HP Unit Reaches Huge Settlement With Shareholders

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Mercury News, 10/16/07 Mercury Interactive and several pension funds Monday reached the largest settlement yet in a stock-option backdating class-action case, according to the plaintiffs' law firm.

Mercury, the Mountain View maker of computer testing software now owned by Hewlett-Packard, will pay $117.5 million. That is more than six times the size of the second-largest backdating settlement, an $18 million agreement reached last month between investors and Los Altos chip designer Rambus.

"We are satisfied that the parties have come to such a fair settlement and are confident that the award will provide fair recompense to the investors who lost money as a result of Mercury's improper practices," said plaintiffs' lawyer Joel Bernstein of the New York firm Labaton Sucharow.

Despite agreeing in principle to the settlement, which must be approved by the court, "Mercury Interactive is not admitting liability and believes it has meritorious defenses to the claims," said HP spokeswoman Emma McCulloch.

She added, "We don't believe it is appropriate to discuss further details until the settlement is filed with the court." HP acquired Mercury for $4.5 billion in cash last year.

Backdating refers to manipulating the process of granting stock options to take advantage of a lower stock price, thus inflating the value of options for executives and other employees without proper disclosure to investors.

Although the pension fund suit was dismissed in July by U.S. District Judge Jeremy Fogel in San Jose, Fogel left open the option for the suit to be refiled. But it never was because both sides began settlement talks shortly after its dismissal, according to attorney Bernstein.

"It was more fruitful for the parties to see whether they could resolve the case" out of court, he said. If the proposed settlement is approved by the court, Bernstein said he doubted it would have much if any impact on other corporate cases of alleged backdating.

"I would not think that the fact that this case settled would trigger other settlements," he said, because the resolution of such cases largely hinges on their particular details.

Jesse Fried, a law professor at the University of California-Berkeley's Boalt Hall School of Law, tended to agree. He also speculated that HP may not have opposed the settlement because it was Mercury Interactive - not HP - that was accused of wrongdoing.

Even though HP now owns Mercury Interactive, Fried said, "they're not going to take a reputational hit" if the suit is settled.

In May, the U.S. Securities and Exchange Commission - which has been investigating more than 100 companies for backdating - reached a settlement in its fraud case against Mercury, with the HP subsidiary agreeing to pay $28 million. That is the largest SEC fine in a backdating case.

At the same time as the SEC settlement, the federal agency filed suit accusing four former Mercury executives of securities fraud. The executives included Mercury's former Chief Executive Amnon Landan, former Chief Financial Officers Sharlene Abrams and Doug Smith, and former General Counsel Susan Skaer.

The SEC's suit claimed the four awarded themselves and other employees undisclosed secret compensation from 1997 to 2005 by backdating 45 different stock-option grants, failing to disclose hundreds of millions of dollars of compensation expenses and falsifying documents.

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