left its facility. Recognizing the revenue was not in conformity with GAAP.

Improper Recognition of Revenue Upon Shipment of Goods Without Customer Authorization

13. Super Micro—at the end of quarters—shipped goods on multiple occasions prior to the delivery dates agreed with, or specified by, its customers in order to record and recognize the revenue prior to quarter-end.

14. For example, at the end of FY 2017, Super Micro shipped product to a customer who had not wanted the goods delivered for another month. A few days after the shipment, the customer stated “Please reject this shipment . . . Why are you shipping this now?” In response, the Super Micro salesperson requested “Can you please help to approve this shipment to help with our

quarter end? I was instructed by our management to push all the orders out before our quarter end which is also our year end. . . . we will just need your special support for this time.” The customer again rejected the request. Nevertheless, the revenue was improperly recognized at the time of shipment.

15. Similarly, on the last day of FY 2017, Super Micro shipped more than \$278,000 of goods to a customer. In the days preceding the shipment, Super Micro employees repeatedly asked the customer to allow the goods to ship, although the employees understood that the customer did not have space for the goods. Ultimately, the customer instructed Super Micro not to ship out the goods until early July 2017. A Super Micro employee, however, informed the customer that the goods had already been shipped and Super Micro improperly recorded the revenue in the fourth quarter of FY 2017.

16. In another example, at the end of the second quarter of FY 2017, a distributor customer indicated that over \$250,000 of goods could not be shipped absent its authorization. A Super Micro employee still shipped the goods before quarter-end. The customer’s representative complained that “no one can command you to process [our] order w/o our permission.” Super Micro improperly recognized the revenue in the second quarter of FY 2017.

17. Super Micro’s recognition of revenue when it shipped goods in contravention of customer instructions did not conform with GAAP.

Improper Recognition of Revenue Upon Shipment to a Large Super Micro Customer Where the Parties’ Shipping Terms Required Revenue to Be Recognized Upon Delivery

18. From at least 2014 through 2017, purchase orders submitted by a large Super Micro customer specified “FOB Destination” as the shipping terms. Sales with FOB Destination shipping terms are not realized or earned until delivery has occurred at the customer-designated location and title to the goods has passed to the customer. Super Micro, however, improperly recorded revenue upon shipment to the customer.

19. Many shipments to this customer occurred near the end of quarters. During most quarters over the relevant period, Super Micro’s employees sent emails to the customer’s employees, purporting to change the shipping terms to “ex works”, which generally means that the goods and title would pass to the customer when picked up at Super Micro’s warehouse. The emails purporting to change the shipping terms, however, were often sent to the customer after the goods had been shipped and the quarter had ended. Indeed, in many instances, the purported change in terms occurred after the customer had already received the goods—*i.e.*, after the question of who would bear the risk of loss while the goods were in transit was moot.

20. In addition, on one occasion a lower-level sales employee fabricated an email purporting to be from this customer, stating that Super Micro could use “ex works” shipping terms for open, current and future orders. The email was used by Super Micro to recognize revenue upon shipment during several periods.

21. In addition to these problems with the timing, and authenticity, of emails purporting to change shipping terms, the emails were insufficient to override the customer's purchase order terms and conditions and allow for both the transfer of title and risk of loss at the point of shipment under GAAP. For all of these reasons, revenue should not have been recognized upon shipment.

22. From FY 2015 through FY 2017, Super Micro prematurely recognized more than \$45 million in revenue in connection with sales to this customer.

Improper Recognition of Revenue Before Obtaining Customer Acceptance

23. A number of Super Micro's agreements with customers included acceptance clauses, meaning that customer acceptance was a condition of the customer's obligation to pay for the goods. Under GAAP, revenue is considered to be earned when the seller has substantially accomplished what it must do to be entitled to the revenue. Accordingly, where an agreement contains a substantive customer acceptance clause, permitting customers to return the goods if they did not meet the customer's specifications, revenue generally should not be recognized until Super Micro received confirmation of customer acceptance, the customer acceptance provision lapsed, or, alternatively, Super Micro received payment from the customer.

24. Super Micro's internal accounting control for tracking customers with acceptance clauses, and for determining whether those clauses had been satisfied, was lacking for two reasons. First, Super Micro had no adequate process to identify customers with acceptance clauses. Acceptance clauses included in purchase orders or other transactional documents that evidenced the arrangements that Super Micro had with its customers were identified on an *ad hoc* basis by operations and sales employees who did not receive proper training or guidance on this topic. Second, even in instances where Super Micro was aware of customer acceptance provisions, the determination of whether the condition was satisfied was reached haphazardly. The decision was typically based on discussions between members of the finance group and sales personnel who did not receive any relevant training from Super Micro. As a result, Super Micro recognized revenue in connection with numerous sales before it received customer acceptance.

Improper Recognition of Revenue Upon Shipment of Goods That Were Incomplete or Mis-Assembled

25. Super Micro also improperly recognized revenue for products that it sold where employees knew the goods were incomplete or mis-assembled at the time of shipment. The goods were shipped to customers at the end of quarters and Super Micro improperly recognized the revenue before quarter-end.

26. For example, at the end of FY 2016, Super Micro prematurely recognized \$384,000 of revenue, while failing to ship certain products that were part of the customer's purchase order. In an email sent several months later concerning shipment of the missing parts, a Super Micro employee explained "[d]ue to time constraint to meet June'16 year-end revenue target" certain goods were not originally shipped. The employee went on to explain that "if we ship the accessory package [that the customer had ordered], we would miss the June year-end revenue."

27. In a second example, Super Micro sent a \$4 million order to a new customer towards the end of the same quarter. While the goods were in transit, the customer informed Super Micro that the product included a wrong component. As a result of the error, the products were shipped to a warehouse where they remained until Super Micro corrected the error. Super Micro employees were required to spend significant time and effort over the following nearly two months to resolve the issue. Nevertheless, Super Micro recognized the sale at the end of FY 2016.

28. In another instance, Super Micro wanted to ship goods to a customer at the end of the second quarter of FY 2016. However, Super Micro was unable to get all of the units to function properly before quarter end. In order to recognize the revenue in the second quarter of FY 2016, a Super Micro sales employee instructed Super Micro employees to put green stickers on eight mis-assembled units. At the time of shipment, the sales employee knew that Super Micro might have to take back and repair or replace the tagged units.

29. Because Super Micro had not satisfied all of the necessary elements to recognize revenue under GAAP, Super Micro prematurely recognized revenue in these and other similar circumstances.

Improper Recognition of Revenue Upon Shipment to a Large Super Micro Distributor

30. Super Micro had a distributor customer to which it sold hundreds of millions of dollars in products from FY 2015 to FY 2017. The distributor, however, was consistently unable to pay within its payment terms—its payables were often many months past due. Super Micro received information on multiple occasions that the distributor’s ability to pay was tied to its receipt of funds from its own customers (*i.e.*, end-customers).

31. Numerous Super Micro employees, including executives, were aware of the distributor’s delayed payments and the fact that the distributor could not pay Super Micro until it sold the products to end-customers and received payment from those customers.

32. In light of these facts, under GAAP, Super Micro was required to recognize revenue when it received payments from its distributor customer. Super Micro, however, prematurely recognized more than \$150 million in total revenue at the time of shipment from FY 2015 through FY 2017.

Improper Recognition of Revenue While Holding Customers’ Bills of Lading

33. Super Micro improperly recognized revenue while holding certain customers’ bills of lading. When Super Micro shipped goods to certain countries—primarily Russia and other Eastern European countries—Super Micro requested that the freight forwarders return the bills of lading to it. Super Micro then held the bills of lading until it received payment (either partial or in full) from its customers.

34. A bill of lading is a shipping document that allows a customer to clear products through customs. Absent a bill of lading, a customer ordinarily cannot take possession of the goods. Super Micro’s practice was meant to ensure that Super Micro was paid by customers that had not paid in advance.

35. In instances where Super Micro prevented customers from taking possession of goods until payment was received, revenue was not realized or realizable at the time of shipment under GAAP. Accordingly, revenue should not have been recognized.

Failure to Properly Account for Extended Warranties

36. Super Micro offered its customers the ability to purchase extended warranties on its products. At times, these warranties were purchased separately from the cost of Super Micro products and listed separately on invoices. With respect to certain types of products sold by Super Micro, however, customers received an extended warranty covering periods ranging from one to five years beyond the standard warranty, the cost for which was built into the price of the hardware products purchased. These warranties were not explicitly listed in the invoice, purchase order or any other documents provided to accounting.

37. Until 2015, Super Micro did not have any internal accounting control or process to identify products that included embedded warranties. Salespeople and members of the operations team did not receive training on how to identify embedded warranties.

38. Under GAAP, companies must account for revenue as earned, which for extended warranties is ratably over the duration of the warranty term. Super Micro, instead, recognized all of the extended warranty revenue upfront. Accordingly, Super Micro prematurely recognized all revenue from embedded extended warranties at the time of sale.

B. Super Micro Understated Certain Expenses

Misuse of Cooperative Marketing Funds

39. Super Micro's customers often were entitled to cooperative, or "co-op", marketing funds based on their purchases of product from Super Micro. As Super Micro stated in its SEC filings, as well as in its internal written policies, these funds were to be used for co-op marketing activities undertaken by Super Micro's customers. The customers were entitled to receive reimbursement for a portion of the cost of these activities.

40. At the time of each sale to customers who were entitled to receive co-op marketing funds, Super Micro accrued a liability and recorded an offsetting debit to contra revenue and marketing expense. These liabilities were to pay for future marketing activities that customers would perform. In reality, however, Super Micro improperly reduced the liabilities to avoid recognizing a variety of expenses unrelated to marketing.

41. Super Micro used co-op marketing funds, without customer approval, for a variety of purposes unrelated to marketing. For instance, Super Micro misused these funds to (a) pay shipping costs that were the responsibility of Super Micro; (b) pay to store goods at third-party facilities when customers were not prepared or willing to accept the goods before quarter-end; (c) recoup Super Micro losses in connection with goods that had been returned by customers (*e.g.*, in instances where the replacement products were more expensive); (d) pay for product repair costs requested by customers that had extended warranties; (e) pay for Christmas gifts given to

customers; (f) cover customer short-pays (*i.e.*, instances where invoices were not paid in full); and (g) pay for installation services that Super Micro performed for its customers.

42. In using co-op marketing funds for purposes unrelated to marketing, Super Micro understated its expenses and liabilities. Specifically, Super Micro should have recorded expenses when it incurred costs unrelated to marketing. Instead, Super Micro reduced its co-op marketing liability account and did not record any expense.

43. Separately, in connection with one of its vendor's co-op marketing programs (under which Super Micro was entitled to receive co-op marketing funds), Super Micro employees submitted claims for approximately \$660,000 to which Super Micro was not entitled. As a result of this conduct, Super Micro understated its expenses and overstated its income from at least FY 2013 through FY 2015.

Overvaluation of Inventory

44. Super Micro engaged in two additional practices over the course of several years that systemically overstated inventory and understated expenses in Super Micro's books and records and publicly reported financial statements. First, Super Micro failed to reduce inventory and record a research and development expense when its engineers used inventory for internal purposes, as was required by GAAP. Second, Super Micro improperly continued to keep inventory on its books that had been provided to customers for testing purposes even when those products were never returned, as well as instances where it shipped items as replacement products to its customers. These practices resulted in an understatement of cost of sales and overstatement of gross profit.

C. Super Micro's Material Weaknesses

45. On May 17, 2019, Super Micro filed its FY 2017 Form 10-K. In that filing, the company disclosed numerous material weaknesses in its Internal Control over Financial Reporting. These material weaknesses prevented Super Micro from recording transactions as necessary to permit the preparation of financial statements in conformity with GAAP.

46. The company's material weaknesses included:
- a. Aggressively focusing on quarterly revenue without sufficient focus on compliance;
 - b. A failure by senior management to establish and promote a control environment with an appropriate tone of compliance and control consciousness throughout the entire company;
 - c. An inappropriate tone at the top; and
 - d. A failure to hire personnel who had appropriate levels of knowledge and experience or to provide adequate training to its personnel.

D. Super Micro was Required to Restate Years' Worth of Financial Statements Included in Commission Filings

47. On August 3, 2017, Super Micro filed a Form 8-K with the Commission, announcing its operating and financial results for the fourth quarter of FY 2017. Several weeks later, Super Micro announced that it would be unable to file its FY 2017 Form 10-K on time and, on September 15, 2017, it disclosed that it was performing an audit committee review to permit its auditor to complete its audit of the financial statements. In November 2018, Super Micro determined that its previously filed financial statements from FYs 2015 through 2017 could not be relied upon. Super Micro did not file any annual or quarterly reports from the time it filed its Form 10-Q for the third quarter of FY 2017 until May 2019, when Super Micro filed its FY 2017 Form 10-K.

48. As a result of Super Micro's inability to file any financial statements for nearly two years, the company's stock was suspended from trading on the NASDAQ Stock Market and then de-listed.

49. In May 2019, Super Micro filed its Form 10-K for the year ended June 30, 2017 and amended its Form 10-Q filings to restate its financial statements for the first three quarters of fiscal 2017. The FY 2017 Form 10-K also restated the financial statements for fiscal years 2015 and 2016. The restatements substantially impacted the company's revenue/net sales, gross profits, operating income and net income previously recorded in its books and records and previously reported in its filings with the Commission.

50. Since discovering and correcting these financial statement errors, Super Micro improved its internal controls and reorganized its management team. In January 2020, Super Micro's stock was relisted on the Nasdaq Global Market.

51. The net effects of Super Micro's restatement are outlined in the charts below.³

³ The "net" effects represent the impact when reporting all errors in their proper periods. The gross effects of Super Micro's errors in any individual period are substantially larger, as revenue that was improperly and prematurely recognized in one period was corrected and recognized in later periods.

FY 2015 (ending 6/30/2015) (in 000s)

	As Reported	As Restated	% Change
Net Sales	1,991,155	1,954,353	(1.88%)
Income from Operations	146,746	132,646	(10.63%)

FY 2016 (ending 6/30/2016) (in 000s)

	As Reported	As Restated	% Change
Net Sales	2,215,573	2,225,022	0.42%
Income from Operations	106,850	107,491	0.60%

2017 (ending 6/30/2017) (in 000s)

	As Reported⁴	As Restated	% Change
Net Sales	2,529,915	2,484,929	(1.81%)
Income from Operations	101,877	94,875	(7.38%)

Super Micro's Remedial Efforts

52. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent.

Violations

53. As a result of the conduct described above, Super Micro violated Section 17(a)(2) and (3) of the Securities Act, which prohibit any person from directly or indirectly obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, in the offer or sales of securities.

54. As a result of the conduct described above, Super Micro also violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder, which require issuers to file accurate annual, current and quarterly reports, which include such further information as may be necessary to make the required statements not misleading.

⁴ The FY 2017 reported amounts include fourth quarter FY 2017 net sales and income from operations reported in Super Micro's Form 8-K filed on August 3, 2017.

55. As a result of the conduct described above, Super Micro also violated Section 13(b)(2)(A) of the Exchange Act, which requires an issuer to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the issuer's transactions and disposition of assets.

56. As a result of the conduct described above, Super Micro also violated Section 13(b)(2)(B) of the Exchange Act, which requires an issuer to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: transactions are executed in accordance with management's general and specific authorization; transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and to maintain accountability for assets; access to assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Super Micro's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Super Micro cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act and Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B), of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$17,500,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341

6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Super Micro Computer, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Lisa Deitch, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalties referenced in paragraph IV.B above. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary