

JOSEPH W. COTCHETT (#36324)  
[jcotchett@cpsmlaw.com](mailto:jcotchett@cpsmlaw.com)  
MARK C. MOLUMPY (#168009)  
[mmolumphy@cpsmlaw.com](mailto:mmolumphy@cpsmlaw.com)  
KELLY L. SOMMERFELD (#234025)  
[ksommerfeld@cpsmlaw.com](mailto:ksommerfeld@cpsmlaw.com)  
COTCHETT, PITRE, SIMON & McCARTHY  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010  
Telephone: (650) 697-6000  
Fax: (650) 697-0577

*Attorneys for the Plaintiffs and Class*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LARRY McINTOSH, YANGJIE CHENG,  
PING CHEN, STEVE HAEFFELE, LEBIN  
CHENG, VATSAL SONECHA, and  
JONATHAN WONG, individually and on  
behalf of all those similarly situated,

Plaintiffs,

v.

McAFEE, INC., GEORGE SAMENUK,  
DALE FULLER, and Does 1-10,

Defendants.

C06 07694

CLASS ACTION

COMPLAINT FOR:

1. Breach of Contract;
2. Breach of the Covenant of Good Faith and Fair Dealing;
3. Fraud and Deceit;
4. Negligent Misrepresentation; and
5. Unjust Enrichment.

JURY TRIAL DEMANDED

E-Filing

ADR

Filed

DEC 15 2006

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

HRL

COMPLAINT

1 Plaintiffs allege as follows upon information and belief based, *inter alia*, upon  
2 investigation conducted by plaintiffs and their counsel, except as to those allegations pertaining  
3 to plaintiffs personally, which are alleged upon knowledge:

4 **I. OVERVIEW**

5 1. This is an action filed by the hidden victims of the stock option backdating  
6 scandal. While some top executives suspected of backdating are walking away with millions of  
7 dollars worth of stock options, plaintiffs – former employees of McAfee, Inc. – have been told  
8 *they can never cash in theirs.*

9 2. On July 27, 2006, McAfee filed a Form 8-K with the SEC, admitting that it was  
10 unable to file its quarterly results on a timely basis and that its previously issued financial  
11 statements should no longer be relied upon due to its expanding backdating investigation. At the  
12 same time, McAfee ceased the issuance of any new shares under the Company's stock option  
13 plans pending the filing of corrected financials. This unilateral freeze, commonly referred to as a  
14 "blackout," effectively prevented McAfee employees from exercising their earned and vested  
15 stock options as of July 28, 2006.

16 3. Making matters worse, former employees were then told that their options would  
17 expire during the blackout, despite agreements and reassurances to the contrary. By virtue of its  
18 stock option agreements, McAfee was contractually obligated to honor requests to exercise  
19 vested stock options made within 90 days after an employee left or was terminated by McAfee.  
20 Indeed, when the blackout was first announced, McAfee's highest management and its human  
21 resource department reassured employees worldwide that the Company would honor the 90-day  
22 exercise period by starting it *after* the blackout was lifted.

23 4. For example, on August 4, 2006, defendant George Samenuk – McAfee's  
24 Chairman and Chief Executive Officer – sent an email to all employees entitled "GOOD NEWS  
25 FOR THE MCAFEE TEAM!" Samenuk attached to his email the Company's response to  
26 "frequently asked questions" from employees about the blackout:  
27  
28

1           **“Q: If I terminate my employment at McAfee during the blackout period,**  
2           **will I be able to exercise my vested stock options?”**

3           A: Regardless of your employment status with the Company, you are not able to  
4           exercise your vested stock options until the blackout period is lifted.

5           *However, the Company intends to allow all employees who terminate*  
6           *during the blackout period a three-month extension to exercise their*  
7           *vested stock options when the blackout is lifted.* For example, if an  
8           employee terminates employment with the Company on August 17, 2006,  
9           the former employee will not be able to exercise their vested stock options  
10          until the blackout is lifted. If the blackout is lifted on December 20, 2006,  
11          the former employee will have until March 20, 2007 to exercise their  
12          options which were vested on August 17, 2006. All unexercised, vested  
13          options held by the employees will expire at the close of the Market on  
14          March 20, 2007. . . .”

15          Emphasis added. A copy of the email is attached as Exhibit A. These statements were  
16          repeatedly reaffirmed by other Company management, including the Executive Vice President of  
17          McAfee and the Manager of the Human Resources Department. They were also consistent with  
18          the Company’s prior practice and policy during a prior blackout period just three years earlier.

19          5. Unfortunately, defendants’ assurances were a sham and McAfee had no intention  
20          of starting the 90-day exercise period when the blackout was lifted. On October 26, 2006,  
21          McAfee’s new CEO, defendant Dale Fuller, sent an email to all employees worldwide giving  
22          notice that McAfee would no longer honor its contractual obligations – and its written assurances  
23          to employees – to provide a 90-day, post-termination exercise period and, instead, would start  
24          the exercise period during the blackout even though former employees (through no fault of their  
25          own) were **precluded** by McAfee from exercising their options.

26          6. In effect, defendants unilaterally stole back their former employees’ vested stock  
27          options by preventing them from exercising them, evidently trying to ensure that current  
28          employees would not leave the Company under fear that they too would lose their options.

29          7. By this action, plaintiffs and Class members seek the return of the benefits that  
30          they *earned* as faithful employees of McAfee and that rightfully belong to them.

1 **II. JURISDICTION AND VENUE**

2 8. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d).

3 9. Venue is proper in this district. Defendant McAfee is headquartered in this  
4 District. A substantial part of the events, acts, omissions and transactions complained of herein,  
5 including the concealment of information to plaintiffs, occurred in this District. At all relevant  
6 times herein, defendant conducted substantial business and/or committed violations of law in this  
7 District.

8 **III. THE PARTIES**

9 **A. Plaintiffs**

10 10. Plaintiff Larry McIntosh is an individual and former employee of McAfee.  
11 McIntosh chose to leave the Company, relying on defendants' representations that McAfee  
12 would give him 90 days following the termination of his employment to exercise his options.  
13 While McIntosh earned stock options while employed at McAfee, he has been prevented from  
14 exercising his stock options and is now informed of defendants' position that the post  
15 termination exercise period will run during the blackout period and that any options that expire  
16 during the blackout period become void and cannot be exercised once expired.

17 11. Plaintiff Yangjie Cheng is an individual and former employee of McAfee. Cheng  
18 chose to leave the Company, relying on defendants' representations that McAfee would give him  
19 90 days following the termination of his employment to exercise his options. While Cheng  
20 earned stock options while employed at McAfee, he has been prevented from exercising his stock  
21 options and is now informed of defendants' position that the post termination exercise period  
22 will run during the blackout period and that any options that expire during the blackout period  
23 become void and cannot be exercised once expired.

24 12. Plaintiff Ping Chen is an individual and former employee of McAfee. Chen chose  
25 to leave the Company, relying on defendants' representations that McAfee would give her 90  
26 days following the termination of her employment to exercise her options. While Chen earned  
27 stock options while employed at McAfee, she has been prevented from exercising her stock  
28 options and is now informed of defendants' position that the post termination exercise period

1 will run during the blackout period and that any options that expire during the blackout period  
2 become void and cannot be exercised once expired.

3 13. Plaintiff Steve Haeffele is an individual and former employee of McAfee.  
4 Haeffele chose to leave the Company, relying on defendants' representations that McAfee would  
5 give him 90 days following the termination of his employment to exercise his options. While  
6 Haeffele earned stock options while employed at McAfee, he has been prevented from exercising  
7 his stock options and is now informed of defendants' position that the post termination exercise  
8 period will run during the blackout period and that any options that expire during the blackout  
9 period become void and cannot be exercised once expired.

10 14. Plaintiff Lebin Cheng is an individual and former employee of McAfee. Cheng  
11 chose to leave the Company, relying on defendants' representations that McAfee would give him  
12 90 days following the termination of his employment to exercise his options. While Cheng  
13 earned stock options while employed at McAfee, he has been prevented from exercising his stock  
14 options and is now informed of defendants' position that the post termination exercise period  
15 will run during the blackout period and that any options that expire during the blackout period  
16 become void and cannot be exercised once expired.

17 15. Plaintiff Vatsal Sonecha is an individual and former employee of McAfee.  
18 Sonecha was involuntarily terminated from the company. While Sonecha earned stock options  
19 while employed at McAfee, he has been prevented from exercising his stock options and is now  
20 informed of defendants' position that the post termination exercise period will run during the  
21 blackout period and that any options that expire during the blackout period become void and  
22 cannot be exercised once expired.

23 16. Plaintiff Jonathan Wong is an individual and former employee of McAfee. Wong  
24 chose to leave the Company, relying on defendants' representations that McAfee would give him  
25 90 days following the termination of his employment to exercise his options. While Wong earned  
26 stock options while employed at McAfee, he has been prevented from exercising his stock  
27 options and is now informed of defendants' position that the post termination exercise period  
28



1 will run during the blackout period and that any options that expire during the blackout period  
2 become void and cannot be exercised once expired.

3 **B. Defendants**

4 17. Defendant McAfee, Inc. is a Delaware corporation with its principal executive  
5 offices located at 3965 Freedom Circle, Santa Clara, California. McAfee is a worldwide supplier  
6 of computer security solutions designed to prevent intrusions on networks and secure computer  
7 systems and other digital devices from a large variety of known and unknown threats and attacks.  
8 The Company develops, markets, distributes and supports computer security solutions for large  
9 enterprises, governments, small and medium-sized business and consumers through a network of  
10 qualified partners.

11 18. Defendant George Samenuk was, at all times relevant hereto, President, Chairman  
12 of the Board of Directors, and CEO of McAfee. During the relevant period, Samenuk  
13 participated in decisions made by the Company relating to its stock option practices, and made or  
14 approved the making of false statements and/or concealed material information from Plaintiffs  
15 and the Class about such practices, as described below. On October 11, 2006, McAfee  
16 announced that Samenuk has "retired" from McAfee following the Special Committee's  
17 presentation of their investigation of McAfee's historical stock option grant practices and related  
18 accounting.

19 19. Defendant Dale Fuller ("Fuller") was, at all times relevant hereto, a director of  
20 McAfee. Fuller is currently interim CEO and President of McAfee. During the relevant period,  
21 Fuller participated in decisions made by the Company relating to its stock option practices, and  
22 made or approved the making of false statements and/or concealed material information from  
23 Plaintiffs and the Class about such practices, as described below.

24 20. Except as described herein, Plaintiffs are ignorant of the true names of defendants  
25 sued as Does 1 through 20 inclusive and, therefore, sue these defendants by such fictitious  
26 names. Plaintiffs will seek leave of the Court to amend this Complaint to allege their true names  
27 and capacities when they are ascertained. Plaintiffs allege that each of these Doe Defendants is  
28

1 responsible in some manner for the acts and occurrences alleged herein, and that Plaintiffs'  
2 damages were caused by such Doe Defendants.

3 21. Defendant, and the Doe Defendants, and each of them, are individually sued as  
4 participants and as aiders and abettors in the improper acts, plans, schemes, and transactions that  
5 are the subject of this Complaint.

6 22. Various other people, firms, and corporations, presently unknown to Plaintiffs and  
7 sued herein as Does 1 through 20 in this Complaint, have participated as members of the alleged  
8 scheme or acted in furtherance of it, or aided or assisted in carrying out its purposes as alleged in  
9 this Complaint, and have performed acts and made statements in furtherance of the violations  
10 and conspiracy.

11 23. At all relevant times, each Defendant was and is the agent of each of the  
12 remaining Doe Defendants, and in doing the acts alleged herein, was acting within the course and  
13 scope of such agency. Each Defendant ratified and/or authorized the wrongful acts of each of the  
14 other Doe Defendants.

15 **IV. FACTUAL ALLEGATIONS**

16 **A. The Stock Option Plans At McAfee**

17 24. McAfee, previously known as Network Associates, is a worldwide supplier of  
18 computer security solutions designed to prevent intrusions on networks and secure computer  
19 systems and other digital devices from a large variety of known and unknown threats and attacks.

20 25. McAfee grew dramatically in the 1990s, as its employees pioneered the  
21 development of online security software and the use of internet started to increase. McAfee went  
22 public in 1992 and, by 2001, it had over a billion dollars in revenues.

23 26. At the same time, McAfee expanded its number of employees. While it had  
24 approximately 40 employees in 1993, it had well over 3,000 just ten years later, in 2003.

25 27. To attract and retain employees, particularly given increasing demand for a very  
26 limited number of skilled and experienced employees in its field, McAfee's Board increasingly  
27 used stock options as an employee benefit to attract and retain these key contributors. If the  
28 McAfee both granted stock options to employees at the time of hiring and as "merit grants" when

1 an employee was promoted or after the employee's annual review. The Compensation  
2 Committee determined and approved grants to employees as well as the Company's policies and  
3 practices with respect to exercise of the grants.

4 28. An option gives a holder the right to purchase one share of stock at a set price,  
5 called the strike price. If the stock's market price rises above the strike price, the employee can  
6 exercise the option, buying stock at the strike price. The employee can then sell the stock back at  
7 the market price and benefit from the difference.

8 29. Employees typically have ten years to exercise their options once they are vested,  
9 and then they expire. However, when employees quit or get laid off, they typically have 90 days  
10 to exercise their vested options before they expire. That was also the case at McAfee.

11 30. Plaintiffs and Class members received stock options issued under stock option  
12 plans adopted by the McAfee Board of Directors, and administered by certain members of the  
13 Board. Under the plans, each grant of an option was to be evidenced by a Stock Option  
14 Agreement between the optionee and McAfee. The Stock Option Agreements specified the  
15 number of shares subject to the option, the exercise price, the date when the option becomes  
16 exercisable, and critically, the term of the option.

17 31. As a uniform practice, and as issued to Plaintiffs, McAfee's Stock Option  
18 Agreements provided that stock options granted to employees would expire, and employees  
19 would be unable to exercise them, *ten years* after the grant date. However, in the event an  
20 employee terminated his or her employment, either voluntarily or involuntarily, they had *90 days*  
21 to exercise their options before they expired.

22 32. The Stock Option Agreements provided that they would be governed by the  
23 internal substantive laws of California.



1           **C.     McAfee's Prior Policy Of Excluding Blackout Date From Exercise Period**

2           33.     During the course of its history, McAfee has had periods in which it was unable to  
3 timely file financial reports with the SEC for various reasons.

4           34.     On these prior occasions, McAfee has honored its 90-day post-termination  
5 exercise period – and actually gave former employees 90 days to exercise their options – by  
6 starting the period when the blackout period was lifted.

7           35.     For example, in March 2003, McAfee (then Network Associates) announced that  
8 it had to delay the filing of its Form 10-K for 2002 in order to restate its financial results for  
9 1998, 1999 and 2000. It then imposed a blackout period by which employees were precluded  
10 from exercising their stock options until the Form 10-K was filed.

11           36.     On April 2, 2003, McAfee distributed a notice to all employees confirming that, in  
12 the event their options terminated during the blackout period, the Company would extend the  
13 exercise period until after the blackout was lifted:

14           “Also, as noted above, after April 9, 2003 and until further notice, you will not be  
15 able to exercise options under any Company Option Plans.

16           *In the event any of your options would otherwise terminate under the Company*  
17 *Option Plans during the blackout period, the Company will extend the exercise*  
*period of your options for a period of time equal to the length of the blackout*  
*period.”*

18           Emphasis added.

19           37.     When the blackout period was lifted, McAfee then honored its contractual  
20 obligations. McAfee also described this practice in its subsequent public filings with the SEC,  
21 including Form 10-Qs.

22           **D.     McAfee Announces New Blackout Period in 2006 Based On Backdating**  
23 **Investigation, Reassuring Employees That It Will Honor Its Obligations**

24           38.     In May 2006, reports were published about a number of companies that had  
25 granted senior executives stock options at exercise prices and dates that matched exactly or were  
26 close to lows in the company's stock price.

39. On May 25, 2006, McAfee held its Annual Stockholder Meeting and announced that it had "voluntarily initiated" a review of its stock option grant practices, and opened an informal "dialogue" with the SEC.

40. On May 30, 2006, McAfee issued a press release and announced that it had fired its General Counsel, Kent Roberts, for improper conduct related to stock option grants under investigation:

"McAfee, Inc. (NYSE: MFE), today announced that its Board of Directors has terminated the employment of its General Counsel, Kent Roberts. The Company had previously disclosed that it is reviewing prior practices in connection with grants of employee stock options. . . . The Company has had communications on the subject of option grants with staff of both the Securities and Exchange Commission and the Justice Department."

41. On June 9, 2006, McAfee filed a Form 8-K with the SEC stating that it had received a subpoena pursuant to a formal order of investigation by the SEC.

42. On July 27, 2006, McAfee filed a Form 8-K with the SEC and announced that it would not be able to timely file its financial results for the second quarter of 2006 as a result of its review of its options granting processes:

"The second quarter results are preliminary because the Registrant (as previously disclosed) is in the process of reviewing its stock option grant practices and related accounting. McAfee believes that, as a result of this financial results in at least one, and potentially several, prior periods, to reflect additional stock compensation and/or tax related impact. These adjustments could also affect the preliminary results announced in the furnished July 27, 2006, press release, which are presented without taking into account any adjustments or restatements which may be required resulting from the ongoing review of stock option grants. . . . ***Because of the pending review, McAfee is not in a position to timely file its Form 10-Q with the SEC for the second quarter ended June 30, 2006. McAfee will attempt to file its Form 10-Q as soon as it has sufficient certainty as to the impact of these matters on its financial statements.***"

Emphasis added.

43. Significantly for plaintiffs, at the close of the market on July 27, 2006, McAfee also suspended the exercise of any stock options by employees and former employees due to its inability to timely file its Form 10-Q. The blackout still extends to this day.

44. The announcement of the blackout led to a number of inquiries by McAfee employees with respect to vested stock options. Defendants moved quickly to reassure its staff.

45. For example, on Thursday, August 3, 2006, William Kerrigan, McAfee's Executive Vice President, and a statutorily recognized "reporting officer" under Section 16 of the Securities Exchange Act of 1934, sent an email to employees following an all hands meeting the day before, stating:

"Team,

As a follow up to our Consumer All Hands discussion, below are answers to some of the questions raised.

Bill Kerrigan  
Executive Vice President  
McAfee Consumer

*If I terminate employment with McAfee can I exercise and sell my options? I believe we have 90 post term date window. What happens to window? Does it start after review and restatement is completed or is it still driven by term date?*

Until the option review is completed and all filings have been made with the SEC, terminated employees will not be able to exercise options. *The 90 day post term window will be extended to 90 days of following the time that McAfee is once again a current filer with the SEC.* At this time we do not know when this will be."

Emphasis added.

46. The very next day, Friday, August 4, 2006, defendant George Samenuk – McAfee's Chairman and CEO – sent an email to all employees worldwide, with a subject line entitled, "GOOD NEWS FOR THE McAFEE TEAM!" Samenuk, with the knowledge and approval of the remaining defendants, again reassured all employees (including Plaintiffs and other Class members) that the Company intended to honor its commitments and obligations relating to the 90 day period to exercise options, and would not start the exercise period until *after* the blackout was lifted. The email stated:

"McAfee Team:

Last week we had to deliver the unfortunate news concerning the implementation of trading restrictions and the suspension of the ESPP purchase...

The attached FAQ document has been prepared to answer any of the most common questions. Please review the attached document and contact stock administration with any further questions you may have.

Thank you for your patience and understanding.

Regards,  
George"

1 Attached to the email was a document entitled, "Stock Option Review FAQ.doc," which  
2 explicitly stated:

3 **"EMPLOYEE FREQUENTLY ASKED QUESTIONS ABOUT MCAFEE,  
4 INC. BLACKOUT . . .**

5 Q: *If I terminate my employment at McAfee during the blackout period,  
will I be able to exercise my vested stock options?*

6 A: Regardless of your employment status with the Company, you are not able  
7 to exercise your vested stock options until the blackout period is lifted.

8 *However, the Company intends to allow all employees who terminate during the  
blackout period a three-month extension to exercise their vested stock options  
when the blackout is lifted.* For example, if an employee terminates employment  
9 with the Company on August 17, 2006, the former employee will not be able to  
10 exercise their vested stock options until the blackout is lifted. If the blackout is  
lifted on December 20, 2006, the former employee will have until March 20,  
11 2007 to exercise their options which were vested on August 17, 2006. All  
unexercised, vested options held by the employees will expire at the close of the  
12 Market on March 20, 2007. . . ."

13 Emphasis added.

14 47. Similarly, given the large amounts of earned benefits at stake, employees  
15 considering terminating their employment made numerous communications to McAfee's Human  
16 Resources Department. Darren Albert, the Manager of the Human Resources Department,  
17 replied,

18 "Here's the statement we provide to all terminating employees . . .

19 'As you know, due to the current blackout, your period for exercising stock  
options which have vested or which vest between now and your term, *will be  
20 extended for a period of three months following the date the blackout is lifted.*'

21 Darren Albert  
22 Manager, Human Resources  
McAfee, Inc."

23 Emphasis added.

24 48. On August 16, 2006, McAfee announced the preliminary findings of its Special  
25 Committee and confirmed that its financial statements for fiscal years 2005, 2004 and 2003,  
including 2002 and 2001 data, should no longer be relied upon.

26 49. On August 18, 2006, McAfee announced that it had received a grand jury  
27 subpoena from the U.S. Attorney's Office regarding their termination of defendant Roberts:  
28

1 McAfee, Inc.(the "Company") has received a grand jury subpoena from the U.S.  
2 Attorney's Office for the Northern district of California relating to the Company's  
3 previously disclosed termination of the employment of Kent Roberts, the Company's  
4 former general counsel, his options-related activities, and the Company's previously  
5 announced investigation. The Company is continuing to fully cooperate with the U.S.  
6 Attorney's Office.

7 50. On October 4, 2006, McAfee announced that Robert Dutkowsky – a director and  
8 long time member of the Board's Compensation Committee – was resigning, effectively  
9 immediately, as the lead independent director of McAfee's Board and from all Board committees  
10 that he served on. McAfee also announced that Dutkowsky was resigning from the Board  
11 entirely on January 31, 2007.

12 51. One week later, on October 11, 2006, McAfee announced that defendant Samenuk  
13 had "retired" as Chairman and CEO, and that Kevin Weiss had been fired as President. Samenuk  
14 was replaced an on "interim" basis by defendant Dale Fuller, who was appointed as Interim  
15 President and Chief Executive Officer.

16 **E. Defendants Decide To Renege On Their Word**

17 52. On October 26, 2006, defendants announced to McAfee employees that the  
18 Company would no longer permit employees who terminated their employment to exercise stock  
19 options when the blackout was lifted, even though other Company representatives – including  
20 Section 16 corporate officers – had explicitly stated that McAfee would permit such an  
21 opportunity just weeks earlier.

22 53. On information and belief, the decision was driven by McAfee's newly appointed  
23 CEO, defendant Fuller. Indeed, on or about the day he was appointed as CEO, Fuller called a  
24 conference call with his Global Management Team or "GMT." The GMT included the 25  
25 highest ranking employees at the Company, excluding the President, CFO, and General Counsel  
26 (who were separately part of the Core Management Team or "CMT"). During that call, one of  
27 the senior managers – on information and belief, Roger Bean, VP of North America Human  
28 Resources – raised the issue of the blackout period. Fuller angrily responded that he didn't know  
why McAfee would "take money out of our pockets and our children's pockets and give it to  
employees who have left the company." Fuller also stated that "unless the lawyers tell me  
otherwise" he didn't intend to allow the 90 day post-termination exercise period to be extended



1 beyond the blackout. After a lengthy period of silence from the GMT, only one person spoke up  
2 – on information and belief, Angela Bullock, the Vice President and Controller of the Company –  
3 stating that she had a real problem with Fuller’s stated new policy.

4 54. On Thursday, October 26, 2006, just two weeks after taking over as the CEO at  
5 McAfee, defendant Fuller carried out his threat and sent an email to all employees worldwide  
6 entitled, “Options update.” In a complete reversal from the Company’s prior representations,  
7 Fuller gave notice that the Company would no longer honor its obligation and permit former  
8 employees to exercise their options when the blackout period was lifted:

9 “McAfee Team,

10 Many of you have asked about your options recently, and we’d like to set the  
11 record straight.

12 Here’s the background,

13 As you know, we are in the midst of an ongoing review of our historic stock  
14 option grant practices. In fact, on July 27, 2006 McAfee advised investors and the  
15 financial community that our historical financial statements should no longer be  
16 relied upon and that our Quarterly Report on Form 10-Q for the quarter ended  
17 June 30, 2006 would not be filed in a timely manner. To date, McAfee has not  
18 filed either its second or third quarter 10-Q and these documents will not be filed  
19 until such time as the stock options review is complete and the required historic  
20 financial statements have been restated.

21 Here’s why,

22 Since McAfee does not have current financials on file with the SEC, all McAfee  
23 option holders (whether current or former employees) will not be permitted to  
24 exercise options until McAfee has current financials on file and the blackout  
25 period has ended.

26 Here’s what it all means,

27 Until the stock blackout has been lifted, the following restriction must apply:

28 *(1) The post termination exercise period (90 days in most cases) continues to  
apply. This also applies to employees who voluntarily leave the company,  
through a resignation, for example.*

*(2) All stock options that expire during the blackout will become void and  
cannot be exercised once they are expired.*

McAfee’s option plan provides that the issuance of shares under the plan are  
subject to applicable laws, rules and regulations, and the above restrictions ensure  
we comply with all applicable laws, rules and regulations. The options plan does  
not provide for an extension during a blackout period.

*Finally, I’d like to add that any messages that you may have received from  
company representatives, whether written or oral, that conflict with the above  
information were inaccurate.*

1 Unfortunately, I can't give you any timing pertaining to the lifting of these  
2 restrictions, but you have my commitment that I will work with the Board to get  
this resolved as soon as possible.

3 Thank you for a great quarter. Keep doing the things you're doing and hang in  
4 there with me- we'll get this resolved.

5 Dale"

6 Emphasis added. A copy of the email is attached as Exhibit B.

7 55. Defendant Fuller's message was loud and clear. Current employees should think  
8 twice before leaving the Company at the risk of not being able to cash out their options during  
9 any extended blackout. Fuller's policy gives a whole new meaning to the use of stock options to  
10 assist in employee retention.

11 56. Notably, defendants did not even bother to communicate their reversal in policy to  
12 former employees, who were not on Fuller's email list. Rather, they received the rude awakening  
13 when they logged into their brokerage accounts, including the eTrade financial network utilized  
14 by McAfee to trade options. Plaintiffs were suddenly informed that their options would soon be  
15 cancelled and "If you want to exercise these shares, you must do so before close of trading on the  
16 cancellation date or the shares will be forfeited" – even though they were prevented by McAfee  
17 from exercising them. Calls to McAfee's stock administration and legal affairs departments were  
18 met with a response that, while they were "acutely aware of the frustration" of plaintiffs, "our  
19 hands are tied."

20 57. To this day, the blackout remains in effect. The following message is given to  
21 plaintiffs and other Class members who log on to the eTrade system utilized by McAfee and  
22 attempts to exercise their options:

23 "Message From Your Company: Message from McAfee: McAfee does not have  
24 current financials on file with the SEC. Until the Company is a current filer, the  
25 following blackout period restrictions apply: (1) all stock option holders (whether  
26 current or former employees) are not permitted to exercise stock options (2) the  
post termination exercise period (90 days in most cases) continues to apply (3)  
27 stock options that expire during the blackout period become void and cannot be  
28 exercised once expired. . . ."

58. Thus, with each day that passes, additional stock options worth hundreds of  
thousands of dollars earned by plaintiffs and other Class members simply expire under McAfee's  
new policy, without any opportunity to be exercised. Conversely, McAfee continues to benefit

1 from the blackout period since it no longer has to issue shares at below-market prices called for  
2 by the options.

3 **V. CLASS ALLEGATIONS**

4 59. Plaintiffs bring this action as a class action under Federal Rule of Civil Procedure,  
5 Rule 23. The Class is defined as follows:

6 All persons who were employed at McAfee and who received stock options but  
7 were unable to exercise them due to the blackout imposed by McAfee as of July  
8 28, 2006 (the "Class").

9 Excluded from the Class are the defendants herein, and the subsidiaries, parents, affiliates, or  
10 controlled persons or entities of defendants, and their former and present Section 16 officers and  
11 directors.

12 60. The members of the Class are so numerous that joinder of all members is  
13 impracticable. Plaintiffs are informed and believe that there are several hundred Class members.  
14 Class members can be identified from business records of defendant.

15 61. Plaintiffs' claims are typical of the claims of the members of the Class, as  
16 plaintiffs and the Class were all issued stock options with the same or substantially similar  
17 exercise and termination terms, the same terms were allegedly breached by defendant, all were  
18 uniformly misled by the same false statements and omissions concerning the 90 day exercise  
19 window, and all were damaged thereby.

20 62. Plaintiffs will fairly and adequately protect the interests of the members of the  
21 Class and have retained counsel competent and experienced in class litigation. Plaintiffs have no  
22 interests which are contrary to or in conflict with those of the Class members which they seek to  
23 represent.

24 63. A class action is superior to other available methods for the fair and efficient  
25 adjudication of this controversy since joinder of all members is impracticable. Furthermore,  
26 given the damages suffered by the individual members, the expense and burden of individual  
27 litigation make it difficult for all Class members to individually seek redress for the wrongs done  
28

1 to them. Plaintiffs know of no difficulty which will be encountered in the management of this  
 2 litigation which would preclude its maintenance as a class action.

3 64. There is a well-defined community of interest in the questions of law and fact  
 4 involved in this case. Common questions of law and fact exist as to all members of the Class,  
 5 and predominate over any questions affecting solely individual members of the Class. Among  
 6 questions of law and fact common to the Class are:

- 7 a. whether defendants breached stock option agreements;
- 8 b. whether defendants' decision to start the 90 day exercise window during  
 9 the blackout, even though plaintiffs were precluded from exercising their  
 10 options, violated their duty of good faith and fair dealing;
- 11 c. whether defendants misrepresented and/or failed to disclose material facts;
- 12 d. whether defendant McAfee was unjustly enriched;
- 13 and
- 14 e. whether Class members were damaged and the measure of damages.

15 65. The names and address of the Class members are available from the business  
 16 records of defendant. Defendants will have the most current addresses for the Class members.  
 17 Notice can be provided to the Class members by first class mail and by using other techniques  
 18 customarily used in class actions arising under the federal securities law.

## 19 **VI. CAUSES OF ACTION**

### 20 **FIRST CAUSE OF ACTION**

#### 21 **(Breach of Contract)**

22 66. Plaintiffs hereby incorporate all of the foregoing paragraphs.

23 67. Plaintiffs and the Class and defendants were parties to Stock Option Agreements  
 24 pursuant to which defendants agreed to permit plaintiffs and the Class to purchase McAfee  
 25 shares of stock before the stock options expired, including a 90 day period after termination of  
 26 employment.

27 68. Plaintiffs and the Class performed all conditions, covenants and promises to be  
 28 performed on their part in accordance with the contracts.

1            69. Defendants breached the Stock Option Agreements with plaintiffs and the Class  
2 by, among other things, failing to permit them to exercise their options and purchase shares  
3 during the term of the option.

2 || by, among other things, failing to permit them to exercise their options and purchase shares

3 during the term of the option.

70. As a result of defendants' breach of the Stock Option Agreements, plaintiffs and the Class have suffered economic losses and other general, consequential and specific damages, including the amounts they would have received from exercising their stock options, according to proof.

5 the Class have suffered economic losses and other general, consequential and specific damages,

6 including the amounts they would have received from exercising their stock options, according to

7 || proof.

8 WHEREFORE, plaintiffs and the Class pray for relief as set forth below.

9 SECOND CAUSE OF ACTION

10 (Breach of the Covenant of Good Faith and Fair Dealing)

11 71. Plaintiffs hereby incorporate all of the foregoing paragraphs.

72. The Stock Option Agreements entered into between plaintiffs and the Class and McAfee are contracts that contain an implied covenant of good faith and fair dealing, which obligated defendants to perform the terms and conditions of the contracts fairly and in good faith and to refrain from doing any act that would prevent or impede plaintiffs and the Class from performing any or all conditions of the contracts that they agreed to perform, or any acts that would deprive plaintiffs and the Class of their benefits.

13 McAfee are contracts that contain an implied covenant of good faith and fair dealing, which

14 obligated defendants to perform the terms and conditions of the contracts fairly and in good faith

15 and to refrain from doing any act that would prevent or impede plaintiffs and the Class from

16 performing any or all conditions of the contracts that they agreed to perform, or any acts that

17 would deprive plaintiffs and the Class of their benefits.

73. Plaintiffs and the Class performed all conditions, covenants and promises to be performed on their part in accordance with the contracts.

19 performed on their part in accordance with the contracts.

74. Defendants knew plaintiffs and the Class fulfilled all their duties and conditions under the contracts.

21 | under the contracts.

75. Defendants breached the implied covenant and fair dealing under the contracts by engaging in the conduct complained of herein, including by engaging in conduct that led to the Company's blackout period and thereafter, while the blackout was no fault of the plaintiffs, concealing their intent to calculate the exercise period during the blackout, refusing to extend the exercise period beyond the blackout so that plaintiffs could have a meaningful opportunity to exercise their options, and preventing plaintiffs from exercising their stock options.

23 engaging in the conduct complained of herein, including by engaging in conduct that led to the

24 Company's blackout period and thereafter, while the blackout was no fault of the plaintiffs,

25 concealing their intent to calculate the exercise period during the blackout, refusing to extend the

26 exercise period beyond the blackout so that plaintiffs could have a meaningful opportunity to

27 exercise their options, and preventing plaintiffs from exercising their stock options.

28



77. The aforementioned acts of Defendant were done maliciously, oppressively, and with intent to defraud, and Plaintiff and the Class are entitled to punitive and exemplary damages in an amount to be shown according to proof at the time of trial.

WHEREFORE, plaintiffs and the Class pray for relief as set forth below.

### THIRD CAUSE OF ACTION

**(Fraud and Deceit)**

78. Plaintiffs hereby incorporate all of the foregoing paragraphs.

79. The conduct of defendants, and each of them, constitutes a fraud against plaintiffs and the members of the Class. Defendants, directly or through their agents and employees, made false representations, concealments, and nondisclosures to plaintiffs and the members of the Class about the effective term and exercise rights associated with their stock options, and how the term and exercise rights would be calculated in the event their employment terminated at McAfee, with the intent to defraud them.

80. Plaintiffs and the Class justifiably relied on the misrepresented facts, and were unaware of the concealed and/or suppressed facts and would not have acted as they did if they had known of the true concealed and/or suppressed facts. As a result, plaintiffs and the members of the Class sustained damages.

81. Defendants, directly and indirectly, made substantially similar misrepresentations and material omissions to plaintiffs and each member of the Class.

82. Defendants, and each of them, aided and abetted, encouraged and rendered substantial assistance in accomplishing the wrongful conduct and their wrongful goals and other wrongdoing complained of herein. In taking action, as particularized herein, to aid and abet and substantially assist the commission of these wrongful acts and other wrongdoing complained of, each of the defendants acted with an awareness of its primary wrongdoing and realized that its

1 conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals,  
2 and wrongdoing.

3 83. As a result of defendants' wrongful conduct, plaintiffs and the members of the  
4 Class have suffered and continue to suffer economic losses and other general and specific  
5 damages, including but not limited to the lost value of their vested stock options.

6 84. The aforementioned acts of defendants were done maliciously, oppressively, and  
7 with intent to defraud, and plaintiffs and the Class are entitled to punitive and exemplary  
8 damages in an amount to be shown according to proof at the time of trial.

9 WHEREFORE, plaintiffs and the Class pray for relief as set forth below.

10 **FOURTH CAUSE OF ACTION**

11 **(Negligent Misrepresentation)**

12 85. Plaintiffs hereby incorporate all of the foregoing paragraphs.

13 86. Defendants, directly or through their agents and employees, made false  
14 representations to plaintiffs and the members of the Class about the effective term and exercise  
15 rights associated with their stock options, and how the term and exercise rights would be  
16 calculated in the event their employment terminated at McAfee, when they knew or should have  
17 known that such representations were false.

18 87. Plaintiffs and the Class justifiably relied on the misrepresented facts and, as a  
19 result, sustained damages.

20 88. Defendants, directly and indirectly, made substantially similar misrepresentations  
21 to plaintiffs and each member of the Class.

22 89. Defendants, and each of them, aided and abetted, encouraged and rendered  
23 substantial assistance in accomplishing the wrongful conduct and their wrongful goals and other  
24 wrongdoing complained of herein. In taking action, as particularized herein, to aid and abet and  
25 substantially assist the commission of these wrongful acts and other wrongdoing complained of,  
26 each of the defendants acted with an awareness of its primary wrongdoing and realized that its  
27 conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals,  
28 and wrongdoing.

1           90.     As a result of defendants' wrongful conduct, plaintiffs and the members of the  
2 Class have suffered and continue to suffer economic losses and other general and specific  
3 damages, including but not limited to the lost value of their vested stock options.

4           WHEREFORE, plaintiffs and the Class pray for relief as set forth below.

5                                   **FIFTH CAUSE OF ACTION**

6                                   **(Unjust Enrichment)**

7                                   **(Against Defendant McAfee)**

8           91.     Plaintiffs hereby incorporate all of the foregoing paragraphs.

9           92.     As a direct and proximate result of defendants' misconduct as set forth above,  
10 defendant McAfee has been unjustly enriched.

11           93.     Specifically, defendants policy to improperly terminate plaintiffs' and Class  
12 members' stock options during the blackout, without any opportunity to exercise them, has  
13 resulted in McAfee's wrongful receipt and/or retention of stock and injury to plaintiffs and the  
14 Class.

15           WHEREFORE, plaintiffs and the Class pray for relief as set forth below.

16 **VII.   PRAYER FOR RELIEF**

17           WHEREFORE, plaintiffs, on behalf of themselves and the Class, pray for judgment as  
18 follows:

19           1.     Declaring this action to be a proper class action pursuant to Rule 23 of the Federal  
20 Rules of Civil Procedure on behalf of the Class defined herein, and declaring plaintiffs to be  
21 proper Class representatives and plaintiffs' counsel as counsel for the Class;

22           2.     Awarding plaintiffs and all members of the Class compensatory damages and  
23 exemplary damages in an amount to be proven at trial;

24  
25 ///

26 ///

27 ///

1           3.       Awarding plaintiffs and members of the Class pre-judgment interest, as well as  
2 reasonable fees and costs;

3           4.       Awarding such other relief as this Court may deem just and proper.

4 Dated: December 14, 2007

COTCHETT, PITRE, SIMON & McCARTHY

5  
6 By: 

MARK C. MOLUMPHY

7 Attorneys for Plaintiffs and the Class  
8  
9

**JURY DEMAND**

10 Plaintiffs demand a jury trial on all issues so triable.

11 Dated: December 14, 2006

COTCHETT, PITRE, SIMON & McCARTHY

12  
13 By: 

14 MARK C. MOLUMPHY

15 Attorneys for Plaintiffs and the Class  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# Exhibit A



---

**From:** Samenuk, George  
**Sent:** Friday, August 04, 2006 9:56 AM  
**To:** DL #McAfee WorldWide  
**Subject:** GOOD NEWS FOR THE MCAFEE TEAM!

McAfee Team:

Last week we had to deliver the unfortunate news concerning the implementation of trading restrictions and the suspension of the ESPP purchase.

Recognizing that this has created problems for many of our employees worldwide, we have two pieces of good news that we hope can partially offset this situation.

1) ESPP Interest Payment - we will be making an interest payment to all ESPP participants who had funds in the program for the latest purchase cycle as of July 27, 2006. Interest will be paid on the amount of ESPP funds at the rate of 5% annualized. Interest payments will be processed by the respective geos by the end of this month.

2) Extra Company Holiday - we are granting all employees worldwide an additional Company Holiday on Friday September 1, 2006.

The attached FAQ document has been prepared to answer many of the most common questions. Please review the attached document and contact stock administration with any further questions you may have.

Thank you for your patience and understanding.

Regards,

George

<<Stock Option Review FAQ.doc>>

**EMPLOYEE FREQUENTLY ASKED QUESTIONS**  
**ABOUT MCAFEE, INC. BLACKOUT**

**Stock Option Questions:**

**Q: Why can't I exercise my stock options?**

**A:** On July 27, 2006, McAfee announced to the Market that it will more likely than not have to restate its financial statements for at least one, and potentially several, prior periods. As a result, McAfee has concluded that its previously issued financial statements should no longer be relied upon. The shares issued under McAfee stock option plans must be registered with the Securities and Exchange Commission. As a result of informing the Market that the Company's previously issued financial statements should not be relied upon, McAfee is prohibited by the Securities and Exchange Commission from issuing any new shares. Therefore, the exercise of stock options is not possible after the Market closes on July 27, 2006.

**Q: When will these restrictions be lifted?**

**A:** Employees will be restricted from exercising stock options until the Company has filed its quarterly report for the period ended June 30, 2006, and any subsequent required filings, with the Securities and Exchange Commission. The Company intends to file its quarterly report for the period ended June 30, 2006 as soon as practicable following the completion of the stock option investigation. However, at this time, the Company is not in a position to predict when it will be able to file this report.

**Q: What options are affected?**

**A:** All stock options issued or assumed by McAfee are impacted by the blackout.

**Q: Can I sell stock that I received from an option exercised before July 28, 2006?**

**A:** Provided that you have not been personally notified that you are otherwise subject to a special trading blackout, employees may continue to sell McAfee stock that was acquired pursuant to an option exercise prior to July 28, 2006. For example, if you exercised options in June 2006 but have not yet sold the underlying shares, these shares may be sold at any time assuming you are not subject to special blackout restrictions. However, insider trading rules still apply. If you possess material non-public, inside information, you may not trade in McAfee stock.

**Q: Does this affect the vesting of my stock options?**

**A:** No, just the ability to exercise your stock options is affected by the blackout. Your stock options will continue to vest during the blackout period subject to the terms of your stock option agreement and the stock plan under which they were granted.

**Q: Can the Company continue to grant stock options during the blackout?**

- A: Yes, the blackout restrictions do not impact the Company's ability to grant stock options or other forms of equity compensation. Management will continue to recommend that new hires receive option grants during the blackout period.

**Q: If I terminate my employment at McAfee during the blackout period, will I be able to exercise my vested stock options?**

- A: Regardless of your employment status with the Company, you are not able to exercise your vested stock options until the blackout period is lifted.

However, the Company intends to allow all employees who terminate during the blackout period a three-month extension to exercise their vested stock options when the blackout is lifted. For example, if an employee terminates employment with the Company on August 17, 2006, the former employee will not be able to exercise their vested stock options until the blackout is lifted. If the blackout is lifted on December 20, 2006, the former employee will have until March 20, 2007 to exercise their options which were vested on August 17, 2006. All unexercised, vested options held by the employee will expire at the close of the Market on March 20, 2007.

Please note that no additional options will vest after employment with the Company is terminated regardless of the length of the blackout period, and the Company is not liable for fluctuations in the Company's stock price during the original grace period, the blackout period, or the extended three-month grace period. Additionally, at this time, the Company does not know how long the blackout will be in effect.

**Restricted Stock Unit Questions:**

**Q. How does the blackout impact restricted stock units?**

- A. The terms of your restricted stock unit grant will not be altered as a result of the blackout. However, the shares of the Company's stock underlying your restricted stock units cannot be issued during the blackout.

**ESPP Questions:**

**Q: What impact does this have on purchases under the McAfee Employee Stock Purchase Plan (ESPP)?**

- A: Because of restrictions placed on the Company by the Securities and Exchange Commission as a result of the announcement made on July 27, 2006, the Company is not able to issue the shares necessary to complete the ESPP purchase scheduled to occur on July 31, 2006. All employees who were participating in the current ESPP offering period at the close of business on July 27, 2006 will be refunded their contributions as soon as practicable following July 31, 2006. As contributions to the ESPP are deducted from participant wages after tax, there are no tax implications associated with the return of these contributions.

Furthermore, the Company is not able to accept future contributions under the ESPP, therefore, there will be no ESPP offering period beginning August 1, 2006. You will be notified when the Company is able to resume the ESPP.

Provided that you have not been personally notified that you are otherwise subject to a special

trading blackout, employees may continue to sell McAfee stock that was acquired pursuant to the ESPP prior to July 28, 2006. For example, if you were issued shares in conjunction with the January 31, 2006 ESPP purchase and have not sold the shares, these shares may be sold at any time assuming you are not subject to a special trading blackout. However, insider trading rules still apply. If you possess material non-public, inside information, you may not trade in McAfee stock.

**Q: Is the Company providing any relief to employees who had funds withheld from their pay during the six-month offering period ended July 31, 2006?**

The Company will pay employees who were active participants in the ESPP plan as of the close of business on July 27, 2006 an amount of interest calculated at annual rate of 5.0% or 2.5% of the total amount withheld during the six-month offering period which ended on July 31, 2006. For example, if an employee contributed a total of \$4,500 towards the purchase which was scheduled to take place on July 31, 2006, the employee will be eligible to receive an interest payment in the amount of \$112.50 ( $\$4,500 \times 2.5\%$ ). These interest payments will be included in each participant's wages during the month of August and are subject to applicable tax withholding.

**Q: I was employed at McAfee a few years ago during the last blackout, at that time, we were able to continue to contribute to the ESPP during the blackout, the Company kept our contributions, and the ESPP purchase occurred when the blackout was lifted. Why is the Company choosing to proceed differently this time around?**

A: It should be noted that from an accounting and regulatory standpoint, an employee stock purchase plan is treated almost identically as a stock option plan. Because of the intense regulatory scrutiny surrounding stock options presently, the nature of the stock option review being conducted, and based upon advice from our outside legal counsel, the decision was made to refund all employee contributions made to the current ESPP offering period.

**Q: On a related topic, why doesn't E\*TRADE offer the same "Quick Sale" functionality as was offered by our former stock plan broker, UBS?**

A: Although this question is not applicable given the current blackout restrictions, it is addressed here because the ability of participants' to execute a "Quick Sale" using UBS has been the subject of much confusion. Signing up to have ESPP shares sold as soon as possible using a "Quick Sale" did not guarantee the participant a specific return even though the shares were purchased at a 15% discount nor did electing the "Quick Sale" guarantee that the shares purchased would be deposited into the participant's account the business day following the purchase date.

The "Quick Sale" functionality provided by UBS simply provided a mechanism such that a participant could elect to have their shares sold on the same day that they were deposited into their account. It was always possible that the shares purchased might not be deposited into the participant's account until a few days following the purchase date. If the participant had elected a "Quick Sale" with UBS, the shares would have been sold on the same day that they were deposited which may not have been the day following the purchase date.

If the Company's stock price declined between the purchase date and the date on which the shares were deposited into participant stock plan accounts, the actual amount realized on the sale of the shares would not have been the 15% discount at which the shares were purchased. Likewise, if the Company's stock price increased between the purchase date and the date the shares were deposited, participants would have realized more than a 15% gain on the sale of their shares.

Given that the stock administration department would have sent an e-mail message to all employees who participated in the purchase informing them that their shares had been deposited into their account, a participant could have achieved much of the same "Quick Sale" functionality offered by UBS utilizing the E\*TRADE system by accessing their stock plan account on the day that the shares were deposited and entering into a sales transaction on those shares.

**Q: When the blackout restrictions are lifted and the ESPP is allowed to proceed, will I have to enroll again in the plan or will my current enrollment still be valid.**

**A:** All employees will be required to enroll in the ESPP when the program is reinstated regardless of their prior participation in the program.

**Other Questions:**

**Q: Are there any limitations on my ability to buy and sell McAfee stock on the open market?**

**A:** Provided that you have not been personally notified that you are otherwise subject to a special trading blackout, the trading restrictions imposed upon employees do not impact open market transactions in McAfee stock. However, insider trading rules still apply. If you possess material non-public, inside information, you may not trade in McAfee stock.

**Q: Who at McAfee can answer any additional questions I may have regarding the blackout?**

**A:** Questions regarding the exercise of stock options should be addressed to the Company's stock administration department by sending an e-mail to [stock\\_admin@mcafee.com](mailto:stock_admin@mcafee.com) or by calling (972) 987-2919.

---



Exhibit B

**From:** Fuller, Dale  
**Sent:** Thursday, October 26, 2006 6:35 PM  
**To:** DL #McAfee WorldWide  
**Subject:** Options update

McAfee Team,

Many of you have asked about your options recently, and we'd like to set the record straight.

Here's the background,

As you know, we are in the midst of an ongoing review of our historic stock option grant practices. In fact, on July 27, 2006 McAfee advised investors and the financial community that our historical financial statements should no longer be relied upon and that our Quarterly Report on Form 10-Q for the quarter ended June 30, 2006 would not be filed in a timely manner. To date, McAfee has not filed either its second or third quarter 10-Q and these documents will not be filed until such time as the stock options review is complete and the required historic financial statements have been restated.

Here's why,

Since McAfee does not have current financials on file with the SEC, all McAfee option holders (whether current or former employees) will not be permitted to exercise options until McAfee has current financials on file and the blackout period has ended.

Here's what it all means,

Until the stock blackout has been lifted, the following restrictions must apply:

- (1) The post termination exercise period (90 days in most cases) continues to apply. This also applies to employees who voluntarily leave the company, through a resignation, for example.
- (2) All stock options that expire during the blackout will become void and cannot be exercised once they are expired.

McAfee's option plan provides that the issuance of shares under the plan are subject to applicable laws, rules and regulations, and the above restrictions ensure we comply with all applicable laws, rules and regulations. The options plan does not provide for an extension during a blackout period.

Finally, I'd like to add that any messages that you may have received from company representatives, whether written or oral, that conflict with the above information were inaccurate.

Unfortunately, I can't give you any timing pertaining to the lifting of these restrictions, but you have my commitment that I will work with the Board to get this resolved as soon as possible.

Thank you for a great quarter. Keep doing the things you're doing and hang in there with me – we'll get this resolved.

Dale