

Russell D. Duncan (Lead Counsel) (DC Bar #366888)  
James A. Howell (CA Bar #92721)  
Lawrence C. Renbaum (DC Bar #450015)  
Paul G. Lane (DC Bar #428821)  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, D.C. 20549-0911  
Telephone: (202) 942-7303 (Lead Counsel)  
Facsimile: (202) 942-9569

Attorneys for Plaintiff  
Securities and Exchange Commission

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

SECURITIES AND EXCHANGE	)	
COMMISSION,	)	<b>Case No.</b>
	)	
Plaintiff,	)	
v.	)	<b>COMPLAINT</b>
	)	
EVAN S. COLLINS,	)	
	)	
Defendant.	)	
	)	

Plaintiff Securities and Exchange Commission (“Commission”) alleges:

**SUMMARY**

1. This case involves unlawful trading in the securities of Network Associates, Inc. (also known and doing business as Networks Associates, Inc., currently known as McAfee, Inc., and hereafter referred to as “Network Associates”), a publicly-traded manufacturer and supplier of computer programs and hardware based in Santa Clara, California, by Evan Collins (“Collins”). Collins, a former Corporate Controller of Network Associates, sold Network Associates stock in November 2000 while in possession of material nonpublic information concerning fraudulent accounting practices at Network Associates.

1           2.       By his conduct, described herein, Collins, directly and indirectly, engaged in acts,  
2 practices, and courses of business that violated the antifraud provisions of the federal securities  
3 laws, Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Section  
4 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15U.S.C. § 78j(b)], and  
5 Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

6           3.       The Commission brings this action pursuant to Sections 20(b), 20(d), 20(e), and  
7 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), 77t(e), and 77v(a)] and Sections 21(d),  
8 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1] for an order  
9 permanently restraining and enjoining Collins, ordering him to account for and disgorge all  
10 profits from the unlawful trading, prohibiting him from acting as an officer or director of any  
11 issuer of securities that has a class of securities registered pursuant to Section 12 of the  
12 Exchange Act or that is required to file reports pursuant to Section 15(d) of such Act, imposing  
13 civil monetary penalties, and granting other equitable relief.

14                   **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

15           4.       This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d),  
16 20(e), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), 77t(e), and 77v(a)] and  
17 Sections 21(d), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and  
18 78aa].

19           5.       Venue properly lies in this Court pursuant to Section 22 of the Securities Act [15  
20 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because Collins transacted  
21 business in this judicial district, because sales of the securities at issue in this case took place in  
22 this judicial district, and because certain of the acts and transactions constituting the violations in  
23 this case occurred within this judicial district.

24           6.       Collins, directly and indirectly, made use of the means and instrumentalities of  
25 interstate commerce in connection with the transactions, acts, practices, and courses of business  
26 described in this complaint.

27           7.       Related criminal and civil cases against Terry W. Davis, *United States of America*  
28 *v. Terry W. Davis*, CR-03-0172-MJJ; *Securities and Exchange Commission v. Terry W. Davis*,

1 C-03-2729-MJJ, and Prabhat K. Goyal, *United States of America v. Prabhat K. Goyal*, CR-04-  
2 0201-MMJ; *Securities and Exchange Commission v. Prabhat K. Goyal*, C 04-2372-MJJ, have  
3 been filed in this Division.

4 **THE DEFENDANT**

5 8. Collins joined McAfee Associates, Inc. in 1996 as Finance Director and  
6 Corporate Controller. In December 1997, Network General and McAfee Associates combined to  
7 form Network Associates. Collins remained as Corporate Controller after the formation of  
8 Network Associates. As part of his compensation at Network Associates, Collins received  
9 options to purchase Network Associates stock. In mid-1999, Collins left Network Associates to  
10 serve as Vice President, Chief Financial Officer, and Secretary of McAfee.com Corporation  
11 (“McAfee.com”), a majority-owned subsidiary of Network Associates. Collins left McAfee.com  
12 in October 2002 when Network Associates reacquired McAfee.com in a tender offer and, at that  
13 time, received a one-year severance package. Collins is currently employed as the Chief  
14 Financial Officer of a privately held company located in Santa Clara, California.

15 **RELATED ENTITIES**

16 9. Network Associates is a Delaware corporation with principal offices in Santa  
17 Clara, California. Its common stock is registered with the Commission pursuant to Section 12(b)  
18 of the Exchange Act [15 U.S.C. § 781(b)]. During the relevant period, Network Associates  
19 traded on the Nasdaq National Market under the symbol “NETA.” Network Associates owed  
20 approximately 80 percent of McAfee.com’s outstanding common stock. On February 12, 2002,  
21 Network Associates moved its listing from the Nasdaq National Market to the New York Stock  
22 Exchange and its common stock began trading under the symbol “NET.” On June 30, 2004,  
23 Network Associates changed its name to McAfee, Inc. and began trading under the symbol  
24 “MFE.”

1 **FACTS**

2 **Collins Acquired Material Nonpublic**  
3 **Information Concerning Network Associates**

4 10. Collins served as Controller of Network Associates from its inception in 1997  
5 through mid-1999, when he left to serve as Vice President, Chief Financial Officer, and  
6 Secretary of McAfee.com. McAfee.com and Network Associates shared the same internal  
7 accounting system, which was accessible through computers at both companies.

8 11. In September 2000, while working at McAfee.com, Collins met for lunch with a  
9 former Network Associates accounts receivable manager, a former Network Associates assistant  
10 controller who, during this time, was the controller at McAfee.com, and a former Network  
11 Associates accounts payable manager. At the luncheon, the former accounts receivable manager  
12 told the group that Terry Davis, who had succeeded Collins in 1999 as Network Associates'  
13 controller, had made journal entries in Network Associates general ledger that improperly  
14 inflated Network Associates' accounts receivable reserve. Specifically, the accounts receivable  
15 manager told Collins that Davis had transferred \$15 million from a tax-related reserve account to  
16 an accounts receivable sales reserve account.

17 12. After the luncheon, Collins and the Controller of McAfee.com accessed Network  
18 Associates' general ledger from Collins's office computer at McAfee.com in an attempt to verify  
19 the journal entries for the transfers described by the former accounts receivable manager. In his  
20 capacity as Chief Financial Officer of McAfee.com, Collins was given access to the accounting  
21 computer system through which he could access the nonpublic books and records of both  
22 McAfee.com and Network Associates. Collins corroborated what he had learned at the luncheon  
23 when he observed, within Network Associates' general ledger, that Davis had transferred \$10  
24 million and \$5 million from a tax-related reserve account to an accounts receivable sales reserve  
25 account.

26 13. Collins knew that Davis's \$15 million transfer from the tax-related account was  
27 not in conformity with Generally Accepted Accounting Principles (GAAP), which provide that  
28 accounts receivable reserves should only be increased by a corresponding reduction to revenue.

1 In fact, Collins had explained this GAAP principle to both Davis and Network Associates' then-  
2 Chief Financial Officer, Prabhat Goyal, in a meeting that the three had in mid-1998, during  
3 which Goyal had asked Collins whether excesses in Network Associates' tax reserves could be  
4 used to boost other, unrelated reserves. Collins told Goyal that using tax reserves in this manner  
5 would be improper under GAAP.

6 14. Collins understood from his experience as a Controller and Chief Financial  
7 Officer that public companies such as Network Associates are required to, among other things,  
8 prepare its books, records, and financial statements in conformity with GAAP, and that financial  
9 statements filed with the Commission which are not prepared in accordance with GAAP are  
10 presumed to be misleading and inaccurate. Collins inferred that Network Associates' financial  
11 statements were fraudulent based on his observation of the movements in tax reserve accounts.

12 15. In October 2000, sometime after accessing the nonpublic books and records of  
13 Network Associates to confirm that Davis had improperly inflated Network Associates's  
14 accounts receivable reserves, Collins also learned that Davis was warning certain associates that  
15 they should sell their Network Associates stock. Based on this and his knowledge of the  
16 material, nonpublic information concerning the improper accounting entries, Collins concluded  
17 that Network Associates had misstated its financial statements and, as a result, was in danger of  
18 not meeting its publicly announced revenue targets for the fourth quarter ending December 31,  
19 2000.

20 **Collins Sold Stock While In Possession Of Material**  
21 **Nonpublic Information Concerning The Fraudulent Accounting**

22 16. On or about November 1, 2000, Collins exercised stock options on 30,000 shares  
23 of Network Associates stock. Pursuant to the option contract, Collins paid \$11.0625 for each  
24 share. He then sold all 30,000 shares through his brokerage account for \$19.50 per share.  
25 Collins realized a net profit of \$253,125 when he sold the shares.

26 17. On or about December 26, 2000, Network Associates announced in a press  
27 release that its sales for the fourth quarter would be only \$55 million, dramatically lower than an  
28 earlier published prediction of \$245 million. Following that news, on December 27, 2000,

1 Network Associates shares closed at \$4.50. Network Associates' announcement that it would  
2 miss its fourth quarter financial targets slashed more than \$1 billion from the company's market  
3 capitalization.

4 **COUNT ONE**

5 **Collins Violated Exchange Act Section 10(b), and Exchange Act Rule 10b-5**  
6 **[Insider Trading]**

7 18. At all relevant times, Collins knew, or was reckless in not knowing, that he was  
8 subject to a duty of trust and confidence to McAfee.com not to use or divulge the nonpublic  
9 information on the company's accounting system for his personal benefit. When Collins used  
10 the shared McAfee.com / Network Associates computer accounting system to access Network  
11 Associates' internal accounting system to review the improper transfers made by Davis, and then  
12 used the information in selling Network Associates stock, he misappropriated the information in  
13 breach of the duty that he owed to his employer.

14 19. After Network Associates had announced in late December 2000 that it would  
15 miss its previously announced quarterly earnings targets by nearly eighty percent, the price of  
16 Network Associates stock dropped below the exercise price of Collins stock options.  
17 Consequently, Collins' illicit profit from the misappropriation and use of the material, nonpublic  
18 information was the difference between the price at which he was able to sell the 30,000 shares  
19 of Network Associates stock in November, \$19.50 per share, and the price at which he acquired  
20 the stock through the exercise of his options, \$11.0625 per share. By using the misappropriated  
21 material, nonpublic information when he exercised vested employee stock options and sold  
22 Network Associates stock in November 2000, Collins profited in the amount of \$253,125.

23 20. By virtue of the conduct described above, Collins, directly or indirectly, in  
24 connection with the purchase or sale of Network Associates' common stock, by use of the means  
25 and instrumentalities of interstate commerce, of the mails, or of the facilities of a national  
26 securities exchange: (1) employed devices, schemes, or artifices to defraud; (2) made untrue  
27 statements of material facts, or omitted to state material facts necessary in order to make the  
28 statements made, in light of the circumstances in which they were made, not misleading; or (3)

1 engaged in acts, practices, or transactions which operated as a fraud or deceit upon purchasers or  
2 sellers of securities or upon other persons.

3 21. By reason of the foregoing acts, practices, and transactions, Collins violated  
4 Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §  
5 240.10b-5].

6 **COUNT TWO**

7 **Collins Violated Securities Act Section 17(a)**  
8 **[Insider Trading]**

9 22. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

10 23. As described above, Collins, directly or indirectly, in connection with the  
11 purchase or sale of Network Associates' common stock, by use of the means and  
12 instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities  
13 exchange: (1) employed devices, schemes, or artifices to defraud; (2) obtained money or  
14 property by means of untrue statements of a material facts, or omitted to state material facts  
15 necessary in order to make the statements made, in light of the circumstances in which they were  
16 made, not misleading; or (3) engage in transactions, practices, or courses of business which  
17 operated or would operate as a fraud or deceit upon the purchaser.

18 24. By reason of the foregoing acts, practices, and transactions, Collins violated  
19 Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

20 **RELIEF REQUESTED**

21 WHEREFORE, Plaintiff Securities and Exchange Commission respectfully  
22 requests that this Court:

23 **I.**

24 Issue an order of permanent injunction restraining and enjoining Collins, and his  
25 agents, servants, employees, attorneys, and assigns, and those persons in active concert or  
26 participation with him, and each of them, from violating Securities Act Section 17(a) [15 U.S.C.  
27 § 77q(a)], Exchange Act Section 10(b) [15 U.S.C. §§ 78j(b)], and Exchange Act Rule 10b-5 [17  
28 C.F.R. §§ 240.10b-5

1 **II.**

2 Order an accounting by Collins of all money, property, and other assets directly or  
3 indirectly derived from the conduct alleged herein.

4 **III.**

5 Issue an order directing Collins to disgorge, with prejudgment interest, all ill-  
6 gotten gains resulting from his conduct alleged herein.

7 **IV.**

8 Issue an order directing Collins to pay civil monetary penalties under Securities  
9 Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Sections 21(d)(3) and 21A of the  
10 Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78u-1].

11 **V.**

12 Enter an order under Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and  
13 Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] prohibiting Collins from acting as  
14 an officer or a director of any issuer that has a class of securities registered pursuant to Section  
15 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section  
16 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

17 **VI.**

18 Grant such other and further relief as this Court may deem just and proper.

19  
20 Dated: \_\_\_\_\_

\_\_\_\_\_  
21 Russell D. Duncan (Lead Counsel)  
22 Lawrence C. Renbaum  
23 James A. Howell  
24 Paul G. Lane  
25 Attorneys for Plaintiff  
26 Securities and Exchange Commission  
27 450 Fifth Street, N.W.  
28 Washington, DC 20549-0911  
Telephone: (202) 942-7303 (Lead Counsel)  
Facsimile: (202) 942-9569