

Independent Investment Research Focused on Public Company Interactions with the SEC.

#### Disclosed SEC Investigation(s) Confirmed as On-going

**Watch List Status:** Removed from Watch List of Companies with Undisclosed SEC Investigations

#### Super Micro Management Playing Disclosure Games® With Investors Over Protracted and Previously Undisclosed SEC Investigative Activity

**Updates / Developments of Note:** Super Micro had one of the longer running undisclosed SEC investigations we've tracked. We warned repeatedly about an SEC investigation at SMCI since 2015, until it was finally disclosed in May-2019 – within a year's worth of amended filings. Yet the whole time we are to believe management believed such a protracted exposure was not material enough to require disclosure. Now they do. Something changed. That makes Super Micro one of the more troubling risk profiles we encounter.

**What's Been Disclosed:** We have known and warned about an undisclosed SEC investigation at Super Micro since 2015. In May-2019, Super Micro Computer filed a year's worth of amended 2016-2017 EDGAR filings within which SEC investigative activity was [finally] disclosed for the first time. There was a restatement and accompanying detail on an internal investigation. In Dec-2019, Super Micro Computer filed another wave of delayed EDGAR filings. SEC investigative activity was again disclosed, but with little change from the initial disclosures made in May-2019.

**Our full research history with select disclosure excerpts appear below.**

*"Disclosure Games®" is a trademarked term we use to highlight those public companies engaging in disclosure practices that in our opinion may be misleading, confusing, evasive, or otherwise lacking the transparency needed for investors to make well-informed investment decisions regarding a potentially material exposure.*

#### Disclosure Insight®

In all cases, Super Micro's disclosures of SEC investigative activity are of little analytical value and open far more questions than they answer.

Super Micro had one of the longer running undisclosed SEC investigations we've tracked. We now know Super Micro's SEC investigative activity dates back to 2015, which is consistent with our early warnings of the same.

Since May-2019, it appears the company has been disclosing multiple SEC investigations within a single disclosure paragraph. Here's how we break it down –

- There is/was an SEC investigation of marketing expenses that contained "certain irregularities". The company claims these irregularities were discovered by management and disclosed on 31-Aug-2015.

- The company claims to have also received SEC subpoenas, "in connection with the matters underlying our inability to timely file our Form 10-K for the fiscal year ending June 30, 2017."
- Finally, the company says it received an SEC subpoena, "following the publication of a false and widely discredited news article in October 2018 concerning our products."

In all instances cited above, the company otherwise provides no meaningful detail. Super Micro also claims it is cooperating fully to comply with these government requests. (Of course ... All companies with multiple rounds of SEC subpoenas on undisclosed SEC investigative activity are cooperating fully.)

**There is Material Risk Here:** Even though it’s been running for a long time and the details/updates are lacking, we caution investors to remember that there is a reason Super Micro Computer, Inc. started, and now keeps disclosing SEC investigative activity: Management believes it poses a material risk. We suggest you trust them on this.

If you cannot independently understand why they reached that conclusion, or why changes are made to disclosure language related to investigation(s), you are effectively left with a company that has a known material risk that you cannot properly analyze and discount. We generally recommend investors avoid such scenarios.

**How to Proceed from Here:** Those with an interest in Super Micro are advised to focus on what’s really going on in the now-protracted SEC investigation(s) we kept warning about.

Companies can provide investors with far more substantive detail and updates on SEC investigative activity than most do. Super Micro management can – if they choose – disclose greater detail on such things as:

- First contact with the SEC.
- Records / testimony requested.
- Time period [now] covered by the investigation.
- Areas it is [now] focused on.
- Whether the investigation has expanded.
- Whether the investigation is formal.
- Involvement by other agencies.
- Company personnel asked to give testimony.
- Subpoenas (there can be many over time).
- Who got subpoenas / what they sought?
- Last contact with the SEC on the investigation(s).

Keep in mind that a public company can be involved in more than one SEC investigation at a time. That appears to be the case here. As such, we routinely recommend asking a company if there are any investigations beyond what is disclosed or reported in media stories – or even in our research.

Clients are invited to contact us anytime, in total confidence, to discuss how to better assess the risks we identify here.

*– John P. Gavin, CFA*

**From the Probes Reporter Database**

**From the Probes Reporter Database:** The first Freedom of Information Act (FOIA) response indicating an SEC investigation was dated 23-Oct-2015. Ongoing enforcement proceedings were then confirmed six times since, most recently on 19-Feb-2019. For this reason, Super Micro Computer, Inc. was previously carried on our Watch List.

It wasn’t until May-2019, that the company made its first disclosure of SEC investigative activity. For this reason, Super Micro Computer, Inc. has been removed from our Watch List. However, SEC investigative activity was confirmed as on-going as of 17-Dec-2019, so it appears this remains an exposure to the company.

If we alert you to the existence of an undisclosed SEC investigation – or any response from the SEC – that means we filed a Freedom of Information Act (FOIA) request on the company in question and have a response, in black-and-white on government letterhead, that supports our statement.

We filed our first FOIA request on this company in **Jan-2013**. Below is the notable SEC response history for this company: Recent FOIA responses are consistent with recent company disclosures; that is, they confirm enforcement proceedings were ongoing as of 17-Dec-2019.

30-Jan-2013	FOIA Response	No SEC investigative records found.
30-Jan-2014	FOIA Response	No SEC investigative records found.
24-Nov-2014	FOIA Response	No SEC investigative records found.

23-Oct-2015	First Indication of an undisclosed SEC Investigation FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
10-Nov-2015	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
4-Aug-2016	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
12-Aug-2016	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
8-Mar-2017	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
23-Mar-2017	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
3-Oct-2017	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
20-Oct-2017	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
14-May-2018	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
12-Jun-2018	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
21-Dec-2018	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
19-Feb-2019	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
17-May-2019	Initial Disclosure of an SEC Investigation	After sitting on it for years, Super Micro finally makes its first disclosure of an SEC investigation that dates back to 2015. Probes Reporter warned repeatedly of this investigation during this time.
18-Sep-2019	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
17-Dec-2019	Appeal Response	<b>Existence of on-going SEC enforcement proceedings officially confirmed on appeal;</b> Access to records remains blocked.

When research history is available in our database, we present it above so you can compare it to company disclosures. Other interpretative guidance and disclosures appear below.

As can be seen in the table above, at least once in the past the SEC cited the "law enforcement exemption" of the Freedom of Information Act (FOIA) as basis to deny the public's access to the detailed records we sought on this company. As a matter of law, the SEC is acknowledging some sort of investigative activity with this response. We filed an appeal with the SEC's Office of the General Counsel to challenge that response. In response to our latest appeal(s), the date(s) of which is/are also shown in the table above, the SEC stated, "We have confirmed with staff that releasing the withheld information could reasonably be expected to interfere with on-going enforcement proceedings."

While the SEC as a matter of course tells the public that an on-going investigation should not be construed as a finding of any wrongdoing, the public interest is understandably high in tracking these investigations and their outcome. In this case, our research shows these SEC proceedings are [finally] disclosed by **Super Micro Computer, Inc.**

## Documents Acquired Under the Freedom of Information Act

At this time, we have no investigative records in our library from closed SEC investigations of this company.

## Notable Events and Disclosures

As of Mar-2019, when we issued our last report and Super Micro Computer, Inc. was still on our Watch list, the investigation(s) we highlighted in today's report was/were undisclosed. At that time repeated searches of SEC filings, back to Dec-2013, had found no clear disclosure of SEC investigative activity.

As you review the following disclosure excerpts, keep in mind that public companies can provide investors with far more substantive detail and updates on SEC investigative activity than most do. Public companies can – if they choose – disclose greater detail on such things as:

- First contact with the SEC.
- Records / testimony requested.
- Time period [now] covered by the investigation.
- Areas it is [now] focused on.
- Whether the investigation has expanded.
- Whether the investigation is formal.
- Involvement by other agencies.
- Company personnel asked to give testimony.
- Subpoenas (there can be many over time).
- Who got subpoenas / what they sought?
- Last contact with the SEC on the investigation(s).

- *Probes Reporter*

We observe a lot of cut-and-paste is used in this company's disclosures (excerpts below) in place of actual updates on investigative activity that would be more useful to investors.

**The following was repeated in the following Super Micro Computer, Inc. filings –**

- **10-Q (30-Sep-2019) filed on 20-Dec-2019:**
- **10-K (30-Jun-2019) filed on 19-Dec-2019:**
- **10-Q (31-Mar-2019) filed on 19-Dec-2019:**
- **10-Q (31-Dec-2018) filed on 19-Dec-2019:**
- **10-Q (30-Sep-2018) filed on 19-Dec-2019:**

We cooperated with the SEC in its investigation of marketing expenses that contained certain irregularities discovered by our management, which irregularities were disclosed on August 31, 2015. In addition, we have received subpoenas from the SEC in connection with the matters underlying our inability to timely file our Form 10-K for the fiscal year ending June 30, 2017. We also received a subpoena from the SEC following the publication of a false and widely discredited news article in October 2018 concerning our products. We are cooperating fully to comply with these government requests.

**The following was repeated in the following Super Micro Computer, Inc. filings –**

- **10-K (30-Jun-2017) filed on 17-May-2019:**
- **10-Q/A (31-Mar-2017) filed on 17-May-2019:**
- **10-Q/A (31-Dec-2016) filed on 17-May-2019:**
- **10-Q/A (30-Sep-2016) filed on 17-May-2019:**

## Background of Restatement

In August 2017, prior to the issuance of our consolidated financial statements for the fiscal year ended June 30, 2017, the audit committee (the “Audit Committee”) of our Board of Directors (the “Board”) commenced an investigation (the “Investigation”) into certain accounting and internal control matters, principally focused on certain revenue recognition matters. The Investigation was conducted with the assistance of outside counsel, which retained forensic accountants to assist them in their work. Following the conclusion of the Investigation, the Audit Committee directed its outside counsel and its forensic accountants to conduct additional procedures on an expanded scope of revenue recognition matters. Concurrent with these additional procedures, new members of our management, under the direction of the Audit Committee, performed a thorough analysis of our historical financial statements, accounting policies and financial reporting, as well as our disclosure controls and procedures and our internal control over financial reporting. During the course of the Investigation, the further procedures by outside counsel and the management analysis (collectively, the “Investigation, Procedures and Analysis”), the Audit Committee and management determined certain employees had violated our Code of Business Conduct and Ethics and discovered accounting and financial reporting errors and certain irregularities. On November 14, 2018, the Board, upon the recommendation, and with the concurrence of the Audit Committee and new members of management, concluded that certain previously filed consolidated financial statements and related financial information should no longer be relied upon ...

... Between late 2015 and 2017, we cooperated with the SEC in its investigation of marketing expenses that contained certain irregularities discovered by our management, which irregularities were disclosed on August 31, 2015. In addition, we have received subpoenas from the SEC in connection with the matters underlying our inability to timely file our Form 10-K for the fiscal year ending June 30, 2017. We also received a subpoena from the SEC following the false and widely-discredited reporting in October 2018 by Bloomberg Businessweek concerning our products. We are cooperating fully to comply with these government requests.

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*Probes Reporter research provides data, commentary, and analysis on public company interactions with investors and with the SEC. Our work is heavily reliant on company disclosures and our expertise in using the Freedom of Information Act.*

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***Notes: The SEC reminds us that its assertion of the law enforcement exemption should not be construed as an indication by the Commission or its staff that any violations of law have occurred with respect to any person, entity, or security. New SEC investigative activity could theoretically begin or end after the date covered by the latest information in this report, which would not be reflected here. The SEC did not disclose the details on investigations referenced herein. All we know is that they somehow pertain to the conduct, transactions, and/or disclosures of the companies referenced above. Companies with undisclosed SEC investigations are maintained on our Watch List of companies with undisclosed SEC investigations.***

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