U.S. Senate Committee on Banking, Housing, and Urban Affairs

Hearing on:

Stock Options Backdating

Prepared Statement of Mr. Lynn E. Turner

10:00 a.m., Wednesday, September 6, 2002 - Dirksen 538

Chairman Shelby, Ranking Member Sarbanes, thank you for the opportunity to testify before the Senate Banking Committee regarding the growing stock-option scandal. As noted in Appendix A, the number of companies presently caught up in this scandal has mushroomed and now totals in excess of 120. It grows and multiplies each week. Professors Lie and Heron have noted that 18.9% of the unscheduled, at-the-money option grants to top executives during the period 1996-2005 were backdated. This includes a 10% rate subsequent to changes in regulations in 2002, requiring more timely reporting of these transactions. At the same time, investor groups such as the Council of Institutional Investors, the CFA Institute, and leading institutional investors from Australia, Canada, England, the Netherlands, New York, Connecticut, Florida, California, Illinois and elsewhere have written the Securities and Exchange Commission (SEC) expressing "great concern" regarding the backdating of options. Also, I would note the Council of Institutional Investors has written letters to approximately 1,500 companies inquiring of their policies with respect to backdating. To date, approximately 200 of those companies have responded, leaving a big question mark with respect to the other 1,300.

But before I begin, I think it is worth noting that, as BusinessWeek recently reported, the option scandal had its beginnings, in part, in Congress in 1994. That is when the Senate passed a resolution opposing the efforts of the Financial Accounting Standards Board (FASB) to create greater transparency for options. As a direct result of this overreaching interference, during the ensuing 11 years, companies in the Standard & Poor's 500-stock index alone excluded *$246 billion* in options compensation from net income figures, overstating earnings by 7%.[1]

Fortunately, when efforts to increase transparency of options arose once again in the aftermath of Enron, investors had a new champion. Chairman Shelby, your courage, your leadership, and your vision of the necessity of honest accounting and full and fair disclosure for the capital markets almost single-handedly prevented Congress from repeating its mistakes of the past. Your support of the FASB's efforts to reflect the economic reality of options in financial statements ensured greatly enhanced transparency for the 90 million Americans investing in the capital markets. That effort, despite an onslaught of opposition, including by companies now caught up in the option scandal, has helped to mitigate the scandal's future potential impact.

Let me also say that, as a business executive, I have been both a giver and a receiver of stock options. In the past I have not opposed their use in a thoughtful manner. However, the focus of their use must be on what Franklin Roosevelt called the "...thrill of achievement, in the thrill of creative effort."[2] Not the self-serving, single-minded pursuit of evanescent profits. Not abuses of investor interests through the repricings, early accelerations, or early vesting of options that have become all too common.

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[1] Business Week, August 31, 2006 in citing statistics from *The Analyst's Accounting Observer.*
[2] Franklin Delano Roosevelt, First Inaugural Address, Washington D.C., March 4, 1933.

I firmly believe that what one manages is what one measures. As a result, requiring the measurement and expensing of the value of options granted as compensation will increase the focus and attention they duly deserve and will help eliminate abuses.

Capital Markets Depend on Integrity and Transparency

As many learned during the early years of this decade -- when the markets lost trillions in value, with stockholders actually withdrawing cash -- the ability of the U.S. capital markets to attract capital depends on investors having confidence in the integrity and transparency of the markets. Confidence is earned over time through honest and fair markets that provide investors with the material information they need to make informed decisions.

But that confidence can quickly erode if investors believe the markets have become "rigged," and one party is given an unfair advantage over others. Unfortunately, that is what occurs when an executive who has a fiduciary relationship of trust with shareholders engages in either "backdating" or "spring-loading" of options. The executive uses confidential information, available as a result of his or her position in the company, for self-serving gains. Such is the beginning of what is referred to as a manipulative or deceptive device.

Sam Rayburn, a legend in this town, once said "men charged with the administration of other people's money must not use inside information for their own advantage."[3] Indeed, the Securities and Exchange Act of 1934, passed with the help of Rayburn's leadership, includes a provision that makes it unlawful for people to use "...any manipulative or deceptive device..." in connection with the purchase or sale of a security. Likewise, in the '34 Act and related rules, Congress and the SEC have made it unlawful for the votes of investors to be solicited in a proxy that contains false or misleading statements with respect to material facts. In particular, Rule 14a-9 specifically addresses false and misleading statements in a proxy provided to investors, including omission of material facts.

With that as background, I would first like to focus my remarks on "spring-loading" of options.

Spring-loading

Let's say a government contractor receives notice from the government that it has been awarded a profitable contract. The company's stock is trading at $15 before news of the new contract is disclosed to investors. Three days later, upon the announcement and disclosure of the contract, the company's stock price increases

[3] H.R. Rep. No. 1383, 73d Cong., 2d Sess. 13. Cited by the U.S. Supreme Court in *Blau vs. Lehman, et al*, 368 U.S. 403 (1962).

to $20. But before the disclosure is made, while the stock is still trading at $15, a grant of options to the top executives is made with an exercise price of $15. In essence, the options have been "spring-loaded" to the tune of $5.

There are a few key points I want to highlight with respect to this spring-loading example. First, the options were not granted at the fair value of the underlying stock. It is clear if the market had the information on the date of the grant with respect to the new contract, the stock would have traded higher. Second, if properly valued using all the available information at the time of the option grant, the grant would have resulted in a benefit to the recipient, as it was granted in-the-money, not at the market price. And finally, generally accepted accounting principles (GAAP) would require the value of such in-the-money options to be expensed under the old accounting rule, Accounting Principles Board Opinion No. 25, or the new accounting rule, FASB statement No. 123R.

Now, some would lead you to believe that granting such "in the money" options, or spring-loading, is not a bad thing, not illegal. I beg to differ.

First of all, research has shown that companies include in their annual reports, disclosures such as:

"The Company accounts for those plans using the intrinsic value method prescribed by APB Opinion No. 25, Accounting for Stock Issued to Employees. No stock-based compensation cost is reflected in the statements of operations, as all options granted under those plans had an exercise price equal to the market value of the underlying common stock on the date of grant."

Or:

"As permitted by Statement 123, the Company currently accounts for share-based payments to employees using Opinion 25's intrinsic value method and, as such, generally recognizes no compensation cost for employee stock options."

In addition, I have seen proxy disclosures that indicate options are being granted at the fair value of the underlying stock, and that no gain is available to the executive without further stock appreciation. In cases involving potential spring-loading, they fail to properly disclose the options were granted in the money. In one instance, the disclosure noted the grant of options was designed to align the executive's interests with those of the stockholders, without noting the spring-loading. Likewise, the proxy disclosures fail to note that, when options have been spring-loaded and granted "in the money" to the executives, there may be significant negative tax consequences.

If a company has engaged in spring-loading, disclosures such as those above would be misleading to investors and other users of financial statements. First, since the option had an embedded value on the date of grant, the company was

wrong in saying they were granted at the market value. Second, given spring-loaded options are "in the money" at the date of grant, the company should have reported compensation expense under the intrinsic value method required by APB 25. Likewise, any proxy disclosures noting options were granted at fair value, when they in fact were not, would be misleading. So would statements that the options were granted pursuant to plans requiring the options be granted at fair value. The failure to disclose the significant tax implications of not granting the options at the money also would be misleading.

Unfortunately, I have not seen disclosures of the nature the SEC has recently adopted with respect to a company that has a "...plan or practice to select option grant dates...in coordination with the release of material non-public information that is likely to result in an increase in its stock price, such as immediately prior to a significant positive earnings...announcement." I could not agree more with the SEC when it said "...the Commission believes that in many circumstances the existence of a ...plan...to time the grant of stock options to executives in coordination with material non-public information would be material to investors..."[4] The failure of companies with spring-loading plans to disclose that information is an omission of a material item of interest to investors.

Accordingly, I believe that disclosures made in the past regarding spring-loaded option grants will be found in all too many instances to have been false and misleading, violating the securities laws and regulations.

Integrity of Management

Equally important, I believe information regarding the integrity of management is always vitally important and material to investors. After all, what investors want to give management their money when the integrity of that management team is in question?

Yet executives who are found to have spring-loaded or backdated their options will find their integrity challenged as a result of representations they have made to their companies' auditors, as well as certifications they have made to their companies' shareholders. When the CEO and CFO complete the financial statements for a company, they must provide the auditors with a representation letter that indicates they have prepared the financial statements in accordance with generally accepted accounting principles. This would include the proper accounting for stock options, including recognizing expense for spring-loaded or backdated options that were granted "in the money." At the same time, the CEO and CFO must certify to investors that the company has properly prepared its financial statements and has effective internal controls, including over the accounting for options. However, if these executives have engaged in spring-loading (or backdating) options, failed to properly account for these options, and

[4] **Securities and Exchange Commission, Executive Compensation and Related Person Disclosure. Release Nos. 33-8732;34-54302;File No. S7-03-06.**

failed to note this in their representations to auditors and certifications to investors, consistent with the types of misleading disclosures I discussed earlier, the executives would have once again violated securities laws and regulations.

Accordingly, given that spring-loading certainly can and probably has resulted in improper financial reporting and misleading disclosures, raising serious questions about the integrity of management, I would challenge those who have argued its acceptability to take a closer look at the filings of companies who have engaged in this behavior. I think they will find them most troublesome from the perspective of an investor, as well as a securities regulator.

Late Filings

Now I would like to turn my attention to another issue of concern. That is the issue of late filings. In particular, late filings of the forms the SEC requires to be filed within two days by certain executives or corporate board members, namely Form 4's.

A sample of actual Form 4s for the company, Children's Place Retail Stores, is included as Appendix B. These forms are required to be filed on a timely basis so investors have insights into transactions key insiders are entering into with respect to the stock of the company. In fact, Enron and other corporate scandals highlighted just how late this information was being filed at times, much to the detriment of investors. And, in response to this concern, Congress adopted Section 403 of the Sarbanes-Oxley Act of 2002 to ensure investors received the information within two business days.

However, we continue to see late filings, or, quite frankly, Form 4's that are not filed at all. For example, if you look closely at one of the Children's Place Form 4 filings, you will see it was filed on May 20, 2005. At the same time, the company states that the transaction date was on April 29, 2005, well outside the two-day requirement of SOX. Of interest in this instance is that Children's Place's stock price increased $9.58, or 26%, to $46.79 between the filing date of the Form 4 and the disclosed transaction date. On May 5, 2005, the company issued a press release raising fiscal-year earnings guidance to $2.15-$2.25 a share from $2.10-$2.20 a share. Children's Place does not have an established pattern of granting executive options at this time each year. And while one might well be hesitant to draw conclusions as to why the Form 4 was filed late, the April 29th date did provide an unusually low exercise price for the options.

If the Form 4's had been filed on time, investors would not have to wonder about the integrity of the grant date. That is why it is important the SEC begin to enforce the provisions of SOX that require timely filing. And while I have used Children's Place merely as an example, it is not alone. Companies such as Novatel Wireless, P.F. Chang's, Activision, Sigma Designs and SafeNet are all on a growing list. In fact, if you look at SafeNet's proxy disclosures, which I have

included as Appendix C, you will see the filings themselves show the company repeatedly abused the rules. And despite this constant pattern of late filings, I am not aware of any formal SEC sanctions being handed in a timely fashion to ensure the company and its insiders commence complying with the law. To its credit, SafeNet has disclosed this shortcoming to investors, something that cannot be said for other late filers.

Restatements and Internal Control Weaknesses

Another topic worth noting is the 48 companies that have recently reported they will be delaying providing their investors and the SEC with their financial statements until they are able to complete their own investigations of the matter. Of these companies, 19 have announced they will be restating their financial statements, and certainly a good portion of the remaining 29 could join that group. Another 22 companies that were not late filers this quarter have also announced restatements.

In addition, 18 of the companies listed in Appendix A also reported they had material weaknesses related to their accounting for stock options. As you are well aware, Congress since 1977 has required companies to maintain adequate internal controls that will provide reasonable assurance their financial statements have been properly prepared. Yet we are finding, no doubt due to Section 404 of SOX, that companies have not maintained those necessary controls. Nor in priors years have the executives reported these weaknesses to investors as required by Section 302 of SOX. Both Sections 404 and 302 of SOX -- tools that were not available when this scandal initially began in the Enron era -- should help aid the law-enforcement agencies in cracking down on violators.

Where Were The Gatekeepers?

In what has become a recurring theme in recent years, investors are asking once again: Where were the gatekeepers, including legal counsel and independent auditors?

As both a business executive and corporate board member, my experience has been that legal counsel -- general counsel, if the position exists -- often takes the lead along with the CEO, CFO and vice president in charge of human resources in making the determinations as to option grants, including grant dates. Based on that experience, I would expect legal counsel to have been aware of backdating of options if it occurred. Obviously, one would hope that any legal counsel involved would have had sufficient common sense to have objected to backdating or spring-loading. However, that appears not to have been the case for at least some of the companies.

With respect to independent auditors, I suspect they failed to be skeptical enough with respect to options, despite their known effect on how at least some

executives behave. All too often, it appears they did not pay sufficient attention to the disclosures the company made with respect to option plans and grants. All too often, I have seen auditors pay way too little attention to disclosures in footnotes, merely treating them almost as an afterthought towards the end of an audit. In at least one circumstance now involved in litigation, it has been argued the auditors even gave their blessing to backdating.

However, as a former auditor, I certainly believe that, in some instances, executives at a company could have intentionally withheld critical information on option grants and company performance from the auditors that the auditors otherwise would not have learned of. Accordingly, the auditors would not have detected the misstated financial statements.

Steps to Remediate and Prevent a Recurrence of The Option Scandal

One will naturally ask why a professor, living among the cornfields of Iowa, and two Wall Street Journal reporters were able to bring this scandal to light well before the current rise in the number of law-enforcement investigations. In addition, the question of who thought up the concept of backdating remains unanswered. Hopefully it will be answered through the investigations underway. I will leave those questions for the committee to pursue.

Yet I do think it is important to focus not just on what has transpired, but also on what steps should be taken to ensure it is not repeated.

Benefits of SOX

Certainly, the passage of SOX has helped and will help mitigate the potential for abuse. Its requirements mandate more timely reporting of transactions to investors. They mandate that executives establish their accountability for the company's financial statements and internal controls. They mandate independent examinations of those controls. And they make it unlawful to mislead independent auditors. I also believe the newly adopted disclosure requirements of the SEC will facilitate greater transparency, as well. I suspect the media attention this matter has received has also sharpened the focus of corporate boards on the issue of grant dates, backdating and spring-loading as well.

But, as we have seen in the past, the allure and upside to options are great, and they at times seemingly have a drug-like effect on rational people's thinking. As a result, I don't believe that only the changes made to date will prevent a recurrence of the problem.

Need for Stricter Enforcement and Adequate Resources

I think the changes made to date must be followed up with stricter enforcement of the new rules, which it appears to me has not yet occurred. The SEC needs to

send a clear message through its enforcement actions that investors must be provided information on these transactions through timely filed Form 4's, coupled with honest and transparent disclosures in financial statements, annual reports and proxies. Companies that have solicited the votes of investors based on misleading disclosures need to be held accountable. While the SEC has announced some 80 ongoing investigations, I am worried that when we look back on this episode in five years or so, we fill find these investigations will not have resulted in holding the responsible individuals accountable. This includes gatekeepers who are found to have been actively involved with problematic option grants. Certainly the SEC's actions will have fallen short if executives, board members or gatekeepers are found to have backdated and/or spring-loaded options in violation of laws, and are not required to disgorge themselves of these ill-gotten gains.

One reason for that concern is the decreasing level of resources being dedicated to the enforcement activities of the SEC staff, including the reviews of filings. For example, in its fiscal 2007 congressional budget request, the SEC includes a request for 1,187 full-time equivalents for the enforcement division and 463 FTE's for the division of corporation finance, which reviews the filings. Both of these numbers represent declines from the 1,216 budgeted and 1,232 actual FTE's for the enforcement division in 2006 and 2005, respectively. They also reflect a comparable decline from 478 budgeted and 495 actual FTE's, respectively, for corporation finance. And while spending is projected to be up slightly in 2007, it appears that increases in salaries are coming at the expense of available staff. I would hope Congress would rethink the wisdom of such cuts to an agency so critical to the capital markets and investors.

At the same time, the SEC's budget request stated the staff were piloting a number of technology tools to assist them with enforcement and monitoring of filings. Congress should ensure these pilot programs turn into reality. For example, the SEC staff should have the technology available to them that would automatically match up transaction and filing dates from all Form 4's and generate exception lists whenever a filing is outside the two-day requirement. This should not have to be a manual procedure. At the same time, technology is available whereby option-grant dates can be compared to stock values. Certainly the SEC staff should have these tools available to them to permit quicker identification of these issues.

I would encourage the SEC to step up its enforcement of Section 403 of SOX. As part of each triennial review of a company's filings mandated by SOX, I believe the SEC staff should review the company's compliance with the law. And where there are repeat offenses, such as occurred with Safe Net, the SEC should hand out appropriate sanctions AND fines to those late with their filings.

I certainly do support the new SEC disclosure requirements, which are a positive step forward. However, once again, how good they turn out to be will depend on whether they are enforced.

One of the new requirements includes disclosure of the value of option grants calculated in accordance with the new FASB accounting standard. That means these disclosures and the values reported as compensation expense will be only as good as the implementation of that rule. In its comment letter to the SEC, the Council of Institutional Investors stated:

> "..the Council believes that the backdating controversy illustrates that the financial accounting and reporting for employee stock option grants is an area in which there is a high risk of intentional misapplication of the accounting requirements. The Council notes that those companies involved in the backdating controversy appear to have failed to complied with the rules-based exception contained in the Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees ("Opinion25")
>
> ...The council, however, is concerned that some preliminary evidence surrounding the adoption of Statement 123R appears to indicate that some companies may be intentionally understating certain inputs required by the standard in an effort to continue the Opinion 25 practice of understating compensation costs and inflating reported earnings. [Footnote omitted] The Council believes that the benefits of Statement 123R will not be fully realized by investors unless and until the SEC closely monitors and rigorously enforces a high quality implementation of the standard's requirements."

I share the council's concern and believe it is a valid one. Again, this is an issue of enforcement. If the SEC chooses to go "soft" on the enforcement of the new accounting standard, then it should not be surprised when investors begin to question its commitment to investor protection and the integrity of financial statements.

Changes for Corporate Boards to Consider

Corporate boards, I believe, must also change from being passively involved to one of active involvement with option grants. Corporate boards should be setting the grant dates. I believe it would certainly be a best practice if they chose a set time frame, such as at the annual stockholders meeting, to award option grants.[5] At a minimum, grants should not be permitted during the typical "blackout periods," when the possibility exists there is material information available that has not yet been disclosed to investors.

In the United Kingdom, I understand that a company is required to notify the stock exchange on the date an option grant is made. Certainly that is a very good practice that should be considered here.

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[5] **New grants for new employee hires may need to be tied to the timing of their hiring.**

Finally the treasurer of the state of Connecticut has stated that compensation consultants may be conflicted as a result of services they provide to the executive team. The treasurer has recommended that the SEC require disclosure of such services as an initial step, a recommendation I concur with.

Bringing Closure to The Scandal

Finally, let me close by noting that investors have now suffered through a growing list of companies disclosing they have been caught up in the backdating scandal. In the mid 1970's, the SEC faced a similar scandal involving illegal payment of corporate bribes. After initially involving a dozen or so companies, more than 400 companies were found to have engaged in improper payments and behavior, along with lax accounting in their books and records. Given the magnitude of the issue confronting the agency, and realizing its enforcement resources were going to be insufficient to deal with the breadth of the scandal, then-SEC Chairman Roderick M. Hills announced a program urging companies to self-investigate and, when problems were found, provide independent reports to the SEC along with full disclosure to investors. In turn, the SEC stated that, with adequate disclosure, it would not pursue enforcement remedies unless fraudulent behavior was found, in which case the SEC reserved its legal rights.

Today, I believe the SEC faces a similarly daunting task. With a reported 80 investigations already underway, I see no way the SEC staff, with current resources, can or will adequately investigate all of these cases. As we also continue to find dubious cases of option granting in our own research, I believe we will find many more -- perhaps hundreds of companies -- that have yet to report inappropriate disclosure and accounting of stock-option grants. Certainly, Prof. Lie's research makes that a possibility.

Accordingly, I would hope this committee would urge the SEC to undertake a program, as it has in the past, to more quickly bring this issue to the forefront and to conclusion, while allowing companies to get on with their business. Investors should no longer have to suffer this Chinese water torture, as news of another company backdating continues to drip out.

In Closing

Let me close by noting that I have devoted little time to backdating of options. This is a practice akin to winning the lottery or betting on a race, after the race is over. For that reason, there has been universal agreement that backdating of options is unlawful and should be punished with the full force of the laws, especially when it is done through backdating of documents or involves the misleading of auditors or corporate boards. As such, I have left that topic to be addressed by others today.

However, I do believe spring-loading of options cannot be justified anymore than backdating. It once again provides the insider with an advantage other corporate shareholders do not receive, and I have yet to see it done with full and fair disclosure and appropriate treatment in the financial statements. Once that is forced to occur, and sunlight is focused on this affliction, I suspect this practice will cease to exist. Indeed, it is this lack of transparency that has permitted some unscrupulous executives to engage in doing what they will not do when fully exposed.

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Appendix A

Listing of Companies Announcing Restatements, Internal or Government Investigations Related to Option Backdating

At least 128 companies have announced internal reviews, SEC inquiries, or Justice Department subpoenas related to their historical stock-option grants. We provide details for these companies in the following table. (List as of Sept. 1, 2006.)

	Company	Ticker	Market value ($M)	Internal	SEC	DoJ	Share holder suits	Criminal cases	Executive or director departures	Restate ments	Late filings	Material weaknesses	Accel. vesting	FASB comment letters	IESOG	Auditor
1	Activision Inc.	ATVI	3,686	Yes	Yes		Yes									PricewaterhouseCoopers
2	Affiliated Computer Services Inc.	ACS	5,862	Yes	Yes	Yes	Yes				Yes					PricewaterhouseCoopers
3	Affymetrix Inc.	AFFX	1,383	Yes						Yes	Yes					Ernst & Young
4	Alkermes Inc.	ALKS	1,670	Yes	Yes					Yes	Yes	Yes		2004		Deloitte & Touche
5	Altera Corp.	ALTR	6,729	Yes	Yes	Yes	Yes			Yes	Yes	Yes		2004		PricewaterhouseCoopers
6	American Tower Corp.	AMT	14,594	Yes	Yes	Yes	Yes			Yes	Yes					Deloitte & Touche
7	Amkor Technology Inc.	AMKR	946	Yes			Yes			Yes	Yes		Yes			PricewaterhouseCoopers
8	Analog Devices Inc.	ADI	9,823		Yes	Yes	Yes		Yes				Yes			Ernst & Young
9	Apollo Group Inc.	APOL	7,783	Yes	Yes	Yes					Yes					Deloitte & Touche
10	Apple Computer Inc.	AAPL	56,681	Yes			Yes			Yes	Yes			1994		KPMG
11	Applied Micro Circuits Corp.	AMCC	780	Yes	Yes	Yes					Yes		Yes			Ernst & Young
12	ArthroCare Corp.	ARTC	1,224	Yes	Yes											PricewaterhouseCoopers
13	Asyst Technologies Inc.	ASYT	337	Yes	Yes	Yes	Yes				Yes		Yes			PricewaterhouseCoopers
14	Atmel Corp.	ATML	2,622	Yes	Yes		Yes				Yes					PricewaterhouseCoopers
15	Autodesk Inc.	ADSK	7,838	Yes										1994		Ernst & Young
16	Barnes & Noble Inc.	BKS	2,295	Yes	Yes	Yes	Yes									BDO Seidman
17	BEA Systems Inc.	BEAS	4,643	Yes									Yes			Ernst & Young
18	Blue Coat Systems Inc.	BCSI	182	Yes	Yes		Yes				Yes	Yes				Ernst & Young
19	Boston Communications Group Inc.	BCGI	39	Yes	Yes		Yes				Yes		Yes			Ernst & Young
20	Broadcom Corp.	BRCM	15,219	Yes	Yes		Yes			Yes	Yes				Yes	Ernst & Young
21	Brocade Communications Systems Inc.	BRCD	1,469	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes				KPMG
22	Brooks Automation Inc.	BRKS	1,020	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	2004		PricewaterhouseCoopers
23	CA Inc.	CA	13,175	Yes						Yes	Yes	Yes		1994		KPMG
24	Cablevision Systems Corp.	CVC	6,428	Yes	Yes	Yes				Yes	Yes					KPMG
25	Caremark Rx Inc.	CMX	24,264		Yes	Yes	Yes							1994		Ernst & Young
26	CEC Entertainment Inc.	CEC	971	Yes	Yes						Yes					Deloitte & Touche
27	Ceradyne Inc.	CRDN	1,160	Yes							Yes					PricewaterhouseCoopers
28	Cheesecake Factory Inc.	CAKE	1,881	Yes	Yes		Yes			Yes	Yes					PricewaterhouseCoopers
29	Chordiant Software Inc.	CHRD	183	Yes	Yes						Yes					BDO Seidman
30	Clorox Co.	CLX	9,056	Yes			Yes							1994		Ernst & Young

Source: Glass Lewis, Wall Street Journal, Bloomberg, Reuters, Stanford Securities Class Action Clearinghouse, FASB, Analyst's Accounting Observer, company filings. See legend for column explanations.

	Company	Ticker	Market Value ($M)	Internal	SEC	DoJ	Share-holder suits	Criminal cases	Executive or director departures	Restate-ments	Late filings	Material weaknesses	Accel. vesting	FASB comment letters	IESOC	Auditor
31	CNET Networks Inc.	CNET	1,319	Yes	Yes	Yes				Yes	Yes					KPMG
32	Computer Sciences Corp.	CSC	8,374	Yes	Yes	Yes	Yes									Deloitte & Touche
33	Comverse Technology Inc.	CMVT	4,129	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes					Deloitte & Touche
34	Corinthian Colleges Inc.	COCO	1,085	Yes	Yes		Yes						Yes			Ernst & Young
35	Crown Castle International Corp.	CCI	6,958	Yes	Yes						Yes					KPMG
36	Cyberonics Inc.	CYBX	390	Yes	Yes	Yes	Yes				Yes					KPMG
37	Delta Petroleum Corp.	DPTR	937	Yes	Yes	Yes										KPMG
38	Dot Hill Systems Corp.	HILL	150	Yes			Yes				Yes		Yes			Deloitte & Touche
39	DRS Technologies Inc.	DRS	1,585		Yes	Yes										KPMG
40	Electronic Arts Inc.	ERTS	15,551	Yes			Yes									KPMG
41	Endocare Inc.	ENDO	50	Yes	Yes	Yes										Ernst & Young
42	Engineered Support System	EASI	N/A		Yes	Yes										PricewaterhouseCoopers
43	ePlus Inc.	PLUS	78	Yes						Yes	Yes					Deloitte & Touche
44	Equinix Inc.	EQIX	1,672	Yes	Yes	Yes	Yes				Yes					PricewaterhouseCoopers
45	F5 Networks Inc.	FFIV	1,690	Yes	Yes	Yes	Yes			Yes	Yes					PricewaterhouseCoopers
46	First American Corp.	FAF	3,805	Yes							Yes			1994		PricewaterhouseCoopers
47	Foundry Networks Inc.	FDRY	1,516	Yes	Yes	Yes					Yes		Yes			Ernst & Young
48	Fresenius Medical Care AG KGaA	FMS	12,552			Yes										KPMG
49	Greater Bay Bancorp	GBBK	1,453	Yes									Yes			PricewaterhouseCoopers
50	HCC Insurance Holdings Inc.	HCC	3,444	Yes	Yes						Yes					PricewaterhouseCoopers
51	Home Depot Inc.	HD	71,119	Yes	Yes		Yes							1994		KPMG
52	Integrated Silicon Solution Inc.	ISSI	178	Yes	Yes						Yes					Ernst & Young
53	Intuit Inc.	INTU	10,630	Yes	Yes	Yes									Yes	Ernst & Young
54	j2 Global Communications Inc.	JCOM	1,123	Yes							Yes					Deloitte & Touche
55	Jabil Circuit Inc.	JBL	5,373	Yes	Yes	Yes	Yes						Yes			KPMG
56	Juniper Networks Inc.	JNPR	7,632	Yes		Yes	Yes			Yes	Yes		Yes			Ernst & Young
57	KB Home	KBH	3,821	Yes	Yes											Ernst & Young
58	Keithley Instruments Inc.	KEI	189	Yes			Yes						Yes			PricewaterhouseCoopers
59	Keryx Biopharmaceuticals Inc.	KERX	457	Yes												KPMG
60	Key Energy Services Inc.	KEGS	1,875	Yes						Yes	Yes					KPMG
61	KLA-Tencor Corp.	KLAC	8,517	Yes	Yes	Yes	Yes							1994, 2004	Yes	PricewaterhouseCoopers
62	Knobias Inc.	KNBS	4	Yes						Yes	Yes					Russell Bedford Stefanou Mirchandani
63	Kos Pharmaceuticals Inc.	KOSP	2,167	Yes	Yes					Yes	Yes					Ernst & Young
64	L-3 Communications Holdings Inc.	LLL	8,490	Yes												PricewaterhouseCoopers
65	Linear Technology Corp.	LLTC	9,731		Yes	Yes	Yes						Yes			Ernst & Young

Source: Glass Lewis, Wall Street Journal, Bloomberg, Reuters, Stanford Securities Class Action Clearinghouse, FASB, Analyst's Accounting Observer, company filings. See legend for column explanations.

	Company	Ticker	Market value ($M)	Internal	SEC	DoJ	Share-holder suits	Criminal cases	Executive or director departures	Restate-ments	Late filings	Material weaknesses	Accel-vesting	FASB comment letters	IESOC	Auditor
66	Macrovision Corp.	MVSN	1,134	Yes	Yes	Yes								2004		KPMG
67	Marvell Technology Group Ltd.	MRVL	10,888	Yes	Yes	Yes	Yes									PricewaterhouseCoopers
68	Maxim Integrated Products Inc.	MXIM	8,917	Yes	Yes	Yes	Yes									Deloitte & Touche
69	McAfee Inc.	MFE	3,348	Yes	Yes	Yes			Yes	Yes	Yes					Deloitte & Touche
70	MDC Partners Inc.	MDCA	195	Yes												KPMG
71	Meade Instruments Corp.	MEAD	48	Yes	Yes					Yes	Yes					Moss Adams
72	Medarex Inc.	MEDX	1,055	Yes	Yes	Yes	Yes			Yes	Yes					Ernst & Young
73	Mercury Interactive Corp.	MERQ	4,356	Yes	Yes		Yes		Yes	Yes	Yes	Yes				PricewaterhouseCoopers
74	Michaels Stores Inc.	MIK	5,646	Yes	Yes	Yes	Yes				Yes					Ernst & Young
75	MicroIslet Inc.	MII	70	Yes							Yes	Yes				Deloitte & Touche
76	Microtune Inc.	TUNE	296	Yes							Yes					Ernst & Young
77	MIPS Technologies Inc.	MIPS	281	Yes												Ernst & Young
78	Moldflow Corp.	MFLO	127	Yes												Grant Thornton
79	Molex Inc.	MOLX	6,367	Yes			Yes									Ernst & Young
80	Monster Worldwide Inc.	MNST	5,213	Yes	Yes	Yes	Yes			Yes	Yes		Yes	2004		BDO Seidman
81	M-Systems Flash Disk Pioneers Ltd.	FLSH	1,357	Yes	Yes		Yes				Yes	Yes				Kost, Forer, Gabbay & Kasierer
82	Newpark Resources Inc.	NR	486	Yes			Yes		Yes	Yes						Ernst & Young
83	Novell Inc.	NOVL	2,372	Yes										1994		PricewaterhouseCoopers
84	Novellus Systems Inc.	NVLS	3,171	Yes									Yes			Ernst & Young
85	NVIDIA Corp.	NVDA	8,996	Yes												KPMG
86	NYFIX Inc.	NYFX	140	Yes	Yes	Yes	Yes			Yes	Yes	Yes				Friedman
87	Omnicell Inc.	OMCL	459	Yes						Yes						Ernst & Young
88	Openwave Systems Inc.	OPWV	642		Yes	Yes	Yes									KPMG
89	Pediatrix Medical Group Inc.	PDX	2,085	Yes							Yes					PricewaterhouseCoopers
90	PMC-Sierra Inc.	PMCS	1,165	Yes						Yes	Yes	Yes	Yes			Deloitte & Touche
91	Pool Corp.	POOL	2,029	Yes												Ernst & Young
92	Power Integrations Inc.	POWI	504	Yes	Yes	Yes			Yes	Yes	Yes	Yes				Deloitte & Touche
93	Progress Software Corp.	PRGS	970	Yes	Yes		Yes			Yes	Yes					Deloitte & Touche
94	Quest Software Inc.	QSFT	1,287	Yes	Yes					Yes	Yes					Deloitte & Touche
95	QuickLogic Corp.	QUIK	82	Yes	Yes						Yes		Yes	2004		PricewaterhouseCoopers
96	Rambus Inc.	RMBS	1,168	Yes			Yes		Yes	Yes	Yes	Yes				PricewaterhouseCoopers
97	Redback Networks Inc.	RBAK	1,286	Yes	Yes	Yes					Yes					PricewaterhouseCoopers
98	Renal Care Group Inc.	RCI	N/A			Yes										Ernst & Young
99	Restoration Hardware Inc.	RSTO	243	Yes												Deloitte & Touche
100	RSA Security Inc.	RSAS	2,095		Yes	Yes	Yes						Yes			Deloitte & Touche

Source: Glass Lewis, Wall Street Journal, Bloomberg, Reuters, Stanford Securities Class Action Clearinghouse, FASB, Analyst's Accounting Observer, company filings. See legend for column explanations.

	Company	Ticker	Market value ($M)	Internal	SEC	DoJ	Share holder suits	Criminal cases	Executive or director departures	Restate ments	Late filings	Material weaknesses	Accel. vesting	FASB comment letters	IESOC	Auditor
101	SafeNet Inc.	SFNT	421	Yes	Yes	Yes	Yes			Yes	Yes					Ernst & Young
102	Sanmina-SCI Corp.	SANM	1,732	Yes	Yes						Yes		Yes			KPMG
103	Sapient Corp.	SAPE	603	Yes							Yes					PricewaterhouseCoopers
104	Semtech Corp.	SMTC	853	Yes	Yes	Yes	Yes			Yes	Yes					Ernst & Young
105	Sepracor Inc.	SEPR	4,928	Yes	Yes					Yes	Yes					PricewaterhouseCoopers
106	Sigma Designs Inc.	SIGM	215	Yes	Yes		Yes					Yes				Grant Thornton
107	Skins Inc.	SKNN	40	Yes						Yes						Mahoney Cohen & Co.
108	Sonus Networks Inc.	SONS	1,159	Yes							Yes		Yes			Deloitte & Touche
109	SPSS Inc.	SPSS	452	Yes								Yes				Grant Thornton
110	Stolt-Nielsen S.A.	SNSA	1,543	Yes	Yes							Yes				Deloitte & Touche
111	Sunrise Telecom Inc.	SRTI	120	Yes												KPMG
112	Sycamore Networks Inc.	SCMR	1,012	Yes	Yes	Yes	Yes			Yes	Yes	Yes				PricewaterhouseCoopers
113	Sysview Technology Inc.	SYVT	25	Yes						Yes						Clancy & Co.
114	Take-Two Interactive Software Inc.	TTWO	838	Yes	Yes		Yes									Ernst & Young
115	Tetra Tech Inc.	TTEK	1,007	Yes							Yes	Yes	Yes			Deloitte & Touche
116	THQ Inc.	THQI	1,644	Yes	Yes		Yes									Deloitte & Touche
117	Trident Microsystems	TRID	996	Yes	Yes	Yes	Yes									PricewaterhouseCoopers
118	Ulticom Inc.	ULCM	434	Yes			Yes				Yes					Deloitte & Touche
119	UnitedHealth Group Inc.	UNH	64,217	Yes	Yes	Yes	Yes				Yes					Deloitte & Touche
120	Verint Systems Inc.	VRNT	940	Yes	Yes			Yes			Yes					Deloitte & Touche
121	VeriSign Inc.	VRSN	4,321	Yes	Yes	Yes					Yes		Yes	2004	Yes	KPMG
122	ViaSat Inc.	VSAT	768	Yes							Yes					PricewaterhouseCoopers
123	Vitesse Semiconductor	VTSS	196	Yes	Yes	Yes	Yes	Yes		Yes	Yes		Yes			KPMG
124	Western Digital Corp.	WDC	3,710	Yes											Yes	KPMG
125	Wind River Systems Inc.	WIND	784	Yes												PricewaterhouseCoopers
126	Witness Systems Inc.	WITS	505	Yes			Yes			Yes	Yes					KPMG
127	Xilinx Inc.	XLNX	7,018	Yes	Yes		Yes				Yes			1994, 2004	Yes	Ernst & Young
128	Zoran Corp.	ZRAN	726	Yes	Yes	Yes	Yes				Yes					PricewaterhouseCoopers

Source: Glass Lewis, Wall Street Journal, Bloomberg, Reuters, Stanford Securities Class Action Clearinghouse, FASB, Analyst's Accounting Observer, company filings. See legend for column explanations.

Legend: Market value – company's market capitalization as of Aug. 15, 2006. Internal – company announced an internal review. SEC – company is part of a Securities and Exchange Commission informal inquiry or investigation. DoJ – company received a subpoena from U.S. attorney. Shareholder suits – company was named a defendant in shareholder litigation. Criminal cases – criminal charges were filed against company executives. Executive or director departures – company officers or directors resigned or were fired in connection with the company's stock-option investigation. Restatements – company announced it will restate historical financial statements to correct stock-based compensation expense and filed an 8-K, Item 4.02, for non-reliance on previously issued financial statements. Late filings – company delayed at least one annual or quarterly filing in connection with its stock-option review. Material weaknesses – company disclosed it has a material weakness in its internal controls related to accounting for stock options. Accel. vesting – company accelerated the vesting of its stock options before FAS 123R went into effect. FASB comment letters – company sent a comment letter to the Financial Accounting Standards Board that opposed either the original FAS 123 exposure draft (1994), or the Share-Based Payment (a.k.a. FAS 123R) exposure draft (2004), both of which proposed the expensing of employee stock options. IESOC – company was a member of the International Employee Stock Option Coalition, a group of companies and organizations that opposed FAS 123 and the expensing of stock options.

Appendix B

Sample Form 4 Disclosures

SEC Form 4

FORM 4

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

OMB APPROVAL	
OMB Number:	3235-0287
Expires:	January 31, 2008
Estimated average burden hours per response	0.5

☐ Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

1. Name and Address of Reporting Person*	2. Issuer Name and Ticker or Trading Symbol	5. Relationship of Reporting Person(s) to Issuer (Check all applicable)
CIAMPI MARIO	CHILDRENS PLACE RETAIL STORES INC [PLCE]	Director: 10% Owner
(Last) (First) (Middle) 915 SECAUCUS ROAD	3. Date of Earliest Transaction (Month/Day/Year) 04/29/2005	X Officer (give title below): Sr. VP Other (specify below)
(Street) SECAUCUS NJ 07094	4. If Amendment, Date of Original Filed (Month/Day/Year)	6. Individual or Joint/Group Filing (Check Applicable Line) X Form filed by One Reporting Person Form filed by More than One Reporting Person
(City) (State) (Zip)		

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed Of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned	6. Ownership Form: Direct (D) or	7. Nature of Indirect Beneficial Ownership

			Code	V	Amount	(A) or (D)	Price			

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Securities Underlying Derivative Security (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of derivative Securities Beneficially Owned Following Reported Transaction(s) (Instr. 4)	10. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares				
Employee Stock Option (right to buy)	$37.66	04/29/2005		A			80,000	04/28/2006 (1)	04/29/2015	Common Stock	80,000	$37.66	219,000 (2)	D	

Explanation of Responses:

1. Exercisable cumulatively at the rate of 25% on April 28, 2006 and 25% each year thereafter.

2. Includes (i) 86,600 employee stock options currently exercisable and (ii) 132,400 employee stock options exercisable over the next 4 years.

Remarks:

Mario Ciampi — 05/20/2005

** Signature of Reporting Person — Date

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

* If the form is filed by more than one reporting person, *see* Instruction 4 (b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB Number.

SEC Form 4

FORM 4

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

OMB APPROVAL	
OMB Number:	3235-0287
Expires:	January 31, 2008
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☐ Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

1. Name and Address of Reporting Person*	2. Issuer Name and Ticker or Trading Symbol	5. Relationship of Reporting Person(s) to Issuer (Check all applicable)
DABAH EZRA (Last) (First) (Middle) 915 SECAUCUS ROAD (Street) SECAUCUS NJ 07094 (City) (State) (Zip)	CHILDRENS PLACE RETAIL STORES INC [PLCE] 3. Date of Earliest Transaction (Month/Day/Year) 04/29/2005 4. If Amendment, Date of Original Filed (Month/Day/Year)	Director X 10% Owner Officer (give title below) Other (specify below) 6. Individual or Joint/Group Filing (Check Applicable Line) X Form filed by One Reporting Person Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed Of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned	6. Ownership Form: Direct (D) or	7. Nature of Indirect Beneficial Ownership

			Code	V	Amount	(A) or (D)	Price			

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Securities Underlying Derivative Security (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of derivative Securities Beneficially Owned Following Reported Transaction(s) (Instr. 4)	10. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares				
Employee Stock Options (right to buy)	$41.42	04/29/2005		A		85,000		04/28/2006 (1)	04/29/2010	Common Stock	85,000	$41.42	284,660 (2)	I	Spouse

Explanation of Responses:

1. Exercisable cumulatively at the rate of 25% on April 28, 2006 and 25% each year thereafter.

2. Consists of 99,660 employee stock options currently exercisable and 185,000 employee stock options exercisable over the next four years.

Remarks:

Renee Dabah — 05/20/2005

** Signature of Reporting Person — Date

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

* If the form is filed by more than one reporting person, *see* Instruction 4 (b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.

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SEC Form 4

FORM 4

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

OMB APPROVAL	
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STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

1. Name and Address of Reporting Person*	2. Issuer Name and Ticker or Trading Symbol	5. Relationship of Reporting Person(s) to Issuer (Check all applicable)
DABAH EZRA	CHILDRENS PLACE RETAIL STORES INC [PLCE]	X Director X 10% Owner
(Last) (First) (Middle) 915 SECAUCUS ROAD	3. Date of Earliest Transaction (Month/Day/Year) 04/29/2005	X Officer (give title below) Other (specify below) Chairman and CEO
(Street) SECAUCUS NJ 07094	4. If Amendment, Date of Original Filed (Month/Day/Year)	6. Individual or Joint/Group Filing (Check Applicable Line) X Form filed by One Reporting Person Form filed by More than One Reporting Person
(City) (State) (Zip)		

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed Of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned	6. Ownership Form: Direct (D) or	7. Nature of Indirect Beneficial Ownership

			Code	V	Amount	(A) or (D)	Price			

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Securities Underlying Derivative Security (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of derivative Securities Beneficially Owned Following Reported Transaction(s) (Instr. 4)	10. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares				
Employee Stock Options (right to buy)	$41.42	04/29/2005		A		85,000		04/28/2006 (1)	04/29/2010	Common Stock	85,000	$41.42	284,660 (2)	D	

Explanation of Responses:

1. Exercisable cumulatively at the rate of 25% on April 28, 2006 and 25% each year thereafter.

2. Consists of 99,660 employee stock options currently exercisable and 185,000 employee stock options exercisable over the next 4 years.

Remarks:

Ezra Dabah — 05/20/2005

** Signature of Reporting Person — Date

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

* If the form is filed by more than one reporting person, *see* Instruction 4 (b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

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				Code	V	Amount	(A) or (D)	Price			

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Securities Underlying Derivative Security (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of derivative Securities Beneficially Owned Following Reported Transaction(s) (Instr. 4)	10. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares				
Employee Stock Options (right to buy)	$37.66	04/29/2005		A		85,000		04/28/2006 (1)	04/29/2015	Common Stock	85,000	$37.66	385,000 (2)	D	

Explanation of Responses:

1. Exercisable cumulatively at the rate of 25% on April 28, 2006 and 25% each year thereafter.

2. Consists of 50,000 employee stock options currently exercisable and 335,000 employee stock options exercisable over the next 4 years.

Remarks:

Neal Goldberg — 05/20/2005

** Signature of Reporting Person — Date

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

* If the form is filed by more than one reporting person, *see* Instruction 4 (b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

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SEC Form 4

FORM 4

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

OMB APPROVAL	
OMB Number:	3235-0287
Expires:	January 31, 2008
Estimated average burden hours per response	0.5

☐ Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

1. Name and Address of Reporting Person*	2. Issuer Name and Ticker or Trading Symbol	5. Relationship of Reporting Person(s) to Issuer (Check all applicable)
GOLDBERG NEAL (Last) (First) (Middle) 915 SECAUCUS ROAD (Street) SECAUCUS NJ 07094 (City) (State) (Zip)	CHILDRENS PLACE RETAIL STORES INC [PLCE] 3. Date of Earliest Transaction (Month/Day/Year) 04/21/2005 4. If Amendment, Date of Original Filed (Month/Day/Year) 04/25/2005	☐ Director ☐ 10% Owner X Officer (give title below) ☐ Other (specify below) President 6. Individual or Joint/Group Filing (Check Applicable Line) X Form filed by One Reporting Person ☐ Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed Of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned	6. Ownership Form: Direct (D) or	7. Nature of Indirect Beneficial Ownership

			Code	V	Amount	(A) or (D)	Price			

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Securities Underlying Derivative Security (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of derivative Securities Beneficially Owned Following Reported Transaction(s) (Instr. 4)	10. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares				
Employee Stock Options (right to buy)	$40.65	04/21/2005		A		50,000		04/30/2005 (1)	01/21/2014	Common Stock	50,000	$40.65	300,000 (2)	D	

Explanation of Responses:

1. Exercisable cumulatively at the rate of 20% on October 31, 2005, 20% on January 31, 2006 and 20% on each subsequent January 31st thereafter.

2. Consists of 50,000 employee stock options currently exercisable and 250,000 employee stock options exercisable over the next 4 years.

Remarks:

Neal Goldberg — 05/20/2005

** Signature of Reporting Person — Date

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

* If the form is filed by more than one reporting person, *see* Instruction 4 (b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

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Appendix C

Proxy Disclosure of Repeated Late Form 4 Filings

DEF 14A 1 w22697def14a.htm SAFENET, INC. DEFINITIVE PROXY STATEMENT

SCHEDULE 14A — INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

Filed by the Registrant ☑

Filed by a Party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement

☐ Confidential, for use of the Commission Only (as permitted by Rule 14a-6(e)(2))

☑ Definitive Proxy Statement

☐ Definitive Additional Materials

☐ Soliciting Material Pursuant to § 240.14a-11(c) or § 240.14a-12

SAFENET, INC.

(Name of Registrant as Specified in its Charter)

(Name of Person(s) Filing Proxy Statement if Other Than Registrant)

Compliance with Section 16(a) of the Exchange Act

Section 16(a) of the Securities Exchange Act of 1934, as amended, requires the Company's executive officers and directors, and persons who own more than 10% of the outstanding shares of Common Stock, to file reports of ownership and changes in ownership with the Securities and Exchange Commission. Based solely on a review of the copies of such reports furnished to the Company and written representations from the executive officers and directors, the Company is aware of the following instances of noncompliance or late compliance with such filings during the fiscal years ended December 31, 2005, 2004, 2003 and 2002, respectively, by its executive officers and directors:

- As first reported in the Company's Form 10-K/A filed with the Securities and Exchange Commission on April 11, 2006, with respect to the fiscal year ended December 31, 2005, Messrs. Brooks, Harrison and Lesem and Ms. Argo each failed to file two Forms 4 during the year to report two separate grants of stock options, and Messrs. Clark, Hunt, Money, Straub, Thaw, Caputo, Mueller (a former executive officer of the Company) and Fedde each failed to file one Form 4 during the year to report one grant of stock options;

- With respect to the fiscal year ended December 31, 2004, Mr. Harrison failed to file two Forms 4 during the year to report two separate grants of stock options, and Messrs. Brooks, Clark, Hunt, Money, Straub, Thaw, Caputo, Fedde and Mueller and Ms. Argo each failed to file one Form 4 during the year to report one grant of stock options;

- With respect to the fiscal year ended December 31, 2003, Messrs. Brooks, Clark, Harrison, Hunt, Thaw, Fedde and Ms. Argo each failed to file two Forms 4 during the year to report two separate grants of stock options, and Messrs. Caputo, Money and Straub each failed to file one Form 4 during the year to report one grant of stock options; and

- With respect to the fiscal year ended December 31, 2002, Mr. Caputo failed to file one Form 4 to report one grant of stock options.

Each of the transactions listed above was reported on a Form 5 filed after the end of each of the respective fiscal years rather than a Form 4, as was required beginning August 29, 2002 pursuant to the Sarbanes-Oxley Act of 2002. The Company is aware of compliant Forms 4 reports during this period being filed for transactions involving sales and purchases of the Company's stock, as well as stock option exercises. The Company is continuing to review prior filings under Section 16(a) of the Exchange Act for completeness.

Legal Proceedings

On May 18, 2006, the Company announced that it has received a subpoena from the office of the United States Attorney for the Southern District of New York relating to the Company's granting of stock options. The Company also announced that it has received an informal inquiry from the Securities and Exchange Commission requesting information relating to stock option grants to directors and officers of the Company, as well as information relating to certain accounting policies and practices. The Company is actively engaged in responding to these requests and is cooperating with both offices.

On and after May 31, 2006, individuals claiming to be shareholders of the Company filed multiple derivative complaints in the Circuit Court for Harford County, Maryland, against current and former officers and directors of the Company, as well as the Company as a nominal defendant. The complaints allege state law claims for breach of fiduciary duty and unjust enrichment arising from alleged backdating of stock option grants. On and after June 6,

2006, individuals claiming to be shareholders of the Company filed multiple derivative complaints in the United States District Court for the District of Maryland, purportedly on behalf of the Company, against the current directors and certain current and former officers of the Company, as well as the Company as a nominal defendant. The complaints allege, among other things, claims for breach of fiduciary duties and unjust enrichment and claims under Section 304 of the Sarbanes-Oxley Act of 2002 arising from alleged backdating of stock option grants and alleged dissemination of misleading and inaccurate information through public statements, including filings with the Securities and Exchange Commission. The Board of Directors has directed a special committee of the board to investigate these allegations. This special committee has retained independent counsel and has the authority to retain such other advisers as it deems appropriate to assist in the investigation.

In addition, the Company has also received a letter from a law firm, allegedly on behalf of an unidentified shareholder, demanding that the Board of Directors recover short swing profits alleged to be made by officers and directors in alleged violations of Section 16(b) of the Securities Exchange Act of 1934, as amended. The special committee also will investigate these allegations.