

How Apple Got Tangled Up with Options

Time

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January 11, 2007

Anyone familiar with Macworld knows that Steve Jobs is secretive. It's part of his allure. But that mystique has taken a hit over revelations that the company backdated options. Apple's board gave Jobs and his senior management a vote of confidence following an internal investigation into 6,428 improperly backdated options granted between 1997 and 2002. The board found no misconduct by the CEO. Nor, for that matter, have the Securities and Exchange Commission and the Justice Department, but they aren't done. As part of an ongoing investigation, the feds may question Jobs as they probe Apple's behavior.

Companies grant options to compensate top execs for increasing the stock price. Such grants allow them to buy the stock over a period of time at a price set by the grant date. Backdating--changing the date to make the stock more profitable--is not illegal, per se, but "spring-loading" (granting options before a market-boosting announcement) and faulty or erroneous reporting can violate civil or even criminal laws because of the potential to mislead shareholders.

Apple is hardly alone in backdating. Nearly 30% of U.S. companies manipulated options grants to executives between 1996 and 2005, and more than 200 companies have been implicated in options scandals. "Opportunistic timing in options is not unique," notes options expert Lucien Bebchuk, director of Harvard law school's program on corporate governance.

A report submitted by the board's special investigative committee, headed by Apple directors Al Gore and Jerome York, says Jobs knew about the backdating or recommended favorable dates to boost stock value but says he did not benefit from the two grants he received because he gave up his right to exercise them in 2003. One was for 10 million shares in January 2000, the other for 7.5 million shares. The latter grant was finalized in December 2001 but backdated to October, when the stock was 13% cheaper. "The report seeks to downplay Jobs' involvement and the extent to which he understood the accounting implications of improper dating," says Bebchuk. The report implicated "two former officers," understood to be CFO Fred Anderson and former general counsel and board secretary Nancy Heinen, who resigned last year. They have denied any wrongdoing.

Jobs' options problems don't end with Apple. Similar, favorably timed options were granted (not to Jobs) during his tenure as CEO of Pixar. But investors are more concerned with his ongoing gig. Apple's share price, which has moved up and down with news of the investigation, leaped to \$97 after the iPhone intro.

Erik Lie, an options expert at the University of Iowa, says, "Apple has carefully released some information--not so much as to fall into a trap but enough to tease the media and investors." He says that the extent of Jobs' involvement is still unclear and that Jobs can claim ignorance, as

others have done. "But there will be continuous pressure on Apple to reveal more information," says Lie. "And if it doesn't, ongoing investigations might."