

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SECURITIES AND EXCHANGE
COMMISSION
100 F Street, N.E.
Washington, DC 20549,

Plaintiff,

v.

KENT H. ROBERTS
4001 Lovers Lane Circle
Dallas, TX 75225,

Defendant.

CASE NUMBER 1:07CV00407

JUDGE: Emmet G. Sullivan

DECK TYPE: General Civil

DATE STAMP: 02/28/2007

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

SUMMARY

1. Defendant Kent H. Roberts ("Roberts"), former General Counsel, Corporate Secretary, and Executive Vice-President at McAfee, Inc., formerly known as Network Associates, Inc. ("McAfee"), engaged in a fraudulent scheme to enrich himself and others by secretly changing the dates on which stock options awards had been granted to coincide with lower closing prices of McAfee's common stock, resulting in disguised "in-the-money" option grants. Roberts falsified company documents, including meeting minutes from the McAfee Board of Directors' Compensation Committee, to make it appear that McAfee's Compensation Committee had approved the disguised option grants on the favorable dates that Roberts had chosen. In addition, Roberts helped to prepare and signed McAfee's 2002 and 2003 proxy statements, filed with the

Commission, which he knew, or was reckless in not knowing, contained false information and omitted material information concerning his option grant and grants to other McAfee officers, including, in particular, that Roberts had on more than one occasion circumvented McAfee's shareholder-approved options plan to improperly increase his potential stock-based compensation and the stock-based compensation of others. Roberts also made false statements concerning the true grant dates and proper exercise prices for his own stock options in stock ownership reports that he filed with the Commission.

2. By engaging in such conduct, Roberts violated numerous provisions of the Securities Exchange Act of 1934 ("Exchange Act") and the rules promulgated thereunder, including the anti-fraud provisions, the proxy solicitation provisions, the public company internal controls provisions, and certain securities ownership reporting provisions.

3. Unless enjoined, Roberts is likely to commit future violations of these provisions of the federal securities laws. Accordingly, the Commission seeks an Order enjoining him from doing so, requiring disgorgement of all ill-gotten gains and benefits obtained as a result of his violations and prejudgment interest thereon, and payment of civil money penalties. In addition, he should be prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Exchange Act Section 12 [15 U.S.C. § 78l] or that is required to file reports pursuant to Exchange Act Section 15(d) [15 U.S.C. § 78o(d)].

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Exchange Act Sections 21(d), 21(e), and 27 [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

5. Venue is proper in this District pursuant to Exchange Act Section 27 [15 U.S.C. § 78aa] because Roberts transacted business in this judicial district and because certain of the acts and transactions constituting the violations in this case occurred within this judicial district.

6. Roberts, directly or indirectly, made use of the means and instrumentalities of interstate commerce in connection with the acts alleged in this complaint.

DEFENDANT

7. Defendant Roberts joined McAfee Associates, Inc., the predecessor to Network Associates, Inc. and, later, after a name change, McAfee, Inc., on April 13, 1998, as the Director of Legal Affairs. From February 2000 to July 2001, Roberts served as the company's Vice President of Legal Affairs. In January 2001, Roberts was promoted to General Counsel and Secretary of McAfee. He was promoted in July 2001 to serve as one of McAfee's Executive Vice Presidents. Roberts graduated cum laude from the University of Missouri Law School. Prior to joining McAfee, Roberts practiced law in Dallas, Texas. On May 30, 2006, McAfee announced that Roberts' employment had been terminated.

ADDITIONAL RELEVANT PARTY

8. McAfee, Inc., a Delaware corporation with its principal office in Santa Clara, California, is a manufacturer and worldwide supplier of computer programs and

hardware focusing on network security, anti-virus, and network management products. Prior to June 30, 2004, McAfee was known as Network Associates, Inc. From 1997 through early 2002, the company's shares traded on the Nasdaq National Market under the symbol "NETA." On February 12, 2002, the company's common stock, which is registered with the Commission pursuant to Exchange Act Section 12 [15 U.S.C. § 781], was listed on the New York Stock Exchange, where it currently trades under the symbol "MFE."

FACTS

I. McAfee's Stock Option Plan

9. At all relevant times, McAfee awarded stock options to employees as a way to promote the long-term success of the company and align the employees' interests with the interests of the company's shareholders through increased stock ownership. McAfee typically awarded stock options to its employees in conjunction with three events: upon being hired by the company, as part of a yearly performance review, or as an award for a promotion.

10. McAfee has several plans, all approved by its shareholders, pursuant to which stock options are awarded. All of the option grants at issue in this complaint were awarded under McAfee's 1997 Stock Incentive Plan (the "1997 Plan").

11. The 1997 Plan provided that McAfee's Compensation Committee shall have the authority to "(a) select the Employees, Outside Directors and Consultants who are to receive Awards under the Plan, (b) determine the type, number, vesting requirements and other features and conditions of such Awards, (c) interpret the Plan and (d) make all other decisions relating to the operation of the Plan...." Option grants to

certain officers and grants of more than 15,000 shares (later increased to 25,000 shares) required the approval of the Compensation Committee.

12. The 1997 Plan expressly stated that the exercise price of any grant to a McAfee employee or officer “shall in no event be less than 100% of the Fair Market Value of a Common Share on the date of grant.”

II. Roberts Fraudulently Re-Dated and Re-Priced His Own 20,000-Share Option Grant

13. On February 14, 2000, the Compensation Committee awarded Roberts an option to purchase 20,000 shares of McAfee common stock for \$29.63 per share, McAfee’s closing stock price on February 14.

14. Later in 2000, after McAfee’s stock price had fallen below the exercise price of Roberts’ February 14 option, Roberts secretly accessed McAfee’s computerized internal system for the employee stock options program and changed the option grant date for his grant from February 14, 2000, to April 14, 2000, which, in turn, lowered the exercise price for his option shares to \$19.75, the closing price for McAfee’s stock on April 14, 2000.

15. Roberts was not authorized to unilaterally change the grant date or the exercise price of his option. Roberts concealed from McAfee until May 2006 the roughly \$10 per share benefit that he illicitly conferred upon himself, which had potentially increased Roberts’ stock-based compensation by approximately \$197,000.

16. On or about January 10, 2002, Roberts filed a Form 3 (an “Initial Statement of Beneficial Ownership”) with the Commission reporting the false exercise price of \$19.75 per share, and the false expiration date of April 14, 2010, for the option.

17. In May 2006, shortly after McAfee had begun an internal investigation into its stock option practices, Roberts confessed his misconduct to McAfee's Chief Executive Officer (the "CEO") at the time and two other members of McAfee's Board. Roberts told the CEO that he had re-priced his option because he had become disappointed after McAfee's stock price had fallen below \$29.63 a share, rendering his option grant worthless. Roberts asserted that he and another now-former McAfee employee accessed McAfee's computerized internal options management system and changed the grant date for the option from February 14, 2000, to April 14, 2000, which caused the system to record a new, lower exercise price for the option shares.

18. Prior to May 2006, the company was unaware that Roberts had re-priced his option. Shortly after Roberts confessed his misconduct, McAfee fired him.

III. Roberts Wrongly Re-Priced and Re-Dated a 420,000-Share Option Grant to McAfee's CEO

19. McAfee's Compensation Committee met on January 15, 2002, and approved a grant of an option to purchase 420,000 shares of McAfee common stock to the CEO. The same day, Roberts sent an email to the CEO and McAfee's Senior Vice President of Human Resources indicating that the Board had made certain changes to the CEO's compensation for 2002. Roberts wrote in part: "[The CEO] has been granted a 420,000 share stock option at today's closing price of \$27.19 which vests on January 15, 2005 (100% vesting on that date)[.]"

20. On the following day, January 16, after the market had closed, Roberts sent a second email to the CEO and McAfee's Senior Vice President of Human Resources in which he stated: "Let's price the 420,000 option shares at today's closing price of \$25.43."

21. A week later, on January 23, 2002, the CEO wrote in an email to Roberts and McAfee's Senior Vice President of Human Resources: "On January 16 it appears that the stock price finished at \$25.43 ... is this the price that the new options will be set at?? Is that the low for those days after the Board Meeting??" Roberts replied on the same day: "The close on Jan 16 is the right price."

22. Roberts prepared the minutes from the January 15, 2002 Compensation Committee meeting. The minutes falsely state: "The Committee directed that [the CEO] be granted an additional stock option for 420,000 shares on January 16, 2002, at the closing price on that date."

23. Roberts was not authorized to unilaterally change the grant date or exercise price for the CEO's option grant. Pursuant to McAfee's shareholder approved stock option plan, Roberts' changes to the grant date required the approval of McAfee's Compensation Committee. The Compensation Committee was never told about, and did not approve, Roberts' decision to re-price this option grant.

24. On December 29, 2006, McAfee filed with the Commission a Current Report on Form 8-K in which it disclosed that it had revised the grant date for this option to January 15, 2002, "the date on which Compensation Committee approval was obtained," and, in turn, increased the option's exercise price to \$27.19 per share, the closing price of McAfee's stock on January 15, 2002.

IV. Roberts Prepared and Signed Proxy Statements That He Knew Contained Materially False and Misleading Information and Omitted Material Facts Regarding Certain Option Grants to McAfee Executives

A. False Disclosures and Material Omissions Concerning Roberts' and the CEO's Option Grants

25. On November 14, 2003, McAfee filed with the Commission its proxy statement ("2003 Proxy") notifying shareholders of matters to be brought to a vote at its annual shareholders' meeting. Roberts helped to prepare and signed, or allowed his name to be used to solicit, the proxy on behalf of the company. Among the required disclosures contained in the 2003 Proxy was information relating to executive compensation, including, in particular, all compensation awarded in the prior three years to McAfee's CEO and its four most highly compensated officers.

26. The 2003 Proxy disclosed that Roberts' compensation for fiscal year 2000 included options grants to purchase 30,000 shares of McAfee common stock. These 30,000 shares included the 20,000-share grant that Roberts received on February 14, 2000, which he later secretly re-dated and re-priced, as discussed above. Roberts knew or was reckless in not knowing that his fraudulent re-dating and re-pricing of these options, which potentially increased his compensation by approximately \$197,500, had not been disclosed in the 2003 Proxy.

27. The 2003 Proxy also listed the 420,000-share grant to the CEO, discussed in paragraphs 19-24, above, for which Roberts had improperly changed the grant date from January 15, 2002, to January 16, 2002, in order to reduce the exercise price for the option. Roberts knew or was reckless in not knowing that the 2003 Proxy contained materially false statements and omitted material information concerning this unauthorized re-dating and re-pricing, which resulted in \$739,200 of potential additional

compensation to the CEO. Moreover, the 2003 Proxy stated that this and other option grants were “granted at an exercise price equal to the fair market value of the common stock on the date of the grant,” which Roberts knew, or was reckless in not knowing, to be false.

B. False Disclosures Concerning an Option Grant to Another Senior McAfee Officer

28. On April 11, 2002, McAfee filed with the Commission its proxy statement (“2002 Proxy”) notifying shareholders of matters to be brought to a vote at its annual shareholders’ meeting. Roberts helped to prepare and signed, or allowed his name to be used to solicit, the proxy on behalf of the company. Among the required disclosures contained in the 2002 Proxy was information relating to executive compensation, including, in particular, all compensation awarded in the prior three years to McAfee’s CEO and its four most highly compensated officers.

29. Roberts knew, or was reckless in not knowing, that both McAfee’s 2002 Proxy and 2003 Proxy contained materially false information and omitted material information concerning a 500,000-share option grant to a McAfee Division President. The grant date of this option, according to the proxy, was October 31, 2001, purportedly the date on which the Division President had been hired by McAfee.

30. The McAfee Division President was not hired by McAfee until early December 2001, and continued to work at his prior employer even after October 31, 2001.

31. McAfee’s corporate policy concerning stock option grants to newly hired employees states: “The effective date of a stock option grant is the employee’s date of hire, unless otherwise noted on the PAF (Personnel Action Form), but in no case will a

grant be effective before the employee's date of hire." (Emphasis added.) This policy was memorialized in a memorandum titled "Granting of Stock Options," and was included in a company manual, dated June 2002, containing McAfee's policies and procedures for granting stock options to employees.

32. The McAfee Division President's employment agreement, which was executed by Roberts on behalf of McAfee, states that his employment "shall commence upon a date mutually agreed upon by the parties hereto that is prior to October 30, 2001." However, Roberts knew or was reckless in not knowing that the employment agreement was still in draft form as late as November 13, 2001, and the individual had not begun working for McAfee as of that date.

33. On December 2, 2001, Roberts received an email from McAfee's CEO, concerning "Very Important Executive Promotions and Management Additions," in which the CEO wrote: "I am also very pleased to announce that [the McAfee Division President] has joined [McAfee]. . ." McAfee issued a press release on December 3, 2001, announcing the hiring of the McAfee Division President.

34. McAfee's Compensation Committee reviewed the McAfee Division President's employment terms during its January 15, 2002 meeting. The minutes for that meeting, which Roberts prepared and signed, reflect that the committee approved an option grant to the McAfee Division President to purchase 500,000 shares of McAfee common stock with a grant date of October 30, 2001, and priced at \$18.95, the closing price of McAfee's stock on that day.

35. McAfee's 2002 Proxy and 2003 Proxy stated that the McAfee Division President "joined" McAfee "on October 30, 2001." The proxies further stated that the

Division President “holds 500,000 options that are immediately exercisable ... 25% of these shares vested on October 30, 2002, the first anniversary of [his] employment commencement....” Roberts knew or was reckless in not knowing that the McAfee Division President was not hired by and did not commence employment at McAfee until December 3, 2001, and that the 2002 Proxy and 2003 Proxy contained materially false statements relating to the pricing for this new-hire option grant.

36. The closing price of McAfee’s stock on October 30, 2001, was \$18.95, and the closing price on December 3, 2001, was \$22.08. The \$3.13 difference in pricing resulted in approximately \$1,565,000 in additional stock-based compensation to the McAfee Division President that was not disclosed by McAfee and Roberts in the company’s 2002 Proxy and 2003 Proxy.

37. Defendant Roberts’ conduct resulted in violations of the proxy reporting provisions of the federal securities laws by McAfee.

FIRST CLAIM
Roberts Violated Exchange Act Section 10(b) and Exchange Act Rule 10b-5
[Anti-Fraud Provisions]

38. Paragraphs 1 through 37 are realleged and incorporated herein by reference.

39. Roberts, directly or indirectly, by use of the means or instruments of interstate commerce, or of the mails, or of a facility of a national securities exchange, knowingly or recklessly: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of a material fact or omitted to state a material fact, necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, transactions, practices, or courses of

business which operated or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of securities.

40. By engaging in the conduct described above, Roberts violated Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5], and unless enjoined will continue to violate Section 10(b) of the Exchange Act and Rule 10b-5.

SECOND CLAIM

**Roberts Violated Exchange Act Section 13(b)(5) and Exchange Act Rule 13b2-1
[Internal Controls Provisions]**

41. Paragraphs 1 through 40 are realleged and incorporated herein by reference.

42. By engaging in the conduct described above, Roberts knowingly falsified McAfee's books, records, or accounts.

43. By engaging in the conduct described above, Roberts knowingly circumvented or failed to implement McAfee's system of internal accounting controls.

44. By engaging in the conduct described above, Roberts directly or indirectly falsified or caused to be falsified books, records, or accounts subject to Exchange Act Section 13(b)(2)(A) [15 U.S.C. §78m(b)(2)(A)].

45. By engaging in the conduct described above, Roberts violated Exchange Act Section 13(b)(5) [15 U.S.C. §78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. §240.13b2-1], and unless enjoined will continue to violate Section 13(b)(5) of the Exchange Act and Rule 13b2-1.

