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## Stock options scandal spreads

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By Matt Krantz and Greg Farrell, USA TODAY

The widening scandal over the alleged manipulation, or "backdating," of executive stock options has claimed another two heads at the top ranks of Corporate America.

computer-chip maker Altera ([ALTR](#)) said Monday that chief financial officer Nathan Sarkisian left the company prematurely after a review of its options-granting practice pinpointed problems. The company said it will need to restate earnings to reflect \$47.6 million in costs pertaining to options grants.

Separately, UnitedHealth ([UNH](#)) said Sunday that CEO William McGuire would quit by Dec. 1 after the health insurer's examination of stock option backdating found potential wrongdoing. The study found McGuire received several option grants at yearly lows in the stock, which would be essentially impossible without manipulation.

Backdating is when firms don't disclose they gave executives the right to buy shares at a price lower than the market value when the options are issued. Stock options are designed to reward executives for smart moves after they get the grant. Options typically give executives the right to buy stock in the future at the price it was trading at when the options were issued.

But a growing scandal is finding some companies may have abused the rules. Rather than giving executives the right to buy stock at the current stock price, some companies may have given executives the right to buy stock based on a lower price on a previous date.

This practice, while not necessarily illegal, has the potential of inappropriately rewarding executives in a way not disclosed to shareholders. It understates how much a company paid its executives and affects taxes paid by the companies and the executives as well as what the company reports as earnings.

According to research compiled by Glass Lewis, 150 companies have said they're looking into the issue of whether some of their stock option grants were "backdated." Of those, 142 have opened internal investigations, 91 are being probed by the Securities and Exchange Commission and 55 by the Department of Justice.

As of Monday, the number of companies losing an executive or director in the scandal hit 23. Last week, McAfee CEO George Samenuk and CNet CEO Shelby Bonnie stepped down amid revelations of stock option problems.

Still, only two cases have resulted in criminal charges. Executives at Brocade Communications Systems, including former CEO Gregory Reyes, and Converse Technology, including former CEO Jacob Alexander, are charged with improperly backdating.

But lawyers who have been following the issue predict that many more investigations will end up in criminal court. "We are only at an early stage of the public airing of this issue," says Mark Zauderer of Flemming Zulack Williamson Zauderer. "We are going to see a wave of cases involving backdating."

Zauderer says prosecutors will jump at the opportunity to bring criminal cases against corporate executives because these cases can be simple. "The issues involved, including changes of documents and misrepresentation of documents, are ones that juries can get their arms around easily. This is far easier to prosecute than Enron-type cases of accounting fraud."

But others say there won't be many criminal prosecutions. "A lot of these cases have terrific statute-of-limitations problems," says David

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Gourevitch, a Manhattan attorney and former state prosecutor. The statute of limitations for securities fraud, he notes, is five years. Most of the known instances of options "backdating," he points out, occurred in the late 1990s, during the tech bubble. Since 2001, tech stock prices have been low enough that there hasn't been a compelling reason to engage in backdating.

Meanwhile, investors aren't waiting for regulators to act. Currently, 65 companies face class-action shareholder lawsuits in the scandal, Glass Lewis says.

Backdating revelations aren't necessarily harmful to a company's stock. Take UnitedHealth, which is facing a lawsuit.

Monday, the stock fell \$1.21 to \$47.54, not a brutal loss given that the CEO is quitting. It is down 16% from March when *The Wall Street Journal* reported the company might be involved in backdating. But before that, the stock had already fallen 11% from its high in late 2005.

Such difficulty in isolating how much backdating issues have hurt stock prices has limited securities class-action lawsuits, Stanford Law School professor Joseph Grundfest said in a midyear assessment of shareholder litigation.

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