

PROPOSED CHARGING LETTER
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Supermicro Computer, Inc.
980 Rock Ave.
San Jose, CA 95112

Attn: *Charles Jianhou Liang*
President and Chief Executive Officer

Dear Mr. Liang:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Supermicro Computer, Inc. (hereafter “Supermicro”) of San Jose, California, has committed twelve violations of the Export Administration Regulations (the “Regulations”),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS charges that Supermicro committed the following violations:

Charges 1 – 6: 15 C.F.R. § 764.2(a): Exporting Items Without the Required Licenses:

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on six occasions from on or about September 25, 2001, through on or about March 25, 2003, Supermicro engaged in conduct prohibited by the Regulations by exporting super servers (ECCN³ 4A994), motherboards (ECCNs 4A003 and 4A994) and computer chassis

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2006). The charged violations occurred in 2001 through 2003. The Regulations governing the violations at issue are found in the 2001 through 2003 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001 – 2003)). The 2006 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006 (71 Fed. Reg. 44,551 (August 7, 2006)) has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)).

³ The term “ECCN” refers to an Export Control Classification Number. See Section 772.1 of the Regulations.

(EAR99⁴), items subject to the Regulations and the Iranian Transactions Regulations,⁵ from the United States through the United Arab Emirates (“UAE”) to Iran without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations, an export to a third country intended for transshipment to Iran is a transaction subject to the Iranian Transaction Regulations. Pursuant to Section 746.7 of the Regulations, authorization was required from the Office of Foreign Assets Control, U.S. Department of Treasury (“OFAC”) for the shipment of these super servers, motherboards and chassis from the United States to Iran. By exporting these items in this manner, Supermicro committed six violations of Section 764.2(a) of the Regulations.

Charges 7 – 9: 15 C.F.R. § 764.2(e): Selling Items with Knowledge That Violations of the Regulations Would Occur:

On or about May 7, 2002, on or about November 7, 2002, and on or about March 25, 2003, in connection with the transactions referenced in Charges Four, Five and Six, Supermicro sold items exported from the United States with knowledge that violations of the Regulations would occur. Specifically, Supermicro sold the items described above to a company in the UAE when Supermicro knew or had reason to know that these items would be exported from the United States to Iranian end-users, via the UAE, without the required U.S. Government authorization. Supermicro knew or had reason to know that a license was required for these exports since, *inter alia*, Supermicro’s Senior Director of Strategic Sales knew of, or had reason to know of, the U.S. Government’s embargo on Iran. In so doing, Supermicro committed three violations of Section 764.2(e) of the Regulations.

Charges 10 - 12: 15 C.F.R. § 764.2(g): Misrepresentation of License Authority on Shipper’s Export Declarations:

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on or about December 17, 2001, on or about December 26, 2001, and on or about March 25, 2003, Supermicro made false or misleading representations to the U.S. Government in violation of the Regulations. Specifically, in connection with the export of items described above, Supermicro filed or caused a freight forwarder to file Shipper’s Export Declarations with the U.S. Government that stated that the export of the items from the United States qualified as NLR (“No License Required”). These statements were false or misleading because a Department of Commerce license was required by Section 746.7 of the Regulations for the export of these items. By making these false or misleading representations to the U.S. Government, Supermicro committed three violations of Section 764.2(g) of the Regulations.

⁴ Items subject to the Regulations, which are *not* listed on the Commerce Control List are designated as “EAR99.”

⁵ 31 C.F.R. Part 560.

* * * *

Accordingly, Supermicro is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation;⁶

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Supermicro fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Supermicro defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Supermicro. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Supermicro is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Supermicro is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Supermicro have a proposal to settle this case, Supermicro or its representative should transmit it to the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Supermicro's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of Supermicro's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: James C. Pelletier, Esq.

⁶ 15 C.F.R. § 6.4(a)(4).

Supermicro
Proposed Charging Letter
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Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

James C. Pelletier is the attorney representing BIS in this case; any communications that Supermicro may wish to have concerning this matter should occur through him. Mr. Pelletier may be contacted by telephone at (202) 482-5301.

Sincerely,

Michael D. Turner
Director
Office of Export Enforcement

Attachment

SCHEDULE A

SUPERMICRO COMPUTER, INC.

| CHARGES | DATE OF EXPORT (ON OR ABOUT) | COMMODITY | ECCN | COUNTRY | VALUE (U.S. DOLLARS) | ORDER # INVOICE # |
|----------|------------------------------|--|--|---------|----------------------|-------------------------|
| 1 | 9/25/01 | 6011 Super Server P4SBA Motherboard | 4A994 4A003 | Iran | 662.20 | ORD0893803 IN0892510 |
| 2, 10 | 12/17/01 | P3TDL Motherboards P4SBA Motherboards | 4A994 4A003 | Iran | 41,425.20 | ORD0903434 IN0896416 |
| 3, 11 | 12/26/01 | P4SBA Motherboards | 4A003 | Iran | 9,200.00 | ORD0903839 IN0896805 |
| 4, 7 | 5/7/02 | P4SBM Motherboards P4SBA Motherboards P4SDA Motherboards | 4A994 4A994 4A994 | Iran | 71,540 | ORD0910724 IN0904734 |
| 5, 8, | 11/7/02 | P4DP6 & P4DP8 Motherboards P4DL6 Motherboards P4SSE Motherboards P4SGR Motherboards P4SBR Motherboards P4DPL Motherboards | 4A994 4A994 4A994 4A994 4A994 4A994 | Iran | 24,100 | ORD0921676 IN0919347 |
| 6, 9, 12 | 03/25/03 | SC742i-420W Chassis SC760 Chassis w/420W | EAR99 EAR99 | Iran | 54,419.84 | ORD0931423 IN0931257 |

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
Supermicro Computer, Inc.)
980 Rock Ave.)
San Jose, CA 95112)
)
)
Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Supermicro Computer Inc. (“Supermicro”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2006)) (“Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50

¹ The charged violations occurred in 2001 through 2003. The Regulations governing the violations at issue are found in the 2001 through 2003 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001 – 2003)). The 2006 Regulations set forth the

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U.S.C. app. §§ 2401-2420 (2000)) (“Act”).²

WHEREAS, BIS has notified Supermicro of its intention to initiate an administrative proceeding against Supermicro, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Supermicro that alleged that Supermicro committed twelve violations of the Regulations, specifically:

procedures that apply to this matter.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006 (71 Fed. Reg. 44,551 (August 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)).

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Charges 1 – 6: 15 C.F.R. § 764.2(a): Exporting Items Without the Required

Licenses: On six occasions from on or about September 25, 2001, through on or about March 25, 2003, Supermicro engaged in conduct prohibited by the Regulations by exporting super servers (ECCN¹ 4A994), motherboards (ECCNs 4A003 and 4A994) and computer chassis (EAR99²), items subject to the Regulations and the Iranian Transactions Regulations,³ from the United States through the United Arab Emirates (“UAE”) to Iran without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations, an export to a third country intended for transshipment to Iran is a transaction subject to the Iranian Transaction Regulations. Pursuant to Section 746.7 of the Regulations, authorization was required from the Office of Foreign Assets Control, U.S. Department of Treasury (“OFAC”) for the shipment of these super servers, motherboards and chassis from the United States to Iran. By exporting these items in this manner, Supermicro committed six violations of Section 764.2(a) of the Regulations.

Charges 7 – 9: 15 C.F.R. § 764.2(e): Selling Items with Knowledge That Violations of the Regulations Would Occur: On or about May 7, 2002, on or about November 7, 2002, and on or about March 25, 2003, in connection with the exports described above,

¹ The term “ECCN” refers to an Export Control Classification Number. *See* Section 772.1 of the Regulations.

² Items subject to the Regulations, which are *not* listed on the Commerce Control List are designated as “EAR99.”

³ 31 C.F.R. Part 560.

Supermicro sold items exported from the United States with knowledge that violations of the Regulations would occur. Specifically, Supermicro sold the items described above to a company in the UAE when Supermicro knew or had reason to know that these items would be exported from the United States to Iranian end-users, via the UAE, without the required U.S. Government authorization. Supermicro knew or had reason to know that a license was required for these exports since, *inter alia*, Supermicro's Senior Director of Strategic Sales knew of, or had reason to know of, the U.S. Government's embargo on Iran. In so doing, Supermicro committed three violations of Section 764.2(e) of the Regulations.

Charges 10 - 12: 15 C.F.R. § 764.2(g): Misrepresentation of License Authority on Shipper's Export Declarations: On or about December 17, 2001, on or about December 26, 2001, and on or about March 25, 2003, Supermicro made false or misleading representations to the U.S. Government in violation of the Regulations. Specifically, in connection with the export of items described above, Supermicro filed or caused a freight forwarder to file Shipper's Export Declarations with the U.S. Government that stated that the export of the items from the United States qualified as NLR ("No License Required"). These statements were false or misleading because a Department of Commerce license was required by Section 746.7 of the Regulations for the export of these items. By making these false or misleading representations to the U.S. Government, Supermicro committed three violations of Section 764.2(g) of the Regulations.



WHEREAS, Supermicro has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, Supermicro fully understands the terms of this Agreement and the Order (“Order”) that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, Supermicro enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, the parties enter into this agreement having taken into consideration the plea agreement that Supermicro has agreed to enter into with the U.S. Attorney for the Northern District of California in the related criminal case, U.S. v. Super micro Computer, Inc., (“plea agreement”);

WHEREAS, Supermicro states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Supermicro neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Supermicro wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Supermicro agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:



4. Upon entry of the Order and timely payment of the \$125,400 civil penalty, BIS will not initiate any further administrative proceeding against Supermicro in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

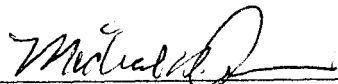
8. This Agreement shall become binding on BIS only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.



BUREAU OF INDUSTRY AND SECURITY

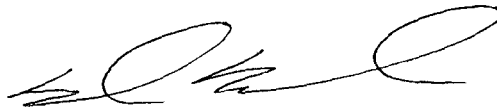
U.S. DEPARTMENT OF COMMERCE



Michael D. Turner
Director
Office of Export Enforcement

Date: 9/7/06

SUPERMICRO COMPUTER, INC.



Howard Hideshima
Chief Financial Officer
Supermicro Computer, Inc.

Date: 8/25/06

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
Supramicro Computer, Inc.)
980 Rock Ave.)
San Jose, CA 95112)
)
)
Respondent)

ORDER RELATING TO SUPERMICRO COMPUTER, INC.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Supramicro Computer, Inc. (“Supramicro”), of its intention to initiate an administrative proceeding against Supramicro pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2006)) (“Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),² by issuing a proposed charging letter to Supramicro that alleged that Supramicro committed twelve violations of the Regulations. Specifically, the charges are:

¹ The charged violations occurred in 2001 through 2003. The Regulations governing the violations at issue are found in the 2001 through 2003 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001 – 2003)). The 2006 Regulations set forth the procedures that apply to this matter.

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Charges 7 – 9: 15 C.F.R. § 764.2(e): Selling Items with Knowledge That Violations of the Regulations Would Occur: On or about May 7, 2002, on or about November 7, 2002, and on or about March 25, 2003, in connection with the exports described above, Supermicro sold items exported from the United States with knowledge that violations of the Regulations would occur. Specifically, Supermicro sold the items described above to

¹ The term “ECCN” refers to an Export Control Classification Number. *See* Section 772.1 of the Regulations.

² Items subject to the Regulations, which are *not* listed on the Commerce Control List are designated as “EAR99.”

³ 31 C.F.R. Part 560.

a company in the UAE when Supermicro knew or had reason to know that these items would be exported from the United States to Iranian end-users, via the UAE, without the required U.S. Government authorization. Supermicro knew or had reason to know that a license was required for these exports since, *inter alia*, Supermicro's Senior Director of Strategic Sales knew of, or had reason to know of, the U.S. Government's embargo on Iran. In so doing, Supermicro committed three violations of Section 764.2(e) of the Regulations.

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WHEREAS, BIS and Supermicro have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

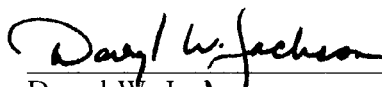
FIRST, that a civil penalty of \$125,400 is assessed against Supermicro, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Supermicro will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Supermicro. Accordingly, if Supermicro should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Supermicro's export privileges under the Regulations for a period of one year from the date of entry of this Order.

FOURTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Darryl W. Jackson
Assistant Secretary of Commerce
for Export Enforcement

Entered this 8th day of September 2006.