



# United States Department of Justice

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FOR IMMEDIATE RELEASE  
SEPTEMBER 16, 2010  
[WWW.USDOJ.GOV/USAO/CAN](http://WWW.USDOJ.GOV/USAO/CAN)

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## **FORMER MERCURY INTERACTIVE CFO PLEADS GUILTY IN STOCK OPTIONS BACKDATING SCHEME**

### *Agreed To Pay \$371,499 In Restitution*

SAN JOSE, Calif. – The former CFO for Mercury Interactive Corporation (Mercury) pleaded guilty Monday to obstructing the due administration of the Internal Revenue Service, First Assistant United States Attorney David L. Anderson and Special Agent in Charge, IRS Criminal Investigation, Scott O'Briant announced.

In pleading guilty, Sharlene P. Abrams admitted that between 1993 and October 2001, she served as the Chief Financial Officer of Mercury, which is located in Mountain View, Calif. In April 2002, her joint federal tax return for the tax year 2001 was filed with a Form W-2 that included a 2001 taxable income that was calculated in part on a number of her Mercury stock options being exercised on April 4, 2001. When her joint 2001 tax return was filed in April 2002, she knew that on April 4, 2001, she had not yet told Mercury what options she was exercising. She also knew that on April 4, 2001, there had not yet been a written action by the Mercury Board of Directors that formally approved the executive loan to pay for the options. Abrams was aware that Mercury's Stock Option Plan required notice of exercise and payment before a stock option could be considered exercised. She also knew that on April 4, 2001, her stock option exercises had not met those requirements. By failing to meet the requirements of the Plan, Abrams endeavored to claim an exercise date on which the company's stock price was lower than on later dates. This caused her to file a tax return and amended tax return that understated her wages and caused the IRS to assess an incorrect amount of tax for 2001, thereby obtaining a tax benefit for which she was not entitled.

Abrams, was charged in a superseding information on Sept. 13, 2010. She was charged with and plead guilty to one count of corruptly endeavoring to obstruct the due administration of the Internal Revenue Service, in violation of Title 26 U.S.C. §7212(a).

According to the superseding Information, in addition to her duties as CFO of Mercury, at various times between 1993 and November 2001, Abrams served as Secretary and Vice President of Finance and Administration. She had the additional title of Securities Compliance Officer as early as May 30, 1996 and was appointed a member of the stock option committee on July 15, 1999. Mercury granted stock options to its employees and executives. Options granted under the stock option plans could be either incentive stock options or non-qualified stock options.

According to the Superseding Information, Abrams supervised the exercises of stock options for officers and executives. At times, officers and executives exercised their stock options and then held the stock for a period of time, usually at least one year, to take advantage of the lower long-term capital gains tax.

The Superseding Information also alleges that, in 2001, Abrams orchestrated the backdating of stock option exercise dates for herself in order to reduce the income taxes due on the gains realized by the exercises. Abrams backdated certain exercises for herself to the low points in the price of Mercury stock to reduce the ordinary income tax.

Federal tax laws require the payment of ordinary income tax on gains realized upon the exercise of non-qualified stock options. Thus, if a person exercises non-qualified stock options, thereby purchasing stock at a lower price than fair market value on that date, the difference between the purchase price and fair market value is taxed as ordinary income.

This is the first case in Northern California charging an individual with a criminal tax violation in connection with a stock options backdating scheme.

Abrams is next scheduled to appear before U.S. District Court Judge Ronald M. Whyte at 9 a.m. on Jan. 10, 2011, for sentencing. The maximum statutory penalty for each count of corruptly endeavoring to obstruct the due administration of the Internal Revenue Service, in violation of 26 U.S.C. § 7212(a) is three years imprisonment and a fine of \$250,000. 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.

Thomas Newman is the Assistant U.S. Attorney who is prosecuting the case with the assistance of Kathy Tat. The prosecution is the result of an investigation by the Internal Revenue Service, Criminal Investigation.

**Further Information:**

Case #: CR08-0252 RMW

A copy of this press release may be found on the U.S. Attorney's Office's website at [www.usdoj.gov/usao/can](http://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](http://www.cand.uscourts.gov).

All press inquiries to the U.S. Attorney's Office should be directed to Jack Gillund at (415) 436-6599 or by email at [Jack.Gillund@usdoj.gov](mailto:Jack.Gillund@usdoj.gov).

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