Risk Factors Comparison 2023-08-28 to 2022-08-29 Form: 10-K

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The risks and uncertainties described below are not the only ones facing us. Other events that we do not currently anticipate or that we currently deem immaterial also may affect our business, financial condition, results of operations, cash flows, other key metrics and the trading price of our common stock. Risk Factor Summary Operational and Execution Risks • **Adverse** ~~The effects of the COVID- 19 pandemic and other macroeconomic~~ ----- **economic conditions may harm** ~~factors exacerbated by the COVID- 19 pandemic adversely affected~~ our business ~~operations, financial condition and results of operations, and there are no assurances adverse effects will not continue~~ . • Recent events in eastern Europe and the Taiwan Strait present challenges and risks to us, and no assurances can be given that current or future developments would not have a material adverse effect on our business, results of operations and financial condition. • ~~Adverse economic conditions may harm our business. •~~ Our quarterly operating results have fluctuated and will likely fluctuate in the future. • Our revenue and margins for a particular period are difficult to predict, and a shortfall in revenue or decline in margins may harm our operating results. • As we increasingly target larger customers and larger sales opportunities, our customer base may become more concentrated, our cost of sales may increase, our margins may be lower, our borrowings may be higher with effects on our cash flow, we are exposed to inventory risks, and our sales may be less predictable. • If we fail to meet any publicly announced financial guidance or other expectations about our business, it could cause our stock to decline in value **. • We may be unable to secure additional financing on favorable terms, or at all, which in turn could impair the rate of our growth** . • Increases in average selling prices for our Total IT Solutions have historically significantly contributed to increases in net sales in some of the periods covered. Such prices are subject to decline if customers do not continue to purchase our latest generation products or additional components, which could harm our results of operations. • Our cost structure and ability to deliver server solutions to customers in a timely manner may be adversely affected by volatility of the market for core components and certain materials for our products. • We may lose sales or incur unexpected expenses relating to insufficient, excess or obsolete inventory. • Difficulties we encounter relating to automating internal controls utilizing our ERP systems or integrating processes that occur in other IT applications could adversely impact our controls environment. • System security violations, data protection breaches, cyber- attacks and other related cyber- security issues could disrupt our internal operations or compromise the security of our products, and any such disruption could reduce our expected revenues, increase our expenses, damage our reputation and adversely affect our stock price. • Any failure to adequately expand or retain our sales force will impede our growth. • Conflicts of interest may arise **with** ~~between us and~~ Ablecom and Compuware, and **they** ~~those conflicts~~ may adversely affect our operations. • Our reliance on Ablecom could be subject to risks associated with our reliance on a limited source of contract manufacturing services and inventory warehousing. • If negative publicity arises with respect to us, our employees, our third- party service providers or our partners, our business and operating results could be adversely affected, regardless of whether the negative publicity is true. • If we lose Charles Liang, our President, Chief Executive Officer and Chairman, or any other key employee, we may not be able to implement our business strategy in a timely manner. • Our direct sales efforts may create confusion for our end customers and harm our relationships in our indirect sales channel and with our OEMs. • If we are unable to attract and integrate additional key employees in a manner that enables us to scale our business and operations effectively, or if we do not maintain competitive compensation policies to retain our employees, our ability to operate effectively and efficiently could be limited. Strategic and Industry Risks • If we do not successfully manage the expansion of our international manufacturing capacity and business operations, our business could be harmed. • We may not be able to successfully manage our business for growth and expansion. • Our growth into markets outside the United States exposes us to risks inherent in international business operations. **• We depend upon the development of new products & enhancements to existing products. If we fail to predict or respond to emerging technological trends & our customers' changing needs, our operating results and market share may suffer.** SMCI | ~~2022~~ **2023** Form 10- K | **9** ~~10 • We depend upon the development of new products & enhancements to existing products. If we fail to predict or respond to emerging technological trends & our customers' changing needs, our operating results and market share may suffer.~~ • The market in which we participate is highly competitive. • Industry consolidation may lead to increased competition and may harm our operating results. • We must work closely with our suppliers to make timely new product introductions. • Our suppliers' failure to improve the functionality and performance of materials and key components for our products may impair or delay our ability to deliver innovative products to our customers. • We rely on a limited number of suppliers for certain components used to manufacture our products. • We rely on indirect sales channels and any disruption in these channels could adversely affect our sales. • Our failure to deliver high quality server and storage solutions could damage our reputation and diminish demand for our products. • Our results of operations may be subject to fluctuations based upon our investment in corporate ventures. Legal and Regulatory Risks • Because our products and services may store, process and use data, some of which contains personal information, we are subject to complex and evolving laws and regulations regarding privacy, data protection and other matters. • Our operations could involve the use of regulated materials, and we must comply with environmental, health and safety laws and regulations, which can be expensive. • If we are unable to maintain effective internal control over financial reporting, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock may decrease. • Failure to comply with the U. S. Foreign Corrupt Practices Act, other applicable anti- corruption and anti- bribery laws, and applicable trade control laws could subject us to penalties and other adverse consequences. • Any failure to protect our intellectual property could impair our brand and our competitiveness. • Resolution of claims that we have violated or may violate the intellectual property rights of others could require us to indemnify others or pay significant royalties to third parties. • Provisions of our governance documents and Delaware law might discourage, delay or prevent a change of control of our company or changes in our management. Financial Risks ~~• We incurred significant expenses related to the matters that led to the delay in the filing of our 2017 10- K and may incur additional expenses related to resulting litigation.~~ • Our R & D expenditures, as a percentage of our net sales, are considerably higher than many of our competitors. • Our future effective income tax rates could be affected by changes in the relative mix of our operations and income among different geographic regions and by changes in domestic and foreign income tax laws. • Backlog does not provide a substantial portion of our net sales in any quarter. Risks Related to Owning our Common Stock • The trading price of our common stock is likely to be volatile. • Future sales of shares by existing stockholders **, including any shares that have vested or may in the future vest under the 2021 CEO Performance Award,** could cause our stock price to decline. • The concentration of our capital stock ownership with insiders likely limits your ability to influence corporate matters. • We do not expect to pay any cash dividends for the foreseeable future. General Risks • Our products may not be viewed as supporting climate change mitigation in the IT sector. • Our business and operations may be impacted by natural disaster events, including those brought on by climate change. **• The use of AI by our workforce may present risks to our business. • Expectations relating to environmental, social and governance considerations expose us to potential liabilities, reputational harm and other unforeseen adverse effects on our business.** SMCI | ~~2022~~ **2023** Form 10- K | ~~11 The novel strain of~~ **10 Our business depends on the overall demand for accelerated compute platforms. Global financial developments and downturns seemingly unrelated to us or our industry may harm us. If economic conditions, including inflation, increased interest rates, economic output and currency exchange rates, in** ~~the~~ **these** ~~coronavirus identified in Wuhan~~ **markets and other key potential markets for our Total IT Solutions remain uncertain or further deteriorate** , ~~China~~ **including as a result of the downturn** in ~~late 2019 (COVID~~ **the global economy, the Russia** - **Ukraine conflict** ~~19) spread throughout the world~~ and ~~resulted~~ -- **related sanctions** ~~in authorities imposing,~~ and **trade** ~~businesses and individuals implementing, numerous unprecedented measures to try to contain the virus, including travel bans and~~ restrictions, ~~quarantines, shelter- in- place / stay- at- home and social distancing orders, and shutdowns. These measures impacted and may continue to impact our business operations, the operations of our customers, and those~~ -- **the effects** of ~~our respective vendors, suppliers, and partners. During~~ the COVID- 19 pandemic **or other reasons** , ~~we~~ **customers may delay or reduce their spending. General economic weakness may also lead to longer collection cycles for payments due from our customers, an increase in customer bad debt, and impairment of investments. Furthermore,** continued **weakness** ~~our manufacturing operations~~ and **uncertainty in worldwide credit markets may harm our** customers' **available budgetary spending** ~~orders processing and services~~ , ~~although~~ **which could lead to cancellations** ~~our~~ - **or** ~~productivity~~ **delays in planned purchases of our Total IT Solutions. If our customers or potential customers experience economic hardship, this could reduce the demand for our Total IT Solutions, delay and lengthen sales cycles, increase requests for customer credit which may increase our risks in the event customers do not pay or make timely payment, lower prices for our Total IT Solutions, and lead to slower growth or even a decline in our revenues, operating results and cash flows. Inflation in the U. S. has recently increased** at ~~times slowed, especially in the United States and in the Netherlands. Logistics has continued to be~~ a **rate not** ~~challenge during the COVID- 19 pandemic as the global transportation industry, and particularly ocean transportation, has been~~ **seen in several decades** ~~constrained by shortages of containers~~ , **which may** ~~labor, truckers and crowded ports. The COVID- 19 pandemic also adversely impacted shipments to our customers and, to a lesser extent, our ability to provide services and support to our customers. As a~~ result **in decreased demand for our Total IT Solutions** , ~~shipping by air has been used more frequently despite that it is more expensive and there are fewer flights during the COVID- 19 pandemic than there were previously. We have experienced increased~~ **increases in our operating** costs **including our** ~~in freight. In addition, we also experienced increased direct~~ labor costs ~~as we incentivized our employees to~~ **, constrained credit and liquidity, reduced spending and volatility in financial markets. Inflation may** continue to **increase** ~~work and assist us in serving our customers~~ , ~~many of whom are in critical industries. We expect~~ both ~~of~~ **in** ~~these~~ -- **the U** ~~trends to continue until the COVID- 19 pandemic and other macroeconomic factors exacerbated by the COVID- 19 pandemic end~~ . **S.** ~~We have invested capital to procure key components (such as CPUs, memory, SSDs~~ and **globally, which could increase our operating costs and reduce demand** ~~GPUs) so we can maintain reasonable lead times to fulfill orders~~ for our ~~customers~~ **Total IT Solutions** . ~~There~~ -- **The Federal Reserve has significantly raised** ~~are positive signs with the expiration of various COVID- 19 mandates~~ , ~~vaccine availability~~ and **may again raise** ~~the rollout of boosters; however~~ , **interest rates in response** ~~with the possibility of the emergence of other new virus strains and vaccine supply constraints, we are unable~~ to ~~predict the ultimate extent to~~ **concerns over inflation risk,** which **may increase** ~~the global COVID- 19 pandemic (or~~ **our** ~~other potential infectious diseases, such as the currently spreading monkeypox virus) may further impact our business operations, financial performance and results of operations. The extent to which the effects of the COVID- 19 pandemic and other macroeconomic factors exacerbated by the COVID- 19 pandemic will continue to impact our business, operations, financial condition and results of operations will depend on~~ **own borrowing costs** ~~numerous evolving factors that we may not be able to control or predict, including: • The duration~~ and **/** ~~scope of the COVID- 19 pandemic; • The extent and effectiveness of responsive actions by authorities and the impact of these and other factors on our~~ - **or reduce our clients** ~~employees, customers and vendors; • The rate of spending on server and storage solutions, including delays in prospective customers~~ ' **access to debt financing** ~~purchasing decisions and delays in the provisioning of our products; • The rate at which our suppliers develop and release new components such as microprocessors and memory; • The rate at which our customers can perform acceptance testing or qualify our products~~ , **reduce** ~~particularly if they contain new technologies~~ **technology expenditures** ~~; • Factors affecting the availability of human capital, including either shortage of labor~~ and **demand** ~~/ or heightened unemployment; • The global economic recession and / or inflation pressures; • The health impact of the pandemic on our employees, including key personnel; • The impact on the liquidity of our sales partners and end customers, including lengthening of customers payment terms and potential bankruptcies; • Our continued ability to execute on business~~

~~continuity plans~~ for ~~the maintenance of our critical business processes and managing our liquidity and access to credit facilities on terms acceptable to us; • Availability of and fluctuations in the cost of materials, logistics and labor; and • Erosion of economic activity by small and medium size business or~~ **our Total IT Solutions** ~~sectors to which we are exposed through OEMs and indirect sales channels~~ . ~~SMCI | 2022 Form 10- K | 12~~ Recent events in eastern Europe and the Taiwan strait present challenges and risks to us, and no assurances can be given that current or future developments will not have a material adverse effect on our business, results of operations and financial condition. The crisis in eastern Europe continues to **pose** ~~be a challenge~~ **challenges** to global companies, including us, which have customers in the impacted regions. The U. S. and other global governments have placed restrictions on how companies may transact with businesses in these regions, particularly Russia, Belarus and restricted areas in Ukraine. Because of these restrictions and the growing logistical and other challenges, we have paused sales to Russia, Belarus and the restricted areas in Ukraine. This decision, which is in line with the approach of other global technology companies, helps us comply with our obligations under the various requirements in the U. S. and around the world. While it is difficult to estimate the impact on our business and financial position of both (i) our pause in sales to Russia, Belarus and the restricted areas in Ukraine and the current or future sanctions and (ii) tensions in the Taiwan strait, our pause in sales and these sanctions and continuing rising tensions could have adverse impacts on us in future periods, although they have not been material to date. For example, with respect to Russia, Belarus and the restricted areas in Ukraine, we ~~do~~ **did** not **, prior to the imposition of restrictions,** make a material portion of our sales or acquire a material portion of our parts or components directly from impacted regions; however, our suppliers and their suppliers may acquire raw materials for parts or components from the impacted regions. Supply disruptions may make it harder for them to find favorable pricing and reliable sources for materials they need, which may put **further** upward pressure on their costs and increasing the risks that our costs may increase and that it may be more difficult, or we may be unable, to acquire materials needed. In addition, the crises may further exacerbate inflationary pressures that have indirect impacts on our business, such as further increasing our logistics costs from rising fuel prices and / or continuing to increase our compensation expense. In addition, no assurances can be given that additional developments in the impacted regions, and responses thereto from the U. S. and other global governments, would not have a material adverse effect on our business, results of operations and financial condition. Our ~~business depends on the overall demand for accelerated compute platforms. Global financial developments and downturns seemingly unrelated to us or our industry may harm us. If economic conditions, including inflation, increased interest rates, economic output and currency exchange rates, in these markets and other key potential markets for our Total IT Solutions remain uncertain or further deteriorate, including as a result of the downturn in the global economy, the Russia- Ukraine conflict and related sanctions and trade restrictions, the effects of the COVID- 19 pandemic or other reasons, customers may delay or reduce their spending. General economic weakness may also lead to longer collection cycles for payments due from our customers, an increase in customer bad debt, and impairment of investments. Furthermore, the continued weakness and uncertainty in worldwide credit markets may harm our customers' available budgetary spending, which could lead to cancellations or delays in planned purchases of our Total IT Solutions. If our customers or potential customers experience economic hardship, this could reduce the demand for our Total IT Solutions, delay and lengthen sales cycles, lower prices for our Total IT Solutions, and lead to slower growth or even a decline in our revenues, operating results and cash flows. Inflation in the U. S. has recently increased at a rate not seen in several decades, which may result in decreased demand for our Total IT Solutions, increases in our operating costs including our labor costs, constrained credit and liquidity, reduced spending and volatility in financial markets. Inflation may continue to increase, both in the U. S. and globally, which could increase our operating costs and reduce demand for our Total IT Solutions. The Federal Reserve has significantly raised, and may again raise, interest rates in response to concerns over inflation risk, which may increase our own borrowing costs and / or reduce our clients' access to debt financing, reduce technology expenditures and demand for our Total IT Solutions. Our~~ quarterly operating results have fluctuated and will likely fluctuate in the future, which could cause rapid declines in our stock price. We believe that our quarterly operating results will continue to be subject to fluctuation due to various factors, many of which are beyond our control. Factors that may affect quarterly operating results include: • Fluctuations in demand for our products, in part due to changes in the global economic environment; • Fluctuations based upon seasonality, with the quarters ending March 31 and September 30 typically being weaker; **SMCI | 2023 Form 10- K | 11** • **Continuing lingering effects from the** ~~The occurrence of global pandemics, including~~ COVID- 19 **pandemic, the occurrence of other global pandemics** , and other events that impact the global economy or one or more sectors **thereof** ~~of the global economy~~ , such as the global economic downturn and recent events in eastern Europe; • The ability of our customers and suppliers to obtain financing or fund capital expenditures; • Fluctuations in the timing and size of large customer orders, including with respect to changes in sales and implementation cycles of our products into our customers' spending plans and associated revenue; ~~SMCI | 2022 Form 10- K | 13~~ • Variability of our margins based on the mix of server and storage systems, subsystems and accessories we sell and the percentage of our sales to internet data center, cloud computing customers or certain geographical regions; • Fluctuations in availability and costs associated with key components, particularly semiconductors, memory, storage solutions, and other materials needed to satisfy customer requirements ~~, especially during a period of global market disruption, and, in particular, the impact of the extended duration of both the COVID- 19 pandemic, the global economic downturn and recent events in eastern Europe on our supply chain and the supply chain of our suppliers~~ ; • The timing of the introduction of new products by leading microprocessor vendors and other suppliers; • The introduction and market acceptance of new technologies and products, and our success in ~~new~~ **emergent** and **rapidly** evolving markets **(such as AI)** , and incorporating emerging technologies in our products, as well as the adoption of new standards; • Changes in our product pricing policies, including those made in response to new product announcements **and fluctuations in availability and costs of key components** ; • Mix of whether customer purchases are of partially or fully integrated systems or subsystems and accessories and whether made directly or through our indirect sales channel partners; • The effect of mergers and acquisitions among our competitors, suppliers, customers, or partners; • General economic conditions in our geographic markets; •

Geopolitical tensions, including trade wars, tariffs and / or sanctions in our geographic markets; and • Impact of regulatory changes on our cost of doing business. In addition, customers may hesitate to purchase, or not continue to purchase, our products based upon past unwarranted reports about security risks associated with the use of our products. Accordingly, our growth and results of operations may fluctuate on a quarterly basis. If we fail to meet expectations of investors or analysts, our stock price may fall rapidly and without notice. Furthermore, the fluctuation of quarterly operating results may render less meaningful period- to- period comparisons of our operating results, and you should not rely upon them as an indication of future performance. As a result of a variety of factors discussed in this Annual Report, our revenue and margins for a particular quarter are difficult to predict, especially in light of a challenging and inconsistent global macroeconomic environment, **lingering** ~~the significant~~ impacts of the COVID- 19 pandemic, the global economic downturn ~~and~~ **,** recent events in eastern Europe **, volatility in emergent and rapidly evolving markets (such as AI)** , steps we are taking in response thereto, increased competition, the effects of the ongoing trade disputes between the United States and China and related market uncertainty. Our revenue may grow at a slower rate than in past periods or decline. Our ability to meet financial expectations could also be adversely affected if the nonlinear sales pattern seen in some of our past quarters recurs in future periods. The timing of large orders can also have a significant effect on our business and operating results from quarter to quarter. From time to time, we receive large orders that have a significant effect on our operating results in the period in which the order is recognized as revenue. For instance, our larger customers may seek to fulfill all or substantially all of their requirements in a single or a few orders, and not make another significant purchase for a substantial period of time. The timing of such orders is difficult to predict, and the timing of revenue recognition from such orders may affect period to period changes in revenue. **When we issue credit in connection with large orders, in the event customers to do not pay or make timely payment our ability to collect amounts owed to us creates risk. We have in the past, and may continue in the future, on a case by case basis, take steps to mitigate collection risks, such as seeking third party insurance with respect to credit issued and taking a security interest in goods we have sold to customers pending collection of any credit given. However, we cannot assure that such measures will be effective to collect on all or part of any such credit issued.** As a result, our operating results could vary materially from quarter to quarter based on the receipt of such orders and their ultimate recognition as revenue. We plan our operating expense levels based primarily on forecasted revenue levels. These expenses and the impact of long- term commitments are relatively fixed in the short term. A shortfall in revenue could lead to operating results being below expectations because we may not be able to quickly reduce these fixed expenses in response to short- term business changes. Any of the above factors could have a material adverse impact on our operations and financial results. SMCI | ~~2022~~ **2023** Form 10- K | ~~14~~ **12** As we increasingly target larger customers and larger sales opportunities, our customer base may become more concentrated, our cost of sales may increase, our margins may be lower, our borrowings to fund purchases of key components may be higher, we are exposed to inventory risks **and increased credit risks,** and our sales may be less predictable. We have become increasingly dependent upon larger sales to grow our business. In particular, in recent years, we have completed larger sales to leading internet data center and cloud customers, large enterprise customers and OEMs. ~~No~~ **While no** single customer accounted for 10 % or more of net sales in any of fiscal years **2023,** 2022 ~~,~~ **or** 2021 **, we may have customers account** ~~or~~ **for** ~~2020~~ **10 % or more of net sales in the future** . If customers buy our products in greater volumes and their business becomes a larger percentage of our net sales, we may grow increasingly dependent on those customers to maintain our growth. If our largest customers do not purchase our products, or we are unable to supply such customers with products, at the levels, in the timeframes or within the geographies that we expect, including as a result of the **global economic downturn, lingering** ~~impact~~ **impacts** of **the** COVID- 19 **pandemic** , ~~the global economic downturn~~ or recent events in eastern Europe on their or our businesses, our ability to maintain or grow our net sales will be adversely affected. Increased sales to larger customers may also cause fluctuations in results of operations. Large orders are generally subject to intense competition and pricing pressure which can have an adverse impact on our margins and results of operations. Accordingly, a significant increase in revenue during the period in which we recognize the revenue from a large customer may be followed by a period of time during which the customer either does not purchase any products or only a small number of our products. Additionally, as we and our partners focus increasingly on selling to larger customers and attracting larger orders, we expect greater costs of sales. Our sales cycle may become longer, and more expensive, as larger customers typically spend more time negotiating contracts than smaller customers. Such larger orders may require greater commitments of working capital, which may require increased borrowings under our credit facilities to fund purchases of key components (such as CPUs, memory, SSDs and GPUs) necessary for such orders, which could adversely affect our cash flow and expose us to the risk of holding excess and obsolete inventory, if there are delays or cancellations. Furthermore, larger customers also often seek greater levels of support in the implementation and use of our server solutions. An actual or perceived inability to meet customer support demands may adversely affect our relationship with such customers, which may affect the likelihood of future purchases of our products. **Larger customers may also request larger amounts of credit or longer payment terms, which, if granted, increases our risks in the event customers to do not pay or make timely payment, which risk is exacerbated in the event our payment terms with major suppliers of necessary components for such orders do not match the payment terms of our customers.** As a result of the above factors, our quarter- to- quarter results of operations may be subject to greater fluctuation and our stock price may be adversely affected. **SMCI | 2023 Form 10- K | 13** We generally provide forward looking financial guidance when we announce our financial results for the prior quarter. No assurances can be given that we will continue to provide forward looking financial guidance, and if we do issue forward looking guidance, the uncertainties related to these items could cause us to revise such guidance. If issued, we undertake no obligation to update any forward- looking guidance at any time. In the past, our financial results have failed to meet the guidance we provided. There are a number of reasons why we have at times failed to meet guidance in the past and might fail again in the future, including, but not limited to, the factors described in these Risk Factors. ~~SMCI |~~ **We had net income of $ 640. 0 million, $ 285. 2 million and $ 111. 9 million in fiscal years 2023,** 2022 ~~Form 10- K | 15~~ **and 2021, respectively. We believe that our current cash, cash**

equivalents, borrowing capacity available from our credit facilities and internally generated cash flows will be sufficient to support our operating businesses and maturing debt and interest payments for the 12 months following the issuance of the financial statements included in this Annual Report. Nevertheless, we intend to continue to grow our business, which could require additional capital. Since our initial public offering, we have funded our growth primarily through the cash raised from our operations and credit facilities with banking institutions. We may need to expand our existing credit facilities, enter into new credit facilities or engage in equity, debt or other type of financings to secure additional capital to continue or increase our rate of growth. If we raise additional capital through future issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we may issue could have rights, preferences and privileges superior to those holders of our common stock. Any credit facility or debt financing that we secure in the future could involve restrictive covenants relating to our capital raising activities and other financial and operational matters, which could make it more difficult for us to raise additional capital and to pursue our growth strategies. If we are unable to secure additional funding on favorable terms, or at all, when we seek it, we may not be able to continue the rate of our growth. In addition, no assurances can be given that in the event that we secure such financing that the proceeds thereof will be used effectively or result in growth. Increases in average selling prices for our solutions have ~~historically~~ significantly contributed to increases in net sales in some of the periods covered by this Annual Report. Such prices are subject to decline if customers do not continue to purchase our latest generation products or additional components, which could harm our results of operations. Increases in average selling prices for our server solutions have significantly contributed to increases in net sales in some of the periods covered by this Annual Report. **The** ~~Recently, the~~ market for key components ~~has become~~ **became , and continues to be,** more volatile during **the global economic downturn,** the COVID- 19 pandemic **and lingering effects thereof** , ~~the global economic downturn~~ and recent events in eastern Europe. As with most electronics- based products, average selling prices of server and storage products are typically highest at the time of introduction of new products, which utilize the latest technology, and tend to decrease over time as such products become commoditized and are ultimately replaced by even newer generation products. We cannot predict the timing or amount of any decline in the average selling prices of our server solutions that we may experience in the future, which may be exacerbated by ~~continued~~ **the global economic downturn, lingering** effects from the COVID- 19 pandemic, ~~the global economic downturn~~ and recent events in eastern Europe. In some instances, our agreements with our indirect sales channel partners limit our ability to reduce prices unless we make such price reductions available to them, or price protect their inventory. If we are unable to either (i) decrease the average per unit manufacturing costs faster than the rate at which average selling prices decline or (ii) increase the average selling prices at the same pace at which average per unit manufacturing costs increase, our business, financial condition and results of operations will be harmed. Prices of certain materials and core components utilized in the manufacture of our server and storage solutions, such as **GPUs,** serverboards, chassis, CPUs, memory, hard drives and SSDs, represent a significant portion of our cost of sales. While we have increased our purchases of certain critical materials and core components in response to the supply and demand uncertainties ~~associated with the COVID- 19 pandemic, the global economic downturn and recent events in eastern Europe~~ , we do not have long- term supply contracts for all critical materials and core components, but instead often purchase these materials and components on a purchase order basis. Prices **and availability** of these core components and materials are volatile, and, as a result, it is difficult to predict expense levels and operating results. In addition, if our business growth renders it necessary or appropriate to transition to longer term contracts with materials and core component suppliers, our costs may increase, and our gross margins could correspondingly decrease. Because we often acquire materials and key components on an as needed basis, we may be limited in our ability to effectively and efficiently respond to customer orders because of the then- current availability or the terms and pricing of these materials and key components **, particularly for GPUs during periods of growth of new emerging markets (such as for AI)** . Our industry has experienced materials shortages and delivery delays in the past, including as a result of **increased demand during periods of growth of new emerging markets (such as for AI),** the negative impact of COVID- 19, the global economic downturn and recent events in eastern Europe on global supply chains, and we may experience shortages or delays of critical materials or increased logistics costs to obtain necessary materials in a timely manner in the future. The COVID- 19 pandemic ~~and~~ **,** other macroeconomic factors exacerbated by the COVID- 19 pandemic ~~has~~ **, lingering effects from the COVID- 19 pandemic, and other factors, have in the past** resulted in ~~widely reported~~ **, and may in future result in additional** shortages of **key** semiconductors. From time to time, we have been forced to delay the introduction of certain of our products or the fulfillment of customer orders as a result of shortages of materials and key components, which can adversely impact our revenue. If shortages, supply or demand imbalances or delays arise, the prices of these materials and key components may increase or the materials and key components may not be available at all. In the event of shortages, some of our larger competitors may have greater abilities to obtain materials and key components due to their larger purchasing power. We may not be able to secure enough key components or materials at reasonable prices or of acceptable quality to build new products to meet customer demand, which could adversely affect our business, results of operations and financial condition. In addition, from time to time, we have accepted customer orders with various types of component pricing protection. Such arrangements have increased our exposure to component pricing fluctuations and have adversely affected our financial results in certain quarters. If we were to lose any of our current supply or contract manufacturing relationships, the process of identifying and qualifying a new supplier or contract manufacturer who meets our quality and delivery requirements, and who will appropriately safeguard our intellectual property, may require a significant investment of time and resources, adversely affecting our ability to satisfy customer purchase orders and delaying our ability to rapidly introduce new products to market. Similarly, if any of our suppliers were to cancel, materially change contracts or commitments to us or fail to meet the quality or delivery requirements needed to satisfy customer demand for our products, whether due to shortages or other reasons, our reputation and relationships with customers could be damaged. We could lose orders, be unable to develop or sell some products cost- effectively or on a timely basis, if at all, and have significantly decreased revenues, margins and earnings, which would have a material adverse effect on our business, results of operations and financial condition. SMCI | ~~2022~~ **2023** Form 10- K | ~~16~~ **15** To offer greater choices and optimization of our products to benefit our customers, we maintain a high level of inventory. If we fail to maintain sufficient inventory, we may not be able to meet demand for our products on a timely basis, and our sales may suffer. If we overestimate customer demand for our products, we could experience excess inventory of our products and be unable to sell those products at a reasonable price, or at all. As a result, we may need to record higher inventory reserves. In addition, from time to time we assume greater inventory risk in connection with the purchase or manufacture of more specialized components in connection with higher volume sales opportunities. **In** ~~There are uncertainties and risks related to COVID- 19,~~ the **past** ~~global economic downturn and recent events in eastern Europe~~ , ~~for which~~ we have taken certain actions including our increased purchase of certain critical materials and components as a part of our response planning **for various uncertainties and risks, such as those related to the COVID- 19 pandemic and lingering effects therefrom** . Specifically, we sought to actively manage our supply chain for potential risks of shortage by first building inventories of critical components required for our motherboards and other system printed circuit boards and continued to add to our inventories of key components such as CPUs, memory, SSDs and to a lesser extent GPUs such that customer orders can be fulfilled as they are received. **We may continue to take similar actions in the future based upon our assessment of uncertainties and risks.** Nevertheless, no assurances can be given that **any** such efforts will be successful to manage inventory, and we could be exposed to risks of insufficient, excess, or obsolete inventory. We have from time to time experienced inventory write downs associated with higher volume sales that were not completed as anticipated. We expect that we will experience such write downs from time- to- time in the future related to existing and future commitments, and potentially related to ~~our~~ **any** proactive purchase of certain critical materials and components as part of our planning **for uncertainties** ~~in light of COVID- 19, the global economic downturn~~ and **risks** ~~recent events in eastern Europe~~ . Excess or obsolete inventory levels for these or other reasons could result in unexpected expenses or increases in our reserves against potential future charges which would adversely affect our business, results of operations and financial condition. Many companies have experienced challenges with their ERP systems that have had a negative effect on their business. We have incurred and expect to continue to incur additional expenses related to our ERP systems, particularly as we continue to further enhance and develop them including by automating certain internal controls. Any future disruptions, delays or deficiencies relating to automating internal controls utilizing our ERP systems or integrating processes that occur in other IT applications could adversely affect our ability to file reports with the SEC in a timely manner, deliver accurate financial statements and otherwise impact our controls environment. Any of these consequences could have an adverse effect on our business, results of operations and financial condition. Malicious computer programmers and hackers may be able to penetrate our network and misappropriate or compromise our confidential information or that of third parties, create system disruptions or cause shutdowns. Computer programmers and hackers also may be able to develop and deploy viruses, worms and other malicious software programs that attack our products or otherwise exploit any security vulnerabilities of our products. While we employ a number of protective measures, including firewalls, anti- virus and endpoint detection and response technologies, regular annual training of employees with respect to cyber- security, these measures may fail to prevent or detect attacks on our systems. While there have been unauthorized intrusions into our network in the past, none of these intrusions, individually or in the aggregate, had a material adverse effect on our business, operations, or products. We have taken steps to enhance the security of our network and computer systems and we provide regular updates to our Board at our quarterly meetings with respect to cyber- security matters. Despite these efforts, we may experience future intrusions, which could adversely affect our business, operations, or products. In addition, our hardware and software or third- party components and software that we utilize in our products may contain defects in design or manufacture, including " bugs " and other problems that could unexpectedly interfere with the operation or security of the products. The costs to us to eliminate or mitigate cyber or other security problems, bugs, viruses, worms, malicious software programs and security vulnerabilities could be significant and, if our efforts to address these problems are not successful, could result in interruptions, delays, cessation of service and loss of existing or potential customers that may impede our sales, manufacturing, distribution or other critical functions. Any claim that our products or systems are subject to a cyber- security risk, whether valid or not, could damage our reputation and adversely impact our revenues and results of operations. SMCI | ~~2022~~ **2023** Form 10- K | ~~17~~ **16** We manage and store various proprietary information and sensitive or confidential data relating to our business as well as information from our suppliers and customers. Breaches of our or any of our third party suppliers' security measures or the accidental loss, inadvertent disclosure or unapproved dissemination of proprietary information or sensitive or confidential data about us or our customers or suppliers, including the potential loss or disclosure of such information or data as a result of fraud, trickery or other forms of deception, could expose us or our customers or suppliers to a risk of loss or misuse of this information, result in litigation and potential liability for us, damage our brand and reputation or otherwise harm our business. To the extent we experience cyber- security incidents in the future, our relationships with our customers and suppliers may be materially impacted, our brand and reputation may be harmed and we could incur substantial costs in responding to and remediating the incidents and in resolving any investigations or disputes that may arise with respect to them, any of which would cause our business, operations, or products to be adversely affected. In addition, the cost and operational consequences of implementing and adding further data protection measures could be significant. We expect that our direct sales force will continue to grow as larger customers increasingly require a direct sales approach. Competition for direct sales personnel with the advanced sales skills and technical knowledge we need is intense, and we face significant competition for direct sales personnel from our competitors. Our ability to grow our revenue in the future will depend, in large part, on our success in recruiting, training, retaining and successfully managing sufficient qualified direct sales personnel. New hires require significant training and may take six months or longer before they reach full productivity. Our recent hires and planned hires may not become as productive as we would like, we may be unable to hire sufficient numbers of qualified individuals in the future in the markets where we do business, and individuals we hire may not perform pursuant to our expectations in the event of inadequate supervision. If we are unable to hire, develop and retain sufficient numbers of productive sales personnel, our customer relationships and resulting sales of our server solutions will suffer. We use Ablecom, a related party, for contract design and manufacturing coordination support and warehousing, and Compuware, also a related party and an affiliate of Ablecom, for distribution, contract manufacturing and warehousing. We work with Ablecom to optimize modular designs for our chassis and certain of other components. We outsource to Compuware a portion of our design activities and a significant part of our manufacturing of subassemblies, particularly power supplies. Our purchases of products from Ablecom and Compuware represented **6. 6 %,** 8. ~~2~~ **3** % ~~,~~ **and** 7. 8 ~~% and 10. 1~~ % of our cost of sales for fiscal years **2023,** 2022 ~~,~~ **and** 2021 ~~and 2020~~ , respectively. Ablecom and Compuware' s sales to us constitute a substantial majority of Ablecom' s and Compuware' s net sales. Ablecom and Compuware are both privately held Taiwan- based companies. In addition, we have entered into a distribution agreement with Compuware, under which we have appointed Compuware as a nonexclusive distributor of our products in Taiwan, China and Australia. ~~We have~~ **Each of Ablecom and Compuware are** also **developing campuses** ~~entered into a tripartite agreement with Ablecom and Compuware related to a three- way purchase of land~~ in **close** proximity to ~~our~~ **the** campus **we are developing** in ~~Bade, Taiwan~~ **Malaysia to expand our manufacturing** . Steve Liang, Ablecom' s Chief Executive Officer and largest shareholder, is the brother of Charles Liang, our President, Chief Executive Officer and Chairman of our Board of Directors (the " Board "). Steve Liang owned no shares of our common stock as of June 30, **2023,** 2022 ~~,~~ **or** 2021 ~~or 2020~~ . Charles Liang and his spouse, Sara Liu, our Co- Founder, Senior Vice President and Director, jointly owned approximately 10. 5 % of Ablecom' s capital stock, while Mr. Steve Liang and other family members owned approximately 28. 8 % of Ablecom' s outstanding common stock as of June 30, ~~2022~~ **2023** . Bill Liang, a brother of both Charles Liang and Steve Liang, is a member of the Board of Directors of Ablecom as well. In October 2018, our Chief Executive Officer, Charles Liang, personally borrowed approximately $ 12. 9 million from Chien- Tsun Chang, the spouse of Steve Liang. The loan is unsecured, has no maturity date and bore interest at 0. 8 % per month for the first six months, increased to 0. 85 % per month through February 28, 2020, and reduced to 0. 25 % effective March 1, 2020. The loan was originally made at Mr. Liang' s request to provide funds to repay margin loans to two financial institutions, which loans had been secured by shares of our common stock that he held. The lenders called the loans in October 2018, following the suspension of our common stock from trading on NASDAQ in August 2018 and the decline in the market price of our common stock in October 2018. As of June 30, ~~2022~~ **2023** , the amount due on the unsecured loan (including principal and accrued interest) was approximately $ ~~15~~ **16** . ~~7~~ **0** million. SMCI | ~~2022~~ **2023** Form 10- K | ~~18~~ **17** Bill Liang is also the Chief Executive Officer of Compuware, a member of Compuware' s Board of Directors and a holder of a significant equity interest in Compuware. Steve Liang is also a member of Compuware' s Board of Directors and is an equity holder of Compuware. Mr. Charles Liang is our Chief Executive Officer and Chairman of the Board, is a significant stockholder of our company, and has considerable influence over the management of our business relationships. Accordingly, we may be disadvantaged by the economic interests of Mr. Charles Liang and his spouse, Ms. Sara Liu, as stockholders of Ablecom and Mr. Charles Liang' s personal relationship with Ablecom' s Chief Executive Officer and Compuware' s Chief Executive Officer. We may not negotiate or enforce contractual terms as aggressively with Ablecom or Compuware as we might with an unrelated party, and the commercial terms of our agreements may be less favorable than we might obtain in negotiations with third parties. If our business dealings with Ablecom or Compuware are not as favorable to us as arms- length transactions, our results of operations may be harmed. If Ablecom or Compuware are acquired or sold, new ownership could reassess the business and strategy of Ablecom or Compuware, and as a result, our supply chain could be disrupted or the terms and conditions of our agreements with Ablecom or Compuware may change. As a result, our operations could be negatively impacted or costs could increase, either of which could adversely affect our margins and results of operations. We plan to continue to maintain our manufacturing relationship with Ablecom in Asia. In order to provide a larger volume of contract manufacturing services for us, we anticipate that Ablecom will continue to warehouse for us an increasing number of components and subassemblies manufactured by multiple suppliers prior to shipment to our facilities in the United States and Europe. We also anticipate that we will continue to lease office space from Ablecom in Taiwan to support our research and development efforts. We operate a joint management company with Ablecom to manage the common areas shared by us and Ablecom for our separately constructed manufacturing facilities in Taiwan. If our commercial relationship with Ablecom deteriorates, we may experience delays in our ability to fulfill customer orders. Similarly, if Ablecom' s facility in Asia is subject to damage, destruction or other disruptions, our inventory may be damaged or destroyed, and we may be unable to find adequate alternative providers of contract manufacturing services in the time that we or our customers require. We could lose orders and be unable to develop or sell some products cost- effectively or on a timely basis, if at all. Currently, we purchase contract manufacturing services primarily for our chassis products from Ablecom. If our commercial relationship with Ablecom were to deteriorate or terminate, establishing direct relationships with those entities supplying Ablecom with key materials for our products or identifying and negotiating agreements with alternative providers of warehouse and contract manufacturing services might take a considerable amount of time and require a significant investment of resources. Pursuant to our agreements with Ablecom and subject to certain exceptions, Ablecom has the exclusive right to be our supplier of the specific products developed under such agreements. As a result, if we are unable to obtain such products from Ablecom on terms acceptable to us, we may need to discontinue a product or develop substitute products, identify a new supplier, change our design and acquire new tooling, all of which could result in delays in our product availability and increased costs. If we need to use other suppliers, we may not be able to establish business arrangements that are, individually or in the aggregate, as favorable as the terms and conditions we have established with Ablecom. If any of these things should occur, our net sales, margins and earnings could significantly decrease, which would have a material adverse effect on our business, results of operations and financial condition. SMCI | ~~2022~~ **2023** Form 10- K | ~~19~~ **18** Negative publicity about our company or our products, even if inaccurate or untrue, could adversely affect our reputation and the confidence in our products, which could harm our business and operating results. For example, in October 2018, a news article was published alleging that malicious hardware chips were implanted on our motherboards during the manufacturing process at the facilities of a contract manufacturer in China. We undertook a thorough investigation of this claim with the assistance of a leading, independent third- party investigations firm wherein we tested a representative sample of our motherboards, including the specific type of motherboard depicted in the news article and motherboards purchased by companies referenced in the article, as well as more recently manufactured motherboards. After completing these examinations as well as a range of functional tests, the investigations firm reported that it had found no evidence of malicious hardware on our motherboards. In addition, neither the publisher of the news article nor any of our customers have ever provided a single example of any such altered motherboard. However, despite repeated denials of any tampering by our customers and us, and the announcement of the results of this independent investigation, the publication of this false allegation in 2018 had a substantial negative impact on the trading price of our common stock and our reputation. The October 2018 news article, the follow up news article published in January 2021, and any similar future article making similar false allegations, may continue to have a negative impact in the future. Harm to our reputation can also arise from many other sources, including employee misconduct, which we have experienced in the past, and misconduct by our partners, consultants and outsourced service providers. Additionally, negative publicity with respect to our partners or service providers could also affect our business and operating results to the extent that we rely on these partners or if our customers or prospective customers associate our company with these partners. If we lose Charles Liang, our President, Chief Executive Officer and Chairman, or any other key employee or are unable to attract additional key employees, we may not be able to implement our business strategy in a timely manner. Our future success depends in large part upon the continued service of our current executive management team and other key employees. In particular, Charles Liang, our President, Chief Executive Officer and Chairman of the Board, is critical to the overall management of our company as well as to our strategic direction. Mr. Liang co- founded our company and has been our Chief Executive Officer since our inception. His experience in leading our business and his personal involvement in key relationships with suppliers, customers and strategic partners are extremely valuable to our company. We currently do not have a succession plan for the replacement of Mr. Liang if it were to become necessary. Additionally, we are particularly dependent on the continued service of our existing research and development personnel because of the complexity of our products and technologies. Our employment arrangements with our executives and employees do not require them to provide services to us for any specific length of time, and they can terminate their employment with us at any time, with or without notice, without penalty. The loss of services of any of these executives or of one or more other key members of our team could seriously harm our business. We expect our direct sales force to continue to grow as our business grows. As our direct sales force becomes larger, our direct sales efforts may lead to conflicts in our indirect sales channel and with our OEMs, who may view our direct sales efforts as undermining their efforts to sell our products. If an indirect sales channel partner or OEM deems our direct sales efforts to be inappropriate, they may not effectively market our products, may emphasize alternative products from competitors, or may seek to terminate our business relationship. Disruptions in our indirect channels could cause our revenues to decrease or fail to grow as expected. Our failure to implement an effective direct sales strategy that maintains and expands our relationships in our indirect sales channel and with our OEMs could lead to a decline in sales, harm relationships and adversely affect our business, results of operations and financial condition. SMCI | ~~2022~~ **2023** Form 10- K | ~~20~~ **19** To execute our growth plan, we must attract additional highly qualified personnel, including additional engineers and executive staff. Competition for qualified personnel is intense, especially in Silicon Valley, where we are headquartered. We have experienced and may continue to experience difficulty in hiring and retaining highly skilled employees with appropriate qualifications. If we are unable to attract and integrate additional key employees in a manner that enables us to scale our business and operations effectively, or if we do not maintain competitive compensation policies to retain our employees, our ability to operate effectively and efficiently could be limited. Since inception, we have conducted a majority of our manufacturing operations in San Jose, California. We continue to increase our manufacturing capacity in Taiwan and in the Netherlands and have sought to accelerate manufacturing in Taiwan in order to better diversify our geographical manufacturing concentration. In order to continue to successfully increase our operations in Taiwan, we must efficiently manage our Taiwan operations from our headquarters in San Jose, California and continue to develop a strong local management team. ~~If~~ **We are also pursuing an expansion of our manufacturing operations into Malaysia. During the second quarter of fiscal year 2023, we entered into a letter of understanding to acquire land in Malaysia. A definitive agreement to acquire such land, subject to various conditions, was subsequently executed in January 2023. We are obtaining early access to such land prior to acquisition, and we anticipate significant capital expenditures will be required for such initiative. To the extent we are unable to recoup expenditures made during our period of early access to such land and we are subsequently unable to complete the acquisition of the land, we could be materially and adversely affected. Furthermore, if** we are unable to successfully ramp up our international manufacturing capacity **in Taiwan, the Netherlands, Malaysia, or any other jurisdictions we pursue** , including the associated **construction,** increased logistics and warehousing, we may incur unanticipated costs, difficulties in making timely delivery of products or suffer other business disruptions which could adversely impact our results of operations. We expect to continue to make investments to pursue new customers ~~and~~ **,** expand our product and service offerings to grow our business **, and pursue new business markets and opportunities** . We also expect that our annual operating expenses will continue to increase as we invest in sales and marketing, research and development, manufacturing and production infrastructure, software and product service offerings, ~~and~~ strengthen customer service and support resources for our customers **, and pursue new business markets and opportunities** . Our failure to expand operational and financial or internal control systems timely or efficiently could result in additional operating inefficiencies, which could increase our costs and expenses more than we had planned and prevent us from successfully executing our business plan. We may not be able to offset the costs of operation expansion by leveraging the economies of scale from our growth in negotiations with our suppliers and contract manufacturers. Additionally, if we increase our operating expenses in anticipation of the growth of our business and this growth does not meet our expectations, our financial results will be negatively impacted. ~~If our~~ **There**

are also no assurances that investments we make to pursue new business **markets and opportunities (such as ecommerce in B2B and B2C markets and data center offerings) will be successful or profitable, given the investment costs necessary to pursue these markets and opportunities, which includes investments in technology, people, time, and other overhead costs. As our business continues to** grows, we will have to manage additional product design projects, materials procurement processes and sales efforts and marketing for an increasing number of SKUs, provide and update an increasing amount of software utilized in our hardware offerings, provide more sophisticated product service offerings to support our customers, ~~and~~ expand the number and scope of our relationships with suppliers, distributors and end customers **, and (for new business markets and opportunities we pursue) manage different and increasingly complex regulatory landscapes they are subject to** . If we fail to manage these additional responsibilities and relationships successfully, we may incur significant costs, which may negatively impact our operating results. Additionally, in our efforts to be first to market with new products with innovative functionality and features, we may devote significant research and development resources to products and product features for which a market does not develop quickly, or at all. If we are not able to predict market trends accurately, we may not benefit from such research and development activities, and our results of operations may suffer. **SMCI | 2023 Form 10- K | 20** Managing our business for long- term growth also requires us to successfully manage our employee headcount. We must continue to hire, train and manage new employees as needed. If our new hires perform poorly, or if we are unsuccessful in hiring, training, managing and integrating these new employees, or if we are not successful in retaining our employees, our business may be harmed. A growth in headcount would continue to increase our cost base, which would make it more difficult for us to offset any future revenue shortfalls by offsetting expense reductions in the short term. If we fail to successfully manage our growth, we will be unable to execute our business plan. ~~SMCI | 2022 Form 10- K | 21~~ We market and sell our systems and subsystems and accessories both inside and outside the United States. We intend to expand our international sales efforts, especially into Asia, and we are expanding our business operations in Europe and Asia, particularly in Taiwan, **Malaysia,** the Netherlands and Japan. In particular, we have made, and continue to make, substantial investments for the purchase of land and the development of new facilities in Taiwan **and Malaysia** to accommodate our expected growth and the migration of a substantial portion of our contract manufacturing operations ~~to Taiwan~~ . Our international expansion efforts may not be successful. Our international operations expose us to risks and challenges that we would otherwise not face if we conducted our business only in the United States, such as: • Heightened price sensitivity from customers in emerging markets; • Our ability to establish local manufacturing, support and service functions, and to form channel relationships with value added resellers in non- United States markets; • Localization of our systems and components, including translation into foreign languages and the associated expenses; • Compliance with multiple, conflicting and changing governmental laws and regulations; • Foreign currency fluctuations and inflation; • Limited visibility into sales of our products by our channel partners; • Greater concentration of competitors in some foreign markets than in the United States; • Laws favoring local competitors; • Weaker legal protections of intellectual property rights and mechanisms for enforcing those rights; • Market disruptions created by world events, such as the global economic downturn and recent events in eastern Europe, or by other public health crises in regions outside the United States, such as avian flu, SARS and other diseases; • Import and export tariffs; • Difficulties in staffing and the costs of managing foreign operations, including challenges presented by relationships with workers' councils and labor unions; and • Changing regional economic and political conditions. These factors could limit our future international sales or otherwise adversely impact our operations or our results of operations. We depend upon the development of new products and enhancements to our existing products, and if we fail to predict or respond to emerging technological trends and our customers' changing needs, our operating results and market share may suffer. The markets for our products are characterized by rapidly changing technology, evolving industry standards, new product introductions, and evolving methods of operations. While our revenues increased in fiscal year ~~2022~~ **2023** , the global economic downturn may affect customer purchasing trends, and our operating results depend on our ability to develop and introduce new products into existing and emerging markets **(such as AI)** and to reduce the production costs of existing products. If our customers do not purchase our products, our business will be harmed. **SMCI | 2023 Form 10- K | 21** The process of developing products incorporating new technologies is complex and uncertain, and if we fail to accurately predict customers' changing needs and emerging technological trends our business could be harmed. We must commit significant resources, including the investments we have been making in our strategic priorities to developing new products before knowing whether our investments will result in products and services the market will accept. If the industry does not evolve as we believe it will, or if our strategy for addressing this evolution is not successful, many of our strategic initiatives and investments may be of no or limited value. Also, suppliers of our key components may introduce new technologies that are critical to the functionality of our products at a slower rate than their competition, which could adversely impact our ability to timely develop and provide competitive offerings to our customers. Similarly, our business could be harmed if we fail to develop, or fail to develop in a timely fashion, offerings to address other transitions, or if the offerings addressing these other transitions that ultimately succeed are based on technology, or an approach to technology, different from ours. In addition, our business could be adversely affected in periods surrounding our new product introductions if customers delay purchasing decisions to qualify or otherwise evaluate the new product offerings. ~~SMCI | 2022 Form 10- K | 22~~ Furthermore, we may not execute successfully on our vision or strategy because of challenges with regard to product planning and timing, technical hurdles that we fail to overcome in a timely fashion, or a lack of appropriate resources. This could result in competitors, some of which may also be our suppliers, providing those solutions before we do and loss of market share, revenue, and earnings. The success of new products depends on several factors, including proper new product and service definition, component costs, timely completion and introduction of these products, differentiation of new products from those of our competitors, market acceptance of these products, and providing appropriate support of these products. There can be no assurance that we will successfully identify new product opportunities, develop and bring new products to market in a timely manner, or achieve market acceptance of our products or that products and technologies developed by others will not render our products or technologies obsolete or noncompetitive. The products and technologies in our other product categories and key priority and growth areas may not prove to have the market success we anticipate, and we may not successfully identify and invest in other emerging or new products. The market in which we participate is highly competitive, and if we do not compete effectively, we may not be able to increase our market penetration, grow our net sales or improve our gross margins. The market for server and storage solutions is intensely competitive and rapidly changing. The market continues to evolve with the growth of public cloud shifting server and storage purchasing from traditional data centers to lower margin public cloud vendors. Barriers to entry in our market are relatively low and we expect increased challenges from existing as well as new competitors. Some of our principal competitors offer server solutions at a lower price, which has resulted in pricing pressures on sales of our server solutions. We expect further downward pricing pressure from our competitors and expect that we will have to price some of our server and storage solutions aggressively to increase our market share with respect to those products or geographies, particularly for internet data center and cloud customers and other large sale opportunities. If we are unable to maintain the margins on our server and storage solutions, our operating results could be negatively impacted. In addition, if we do not develop new innovative solutions, or enhance the reliability, performance, efficiency and other features of our existing server and storage solutions, our customers may turn to our competitors for alternatives. In addition, pricing pressures and increased competition generally may also result in reduced sales, less efficient utilization of our manufacturing operations, lower margins or the failure of our products to achieve or maintain widespread market acceptance, any of which could have a material adverse effect on our business, results of operations and financial condition. Our principal competitors include global technology companies such as Cisco, Dell, Hewlett- Packard Enterprise and Lenovo. In addition, we also compete with a number of other vendors who also sell application optimized servers, contract manufacturers / OEMs and ~~original design manufacturers ("~~ ODMs ~~")~~, such as Foxconn, Inspur, Quanta Computer and Wiwynn Corporation. ODMs sell server solutions marketed or sold under a third- party brand. **SMCI | 2023 Form 10- K | 22** Many of our competitors enjoy substantial competitive advantages, such as: • Greater name recognition and deeper market penetration; • Longer operating histories; • Larger sales and marketing organizations and research and development teams and budgets; • More established relationships with customers, contract manufacturers and suppliers and better channels to reach larger customer bases and larger sales volume allowing for better costs; • Larger customer service and support organizations with greater geographic scope; • A broader and more diversified array of products and services; and • Substantially greater financial, technical and other resources. Some of our current or potential ODM competitors are also currently or have in the past been suppliers to us. As a result, they may possess sensitive knowledge or experience which may be used against us competitively and / or which may require us to alter our supply arrangements or sources in a way which could adversely impact our cost of sales or results of operations. ~~SMCI | 2022 Form 10- K | 23~~ Our competitors may be able to respond more quickly and effectively than we can to new or changing opportunities, technologies, standards or customer requirements. Competitors may seek to copy our innovations and use cost advantages from greater size to compete aggressively with us on price. Certain customers are also current or prospective competitors and as a result, assistance that we provide to them as customers may ultimately result in increased competitive pressure against us. Furthermore, because of these advantages, even if our application optimized server and storage solutions are more effective than the products that our competitors offer, potential customers might accept competitive products in lieu of purchasing our products. The challenges we face from larger competitors will become even greater if consolidation or collaboration between or among our competitors occurs in our industry. Also, initiatives to establish more industry standard data center configurations, could have the impact of supporting an approach which is less favorable to the flexibility and customization that we offer. These changes could have a significant impact on the market and impact our results of operations. For all of these reasons, we may not be able to compete successfully against our current or future competitors, and if we do not compete effectively, our ability to increase our net sales may be impaired. There has been a trend toward consolidation in our industry. We expect this trend to continue as companies attempt to strengthen or hold their market positions in an evolving industry and as companies are acquired or are unable to continue operations. Companies that are suppliers in some areas of our business may acquire or form alliances with our competitors, thereby reducing their business with us. We believe that industry consolidation may result in stronger competitors that are more likely to compete as sole- source vendors for customers. Additionally, at times in the past, our competitors have acquired certain customers of ours and terminated our business relationships with such customers. As such, acquisitions by our competitors could also lead to more variability in our operating results and could have a material adverse effect on our business, operating results, and financial condition. We rely on our close working relationships with our suppliers, including Intel, AMD and ~~Nvidia~~ **NVIDIA** , to anticipate and deliver new products on a timely basis when new generation materials and key components are made available. If we are not able to maintain our relationships with our suppliers or continue to leverage their research and development capabilities to develop new technologies desired by our customers, our ability to quickly offer advanced technology and product innovations to our customers would be impaired. We have no long- term agreements that obligate our suppliers to continue to work with us or to supply us with products. **SMCI | 2023 Form 10- K | 23** We need our material and key component suppliers, such as Intel, AMD and ~~Nvidia~~ **NVIDIA** , to provide us with components that are innovative, reliable and attractive to our customers. Due to the pace of innovation in our industry, many of our customers may delay or reduce purchase decisions until they believe that they are receiving best of breed products that will not be rendered obsolete by an impending technological development ~~, which may be exacerbated due to the uncertainty of the current global economic environment~~ . Accordingly, demand for new server and storage systems that incorporate new products and features is significantly impacted by our suppliers' new product introduction schedules and the functionality, performance and reliability of those new products. If our materials and key component suppliers fail to deliver new and improved materials and components for our products, we may not be able to satisfy customer demand for our products in a timely manner, or at all. If our suppliers' components do not function properly, we may incur additional costs and our relationships with our customers may be adversely affected. ~~SMCI | 2022 Form 10- K | 24~~ Certain components used in the manufacture of our products are available from a limited number of suppliers. Shortages could occur in these essential materials due to an interruption of supply, including interruptions on the global supply chain **(such as did occur** in connection with **the** COVID- 19 **pandemic** , the global economic downturn ~~or~~ **, and** recent events in eastern Europe ~~,~~ **)** or increased demand in the industry **(such as did occur due to volatility in emergent and rapidly evolving markets, including AI). Similar future events may cause additional interruptions on the global supply chain** . Two of our suppliers accounted for ~~18~~ **13** . ~~1~~ **5** % and ~~11~~ **30** . ~~4~~ **7** % of total purchases for the fiscal year ended June 30, **2023. The same two suppliers accounted for 18. 1 % and 11. 4 % of total purchases for the fiscal year ended June 30,** 2022. ~~Two of our~~ **The same two** suppliers accounted for 20. 3 % and 11. 8 % of total purchases for the fiscal years ended June 30, 2021. ~~One of our suppliers~~ **Ablecom and Compuware, related parties,** accounted for ~~26~~ **6. 6 %, 8. 3 % and 7** . 8 % of **our** total ~~purchases~~ **cost of sales** for the fiscal years ended June 30, ~~2020~~ **2023** ~~. Ablecom and Compuware, related parties, accounted for 8. 2 %, 7. 8 % and 10. 1 % of our total cost of sales for the fiscal years ended June 30~~ , 2022 ~~,~~ **and** 2021 ~~and 2020~~ , respectively. If any of our largest suppliers discontinue their operations or if our relationships with them are adversely impacted, we could experience a material adverse effect on our business, results of operations and financial condition. See also " — Our cost structure and ability to deliver server solutions to customers in a timely manner may be adversely affected by volatility of the market for core components and certain materials for our products. " We depend on our indirect sales channel partners to assist us in promoting market acceptance of our products. To maintain and potentially increase our revenue and profitability, we will have to successfully preserve and expand our existing distribution relationships as well as develop new channel relationships. Our indirect sales channel partners also sell products offered by our competitors and may elect to focus their efforts on these sales. If our competitors offer our indirect sales channel more favorable terms or have more products available to meet the needs of their customers, or utilize the leverage of broader product lines sold through the indirect sales channel, those channel partners may de- emphasize or decline to carry our products. In addition, the order decision- making process in our indirect sales channel is complex and involves several factors, including end customer demand, warehouse allocation and marketing resources, which can make it difficult to accurately predict total sales for the quarter until late in the quarter. We also do not control the pricing or discounts offered by our indirect sales channel partners to the end customers. To maintain our participation in the marketing programs of our indirect sales channel partners, we have provided and expect to continue to offer cooperative marketing arrangements and offer short- term pricing concessions. The discontinuation of cooperative marketing arrangements or pricing concessions could have a negative effect on our business, results of operations and financial condition. Our indirect sales channel partners could also modify their business practices, such as payment terms, inventory levels or order patterns. If we are unable to maintain successful relationships in our indirect sales channel or expand our channel or we experience unexpected changes in payment terms, inventory levels or other practices in our indirect sales channel, our business will suffer. **SMCI | 2023 Form 10- K | 24** Our server and storage solutions are critical to our customers' business operations. Our customers require our server and storage solutions to perform at a high level, contain valuable features and be extremely reliable. The design of our server and storage solutions is sophisticated and complex, and the process for manufacturing, assembling and testing our server solutions is challenging. Occasionally, our design or manufacturing processes may fail to deliver products of the quality that our customers require. For example, in the past certain vendors have provided us with defective components that failed under certain applications. As a result, our products needed to be repaired and we incurred costs in connection with the recall and diverted resources from other projects. New flaws or limitations in our server and storage solutions may be detected in the future. Part of our strategy is to bring new products to market quickly, and first- generation products may have a higher likelihood of containing undetected flaws. If our customers discover defects or other performance problems with our products, our customers' businesses, and our reputation, may be damaged. Customers may elect to delay or withhold payment for defective or underperforming server and storage solutions, request remedial action, terminate contracts for untimely delivery, or elect not to order additional products, which could result in a decrease in revenue, an increase in our provision for doubtful accounts or in collection cycles for accounts receivable or subject us to the expense and risk of litigation. We may incur expense in recalling, refurbishing or repairing defective server and storage solutions sold to our customers or remaining in our inventory. If we do not properly address customer concerns about our products, our reputation and relationships with our customers may be harmed. For all of these reasons, customer dissatisfaction with the quality of our products could substantially impair our ability to grow our business. ~~SMCI | 2022 Form 10- K | 25~~ We have a 30 % minority interest in a China corporate venture that was established to market and sell corporate venture branded systems in China based upon products and technology we supply. We record earnings and losses from the corporate venture using the equity method of accounting. Our loss exposure is limited to the remainder of our equity investment in the corporate venture which as of June 30, **2023 and** 2022 ~~, and 2021~~ was $ **2. 0 million and $** 5. 3 ~~million and $ 4. 6~~ million, respectively. We currently do not intend to make any additional investment in this corporate venture. See Part II, Item 8, Note ~~12~~ **9** , " Related Party Transactions " to the consolidated financial statements in this Annual Report. We may make investments in other corporate ventures. We do not control this corporate venture and any fluctuation in the results of operations of the corporate venture or any other similar transaction that we may enter into in the future could adversely impact, or result in fluctuations in, our results of operations. In June 2020, the third- party parent company that controls our corporate venture was placed on a U. S. government export control list, along with several related entities. In addition, the United States has further prohibitions on conducting business with certain entities in China and continued to impose additional tariffs. If economic conditions or trade disputes, including trade restrictions and tariffs such as those between the United States and China, in the areas in which we market and sell our products and other key potential markets for our products continue to remain uncertain or deteriorate, it may further affect the value of our investment in the corporate venture. Because our products and services may store, process and use data, some of which contains personal information, we are subject to complex and evolving domestic and international laws and regulations regarding privacy, data protection and other matters, which are subject to change. Because our products and services store, process and use data, some of which contains personal information, we are subject to complex and evolving domestic and international laws and regulations regarding privacy, data protection, rights of publicity, content, protection of minors and consumer protection. Many of these laws and regulations, which can be particularly restrictive outside of the U. S., are subject to change and uncertain interpretation. Even our inadvertent failure to comply with such laws and regulations could result in investigations, claims, damages to our reputation, changes to our business practices, increased cost of operations and declines in user growth, retention or engagement, any of which could materially adversely affect our business, results of operations and financial condition. Costs to comply with and implement these privacy- related and data protection measures could be significant. **SMCI | 2023 Form 10- K | 25** Global privacy legislation, enforcement, and policy activity for privacy and data protection are rapidly expanding and creating a complex regulatory compliance environment. Costs to comply with and implement these privacy- related and data protection measures could be significant. For example, the EU General Data Protection Regulation 2016 / 679 (“ GDPR ”), and further amendments and interpretations thereof, impose stringent EU data protection requirements on companies established in the European Union or companies that offer goods or services to, or monitor the behavior of, individuals in the European Union. The GDPR establishes a robust framework of data subjects’ rights and imposes onerous accountability obligations on companies, including certain data transfer and security mechanisms. Noncompliance with the GDPR can trigger steep fines of up to the greater of 20 million euros or four percent of annual global revenue. Jurisdictions outside of the European Union are also considering and / or enacting comprehensive data protection legislation. For example, on July 8, 2019, Brazil enacted the General Data Protection Law, or the LGPD, and on June 5, 2020, Japan passed amendments to its Act on the Protection of Personal Information, or the APPI. Both laws broadly regulate the processing of personal information in a manner comparable to the GDPR, and violators of the LGPD and APPI face substantial penalties. We also continue to see jurisdictions, such as Russia, imposing data localization laws, which under Russian laws require personal information of Russian citizens to be, among other data processing operations, initially collected, stored, and modified in Russia. Similarly, on November 1, 2021, China’ s Personal Information Protection law came into effect, which places restrictions on the transfer of personal information to third parties within China or overseas. These regulations may deter customers from using services such as ours, and may inhibit our ability to expand into those markets or prohibit us from continuing to offer services in those markets without significant financial burden. ~~SMCI | 2022 Form 10- K | 26~~ In addition, numerous states in the U. S. are also expanding data protection through legislation. For example, California’ s Consumer Privacy Act (“ CCPA ”) gives California residents expanded privacy rights and protections and provides for civil penalties for violations and a private right of action for data breaches. Further, California voters approved the ballot initiative known as the California Privacy Rights Act of 2020 (“ CPRA ”), enforcement of which ~~begins~~ **began** on July 1, 2023. The CPRA significantly expands privacy rights for California consumers and creates additional obligations on businesses, which could subject us to additional compliance costs as well as potential fines, individual claims and commercial liabilities. The CPRA also establishes the California Privacy Protection Agency ~~(“ CPPA ”)~~, which has the power to implement and enforce the CCPA and CPRA through administrative actions, including administrative fines. The effects of the CCPA and the CPRA are potentially significant and may require us to modify our data collection or processing practices and policies and to incur substantial costs and expenses in an effort to comply and increase our potential exposure to regulatory enforcement and / or litigation. ~~Certain other~~ **Other U. S.** ~~state~~ **states have also enacted** ~~laws, including Virginia, Colorado, Connecticut and Utah~~ data privacy laws ~~,~~ **that began to take effect in 2023 and** impose similar privacy obligations **to the CCPA** and **CPRA** ~~will take effect beginning in 2023~~. We anticipate that more states may enact legislation similar to ~~the~~ **these** ~~CCPA~~ **laws**, by providing consumers with new privacy rights and increasing the privacy and security obligations of entities handling certain personal information of such consumers. The CCPA ~~has~~ **continues to** ~~prompted~~ -- **prompt** a number of proposals for new federal and state- level privacy legislation. Such proposed legislation, if enacted, may add additional complexity, variation in requirements, restrictions and potential legal risk, require additional investment of resources in compliance programs, impact strategies and the availability of previously useful data and could result in increased compliance costs and / or changes in business practices and policies. We have developed and implemented policies and procedures to address applicable data privacy and protection law requirements. However, because the interpretation and application of many privacy and data protection laws, commercial frameworks, and standards are uncertain, it is possible that these laws, frameworks, and standards may be interpreted and applied in a manner that is inconsistent with our existing data protection practices. If so, we and our customers are at risk of enforcement actions taken by data protection authorities or litigation from consumer advocacy groups acting on behalf of data subjects. In addition to the possibility of fines, lawsuits, breach of contract claims, and other claims and penalties, we could be required to fundamentally change our business activities and practices or modify our solutions, which could materially adversely affect our business, results of operations and financial condition. **SMCI | 2023 Form 10- K | 26** Our operations could involve the use of regulated materials, and we must comply with environmental, health and safety laws and regulations, which can be expensive, and may affect our business, results of operations and financial condition. We are subject to federal, state and local regulations relating to the use, handling, storage, disposal and human exposure to materials, including hazardous and toxic materials. If we were to violate or become liable under environmental, health and safety laws in the future as a result of our inability to obtain permits, human error, accident, equipment failure or other causes, we could be subject to fines, costs or civil or criminal sanctions, face third- party property damage or personal injury claims or be required to incur substantial investigation or remediation costs, any of which could have a material adverse effect on business, results of operations and financial condition. We also face increasing complexity in our product design as we adjust to new requirements relating to the materials composition, energy efficiency and recyclability of our products, including EU eco- design requirements for servers and data storage products (Commission Regulation (EU) 2019 / 424). We are also subject to laws and regulations providing consumer warnings, such as California’ s “ Proposition 65 ” which requires warnings for certain chemicals deemed by the State of California to be dangerous. We expect that our operations will be affected by other new environmental laws and regulations on an ongoing basis that will likely result in additional costs and could require that we change the design and / or manufacturing of products, and could have a material adverse effect on business, results of operations or financial condition. We are also subject to the Section 1502 of the Dodd Frank Act concerning the supply of certain minerals coming from the conflict zones in and around the Democratic Republic of Congo and adhere to broader industry best practices to source minerals responsibly from all Conflict- Affected and High- Risk Areas (CAHRA). These requirements and best practices can affect the cost and ease of sourcing minerals used in the manufacture of electronics. ~~SMCI | 2022 Form 10- K | 27~~ As a public company, we are required to maintain internal control over financial reporting and to report any material weaknesses in such internal controls. Section 404 of the Sarbanes- Oxley Act of 2002, or Section 404, requires that we evaluate and determine the effectiveness of our internal control over financial reporting and provide a management report and attestation from our independent registered public accountant on our internal control over financial reporting. Both our evaluation and the external attestation have and will continue to increase our and our independent public accountant costs and expenses. In the past, we have had one or more material weaknesses, which we have remediated. If we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to assert that our internal controls are effective, which could cause our stock price to decline. A " material weakness " is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. If we have material weaknesses in our internal control over financial reporting, we may not detect errors on a timely basis and our financial statements may be materially misstated. If we identify material weaknesses in our internal control over financial reporting, if we are unable to comply with the requirements of Section 404 in a timely manner, if we are unable to assert that our internal control over financial reporting is effective or if our independent registered public accounting firm is unable to attest that our internal control over financial reporting is effective, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock could decrease. We could also become subject to stockholder or other third- party litigation as well as investigations by the stock exchange on which our securities are listed, the SEC or other regulatory authorities, which could require additional financial and management resources and could result in fines, penalties, trading suspensions or other remedies. **SMCI | 2023 Form 10- K | 27** We manufacture and sell our products in several countries outside of the United States, both to direct and OEM customers as well as through our indirect sales channel. Our operations are subject to the U. S. Foreign Corrupt Practices Act (the " FCPA ") as well as the anti- corruption and anti- bribery laws in the countries where we do business. The FCPA prohibits covered parties from offering, promising, authorizing or giving anything of value, directly or indirectly, to a " foreign government official " with the intent of improperly influencing the official' s act or decision, inducing the official to act or refrain from acting in violation of lawful duty or obtaining or retaining an improper business advantage. The FCPA also requires publicly traded companies to maintain records that accurately and fairly represent their transactions, and to have an adequate system of internal accounting controls. In addition, other applicable anti- corruption laws prohibit bribery of domestic government officials, and some laws that may apply to our operations prohibit commercial bribery, including giving or receiving improper payments to or from non- government parties, as well as so- called " facilitation " payments. In addition, we are subject to U. S. and other applicable trade control regulations that restrict with whom we may transact business, including the trade sanctions enforced by the U. S. Treasury, Office of Foreign Assets Control. If we fail to comply with laws and regulations restricting dealings with sanctioned countries or companies and / or persons on restricted lists, we may be subject to civil or criminal penalties. Any future violations could have an adverse impact on our ability to sell our products to United States federal, state and local government and related entities. We have business relationships with companies in China ~~, Russia,~~ and elsewhere in eastern Europe who have been, or may in the future be, added to the restricted party list. We take steps to minimize business disruption when these situations arise; however, we may be required to terminate or modify such relationships if our activities are prohibited by U. S. laws. Further, our association with these parties could subject us to greater scrutiny or reputational harm among current or prospective customers, partners, suppliers, investors, other parties doing business with us or using our products, or the general public. The United States and other countries continually update their lists of export- controlled items and technologies, and may impose new or more- restrictive export requirements on our products in the future. As a result of regulatory changes, we may be required to obtain licenses or other authorizations to continue supporting existing customers or to supply existing products to new customers in China, ~~Russia,~~ eastern Europe and elsewhere. Further escalations in trade restrictions or hostilities, particularly between the United States and China ~~or Russia~~ , could impede our ability to sell or support our products. ~~SMCI |~~ **We do not sell products or provide services to the Russian Federal Security Service (the " FSB "). We had last recorded revenue from Russia on February 23,** 2022 **.** ~~Form 10- K | 28~~ In addition, while we have implemented policies, internal controls and other measures reasonably designed to promote compliance with applicable anti- corruption and anti- bribery laws and regulations, and certain safeguards designed to ensure compliance with U. S. trade control laws, our employees or agents have in the past engaged and may in the future engage in improper conduct for which we could be held responsible. If we, or our employees or agents acting on our behalf, are found to have engaged in practices that violate these laws and regulations, we could suffer severe fines and penalties, profit disgorgement, injunctions on future conduct, securities litigation, bans on transacting government business and other consequences that may have a material adverse effect on our business, results of operations and financial condition. In addition, our brand and reputation, our sales activities or our stock price could be adversely affected if we become the subject of any negative publicity related to actual or potential violations of anti- corruption, anti- bribery or trade control laws and regulations. Any failure to protect our intellectual property rights, trade secrets and technical know- how could impair our brand and our competitiveness. Our ability to prevent competitors from gaining access to our technology is essential to our success. If we fail to protect our intellectual property rights adequately, we may lose an important advantage in the markets in which we compete. Trademark, patent, copyright and trade secret laws in the United States and other jurisdictions as well as our internal confidentiality procedures and contractual provisions are the core of our efforts to protect our proprietary technology and our brand. Our patents and other intellectual property rights may be challenged by others or invalidated through administrative process or litigation, and we may initiate claims or litigation against third parties for infringement of our proprietary rights. Such administrative proceedings and litigation are inherently uncertain and divert resources that could be put towards other business priorities. We may not be able to obtain a favorable outcome and may spend considerable resources in our efforts to defend and protect our intellectual property. **SMCI | 2023 Form 10- K | 28** Furthermore, legal standards relating to the validity, enforceability and scope of protection of intellectual property rights are uncertain. Effective patent, trademark, copyright and trade secret protection may not be available to us in every country in which our products are available. The laws of some foreign countries may not be as protective of intellectual property rights as those in the United States, and mechanisms for enforcement of intellectual property rights may be inadequate. Accordingly, despite our efforts, we may be unable to prevent third parties from infringing upon or misappropriating our intellectual property and using our technology for their competitive advantage. Any such infringement or misappropriation could have a material adverse effect on our business, results of operations and financial condition. Resolution of claims that we have violated or may violate the intellectual property rights of others could require us to indemnify our customers, indirect sales channel partners or vendors, redesign our products, or pay significant royalties to third parties, and materially harm our business. Our industry is marked by a large number of patents, copyrights, trade secrets and trademarks and by frequent litigation based on allegations of infringement or other violation of intellectual property rights. Our primary competitors have substantially greater numbers of issued patents than we have which may position us less favorably in the event of any claims or litigation with them. Other third parties have in the past sent us correspondence regarding their intellectual property or filed claims that our products infringe or violate third parties' intellectual property rights. In addition, increasingly non- operating companies are purchasing patents and bringing claims against technology companies. We have been subject to several such claims and may be subject to such claims in the future. Successful intellectual property claims against us from others could result in significant financial liability or prevent us from operating our business or portions of our business as we currently conduct it or as we may later conduct it. In addition, resolution of claims may require us to redesign our technology to obtain licenses to use intellectual property belonging to third parties, which we may not be able to obtain on reasonable terms, to cease using the technology covered by those rights, and to indemnify our customers, indirect sales channel partners or vendors. Any claim, regardless of its merits, could be expensive and time consuming to defend against, and divert the attention of our technical and management resources. ~~SMCI | 2022 Form 10- K | 29~~ Provisions of our certificate of incorporation and bylaws and Delaware law might discourage, delay or prevent a change of control of our company or changes in our management and, as a result, depress the trading price of our common stock. Our certificate of incorporation and bylaws contain provisions that could discourage, delay or prevent a change in control of our company or changes in our management that the stockholders of our company may deem advantageous. These provisions: • Establish a classified Board of Directors so that not all members of our Board are generally elected at one time; • Require super- majority voting to amend some provisions in our certificate of incorporation and bylaws; • Authorize the issuance of " blank check " preferred stock that our Board could issue to increase the number of outstanding shares and to discourage a takeover attempt; • Limit the ability of our stockholders to call special meetings of stockholders; • Prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders; • Provide that our Board is expressly authorized to adopt, alter or repeal our bylaws; and • Establish advance notice requirements for nominations for election to our Board or for proposing matters that can be acted upon by stockholders at stockholder meetings. In addition, we are subject to Section 203 of the Delaware General Corporation Law, which, subject to some exceptions, prohibits " business combinations " between a Delaware corporation and an " interested stockholder, " which is generally defined as a stockholder who becomes a beneficial owner of 15 % or more of a Delaware corporation' s voting stock for a three- year period following the date that the stockholder became an interested stockholder. Section 203 could have the effect of delaying, deferring or preventing a change in control that our stockholders might consider to be in their best interests. These anti- takeover defenses could discourage, delay or prevent a transaction involving a change in control of our company. These provisions could also discourage proxy contests and make it more difficult for stockholders to elect directors of their choosing and cause us to take corporate actions other than those stockholders desire. ~~We devoted substantial internal and external resources towards investigating, discovering, understanding and remediating the matters that led to the delay in the filing of our 2017 10- K (all as described in the 2017 10- K). As a result of these efforts, we incurred substantial incremental fees and expenses for additional accounting, financial and other consulting and professional services, as well as the implementation and maintenance of systems and processes that will need to be updated, supplemented or replaced. Specifically, in connection with these efforts, we incurred professional fees of approximately $ 4. 4 million, $ 0. 5 million and $ 14. 0 million in fiscal years 2022, 2021 and 2020, respectively. In addition, as of and for the year ended June 30, 2022, we recorded a net litigation settlement cost of $ 2. 0 million associated with the settlement of one of the stockholder actions associated with the delay in the filing of our 2017 10- K and, as of and for the year ended June 30, 2020, we recorded a liability of $ 17. 5 million for our SEC settlement of the investigation into our Company' s financial accounting for fiscal years 2014 to 2017. We have taken a number of steps in order to strengthen our corporate culture, sales processes, and accounting function so as to allow us to be able to provide timely and accurate financial reporting. To the extent these steps are not successful, we could be required to devote significant additional time and incur significant additional expenses. Even if these steps are successful, we may incur significant legal fees in future periods as we continue to address litigation arising from the matters that led to the delay in the filing our 2017 10- K. The expenses we are and may incur in this regard, as well as the substantial time devoted by our management to identify and address internal control deficiencies, could have a material adverse effect on our business, results of operations and financial condition.~~ SMCI | ~~2022~~ **2023** Form 10- K | ~~30~~ **29** Our research and development expenditures, as a percentage of our net sales, are considerably higher than many of our competitors and our earnings will depend upon maintaining revenues and margins that offset these expenditures. One of our key strategies is to focus on being consistently first- to- market with flexible and application optimized server and storage systems that take advantage of our own internal development and the latest technologies offered by microprocessor manufacturers and other component vendors. Consistent with this strategy, we believe we spend higher amounts, as a percentage of revenues, on research and development costs than many of our competitors. If we cannot sell our products in sufficient volume and with adequate gross margins to compensate for such investment in research and development, our earnings may be materially and adversely affected. Our future effective income tax rates could be affected by changes in the relative mix of our operations and income among different geographic regions and by changes in domestic and foreign income tax laws, which could affect our future operating results, financial condition and cash flows. ~~Following the~~ **We receive significant tax benefits from sales to our non-** U. S. ~~federal government~~ **customers. These benefits are contingent upon existing tax laws and regulations in the U. S. and in the countries in which our international operations are located. Future changes in domestic or international tax laws and regulations or a change in how we manage our international operations could adversely affect our ability to continue realizing these tax benefits. Many countries around the world are beginning to implement legislation and other guidance to align their international tax rules with the Organization for Economic Co- operation and Development** ' s **Base Erosion** ~~enactment of the Tax Cuts~~ and **Profit Shifting recommendations** ~~Jobs Act (" 2017 Tax Reform Act "), we realigned our international business operations~~ and ~~group structure~~ **related action plans that aim** to ~~take advantage of certain international~~ **standardize and modernize global corporate** tax ~~planning opportunities~~ **policy, including changes to cross- border tax, transfer- pricing documentation rules** and **nexus- based tax** ~~incentives~~ - **incentive practices. As a result, many of these changes, if enacted, could increase our worldwide effective tax rate and harm our operating results, financial condition, and cash flows** . Our ~~future~~ effective ~~income~~ tax ~~rates~~ - **rate** could **also be adversely affected by changes in tax laws and regulations and interpretations of such laws and regulations, which in turn would negatively impact our earnings and cash and cash equivalent balances we currently maintain. Additionally, our effective tax rate could also** be adversely affected if ~~tax authorities~~ **there is a** ~~challenge~~ --- **change** ~~our~~ **in** international **operations, our** tax structure **and how** ~~or~~ **our operations are managed** ~~if the relative mix of our United States~~ and **structured** ~~international income changes for any reason~~ , **and as a result, we could experience harm to** ~~or~~ **our** ~~due to changes in U. S. or international tax laws. In particular, a substantial portion of our revenue is generated from customers located outside the United States. The effectiveness of our tax planning activities is based upon certain assumptions that we make regarding our future~~ operating ~~performance and tax laws. We continue to optimize our tax structure to align with our business operations and growth strategy. We cannot assure you that we will be able to lower our effective tax rate as a result~~ **results and financial condition** ~~of our current or future tax planning activities nor that such rate will not increase in the future~~ . While we had greater than normal backlog during certain periods of fiscal year ~~2022~~ **2023** , historically, our net sales are difficult to forecast because we do not have sufficient backlog of unfilled orders or sufficient recurring revenue to meet our quarterly net sales targets at the beginning of a quarter. Rather, a majority of our net sales in any quarter depend upon customer orders that we receive and fulfill in that quarter. Because our expense levels are based in part on our expectations as to future net sales and to a large extent are fixed in the short term, we might be unable to adjust spending in time to compensate for any shortfall in net sales. Accordingly, any significant shortfall of revenues in relation to our expectations would harm our operating results. Risks Related to Owning Our Stock The trading price of our common stock is likely to be volatile, and you might not be able to sell your shares at or above the price at which you purchased the shares. The trading prices of technology company securities historically have been highly volatile. In addition, the global markets have **been volatile, and** experienced volatility as a result of **matters such as** the COVID- 19 pandemic, the global economic downturn and recent events in eastern Europe. The trading price of our common stock has been and is likely to continue to be subject to wide fluctuations. Factors, in addition to those outlined elsewhere in this filing, that may affect the trading price of our common stock include: • ~~The impact of COVID- 19, the global economic downturn and recent events in eastern Europe on our business, the global economy and trading markets; • The outcome of litigation and claims as well as regulatory examinations, investigations, proceedings and orders to which we are subject; •~~ Actual or anticipated variations in our operating results, including failure to achieve previously provided guidance; **SMCI | 2023 Form 10- K | 30** • Announcements of technological innovations, new products or product enhancements, strategic alliances or significant agreements by us or by our competitors; • Changes in recommendations by any securities analysts that elect to follow our common stock; • The financial projections we may provide to the public, any changes in these projections or our failure to meet these projections; ~~SMCI | 2022 Form 10- K | 31~~ • False or misleading press releases or articles regarding our company or our products; • The loss of a key customer; • The loss of key personnel; • Technological advancements rendering our products less valuable; • Lawsuits filed against us ~~, including those described in Part I, Item 3, " Legal Proceedings "~~ ; • Changes in operating performance and stock market valuations of other companies that sell similar products; • Price and volume fluctuations in the overall stock market; • Market conditions in our industry, the industries of our customers and the economy as a whole; and • Other events or factors, including those resulting from war, incidents of terrorism, political instability **, pandemics** or responses to these events. Attempts by existing stockholders to sell substantial amounts of our common stock in the public market could cause the trading price of our common stock to decline significantly. All of our shares are eligible for sale in the public market, including shares held by directors, executive officers and other affiliates, sales of which are subject to volume limitations and other requirements under Rule 144 under the Securities Act. In addition, shares subject to outstanding options and reserved for future issuance under our stock option plans **, including those underlying the 2021 CEO Performance Award that have vested or vest in the future,** are eligible for sale in the public market to the extent permitted by the provisions of various vesting agreements. **See " Item 11. Executive Compensation – Compensation Discussion and Analysis (" CD & A ") – Fiscal Year 2023 CEO Compensation – Discussion and Analysis of 2021 CEO Performance Award. "** If these additional shares are sold, or if it is perceived that they will be sold in the public market, the trading price of our common stock could decline. **Furthermore, additional tranches of the 2021 CEO Performance Award may vest, subject to the achievement of specified annualized revenue milestones (the " Annualized Revenue Milestones ") and a matching stock price milestone, and if such additional tranches do vest, they would be subject to the risks discussed above. In connection therewith, the Company has determined that the Annualized Revenue Milestones that have not yet**

been achieved are " probable of achievement, " for purposes of determining whether to recognize expense associated with the applicable tranche. Such determination is based upon management' s subjective judgment and is not a guarantee that it will be achieved. See Note 10, Stock- based Compensation and Stockholders' Equity in the Notes to Consolidated Financial Statements. As of July 31, ~~2022~~ **2023** , our executive officers, directors, current five percent or greater stockholders and affiliated entities together beneficially owned ~~37~~ **42** . ~~4~~ **3** % of our common stock, net of treasury stock. As a result, these stockholders, acting together, have significant influence over all matters that require approval by our stockholders, including the election of directors and approval of significant corporate transactions. Corporate action might be taken even if other stockholders oppose them. This concentration of ownership might also have the effect of delaying or preventing a change of control of our company that other stockholders may view as beneficial. We do not anticipate that we will pay any cash dividends to holders of our common stock in the foreseeable future. In addition, under the terms of the credit agreement with Bank of America, dated April 19, 2018, we cannot pay any dividends, with limited exceptions. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment. Investors seeking cash dividends in the foreseeable future should not purchase our common stock. **SMCI |** ~~According to the Journal Nature, the global energy demand of IT equipment is expected to be 20 % of global energy demand by 2030~~ **2023 Form 10- K | 31** ~~. More than 70 % of the Scope 3 (lifecycle) emissions of our server products are attributed to their use in data centers.~~ Our ability to create energy saving products ~~is key to~~ **will be a part of** climate change mitigation, and **we believe one of the keys to our** business success. In addition, climate change reporting and product certification are increasingly sought by customers and regulators. If we do not satisfy customer requirements for products that help mitigate climate change, and document how they contribute to such change, it could have a material adverse impact on our business, operating results, and financial conditions. ~~SMCI | 2022 Form 10- K | 32~~ Land, sea and air routes between economic centers are subject to weather events exacerbated by climate change and can disrupt commercial activity. Our most significant business offices, research and development, and manufacturing locations, are in the San Jose, California area and in Taiwan. **We are also in the process of developing manufacturing operations in Malaysia.** Each region is subject to climate change events and known for earthquakes. While we have adopted a business continuity plan **and are taking steps to further diversify our manufacturing locations** , there is no certainty it will be effective for significant natural disasters, which could have a material adverse impact on business, operating results, and financial condition. **Our workforce may use AI tools on an unauthorized basis which poses additional risks relating to the protection of data, including the potential exposure of our proprietary confidential information to unauthorized recipients and the misuse of our or third- party intellectual property. Use of AI technology by our workforce may result in allegations or claims against us related to violation of third- party intellectual property rights, unauthorized access to or use of proprietary information and failure to comply with open source software requirements. AI technology may also produce inaccurate responses that could lead to errors in our decision- making, solution development or other business activities, which could have a negative impact on our business, operating results and financial condition. Our ability to mitigate these risks will depend on our continued effective training, monitoring and enforcement of appropriate policies and procedures governing the use of AI technology, and compliance by our workforce. Many governments, regulators, investors, employees, customers and other stakeholders are increasingly focused on environmental, social and governance considerations relating to businesses, including climate change and greenhouse gas emissions, human capital and diversity, equity and inclusion. We make statements about our environmental, social and governance goals and initiatives through information provided on our website, press statements and other communications Responding to these environmental, social and governance considerations and implementation of these goals and initiatives involves risks and uncertainties and requires ongoing investments. The success of our goals and initiatives may be impacted by factors that are outside our control. In addition, some stakeholders may disagree with our goals and initiatives and the focus and views of stakeholders may change and evolve over time and vary depending on the jurisdictions in which we operate. Any failure, or perceived failure, by us to achieve our goals, further our initiatives, adhere to our public statements, comply with federal, state or international environmental, social and governance laws and regulations, or meet evolving and varied stakeholder expectations and views could materially adversely affect our business, reputation, results of operations, financial position and stock price.**