

DRAFT



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Symmetricon, Inc.
2300 Orchard Parkway
San Jose, California 95131

Attn: Thomas W. Steipp
President and Chief Executive Officer

Dear Mr. Steipp:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that Symmetricon, Inc., of San Jose California ("Symmetricon"), as the successor corporation to Datum, Inc. of Beverly, Massachusetts ("Datum"), is liable for five violations of the Export Administration Regulations (the "Regulations")¹ committed by Datum. The Regulations are issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that Datum³ committed the following violations:

Charge 1 15 C.F.R. § 764.2(a) - Exporting Cesium Frequency Standard Equipment to Malaysia Without the Required Department of Commerce License

On or about April 27, 1999, Datum engaged in conduct prohibited by the Regulations by exporting cesium frequency standard equipment, items subject to the Regulations (ECCN

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2004). The charged violations occurred in 1999. The Regulations governing the violations at issue are found in the 1999 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999)). The 2004 Regulations establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (3 C.F.R., 2003 Comp. 328 (2004)), continues the Regulations in effect under the IEEPA.

³ Datum was the corporate entity that committed the charged violations in 1999. In November of 2002, Datum merged into Symmetricon.



3A002.g.1),⁴ to Malaysia without obtaining the Department of Commerce license required by Section 742.4 of the Regulations. In doing so, Datum committed one violation of Section 764.2(a) of the Regulations.

Charge 2 15 C.F.R. § 764.2(g) - False Statement on a Shipper's Export Declaration Concerning Authority to Export

On or about April 27, 1999, in connection with the export referenced in Charge One above, Datum filed or caused to be filed a Shipper's Export Declaration with the U.S. government that stated the cesium frequency standard equipment qualified for export from the United States as NLR ("No License Required"). This statement was false because, as described in Charge One above, U.S. government authorization was required to export these items to Malaysia. In so doing, Datum committed one violation of Section 764.2(g) of the Regulations.

Charge 3 15 C.F.R. § 764.2(a) - Exporting an Ovenized Quartz Crystal Oscillator to an Organization in India on the Entity List Without the Required Department of Commerce License

On or about May 26, 1999, Datum engaged in conduct prohibited by the Regulations by exporting an ovenized quartz crystal oscillator, an item subject to the Regulations (EAR99),⁵ from the United States to an organization in India on BIS' Entity List without obtaining the Department of Commerce license required by Section 744.11 of the Regulations. In so doing, Datum committed one violation of Section 764.2(a) of the Regulations.

Charge 4 15 C.F.R. § 764.2(g) - Forwarding Items With Knowledge a Violation of the Regulations Would Occur

On or about May 26, 1999, Datum forwarded the ovenized quartz crystal oscillator referenced in Charge Three above with knowledge that a violation of the Regulations would occur. Specifically, Datum forwarded the oscillator to an organization in India on BIS' Entity List when Datum knew or had reason to know that the required U.S. government authorization would not be obtained. In so doing, Datum committed one violation of Section 764.2(e) of the Regulations.

⁴ The term "ECCN" refers to an Export Control Classification Number. See Supp. 1 to 15 C.F.R. § 774.

⁵ The term "EAR99" refers to items subject to the Regulations which are not listed on the Commerce Control List. See 15 C.F.R. § 734.3(c).

**Charge 5 15 C.F.R. § 764.2(g) - False Statement on a Shipper's Export Declaration
Concerning Authority to Export**

On or about May 26, 1999, in connection with the export referenced in Charge Three above, Datum filed or caused to be filed a Shipper's Export Declaration with the U.S. government that stated the ovenized quartz crystal oscillator qualified for export from the United States as NLR ("No License Required"). This statement was false because, as described in Charge Three above, U.S. government authorization was required to export this item to the organization in India. In so doing, Datum committed one violation of Section 764.2(g) of the Regulations.

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

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

Denial of export privileges; and/or

Exclusion from practice before BIS.

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

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

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

⁶ *See* 15 C.F.R. § 6.4(a)(2).

Symmetricom, Inc.

Charging Letter

Page 4 of 4

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

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

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

Chief Counsel for Industry and Security
Attention: David C. Recker
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

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

Sincerely,

Acting Director
Office of Export Enforcement

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

In the Matter of:)
)
Symmetricom, Inc.)
2300 Orchard Parkway)
San Jose, California 95131)
)
Respondent.)
_____)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, Symmetricom, Inc. (“Symmetricom”), and the Bureau of Industry and Security, United States Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2004)) (“Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),²

¹ The charged violations occurred 1999. The Regulations governing the violations at issue are found in the 1999 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999)). The 2004 Regulations establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (69 *Fed. Reg.* 48763 (August 10, 2004)), has continued the Regulations in effect under the IEEPA.

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

WHEREAS, BIS has issued a proposed charging letter to Symmetricom that alleged that Symmetricom, as the successor corporation to Datum, Inc. (“Datum”), is liable for five violations of the Regulations committed by Datum,³ specifically:

1. *One Violation of 15 C.F.R. § 764.2(a) - Exporting Cesium Frequency Standard Equipment to Malaysia Without the Required Department of Commerce License:*
On or about April 27, 1999, Datum engaged in conduct prohibited by the Regulations by exporting cesium frequency standard equipment, items subject to the Regulations (ECCN 3A002.g.1),⁴ to Malaysia without obtaining the Department of Commerce license required by Section 742.4 of the Regulations.
2. *One Violation of 15 C.F.R. § 764.2(g) - False Statement on a Shipper’s Export Declaration Concerning Authority to Export:* On or about April 27, 1999, in connection with the export referenced in Paragraph One above, Datum filed or caused to be filed a Shipper’s Export Declaration with the U.S. government that stated the cesium frequency standard equipment qualified for export from the United States as NLR (“No License Required”). This statement was false

³ Datum was the corporate entity that committed the charged violations in 1999. In November of 2002, Datum merged into Symmetricom.

⁴ The term “ECCN” refers to an Export Control Classification Number. *See* Supp. 1 to 15 C.F.R. § 774.

because, as described in Paragraph One above, U.S. government authorization was required to export these items to Malaysia.

3. *One Violation of 15 C.F.R. § 764.2(a) - Exporting an Ovenized Quartz Crystal Oscillator to an Organization in India on the Entity List Without the Required Department of Commerce License:* On or about May 26, 1999, Datum engaged in conduct prohibited by the Regulations by exporting an ovenized quartz crystal oscillator, an item subject to the Regulations (EAR99),⁵ from the United States to an organization in India on BIS' Entity List without obtaining the Department of Commerce license required by Section 744.11 of the Regulations.
4. *One Violation of 15 C.F.R. § 764.2(g) - Forwarding Items With Knowledge a Violation of the Regulations Would Occur:* On or about May 26, 1999, Datum forwarded the ovenized quartz crystal oscillator referenced in Paragraph Three above with knowledge that a violation of the Regulations would occur. Specifically, Datum forwarded the oscillator to an organization in India on BIS' Entity List when Datum knew or had reason to know that the required U.S. government authorization would not be obtained.

⁵ The term "EAR99" refers to items subject to the Regulations which are not listed on the Commerce Control List. See 15 C.F.R. § 734.3(c).

5. *One Violation of 15 C.F.R. § 764.2(g) - False Statement on a Shipper's Export Declaration Concerning Authority to Export:* On or about May 26, 1999, in connection with the export referenced in Paragraph Three above, Datum filed or caused to be filed a Shipper's Export Declaration with the U.S. government that stated the ovenized quartz crystal oscillator qualified for export from the United States as NLR ("No License Required"). This statement was false because, as described in Paragraph Three above, U.S. government authorization was required to export this item to the organization in India.

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

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

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Symmetricom, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against Symmetricom in complete settlement of the violations of the Regulations set forth in the proposed charging letter:

- a. Symmetricom shall be assessed a civil penalty in the amount of \$35,500 which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order;
- b. The timely payment of the civil penalty agreed to in paragraph 2.a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, License Exception, permission, or privilege granted, or to be granted, to Symmetricom. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of Symmetricom's export privileges for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Symmetricom hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the

Order, if entered; (c) request any relief from the Order, if entered, including without limitation relief from the terms of a denial order under 15 C.F.R. § 764.3(a)(2); and (d) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$35,500 civil penalty, BIS will not initiate any further administrative proceeding against Symmetricom in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

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

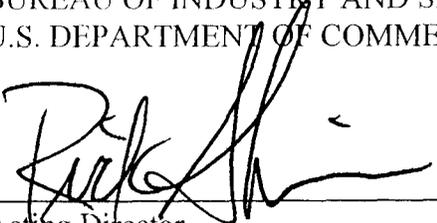
6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial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

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

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

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

BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE



Acting Director
Office of Export Enforcement

Date: 10/21/04

SYMMETRICOM, INC.



William Slater
Chief Financial Officer

Date: 10/19/04

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

In the Matter of:)
)
Symmetricom, Inc.)
2300 Orchard Parkway)
San Jose, California 95131)
)
Respondent.)
_____)

ORDER RELATING TO SYMMETRICOM, INC.

The Bureau of Industry and Security, United States Department of Commerce (“BIS”) having notified Symmetricom, Inc. (“Symmetricom”) of its intention to initiate an administrative proceeding against Symmetricom pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2004)) (“Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),² based on the proposed charging letter issued to Symmetricom that alleged that

¹ The charged violations occurred in 1999. The Regulations governing the violations at issue are found in the 1999 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999)). The 2004 Regulations establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (69 *Fed. Reg.* 48763 (August 10, 2004)), has continued the Regulations in effect under the IEEPA.

Symmetricom, as the successor corporation to Datum, Inc. (“Datum”), is liable for five violations of the Regulations committed by Datum.³ Specifically, the charges are:

1. *One Violation of 15 C.F.R. § 764.2(a) - Exporting Cesium Frequency Standard Equipment to Malaysia Without the Required Department of Commerce License:* On or about April 27, 1999, Datum engaged in conduct prohibited by the Regulations by exporting cesium frequency standard equipment, items subject to the Regulations (ECCN 3A002.g.1),⁴ to Malaysia without obtaining the Department of Commerce license required by Section 742.4 of the Regulations.
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⁴ The term “ECCN” refers to an Export Control Classification Number. See Supp. 1 to 15 C.F.R. § 774.

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described in Paragraph Three above, U.S. government authorization was required to export this item to the organization in India.

BIS and Symmetricom having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

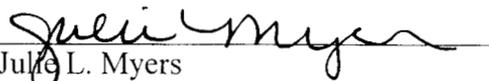
FIRST, that a civil penalty of \$35,500 is assessed against Symmetricom which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

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

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

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

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


Julie L. Myers
Assistant Secretary of Commerce
for Export Enforcement

Entered this 27th day of October 2004.