

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 89657 / August 25, 2020**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4162 / August 25, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19928**

**In the Matter of**

**HOWARD HIDESHIMA,**

**Respondent.**

**CORRECTED 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 Howard Hideshima (“Hideshima” 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 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<sup>1</sup> that:

#### Summary

1. Howard Hideshima, the former Chief Financial Officer of Super Micro Computer, Inc. ("Super Micro"), engaged in improper accounting and caused internal accounting controls failures, which resulted in Super Micro systematically prematurely recognizing and reporting revenue and understating expenses from at least fiscal year ("FY") 2015 through FY 2017.

2. Hideshima pressed employees to maximize end-of-quarter revenue, without devising and maintaining sufficient internal accounting controls to record revenue in conformity with U.S. Generally Accepted Accounting Principles ("GAAP"). Hideshima was on notice that Super Micro employees engaged in a number of improper practices to accelerate revenue recognition and reporting, and he failed to adequately address the internal accounting control failures and stop these practices going forward.

3. Hideshima also was responsible for certain accounting decisions that did not conform with GAAP. For example, Super Micro improperly recognized and reported revenue (a) upon a large shipment at quarter-end, when Hideshima was informed that Super Micro sent the wrong goods to a customer and had to perform significant work for months after the shipment to address the problem, (b) for sales to a large Super Micro distributor upon shipment, when Hideshima received information indicating that the revenue should have been recognized when Super Micro received payment from the distributor; and (c) upon shipment to certain overseas customers, despite Hideshima authorizing employees to hold bills of lading and thus preventing the customers from taking possession of the goods as a means to ensure payment.

4. In addition, Hideshima knew that Super Micro was misusing its cooperative marketing program to pay a variety of unrelated expenses and, in certain instances, he proposed that co-op funds be used for non-marketing purposes, which caused Super Micro to understate these expenses. Furthermore, Hideshima implemented practices that caused Super Micro to over-value inventory and under-state expenses by failing to reduce inventory and record an associated expense when Super Micro no longer held the inventory for sale.

5. From at least FY 2015 through FY 2017, Hideshima signed, and/or approved, annual, quarterly and current reports with the Commission that contained materially misstated financial statements.<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> Hideshima signed 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 containing materially misstated financial statements.

6. Hideshima's conduct violated certain internal accounting controls and books and records provisions under the Exchange Act, and caused Super Micro's reporting, books and records, and internal accounting control violations.

### **Respondent**

7. Howard Hideshima, age 60, was the Chief Financial Officer and Senior Vice President of Super Micro from 2006 through 2018. Among other things, Hideshima was responsible for designing and implementing the company's internal accounting controls. Hideshima approved and signed all of the company's annual and quarterly reports at issue. He also reviewed and approved current reports. He previously held senior financial positions at other private and public companies. He holds Bachelor's and Master's degrees in accounting. Hideshima is not a Certified Public Accountant.

### **Related Entity**

8. 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 30th. 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.

### **Facts**

#### **A. Premature Revenue Recognition and Reporting**

9. 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, which Hideshima was responsible for enforcing and interpreting, indicated 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.

10. Hideshima pressed employees to maximize revenue at the end of quarters—typically sending dozens of emails to salespeople and other executives at the end of each quarter to

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Hideshima approved 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, which also contained materially misstated financial information.

try to increase sales—but failed to devise and maintain sufficient internal accounting controls with respect to proper revenue recognition. For instance, Super Micro’s revenue recognition policy, for which Hideshima was responsible, delegated responsibility for identifying sales terms that may affect revenue recognition to salespeople. Yet Hideshima failed to directly or indirectly provide revenue recognition training to salespeople. Hideshima also adopted policies, and was on notice of the recording and reporting of certain transactions, that were not in accordance with GAAP. As a result, 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 a the following improper practices.

***Premature Revenue Recognition Prior to Customer Delivery***

11. 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.

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

13. On multiple occasions, Hideshima received information indicating that revenue was being recognized prior to customer delivery, but he failed to put in place sufficient internal accounting controls to address the issue and stop these practices going forward, resulting in the premature recording and reporting of revenue.

***Improper Recognition of Revenue Upon Shipment of Goods Without Customer Authorization***

14. 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. Hideshima failed to put in place sufficient internal accounting controls to address this practice.

15. At the end of the second quarter of FY 2017, for example, 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.” Hideshima was informed that the goods were shipped without this customer’s authorization, and that lower level Super Micro employees misrepresented to the customer that the goods were at the warehouse when, in fact, they had already been shipped. Even after receiving this information, Hideshima

failed to put sufficient internal accounting controls in place to address employees' shipment of goods without customer authorization.

16. The recognition of revenue when goods were shipped 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***

17. 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. Hideshima received information indicating that the purchase orders contained FOB Destination terms. Under GAAP, revenue with FOB Destination terms should ordinarily be recognized upon Super Micro's delivery to the customer.

18. 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.

19. Hideshima received information indicating that Super Micro employees were routinely sending emails to purportedly change the shipping terms with this customer. He also received information indicating that, in at least one instance, Super Micro employees sought to recognize revenue upon shipment to this customer where the purchase order stated FOB Destination shipping terms and Super Micro had not yet received an email from the customer purporting to change the terms more than one month after quarter end.

20. In addition to the problems with the timing of emails purporting to change shipping terms with this customer, 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.

21. In light of the information Hideshima received, he should have known that recognition of revenue upon shipment to this customer was not appropriate under GAAP, and instead should have been recognized upon delivery to the customer.

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. Hideshima was aware that certain customers had acceptance clauses and understood that, under GAAP, revenue could not be recognized absent customer acceptance or payment.

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, there was 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 from Hideshima or anyone else at Super Micro. 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 Hideshima or anyone else at Super Micro. As a result, Super Micro recognized revenue in connection with numerous sales before it received customer acceptance. Hideshima oversaw the design and implementation of this internal accounting control.

### ***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. Because Super Micro had not satisfied all of the necessary elements to recognize revenue under GAAP, Super Micro prematurely recognized revenue in many instances.

27. Hideshima did not put in place sufficient internal accounting controls to address this improper practice and, in at least one instance, he failed to reverse the recognition of revenue after he was on notice that Super Micro sent the wrong goods to a customer and had to perform significant work in the subsequent months to address the problem.

28. Specifically, Super Micro sent a \$4 million order to a new customer towards the end of the fourth quarter of FY 2016. Hideshima was involved in negotiating the transaction. 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. Hideshima was informed of these facts, and therefore he should have known it was improper to recognize the sale at the end of FY 2016 under GAAP.

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

29. 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.

30. On several occasions, Hideshima was informed of the distributor's inability to pay within payment terms and that the distributor's ability to pay was tied to its receipt of funds from its own customers (*i.e.*, end-customers).

31. In light of these facts, under GAAP, Super Micro was required to recognize revenue when it received payments from its distributor customer. Nevertheless, from FY 2015 through FY 2017, Hideshima approved Super Micro's recognition of more than \$150 million in total revenue from this customer at the time of shipment.

### ***Improper Recognition of Revenue While Holding Customers' Bills of Lading***

32. Hideshima instituted a practice where 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.

33. 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.

34. 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, Hideshima should have known that revenue should not have been recognized.

### ***Failure to Properly Account for Extended Warranties***

35. 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.

36. Hideshima should have known that in order to properly account for extended warranties, there needed to be a system facilitating accounting personnel's receipt of information about any extended warranties sold by Super Micro. Yet, until 2015, Hideshima did not put into place any internal accounting control or process to identify products that included embedded warranties. Hideshima also failed to train, or have others train, salespeople and members of the operations team on how to identify embedded warranties.

37. 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 as a result of Hideshima's failure to put in place a sufficient internal accounting control. 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 to Pay Unrelated Expenses***

38. Under a policy implemented by Hideshima and his accounting team, 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, which were signed by Hideshima, as well as in internal written policies for which Hideshima was responsible, 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.

39. 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.

40. Super Micro used co-op marketing funds, without customer approval, for a variety of purposes that were 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. Hideshima knew co-op funds were used for non-marketing purposes and, in certain instances, he proposed that co-op funds be used for non-marketing purposes.

41. In using co-op marketing funds for purposes unrelated to marketing, Super Micro understated its expenses and liabilities. Specifically, Hideshima should have recorded or caused



others to record expenses when Super Micro incurred costs unrelated to marketing. Instead, Hideshima knowingly circumvented the company's internal accounting controls by approving a practice where Super Micro reduced its co-op marketing liability account and did not record any expense.

### ***Overvaluation of Inventory***

42. Super Micro engaged in two additional practices over the course of several years, which Hideshima implemented, which 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 was Required to Restate Years' Worth of Financial Statements Included in Commission Filings**

43. On August 3, 2017, Super Micro filed a Form 8-K with the Commission, which Hideshima reviewed, announcing its operating and financial results for the fourth quarter of FY 2017. Several weeks later, Super Micro announced, in a filing signed by Hideshima, that it would be unable to file its FY 2017 Form 10-K on time. On September 15, 2017, Super Micro 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 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.

44. 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.

45. Hideshima approved and signed all of the annual and quarterly reports containing misstated financial statements that were ultimately restated. He also reviewed and approved current reports that included misstated financial statements.

46. During the periods in which Hideshima signed annual and quarterly reports containing misstated financial statements, he sold Super Micro stock at a profit.

## Violations

47. As a result of the conduct described above, Respondent violated Section 13(b)(5) of the Exchange Act, which provides that no person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account.

48. As a result of the conduct described above, Respondent violated Rule 13b2-1 of the Exchange Act, which prohibits a person from, directly or indirectly, falsifying or causing to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act.

49. Super Micro violated the reporting provisions of Section 13(a) of the Exchange Act by filing periodic and current reports on Forms 10-K, 10-Q, and 8-K that contained materially misstated financial statements. As a result of the conduct described above, Respondent caused Super Micro's violations of 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.<sup>3</sup>

50. Super Micro 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. As a result of the conduct described above, Respondent caused Super Micro's violations of Section 13(b)(2)(A) of the Exchange Act.

51. Super Micro 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. As a result of the conduct described above, Respondent caused Super Micro's violations of Section 13(b)(2)(B) of the Exchange Act.

## IV.

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

Accordingly, it is hereby ORDERED that:

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<sup>3</sup> The Commission may institute cease-and-desist proceedings against any person held to be a cause of violations of the federal securities laws due to acts or omissions such person knew or should have known would contribute to the violation. See 15 U.S.C. § 78u-3(a); *Robert M. Fuller*, 56 SEC 976, 984 (2003), pet. denied, 95 F. App'x 361 (D.C. Cir. 2004).

A. Pursuant to Section 21C of the Exchange Act, Respondent Howard Hideshima cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13 and 13b2-1 thereunder.

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$50,000.00, disgorgement of \$260,844.00 and prejudgment interest of \$40,212.00 to the Securities and Exchange Commission. If timely payment of the penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. If timely payment of the disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

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 Howard Hideshima 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 disgorgement, prejudgment interest and penalties referenced in paragraph IV.B above (the "Hideshema Fair Fund") and the Hideshema Fair Fund shall be added to the Fair Fund established in the Commission's related proceeding, *In the Matter of Super Micro Computer, Inc.*, Admin. Proc. No. 3-19927 (instituted August 25, 2020) ("Super Micro Fair Fund"). The Super Micro Fair Fund will be distributed to affected investors in accordance with a Commission-approved plan of distribution in that proceeding. 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, he shall not argue that he is entitled to, nor shall he 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 he 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.

**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 by Respondent 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