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FOR IMMEDIATE RELEASE
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**U.S. Attorney's Office and SEC Separately
Charge Former Brocade CEO and Vice
President in Stock Option Backdating
Scheme**

SEC Brings Civil Fraud Claims Against Former CFO

San Francisco, July 20, 2006 — The United States Attorney's Office for the Northern District of California, the Securities and Exchange Commission, and the Federal Bureau of Investigation today announced the filing of criminal and civil securities fraud charges against Gregory L. Reyes, the former CEO, President, and Chairman of Brocade Communications Systems, Inc., and Stephanie Jensen, its former Vice President of Human Resources, alleging that the two routinely backdated stock option grants to give employees favorably priced options without recording necessary compensation expenses. The actions, which are among the first cases involving manipulation of stock option grants in violation of the federal securities laws and other criminal statutes, are the result of 18-month investigations by the Commission and the FBI.

According to the criminal complaint and the Commission's civil complaint, Reyes, 43, of Saratoga, Calif., and Jensen, 48, of Los Altos, Calif., regularly

*cited in U.S. v. Reyes,
No. 08-10047 archived on September 4, 2009*

caused Brocade to grant "in-the-money" options (i.e., the exercise price is below the stock's market price on the day of grant, giving the recipient an immediate paper gain) to both new and current employees between 2000 and 2004, but backdated documents to make it appear that the options were "at-the-money" (i.e., the exercise price is the same as the stock's market price on the day of the grant) when granted, thus concealing millions of dollars in expenses from investors. Under well-settled accounting principles applicable at the time, options granted "at-the-money" did not need to be expensed. In contrast, options granted "in-the-money" needed to be recorded as a compensation expense.

The separate criminal and civil complaints allege that Reyes repeatedly used hindsight to select a date with a lower stock price from the recent past as the supposed option grant date. To facilitate the scheme, Jensen created, or directed others to create, paperwork making it appear that the options had been granted on the earlier date. In some instances, employment offer letters and compensation committee minutes were falsified and purported to document option grants to employees before they had even been hired by the company. As a result of this practice, Brocade was able to give employees "in-the-money" stock options without having to recognize compensation expenses as required by accounting rules. When these stock option abuses surfaced, Brocade was required to restate and revise its financial statements for fiscal years 1999 through 2004.

According to the criminal complaint, in January 2005, Brocade announced the following restatements (fiscal years):

2004:	Net loss increased from \$2 million to \$32 million
2003:	Net loss increased from \$136 million to \$147 million
2002:	Income increased by \$60 million to \$126 million
1999-2001:	Income declined by a total of \$304 million

The Commission's civil complaint also names Antonio Canova, Brocade's former CFO, who is alleged to have learned of the backdating after joining Brocade. According to the complaint, Canova was specifically warned in writing that option paperwork had been forged to enable an employee to get favorably priced options; he took no action and failed to advise Brocade's auditors and Audit Committee. The complaint alleges that despite this knowledge, Canova signed Brocade's false and misleading financial statements and SEC filings.

U.S. Attorney Kevin V. Ryan stated, "The criminal charges filed today allege that this backdating scheme contributed to the restatements of hundreds of millions of dollars of Brocade's financial results. The criminal complaint alleges that these defendants altered and backdated Board of Director meeting minutes and employment offer letters in a scheme to defraud in connection with the pricing and granting of stock options. It is integral to the public trust in our financial markets that books and records are maintained honestly, and that the true financial condition of public companies is disclosed accurately."

Linda Chatman Thomsen, Director of the Commission's Enforcement Division in Washington, D.C., said, "By falsifying and backdating option paperwork, Reyes and Jensen knew investors would be given a false portrait of Brocade's financial condition. Canova contributed to this false portrait by continuing to certify Brocade's false filings even after learning option

Cited in U.S. v. Reyes,
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paperwork had been forged. The Enforcement Division is committed to pursuing this type of unlawful stock option manipulation."

Acting Special Agent in Charge Arthur Balizan said, "This complaint demonstrates the strong, cooperative relationship between the FBI, SEC and US Attorney's office, and the successful advancement of justice achieved by these types of parallel investigations. The illegal backdating of options alleged in this case gave the defendants an unfair advantage and misled the investing public."

The criminal complaint, filed in federal court in San Francisco, charges Reyes and Jensen with securities fraud. The Commission's civil complaint, filed in federal court charges Reyes, Canova, and Jensen with fraud and other violations of the federal securities laws, including the books-and-records, internal controls, misrepresentations to auditors, and Sarbanes-Oxley certification provisions.

Reyes and Jensen will be issued a summons to appear in court on August 2, 2006, before Magistrate Judge Joseph C. Spero.

The maximum statutory penalty for securities fraud in violation of 15 U.S.C. §§ 78j(b), 78ff and 17 C.F.R. § 240.10b-5 is 20 years in prison and a fine of \$5 million, plus restitution. 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.

A criminal complaint contains only allegations against an individual and, as with all defendants, Mr. Reyes and Ms. Jensen must be presumed innocent unless and until proven guilty.

Christopher J. Steskal is the Assistant U.S. Attorney who is prosecuting the case with the assistance of legal assistant Michele Sharpe.

The investigations are continuing.

Further Information Regarding the Criminal Complaint:

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 Luke Macaulay at (415) 436-6757 or by email at Luke.Macaulay@usdoj.gov.

Further Information Regarding the Commission's Complaint:

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Securities and Exchange Commission

Additional materials: [Litigation Release No. 19768](#) and [Complaint](#)

<http://www.sec.gov/news/press/2006-121.htm>

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