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FORMER MERCURY INTERACTIVE CFO INDICTED IN STOCK OPTIONS BACKDATING SCHEME

Backdated Stock Option Exercise Dates To Reduce Income Taxes

SAN FRANCISCO – United States Attorney Joseph P. Russoniello and Special Agent in Charge, IRS Criminal Investigation, Scott O'Briant announced a federal grand jury in San Francisco indicted Sharlene P. Abrams with tax evasion and aiding in the preparation of false tax returns related to a stock options backdating scheme.

According to the indictment, between 1993 and November 2001, Ms. Abrams, who resided in Los Gatos, California, served as Chief Financial Officer for Mercury Interactive Corporation (Mercury), a publicly traded corporation that made software used to test and optimize information technology systems and software applications, and which was headquartered in Mountain View, California.

Mercury granted stock options to its employees and executives. Options granted under the stock option plans could be either incentive stock options or non-qualified stock options.

Ms. Abrams supervised the exercises of stock options for officers and executives. Officers and executives typically exercised their stock options and then held the stock for a period of time, usually at least one year to take advantage of the lower long-term capital gains tax.

Ms. Abrams is alleged to have orchestrated the backdating of stock option exercise dates for herself, Mercury's Chief Executive Officer, Amnon Landan, and Mercury's Chief Operating Officer, Kenneth Klein in order to reduce the income taxes due on the gains realized by the exercises in April, May and August 2001. Ms. Abrams searched for low points in the price of Mercury stock and backdated the exercises to those dates.

Federal tax laws require the payment of ordinary income tax on gains realized upon the exercise of non-qualified stock options. Thus, if a person exercises non-qualified stock options, thereby purchasing stock at a lower price than fair market value on that date, the difference between the purchase price and fair market value is taxed as ordinary income.

Although federal tax laws typically do not require the payment of ordinary income tax upon the exercise of incentive stock options, the difference between fair market value and the exercise price is included in alternative minimum tax income, which may trigger the imposition of the alternative minimum tax. Profits from the sale of shares received through an exercise of incentive stock options may qualify to be taxed at the long-term capital gains rate, which is more favorable than regular income tax rates, provided other conditions are met.

Ms. Abrams is charged with one count of income tax evasion and two counts of aiding and assisting in the preparation of false tax returns for Landan and Klein.

This is the first case in Northern California charging an individual with criminal tax violations in connection with an alleged stock options backdating scheme.

The maximum statutory penalty for each count of income tax evasion in violation of 26 U.S.C. § 7201 is five years imprisonment and a fine of \$250,000. The maximum statutory penalty for each count of aiding and assisting in the preparation of a false tax return in violation of 26 U.S.C. § 7206(2) is three years imprisonment and a fine of \$250,000. However, any sentence following conviction would be imposed by the court after consideration of the U.S. Sentencing Guidelines and the federal statute governing the imposition of a sentence, 18 U.S.C. § 3553.

An indictment contains only allegations against an individual and, as with all defendants, Ms. Abrams must be presumed innocent unless and until proven guilty.

David Denier is the Assistant U.S. Attorney who is prosecuting the case with the assistance of Kathy Tat. The prosecution is the result of an investigation by the Internal Revenue Service, Criminal Investigation.

Further Information:

Case #: CR08-0252 RMW

A copy of this press release may be found on the U.S. Attorney's Office's website at www.usdoj.gov/usao/can.

Electronic court filings and further procedural and docket information are available at <https://ecf.cand.uscourts.gov/cgi-bin/login.pl>.

Judges' calendars with schedules for upcoming court hearings can be viewed on the court's website at www.cand.uscourts.gov.

All press inquiries to the U.S. Attorney's Office should be directed to Joshua Eaton at (415) 436-6958 or by email at Josh.Eaton@usdoj.gov.

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