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SANMINA-SCI CORP
Form S-8
March 21, 2002

As filed with the Securities and Exchange Commission on March 21, 2002

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

SANMINA-SCI CORPORATION
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

77-0228183
(I.R.S. Employer Identification No.)

2700 First Street, San Jose, California 95134
(Address of principal executive offices) (Zip Code)

SANMINA-SCI CORPORATION 401(k) PLAN
(Full title of the plan)

Jure Sola
Co-Chairman and Chief Executive Officer
Sanmina-SCI Corporation
2700 First Street, San Jose, California 95134
(Name and address of agent for service)

Telephone number, including area code, of agent for service: (408) 964-3500

Copies to:

Mario M. Rosati, Esq.
Roger D. Stern, Esq.
Wilson Sonsini Goodrich & Rosati, PC
650 Page Mill Road
Palo Alto, California 94304

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered | Proposed Maximum Offering Price Per Share* | Proposed Maximum Aggregate Offering Price* |
|---|----------------------------|--|--|
| Common Stock, \$0.01 par value ** | 15,250,000 shares | \$12.36 | \$188,490,000.00 |

* Estimated solely for the purpose of calculating the registration fee

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pursuant to Rule 457(c) under the Securities Act of 1933, on the basis of \$12.36 per share, the average of the high and low prices per share of the Common Stock on the NASDAQ National Market on March 15, 2002.

** Pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement covers an indeterminate amount of interests to be offered or sold pursuant to the Sanmina-SCI 401(k) Plan described herein.

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents are incorporated by reference in this registration statement: (i) the latest annual report of Sanmina-SCI Corporation (the "Registrant") filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"); (ii) all other reports filed by the Registrant pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in clause (i) above; and (iii) the description of the Registrant's common stock set forth in the Registrant's Registration Statement on Form 8-A relating thereto, including any amendment or report filed for the purpose of updating such description. All documents filed by the Registrant or the Sanmina-SCI Corporation 401(k) Plan, as amended, after the date of this registration statement pursuant to Sections 13(a), 13(c), 14, and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment (that indicates all securities offered have been sold or deregisters all securities then remaining unsold), shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents.

ITEM 4. DESCRIPTION OF SECURITIES

Inapplicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Mario M. Rosati, a member of Wilson Sonsini Goodrich & Rosati, Professional Corporation, is a member of the Board of Directors of the Registrant. Wilson Sonsini Goodrich & Rosati is corporate counsel to the Registrant.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 145(a) of the Delaware General Corporation Law (the "DGCL") provides in relevant part that "[a] corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful." With respect to derivative actions, Section 145(b) of the DGCL provides in relevant part that "[a] corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor... [by reason of his service in one of the capacities

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specified in the preceding sentence] against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed

2

to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper."

The Registrant's Amended and Restated Certificate of Incorporation provides that to the fullest extent permitted by the DGCL, no director of the Registrant shall be personally liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director. The Amended and Restated Certificate of Incorporation also provides that no amendment or repeal of such provision shall apply to or have any effect on the right to indemnification permitted thereunder with respect to claims arising from acts or omissions occurring in whole or in part before the effective date of such amendment or repeal whether asserted before or after such amendment or repeal.

The Registrant's Bylaws provide that the Registrant shall indemnify to the fullest extent permitted by the DGCL each of its directors, officers, employees and other agents against expenses actually and reasonably incurred in connection with any proceeding arising by reason of the fact that such person is or was an agent of the Registrant.

The Registrant has entered into indemnification agreements with its directors and executive officers and intends to enter into indemnification agreements with any new directors and executive officers in the future.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Inapplicable.

ITEM 8. EXHIBITS

4.1 Sanmina-SCI Corporation 401(k) Plan (April 1, 2001 Restatement), as amended by Amendments No. 1 through 5 thereto.

5.1 Undertaking re Status of Favorable Determination Letter Covering the Plan.

The Registrant has received a favorable determination letter from the Internal Revenue Service (the "IRS") concerning the qualification of the Sanmina-SCI Corporation 401(k) Plan (the "Plan") under Section 401(a) and related provisions of the Internal Revenue Code of 1986, as amended. The Registrant will submit any future material amendments to the Plan to the IRS with a request for a favorable determination that the Plan, as amended, continues to so qualify.

23.1 Consent of Arthur Andersen LLP, independent public accountants.

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- 23.2 Consent of Counsel.
- 24.1 Power of Attorney of Directors.
- 99 Company Representation from Independent Public Accountants.

3

ITEM 9. UNDERTAKINGS

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933, as amended (the "Securities Act");

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the

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Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed

4

in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

5

Signatures

THE REGISTRANT

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Jose, State of California on the 18th day of March, 2002.

SANMINA-SCI CORPORATION
(Registrant)

By /s/

Jure Sola
Co-Chairman and
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature Title Date

Principal Executive Officer:

/s/ Co-Chairman and Chief Executive Officer March 18, 2002

Jure Sola

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Principal Financial and
Accounting Officer:

| | | |
|-------------------------------|---|----------------|
| /s/ ----- Rick R. Ackel | Executive Vice President and Chief Financial Officer | March 18, 2002 |
|-------------------------------|---|----------------|

6

Directors:

| | | |
|--|--|----------------|
| /s/ ----- Jure Sola | Co-Chairman of the Board and Director | March 18, 2002 |
| /s/ ----- A. Eugene Sapp, Jr. | Co-Chairman of the Board and Director | March 18, 2002 |
| /s/ ----- John C. Bolger | Director | March 18, 2002 |
| /s/ ----- Neil R. Bonke | Director | March 18, 2002 |
| /s/ ----- Randy W. Furr | Director | March 18, 2002 |
| /s/ ----- Mario M. Rosati | Director | March 18, 2002 |
| /s/ ----- Joseph M. Schell | Director | March 18, 2002 |
| /s/ ----- Bernard V. Vonderschmitt | Director | March 18, 2002 |
| /s/ ----- Wayne Shortridge | Director | March 18, 2002 |
| /s/ ----- Jackie M. Ward | Director | March 18, 2002 |

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A majority of the members of the Board of Directors.

7

THE PLAN

Pursuant to the requirements of the Securities Act of 1933, the Registrant, as the administrator of the Sanmina-SCI Corporation 401(k) Plan, has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Jose, State of California on the 18th day of March, 2002.

SANMINA-SCI CORPORATION 401(k) PLAN
(Plan)

By _____ /s/

Jure Sola
Co-Chairman and
Chief Executive Officer

8

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9