

Securities Litigation in the United States: A Look at the Backdating Scandals

by

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One of the latest scandals to take its toll in the corporate executive suite in the U.S. is the options backdating scandal. Backdating is the term given to the clandestine practice of changing the grant date of options which were given to executives as part of their compensation package to a date more favorable to the executives. In effect, backdating has been used to convert at-the-money options into in-the-money options. To date, at least one hundred forty companies have come under scrutiny for their option grant practices. Executives in thirty-one of those companies have resigned or have been terminated from their position. Eighteen of those companies saw the departure by either termination or resignation of more than one executive. In total, we have seen twenty-three chief executive officers, fourteen chief financial officers, eight General Counsels, and a handful of other executives leave the executive suite in the wake of the scandal.

Even more significant, however, is the number of criminal indictments leveled against corporate executives for their role in backdating stock options packages. It has been reported that ten executives have been criminally charged in the wake of the scandal. Two companies are under investigation by the Department of Justice (DoJ). One hundred-five companies have been contacted or probed by the Securities Exchange Commission (SEC). The DoJ has charged executives with conspiracy, securities fraud, mail fraud, falsifying books, records and accounts, and aiding and abetting.

In light of the number of federal investigations underway, it is evident that the options backdating scandal has wreaked havoc for those firms whose executives have engaged in this practice. This presentation seeks to analyze the options backdating scandal from the point of view of the corporation and the shareholder, by focusing on the violation of fiduciary duties that are implicated. The presentation focuses on the scandals as they have come to light in the U.S. It is hoped that Australian executives can learn from the mistakes made in the U.S. executive suite.