**UNITED STATES OF AMERICA**
**Before the**
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 89658 / August 25, 2020**

**ACCOUNTING AND AUDITING ENFORCEMENT**
**Release No. 4163 / August 25, 2020**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-19929**

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| **In the Matter of**<br><br>**CHARLES LIANG,**<br><br>**Respondent.** | **ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO 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 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Charles Liang ("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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to 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 finds[1] 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. 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 through a number of improper practices. Super Micro also improperly under-reported certain expenses by misusing its cooperative marketing program and by improperly accounting for certain inventory.

3. On May 17, 2019, Super Micro filed with the Commission restated financial statements for previously-filed quarterly and annual reports for fiscal years 2015, 2016 and 2017.

4. Charles Liang, Super Micro's Chief Executive Officer, received profits from stock sales during the 12-month periods following the filings containing financial results that Super Micro restated as a result of misconduct. Liang has not, however, reimbursed Super Micro for those stock sales profits as required under Section 304(a) of the Sarbanes-Oxley Act.

### Respondent

5. Charles Liang, age 62, is the President, Chief Executive Officer, and Chairman of the Board of Directors of Super Micro. He has held those positions since founding the company in 1993.

### Related Entity

6. 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

[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.

stock was suspended in August 2018 and the stock was then delisted from March 2019 through January 2020.

## Facts

### Super Micro's Premature Recognition of Revenue

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.

8. Super Micro engaged in a number of transactions where it recognized revenue prior to customer delivery, in order to improperly accelerate revenue recognition 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. 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.

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

10. From at least 2014 through 2017, purchase orders submitted by a large 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. From FY 2015 through FY 2017, Super Micro prematurely recognized more than $45 million in revenue in connection with sales to this customer.

11. Super Micro prematurely recognized revenue in connection with sales transactions that included customer acceptance clauses. 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 provisions lapsed, or, alternatively, Super Micro received payment from the customer. Super Micro's internal accounting control for

tracking customers with acceptance clauses, and for determining whether those clauses had been satisfied, was lacking. As a result, Super Micro recognized revenue in connection with numerous sales before it received customer acceptance.

12. Super Micro 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 so that Super Micro would recognize the revenue before quarter-end.

13. 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 multiple 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). 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.

14. Super Micro improperly recognized revenue while holding certain customers' bills of lading. Absent a bill of lading, a customer ordinarily cannot take possession of the goods. 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.

15. Super Micro prematurely recognized revenue on certain extended warranties it sold to customers by recognizing the revenue at the time of sale, rather than ratably over the duration of the warranty term.

## **<u>Super Micro's Understatement of Expenses</u>**

16. Super Micro also improperly under-reported expenses by misusing its cooperative marketing funds, without customer approval, for a variety of purposes unrelated to marketing, such as warehousing costs for goods at quarter-end, shipping costs, and product repair costs. Cooperative marketing funds were supposed to be used for cooperative marketing activities undertaken by Super Micro's customers. 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. In using cooperative marketing funds for purposes unrelated to marketing, Super Micro understated its expenses and liabilities. 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.

## Super Micro's Restatement

17. 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.

18. 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.

19. 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 FY 2017. The FY 2017 Form 10-K also restated the financial statements for FYs 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.

## Compensation and Stock Sales of CEO Liang

20. During the 12-month periods that followed the filing of financial statements in Super Micro's quarterly and annual reports requiring restatement, Liang realized profits from his sales of Super Micro stock.

21. Liang has not reimbursed those amounts to Super Micro.

## Violation

22. Section 304 of the Sarbanes-Oxley Act of 2002 requires the chief executive officer or chief financial officer of any issuer required to prepare an accounting restatement due to material noncompliance with the securities laws as a result of misconduct to reimburse the issuer for, among other things, any profits realized from the sale of securities of the issuer during that 12-month periods following the public issuance or filing containing the financial results that were required to be restated. Section 304 does not require that a chief executive officer or chief financial officer engage in misconduct to trigger the reimbursement requirement. Liang received profits from his sales of securities during 12-month periods following filings containing financial results that Super Micro was required to restate. He has not, to date, reimbursed Super Micro for those amounts. Liang has, therefore, violated Sarbanes-Oxley Section 304.

## IV.

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

Accordingly, it is hereby ORDERED that**:**

A. Pursuant to Section 21C of the Exchange Act, Respondent Liang cease and desist from committing or causing any violations and any future violations of Section 304 of the Sarbanes-Oxley Act of 2002.

B. Respondent Liang shall, within 10 days of the entry of this Order, reimburse Super Micro for a total of $2,122,000 pursuant to Section 304(a) of Sarbanes-Oxley Act of 2002. Respondent shall simultaneously deliver proof of satisfying this reimbursement obligation to Lisa Deitch, Division of Enforcement, Securities and Exchange Commission, 100 F Street Northeast, Washington, DC 20549.

## V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary