



This 3DAdvisors Report Covers:

- ✓ **Insider Trading:** Insider Trading Behavior
- ✓ **Accounting:** Quality of Earnings Issues
- Governance:** Corporate Governance Issues
- ✓ **Fundamentals:** Analysis of fundamentals
- Deception:** Deception detection analysis

Undisclosed Settlement May Explain Urgent Selling McAfee Inc. (NYSE:MFE)

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Business Description

McAfee Inc. operates as a security technology company that secures systems and networks from known and unknown threats worldwide. The Company's system security offerings include endpoint protection that encompasses security solutions for consumer and corporate computer systems; data protection solutions to safeguard vital information residing on various devices; and McAfee mobile security solutions to protect mobile operators and their users by safeguarding mobile terminals, applications, and content. The Company was formerly known as Network Associates, Inc. and changed its name to McAfee, Inc. in 2004. McAfee was founded in 1989 and is headquartered in Santa Clara, California.

Key Statistics

Sector:	Last Close:	Market Cap:	Avg Vol (3m):
Technology	\$41.12	\$6.23B	2,410,990
Industry:	52 Wk Range:	Trailing P/E:	Shrs Out:
Security Software & Services	\$24.72-\$40.97	32.28	155.37 M
F/T Employees:	FYE:	Forward P/E:	Short % of Float:
5,600	31-Dec	15.37	4.30%

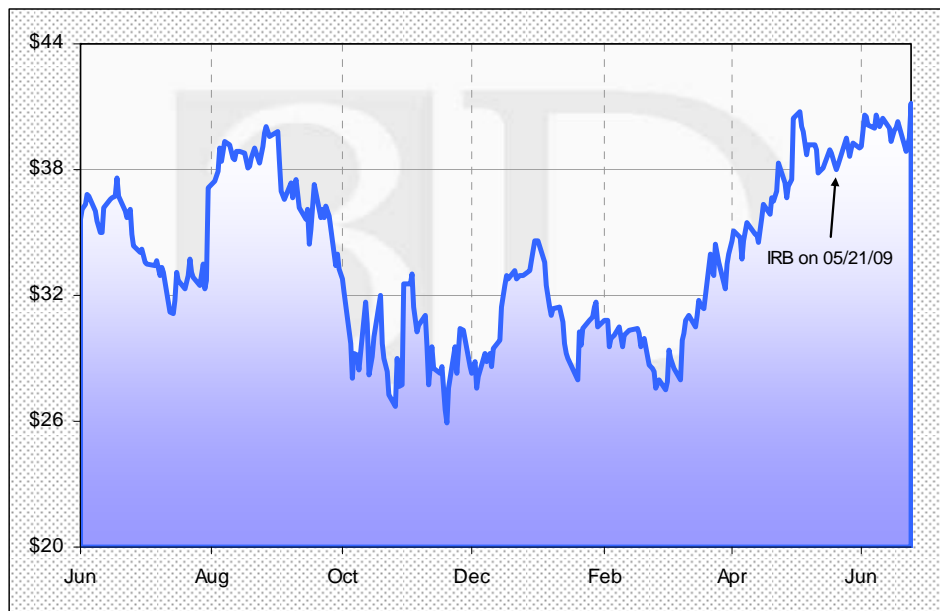
Summary of 3DAdvisors Findings for MFE

- ▶ **Insider Trading:** Undisclosed settlement may explain urgent insider selling
- ▶ **Accounting:** Settlement of NY charges may impact deferred revenue
- ▶ **Governance:** "Retirement" of 41-year old CTO ill-timed and less than amicable
- ▶ **Fundamentals:** CEO seems less sure of himself, more testy on 1Q09 call
- ▶ **Accounting:** Miscellaneous noteworthy items

Discussion of 3DAdvisors Findings for MFE

It was the subtle, but significant, selling by key Company insiders that initially drew our attention to McAfee, activity which we covered in detail in a recent issue of *Insider Research Bulletin* on [05/21/09](#). The trades involved such central operating executives as the Chief Accounting Officer, Chief Technology Officer and General Counsel, each of whom significantly slashed his actionable holdings (common stock plus vested options). Adding considerable spice to the picture was that fact that some of the sales involved the exercise of options very close to the strike price, yielding almost no profit at all in the subsequent sale of the acquired shares. As interesting as the trading profile is by itself, subsequent events, either poorly disclosed or not disclosed at all by the Company, together with a host of fundamental and earnings quality questions, have begun to provide some context and possible explanation for the highly unusual and seemingly urgent trading behavior.

Figure 1. MFE Daily Closing Price, 06/02/08 through 06/25/09. Our initial coverage of the trading profile was in an IRB on 05/21/09. Source: Reuters and 3DAdvisors, LLC.



For starters, we found the sudden “retirement” (at 41) of CTO **Christopher Bolin**, disclosed by the Company on 05/22/09 in an SEC Form 8-K, quite curious, especially when one analyzes his carefully crafted exit agreement. Bolin’s unexpected exit, however, pales in comparison to the Company’s failure to comment on or even disclose a recent settlement with New York State Attorney General Andrew Cuomo, which was announced on 06/10/09. McAfee and security software competitor Symantec Inc. (NASDAQ:SYMC) both settled charges with Cuomo related to charging customers’ credit cards for software subscription renewals without clearly disclosing the practice in its license agreements and then making it difficult for customers to get refunds if they complained. Though the fine was immaterial, we believe that the downstream implications could be very significant, perhaps explaining why the New York Attorney General’s investigation was never disclosed by McAfee, even though the settlement did receive some modest media coverage to which the stock never reacted. While we think

this settlement could lead to more legal and regulatory challenges, the impact on deferred revenue and future financial performance could be even more meaningful.

And then of course there are the often-discussed fundamental issues concerning both Symantec and McAfee, the ubiquitous number one and number two names in the security software market, respectively. While the market for computer and network security solutions remains hot and investors seem anxious to keep pouring money into the space, competition keeps coming, not only in the form of the many freeware offerings (including the upcoming release of Microsoft Security Essentials by Microsoft Inc.) but also boutique companies eager to carve out their share of a market which for so long has been dominated by the "Big Two".

There are other fundamental changes impacting MFE as more computer manufacturers are bundling virus protection software with their hardware offerings. Recent data suggest that individual consumer purchases of virus protection software are being increasingly supplanted by PC manufacturers, leaving the big hardware makers with more negotiating power. We suspect that this phenomenon may offer at least a partial explanation for the decline in deferred revenue bookings in the 1Q09. Further clouding recent performance, MFE has completed no less than seven acquisitions in the past two years, with two more in the offing so far in 2009, which when combined with all the deal-related restructuring charges, makes it almost impossible to measure organic growth as opposed to growth derived from acquisitions. The data suggest that if the acquisitions and attendant account adjustments were removed, organic sales growth would be tepid, at best.

Finally, in analyzing recent conference call transcripts, we found the answers to several key questions less than satisfying or dodged altogether, and we felt the defensive attitude of CEO **David DeWalt**, who dominates the calls, picked up somewhat on the 1Q09 call. Taken as a whole, the mosaic that has emerged that includes the completely undisclosed matter with the New York AG and its potential impact on deferred revenue, numerous fundamental changes and challenges facing the Company, quality of earnings questions, increasingly defensive and obfuscated conference call exchanges, combined with a highly unusual and urgent trading profile *strongly* imply to us that there is considerable risk to the stock at present levels. We begin with an updated review of the trading profile.

Insider Trading: Undisclosed settlement may explain urgent selling

McAfee's trading profile has been out of the spotlight for a number of years due to a lengthy self-imposed trading blackout period stemming from the Company's stock option backdating missteps. The blackout, combined with the resulting management shake-up (read: few executives with actionable equity), led to a two-year period where there was almost no insider trading activity at all. In fact, there was only one senior officer who traded during the course of 2008 when trading was again permitted after the release of the 4Q07 results in February. So when three named executive officers sold 93,000 shares this year, including the 51,000 shares sold after the 1Q09 earnings were reported on 04/30/09, we suspected it was time to revisit the name. And with good reason as these were no ordinary profits taken following a positive earnings surprise and the resultant share price gains. The first trades to grab our attention came from Executive V.P. and General Counsel **Mark Cochran** (50), who has had his hands full

cleaning up the prior regime's legal mess and very well may have been thinking of recent undisclosed developments to come out of the New York Attorney General's office (more on this in the next section).

Cochran was hired in September 2007 to replace the former head counsel, **Kent Roberts**, who was unceremoniously terminated in May 2006 for his role in McAfee's option backdating practices. Cochran previously served as Hyperion Solutions' head counsel from 2005 to 2007 before the Company was acquired by Oracle. Immediately upon joining MFE, he was awarded restricted stock and options, which began to vest in September and October of 2008, respectively. However, the options were under water on the October vesting date and he did not immediately act on the shares that became unrestricted one month earlier. Instead, he waited until 05/05/09 and 05/06/09 to **clear out all of the actionable stock and options at his disposal**. In addition to selling all 11,200 shares of his common, including all the shares bought through the Employee Stock Purchase Plan (ESPP) in November, Cochran 'skimmed' his only vested stock options, having exercised options carrying a \$39.90 strike and sold the underlying 28,127 shares at prices between \$40 and \$40.35, which translates to a pre-tax profit of less than 1%. This razor-thin profit margin is among the smallest we've ever seen.

Figure 2. MFE Daily Closing Price, 05/01/08 through 06/25/09. Red diamonds are where GC Mark Cochran sold 100% of his position, which included selling stock from the exercise of options for a 1% pre-tax profit, and the "flipping" of ESPP shares (on 06/05/09). Source: Reuters and MFE SEC Filings.



We cannot stress enough how rare it is to see corporate insiders, who are not leaving the company, monetize options far from expiration for almost no profit, which is the case here as this particular series was not scheduled to expire for another eight years (October 2017). And he did not skim options just once; Cochran resurfaced again after more options from this series, which vest monthly, became actionable at the end of May. On 06/05/09 he exercised the same \$39.90 series, clearing out all 1,563 underlying shares for \$40.59. And that was not his only transaction on the session as

Cochran also sold all 875 shares bought through the ESPP one week earlier. The practice, also known as 'flipping', involves an employee buying shares through a company-sponsored purchase plan, usually locking in predated (read: lower) prices while also receiving a discount from market, and quickly selling the stock to take advantage of the preferable purchase price. Although this practice is permitted at McAfee, many companies ban insiders from flipping shares as the benefit plans are intended to encourage employee ownership. The two sales once again drained his entire actionable position.

This is a very different trading approach than he demonstrated while at Hyperion, where he never had monetized equity immediately after its becoming actionable such as he has recently at MFE. And his only two Hyperion option-related sales, both part of a 10b5-1 sales plan in early 2007, generated profits no smaller than 35%. Another inconsistency is that he never disposed of any of his directly-held Hyperion common stock. It appears to us, based on his past trading tendencies, that these latest McAfee sales were motivated by more than just the recent share price gains. Cochran currently vests in 1,500 of his new-hire options per month, but these are currently under water. Over the next 52 weeks he will have 19,200 shares become actionable as well (see Appendix A).

Also selling was the now former Executive V.P. and Chief Technology Officer **Christopher Bolin** (41), who joined the Company in 1999. Bolin became a registered insider in November 2006, at which time employees were prohibited from trading due to the blackout period. Shortly after trading resumed in February 2008, Bolin cleared out nearly all of his actionable holdings, 381,000 shares in all, on 02/12/08 and 02/25/08 at an average price of \$34. These sales also came on the heels of an announced \$750 million repurchase program. It was later disclosed in the 2008 Proxy Statement that Bolin took a leave of absence "for personal reasons" from 06/02/08 to 09/08/08, during which time he continued taking profits on newly-actionable shares, including some that vested during his leave. In all, he sold another 39,086 shares between May 2008 and October 2008.

Much like last year, Bolin has been cashing out stock and options this year immediately upon vesting. Between 02/19/09 and 04/29/09 he sold 41,524 shares for an average price of \$32. Included in the shares sold were those acquired through the Company's ESPP last November and also the last of his April 2015 options. Like Cochran, he would resurface again on 06/03/09 to flip 875 shares he had bought through the ESPP on 05/29/09. While Bolin has sold ESPP shares before, this was the first time his turnaround amounted to a few days. The equity accounted for 85% of his actionable ownership, the remainder of which is comprised of just his February 2018 options series that just began vesting in February (no common remains). Granted, at that time, Bolin's holdings stood to increase by another 28,000 shares/options as they vest over the next 52 weeks, but the majority of this equity was not to become actionable until February and April of 2010 (see Appendix A).

It looks now that he will never see them: In a surprise move, Bolin announced his "retirement" from MFE in an SEC Form 8-K filing on May 28th. Nothing in his exit agreement implied that he would see acceleration in vesting of his unvested restricted shares and in-the-money options. Interesting enough, he actually had informed the Company of his decision one week earlier (May 22nd). For a number of reasons, we find

it quite curious that the Company waited one week before disclosing this significant news in an 8-K without issuing a press release (more on this later).

The final seller we have to report on is another relatively new officer, Senior V.P. of Finance, Chief Accounting Officer **Keith Krzeminsky** (47), who joined McAfee in March 2007 and was the primary finance officer during the department's shakeup, including termination of then CFO **Eric Brown**, following the backdating investigation. Just one year after becoming a registered filer in March 2008, Krzeminsky has made some noise with his first trades. After acquiring shares this year when three different restricted stock grants vested between February and April, he cleared out all 9,067 shares on 05/05/09 that remained after turning in stock to cover the associated taxes. The shares accounted for nearly 30% of his ownership, which are now just comprised of vested options with a \$32.49 strike price. These shares will be replenished downstream as he is set to vest in 24,500 options and restricted shares over the next year, but as we indicated was the case with Bolin and Cochran, the majority of these will not become actionable until next year (see Appendix A).

The fact that there are only three sellers thus far may help explain why these sales have for the most part remained off the radar of investors and the media. Yet McAfee, despite being a \$5 billion company with more than 5,000 employees, has only six Section 16 executives, five of whom had any actionable equity at the start of 2009. Given that five of the eight non-employee board members currently own no common shares outright, the number of insiders who are even able to take profits is clearly limited. Therefore, three of McAfee's four named executive officers with actionable equity taking profits is quite meaningful to us.

And on a final note: the fact all three cleared out their common stock makes it even more intriguing considering the Company just mandated stock ownership requirements for its senior officers. Cochran, Bolin and Krzeminsky have been required to hold 8,000 shares (options and unvested shares do not count) by October 2010 and 20,000 shares by 2013. Rather than retain some of the stock they recently acquired from restricted stock awards and the Employee Stock Purchase Plan, they favored settling all their shares for cash now rather than holding even some of the shares to become compliant with the ownership guidelines.

Accounting: Settlement of New York charges may impact deferred revenue

On the surface, the \$375,000 fine levied against McAfee for renewing consumer subscriptions without proper authorization does not seem Draconian. Indeed, the Company may be citing "immateriality" as its "anchor to windward" for having never disclosed the investigation or its outcome. We would argue, however, that a significant backlash is likely to be felt if a critical mass builds in the wake of Cuomo's findings, which were announced on June 10th (see Appendix B for a copy of the press release from Cuomo's office). The settlement with New York requires that the Company will clearly disclose "to consumers any automatic renewal program and provide an easy, transparent, and automated means to opt out of renewal", and further "will provide electronic notification to consumers before and after renewal of the subscription and will provide refunds to consumers who request them within 60 days of being charged."

We suspect this settlement may possibly encourage the filing of class-action suits by various plaintiffs' attorneys around the country. Not lost on us is the fact that 81% of McAfee's 1Q09 total revenues came out of deferred revenue, some unknown portion of which is made up of renewal payments that were automatically billed to subscribers without their knowledge and then recognized as revenue in the income statement over the course of the subscription term, typically one year. Even absent any class-action suits, we think it is possible MFE could face a significant increase in refund requests as consumers become more aware of the New York settlement, the outcome of which has not been widely disseminated.

Whether precipitated by a settlement of any further legal action or just greater consumer awareness of what has happened in New York, any increases in refund requests or a substantial reduction in renewal rates could have a substantial impact on the Company's \$1.3 billion deferred revenue account. If refund requests increase substantially, it could force additional write-downs of the account, and if renewal rates drop because its is forced to be more transparent in its renewal practices, it could put further pressure on deferred revenue growth rates, which had abruptly declined 1.84% sequentially in the 1Q09.

	2006	2007	1Q08	2Q08	3Q08	4Q08	2008	1Q09
Chg in Deferred Revenue (%)	19.4	16.4	3.5	0.5	-2.7	22.4	23.8	-1.84
Sequential Revenue Growth (%)	16.7	14.2	3.7	7.3	3.3	3.5	22.3	5.6

In looking at the above table of revenue and deferred revenue growth, it is important to keep in mind that the numbers are distorted by numerous acquisitions that MFE has completed. For example, the 22.4% spike in deferred revenue in 4Q08 was largely a result of the Secure Computing Corp. acquisition (more on this below). The jumps in deferred revenue and revenue in 2006 and 2007 are likewise largely attributable to acquisitions.

A second by-product of the New York settlement, albeit a lower probability, could potentially result in the restatement of past financials should it be determined that past revenues, which had come out of the deferred revenue account, should not have been recognized since they resulted from the Company's unauthorized renewal practices from prior periods. One can imagine such a scenario should the SEC decide to look into what Cuomo has found. Given past examples of one-upmanship by the New York Attorney General's office over the SEC, one cannot exclude such an outcome from the realm of possibility.

The above facts, and attendant risks, make the selling by General Counsel Mark Cochran downright fascinating. His sales had an urgent tone to them and there can be no doubt that he was fully aware of Cuomo's investigation and, indeed, its downstream implications. It is speculation on our part, but it seems perfectly logical given what we now know, that Cochran may have been concerned his options were in danger of falling out of the money entirely, causing him to act when he did. Not lost on us is the fact that the third seller in the group is the Company's Chief Accounting Officer.

We also wonder if these developments may have been at least a partial impetus for a write-down of deferred revenues from recently-acquired Secure Computing following the closing of the deal. From the prepared text of CEO Dave DeWalt at the start of the 4Q08 conference call:

The total deferred revenue write down for Secure, derived using the fair value method in accordance with GAAP, was \$46 million, leaving a deferred revenue beginning balance of approximately \$119 million at November 18. During the fourth quarter, Secure Computing contributed an additional net increase of \$27 million to deferred revenue for a December 31, 2008 deferred revenue balance of \$146 million.

It stands to reason that the write-down of 28% of Secure Computing's deferred revenue balance speaks to the quality of that company's accounting practices concerning the subject. In the 1Q09 conference call, DeWalt confides that McAfee attains "a little bit higher threshold for recognizing revenue in McAfee's VSOE [Vendor-Specific Objective Evidence] model than in Secure's model."

Clearly, we are not suggesting that the magnitude of Secure Computing's deferred revenue write-down is anything like what MFE might face should there be a huge increase in refund demands as a direct or indirect result of the New York settlement. But we do think the outrageous and unethical of practice of updating expired subscriptions, without the knowledge of and against the wishes of subscribers, obviously gives rise to phantom additions to the deferred revenue account, which, upon discovery by the former subscribers, could be refunded, and removed, from deferred revenue. This unauthorized updating of subscriptions obviously means that at any given time while this practice was going on, there were amounts in deferred revenue that were not going to move to revenue in future periods, but rather, should have been refunded to the former subscribers (had they been aware of the charges) and removed from deferred revenue.

The amount of this overstatement, in previous financial reports cannot be determined. The Company has not disclosed any information that would be helpful in that regard. It is hard to understate the importance of deferred revenue to MFE; in the 1Q09, approximately 80% of recognized revenue was derived from the deferred revenue balance sheet account.

Governance: "Retirement" of 41-year old CTO ill-timed and less than amicable

For a company that has had as many technology acquisitions as MFE (and with more in the pipeline) and has the competitive need to remain technologically on the cutting edge, this seems a particularly difficult time for its Chief Technology Officer, Chris Bolin, to "retire" with a notice of just over 30 days. A read of the exit agreement signed by Bolin is particularly revealing in that it is quite clear he had little-to-no negotiating power in the deal. We have rarely seen a separation agreement with as many caveats as this one. The agreement (see Appendix C) says nothing about his unvested stock and options past his June 30th termination date. After that date, he will serve in a non-employee advisor role through September 2010.

Bolin's only consideration for signing this extremely restrictive agreement is \$117,500, "less withholdings", which will be paid in a lump sum in September of 2009. He agreed that he is not entitled to any compensation benefits other than what is described in the agreement. It clearly seems that he has agreed to give the Company a lot for a paltry sum, especially considering that approximately 40% of it will be withheld. It seems very odd to us that a long-tenured CTO at a \$6 billion technology company would agree to such terms.

With regard to the "non-employee advisor" part of the deal, nothing whatsoever is mentioned about compensation. All that is said is the following [bolding is ours]:

I agree to consult with McAfee, upon McAfee's reasonable request, when, and as is necessary, concerning any matters about which I may have knowledge arising from my employment. I also agree to make myself available to give testimony, if requested or required, if any dispute arises with respect to such issue. Nothing in this paragraph is intended to require or suggest that, if called to testify, I would testify other than truthfully. In the event such a request is made of me after September 2010, McAfee agrees to pay the reasonable expenses incurred by me in connection with my obligations under this paragraph. Should any such request of the Company result in my being required to expend other than minor amounts of time and effort in such consultation, I will be entitled to submit reasonable costs for such time in advance of the time being expended, for consideration by the Company.

Never mind his consulting support on the integration matters involving the Company's many technical acquisitions, it also seems that the MFE, possibly sensing looming legal issues, needs his testimony as a witness in any future litigation.

As we have mentioned, McAfee never issued a press release concerning Bolin's "retirement", only a delayed SEC Form 8-K, one week after the fact. We don't place much stock in such sources, but we have been intrigued by some message board posts we have seen. A June 5th post has been deleted, however, the initial post's headlines and two associated threads are intact. The two response threads accuse the original poster of libelous and slanderous behavior. Who deleted the original message will, no doubt, never be known. Clock forward to another post, this one dated June 23rd. It simply asks: "So, why did Bolin leave so abruptly". The first response to this post read like it came straight from MFE public relations:

"Chris Bolin was the ultimate funny, ungodly rich geek who looked around things in the industry and decided that he was going to take a step back, gather himself and let his mind begin running free again. He's much admired and anchored in his McAfee relationship and will be involved on a consulting basis while he commences his new creative focus. The relationship is 100% amicable and any commentary to the contrary is simply 100% ill-informed at best."

Bolin's exit agreement seems far from "100% amicable" to us. To wit, our read of his employment, stock option and exit agreements is that he likely forfeited \$2.02 million (gross, not counting options exercise costs or taxes) in unvested stock options and restricted shares by his departure.

Fundamentals: CEO seems less sure of himself, more testy on 1Q09 call

During the 1Q09 conference call, CEO David DeWalt seemed to have been compelled to assure his audience of his honesty. Indeed, the phrase “to be honest”, or some variation thereof, left his lips on seven occasions during the call (only once in the 4Q08 call). In one of the more interesting exchanges, he admits that international growth is not where he would like to see it. We have bolded certain sections of his response where he seems to indicate uncertainty:

Analyst: Dave, the North American business is growing about four to five times faster than the international business. What investments do you still need to make in international market to help accelerate your growth there? And if you can just give us, as a quick follow up, since the number of million dollar deals doubled in quarter year-over-year, how you see the pipeline on these big deals.

Dave DeWalt, CEO: That is very insightful of you, actually. We have been executing very well. **I kind of look at it this way.** When you look at the entire Americas continent North and South America, we are executing really well. We've had a tremendous market share gains from Canada to Argentina and we continue to do well there. Strong management, strong execution, strong focus, good seasoned veterans. **We are still working a little bit in the international markets, to be honest.** We had talked about a new leader in Europe, Middle East, Africa, very strong new executive that has come in, just got started **quite honestly** in January. We hired a head of Asia Pacific a year ago as well. We're beginning to see the returns on that. International is a big market opportunity. **So despite seeing revenue not as strong as we'd like,** we are beginning to see some signs in those regions that we can grow substantially and the partnerships in consumer, for example, with Acer, with Toshiba, with others that we have done are beginning to get reach for us consumer... So, for us, keep executing in the Americas, retool and execute in international markets. If we can get both those **really cranking the way I hope we can,** we should see even better results.

It certainly appears that DeWalt honestly sees international markets challenging. To this, one wonders whether the entrance of Microsoft in the freeware game has had an effect on this. By Microsoft's admission, its Morro product is not intended to compete with security companies like MFE. Instead, MSFT claims that the focus will be on emerging markets such as Brazil, China and India and on the 50% to 60% of PC users who do not have or are unlikely to pay for antivirus protection.

DeWalt's dominance during conference calls gives way to impetuous responses at times, which seemed much more prevalent in the 1Q09 call. We found the following exchange very interesting. In it, an analyst was challenging Company claims that bookings had increased by 21% for the period:

Analyst: Good evening. Rocky, at the beginning of the script I think it was you or Dave gave numbers that were sales numbers as opposed to revenue numbers. Could you review what those were and also excluding Secure? If I try to do the classic bookings calculation of revenue plus change in deferred revenue pulling out Secure from revenue and even putting in the FX deferred adjustment, I get kind of a low single digit bookings growth rate. Any chance you

can help true those up and tell me why I wouldn't be concerned about that low single digit bookings number?

Rocky Pimentel, CFO: We don't specifically give out the bookings number but we certainly look at revenue plus change in deferred. We add the impact of foreign exchange. We really aren't commenting in much more detail than that. I would say alluding to Dave's comments and my color, the pipeline remains strong. We are very positive as we go into Q2 and I think [we'll] just leave it at that.

Where Rocky refused to tread, however, DeWalt was quick to rush in during Pimentel's answer to a subsequent question from another analyst. Leapfrogging the question, DeWalt shot the following volley back in answer to the prior query:

David DeWalt, CEO: This is Dave. Just real quick to add on, I meant to do that before the question came up. We had 21% sales increase year-over-year. That was in the script, sales equal bookings or that's the way we describe it. Revenue was also 21% so basically this was a big part of our success was 20 plus percent growth on the bookings side and on top of that we had double digit growth in our core business on bookings or in sales as we describe it. So there is no single digit growth...Rocky did call out in the script as well that when you start to look at FX impacts they were pretty substantial both on revenue and on bookings, and so you can add back even more growth to both numbers if you were to look at the impact of currency exchange...and, of course, when FX [is] adjusted you are looking more like 8% growth with the sales numbers opposed to what looks like maybe down 1% on the revenue basis.

So doubters be damned, if Dave says it's 21%, then its 21%.

Accounting: Miscellaneous noteworthy items

- ➡ **Balance sheet:** Overall, the balance sheet remains strong at 03/31/09. Cash position has even improved from year-end 2008. Investment in marketable securities has increased. Receivables dropped by \$82 million, which seems odd with revenues holding up. The closest thing to an explanation for the receivables drop is a statement to the effect that there were significant cash collections in the first quarter due to the higher accounts receivable balance at 12/31/08. Maybe that higher year-end balance came about from efforts to push sales in whatever way possible in the 4Q08 to help 2008 results.

Although MFE drew its cash balances down significantly during 2008 for acquisitions, cash and marketable securities balances, which stood at \$510 million at 12/31/08, seemed quite adequate. To this, we found it curious that the Company completed a \$100 million credit facility in December and drew down the entire balance the following month.

Total deferred revenue (long-term and short-term) is down by about \$20 million from year-end. In fact, the only significant balance sheet change from year-end is the addition of the above mentioned \$100 million term loan taken down in January of this year. Despite the overall strength of the balance sheet, it is worth noting that 80% of

equity is made up of intangibles and goodwill, and to date the Company has taken some \$800 million out of equity through the purchase of treasury stock.

- ➔ **1Q09 effective tax rate:** The explanation for the 1% effective tax rate is skimpy, to say the least, to wit, “The effective tax rate for the three months ended March 31, 2009 differs from the U.S. Federal statutory rate primarily due to the benefit of lower tax rates in certain foreign jurisdictions, as well as tax benefits recognized in the first quarter of statute expirations in various jurisdictions.” We have identified \$11.3 million of benefits recorded in the quarter, but that is all the Company discloses. Adding back the items we have been able to identify would reflect an effective rate of about 22%. Even so, the question remains, if the various credits wiped out the foreign taxes, where is the tax provision applicable to the U.S. earnings?
- ➔ **SEC and DOJ investigations:** The ongoing SEC and DOJ investigations have still not reached any resolution. The payment of the \$50 million seems to have been related to past difficulties, but it did not resolve the current investigations. Apparently that is why in the 2008 SEC Form 10-K the Company indicated an expectation of more fines and penalties. The picture is rather muddled.
- ➔ **Allowance for sales returns:** MFE establishes an allowance for sales returns but it is interesting to note that the allowance and write-offs as a percentage of total sales have been increasing rather rapidly over the past year. In 2006 MFE provisioned \$19.2 million for sales returns, or 1.7% of total revenues, while write-offs in 2006 amounted to 14.5 million or 1.3% of total sales. By 2008 provisions had increased to \$95.9 million or 6% of total revenues and write-offs to \$89.1 million or 5.6% of total sales. MFE also establishes reserves for “other incentives” (for distributors, resellers and retailers). These reserves are taken as a reduction to revenue to be realized. Interestingly, these reserves and write-offs have been falling as a percentage of sales. In 2006 reserves and write-offs stood at 10.5% and 10.2% of total sales, respectively. In fiscal 2008 they had fallen to 6.9% and 6.5%. In this economic environment it seems odd that incentive reserves would be falling, but it does leave MFE more in line with SYMC. Symantec’s reserves for rebates have amounted to 5.6% to 5.9% of total sales for the past three years. On the other hand, the opposite is true for SYMC product returns and write-offs. Over the past three years reserves for sales returns and write-offs have consistently amounted to only 1.2% to 2% of total sales. It should be noted that detailed information on reserves and write-offs is not provided on a quarterly basis.
- ➔ **Inventory:** Though very small in comparison to total assets, inventories are included in “other current assets” and are not broken out as a separate line item on the balance sheet. This is unlike SYMC who does in fact segregate inventory balances. According to MFE SEC filings, inventory balances “consist primarily of finished goods held at our warehouse and other fulfillment partner locations and finished goods **sold to our channel partners but not yet sold through to the end user...**” [bolding is ours]. What is interesting is that at the end of the 1Q09, inventory balances were \$14.5 million, up 42.2% from the fiscal 2008 year-end of \$10.2 million. This is compared to the 1Q08 when inventory balances stood at \$3.8 million up from \$3.0 million at the end of fiscal 2007. In fact, inventory balances ranged from \$2.7 million at the end of 2006 to \$3.8 million at the end of the 1Q08. Beginning in the 2Q08 inventory balances have begun to climb at least 25% per quarter and experienced big jumps at the end of fiscal 2008 and 1Q09.

- ➔ **Relying more on the “partner model”:** As discussed above, MFE has become more reliant on its hardware “partners” that bundle security software with their product offerings. From the 1Q09 SEC Form 10-Q: the “consumer business is becoming increasingly more dependent upon the partner model.” Truth be told, there is a trend towards less security software being sold as a stand-alone item. It is clear that subscription revenues, for which payments are received up front, are deferred and amortized to revenue over the subscription period, normally one year. It is also clear that revenue from sales to distributors and other channel partners is recognized as the distributors and other channel partners sell the products to the end-users. Less clear is the method used to recognize revenue from sales to OEMs, but various wording appears to indicate that this revenue is recognized when the OEMs take possession of the product.

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Appendix A

Common Stock and Option Holdings for Selected McAfee Inc. (MFE) Insiders

Name	Actionable Position as of 06/25/09:			Derivative Equity Expected to Vest in Next 12 Months			
	Common	Options ¹	Total ²	Grant Date	Strike Price ³	Vesting Dates ⁴	# Vesting
Christopher Bolin EVP, CTO	0	7,582	7,582	02/19/08	\$32.95	06/19/09 - 05/19/10	6,492
				04/28/08	N/A	04/28/10	16,666
				02/17/09	N/A	02/17/10	4,589
							27,747
Mark Cochran EVP, General Counsel	0	0	0	10/29/07	\$39.90	05/29/09 - 04/29/10	18,744
				02/11/08	N/A	09/10/09	13,333
				02/17/09	N/A	02/17/10	5,900
							37,977
David DeWalt Chairman, CEO	114,392	271,874	386,266	02/19/08	\$32.95	06/19/09 - 05/19/10	18,744
				04/30/07	\$32.49	05/30/09 - 04/30/10	124,992
				02/11/08	N/A	04/02/10	41,667
				02/17/09	N/A	02/17/10	34,765
							201,424
Keith Krzeminsky SVP of Finance, CAO	691	22,494	23,185	04/30/07	\$32.49	05/30/09 - 04/30/10	11,244
				02/11/08	N/A	04/30/10	7,500
				04/28/08	N/A	04/28/10	3,333
				02/17/09	N/A	02/17/10	2,500
							24,577

¹ Total number of vested, in-the-money options.

² Total actionable position includes common stock plus vested in-the-money options.

³ Strike Price N/A indicates the series is restricted stock, not options.

⁴ A range of dates indicates the options vest equally on a monthly basis. The total provided is the cumulative amount of equity scheduled to vest during the date range.

Note: Red text indicates series is currently out-of-the-money

CUOMO FORGES SETTLEMENT WITH SYMANTEC AND McAfee OVER AUTOMATIC SUBSCRIPTION RENEWALS

Nation's Two Largest Computer Security Software Providers Routinely Charged Customer Credit Cards without Permission

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Companies Will Reform Practices and Pay \$750,000 in Penalties and Costs

NEW YORK, NY (June 10, 2009) - Attorney General Andrew M. Cuomo today announced a settlement with computer security software vendors Symantec (NYSE: SYMC) and McAfee (NYSE: MFE) after the companies renewed customers' software subscriptions without the customers' knowledge or authorization. Under the Attorney General's settlement, both companies will make detailed disclosures to consumers about subscription terms and renewal, and each will pay \$375,000 in penalties and costs.

"Companies cannot play hide the ball when it comes to the fees consumers are being charged," said Attorney General Cuomo. "Consumers have a right to know what they are paying, especially when they are unwittingly agreeing to renewal fees that will not appear on their credit card bill for months. Symantec and McAfee - two of the nation's largest vendors of computer security software - will now have to be clear and up-front with their customers when it comes to renewal fees. In other words, no more hide the ball with renewal fees."

Symantec and McAfee both offer a wide range of products to individuals and businesses to protect computers from internet threats such as computer viruses and spyware. Both companies regularly revise and update their software to combat the latest security threats, and they provide these updates to their existing customers. Customers who buy Symantec or McAfee software are only entitled to a limited "subscription" to these updates, usually for a period of one year. After this period, customers must pay for a renewal subscription in order to receive new software updates.

The Attorney General conducted an extensive investigation into the online marketing and sales practices of Symantec and McAfee. The Attorney General's investigation found that the companies failed to adequately disclose to consumers that subscriptions would be automatically renewed and that consumers would be charged for subsequent subscriptions. Information about automatic renewal charges was not clearly disclosed, but was instead hidden at the bottom of long webpages or in the fine print of license agreements.

The Attorney General's office received complaints from customers who had bought Symantec and McAfee software over the internet and whose credit cards were later charged for "renewal subscriptions" without their knowledge or consent. In addition, the investigation also revealed that both Symantec and McAfee made it difficult for consumers to contact the companies to opt out of automatic renewal or to request refunds for unauthorized credit card charges.

Under the terms of the Attorney General's settlement, Symantec and McAfee will clearly disclose to consumers any automatic renewal program and provide an easy, transparent, and automated means to opt out of renewal. The companies will provide electronic notification to consumers before and after renewal of the subscription and will provide refunds to consumers who request them within 60 days of being charged. The companies will clearly disclose the length of time that they will continue to support and provide updates to any purchased software. Symantec and McAfee will also pay a combined \$750,000 to the Attorney General's office to settle all claims.

Symantec and McAfee are the nation's largest and second-largest providers of consumer security software, respectively.

The investigation was handled by Assistant Attorneys General Carolyn Fast and Clark Russell, with assistance from Investigator Vanessa Ip, under the direction of Chief of the Internet Bureau Justin Brookman and Deputy Attorney General for Economic Justice Michael Berlin.

RETIREMENT AND RELEASE AGREEMENT

This Retirement and Release Agreement (the “Agreement”) is executed this 22nd day of May, 2009 by Christopher Scott Bolin (“Bolin”). For purposes of this Agreement, unless otherwise indicated, the term “the Company” or “McAfee” shall mean McAfee Inc., a Delaware Corporation, and its majority owned direct and indirect subsidiaries.

1. I have decided to retire from my “at will” employment with the Company, effective 30 June, 2009. As consideration for my execution of this Agreement, I will serve in a non-employee advisory role from 1 July, 2009, through 30 Sept, 2010, , to facilitate a smooth transition from my role as the Executive Vice President and Chief Technology Officer.
 2. a. In exchange for the payment and benefit described in Section 4 hereof and offered to me by the Company, which I hereby acknowledge is above and beyond anything which the Company is legally obligated to provide to me, I (on behalf of myself and my successors and assigns) hereby release the Company and the officers, directors, employees, stockholders, affiliates, subsidiaries and legal successors and assigns of the Company, past and present, (“Released Parties”) from all claims, actions and causes of action, whether now known or unknown, which I now have, or at any other time had, or shall or may have against those Released Parties based upon, relating to or arising out of any matter, cause, fact, thing, act or omission whatsoever occurring at any time up to and including the date I sign this Agreement, including, but not limited to, any claims for breach of express or implied contract, wages or benefits owed, covenants of fair dealing and good faith, interference with contract, option grants, wrongful discharge or termination, fraud, defamation, negligence, assault, battery, invasion of privacy, false imprisonment, civil conspiracy, duress, promissory or equitable estoppel, violation of public policy, retaliation, personal injury, breach of fiduciary duty, bad faith, infliction of emotional distress and employment discrimination or harassment of any type or retaliation based on any protected status (including, without limitation, national origin, race, age, sex, sexual orientation, disability, workers’ compensation status, or other protected category) or other discrimination, retaliation or harassment under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Civil Rights Acts of 1866 and 1871, the Family and Medical Leave Act of 1993 (“FMLA”), the Age Discrimination In Employment Act of 1967, the Americans With Disabilities Act, (“ADA”), the Employee Retirement Income Security Act (“ERISA”), the Fair Labor Standards Act of 1938 (“FLSA”), the California Fair Employment and Housing Act, or any amendments to any of the above, or any other applicable federal, state or local law, statutes, regulations, ordinances, or other similar provisions and all claims for monetary recovery, including, without limitation, attorneys’ fees, experts’ fees, medical fees or expenses, costs and disbursements and the like. I understand that this waiver includes all rights under section 1542 of the Civil Code of the State of California which provides: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.” I acknowledge that I consciously intend these consequences even as to claims for damages that may exist as of the date this Agreement is executed that I do not know exist, and which, if known, would materially affect my decision to execute this Agreement, regardless of whether the lack of knowledge is the result of ignorance, oversight, error, negligence or any other cause. I understand that this does not prohibit me from filing a lawsuit or from challenging the enforcement of this Agreement under the Older Workers Benefit Protection Act, nor does it prohibit me from filing a charge with or participating in any investigation of the EEOC or comparable state or local agency. To the fullest extent permitted by law, I agree that I will not file any lawsuit or other legal proceeding to assert any such claims. I further agree that in the event for any reason my release of claims contained herein as to any claims I might have or may have in the future is
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deemed unenforceable or void, I agree that I shall neither claim nor be entitled to receive, and hereby specifically waive, any benefit or proceeds arising out of such claim or claims.

b. The parties acknowledge and agree that nothing in this Section 2 constitutes a release or waiver of any rights I have to indemnification as an employee and /or officer of the Company pursuant to any indemnification agreement, the Company's Articles of Incorporation or By-Laws, coverage under any applicable contract of insurance, or applicable law.

c. Other than for any violation of existing obligations of confidentiality or breaches of trust of which the Company is not aware, this Agreement acts to release Bolin from any claims which the Company may have against him for actions prior to the date of execution of this Agreement.

3. In exchange for the payments described in paragraph 4, which I acknowledge and agree constitute good and sufficient consideration for the terms of this Agreement, and in exchange for the parties' mutual agreement to resolve any disputes about the scope of reasonable restrictions on my future activities that are necessary to protect the Company's confidential information and trade secrets, I agree to the following :

a. From the date of my retirement (30 June, 2009) through 30 September, 2010), I will not knowingly participate (whether as an employee, consultant, proprietor, shareholder, owner, partner, director or otherwise), in providing services, advice, management, or other substantive assistance to a Competing Business worldwide, where the Company does business and was engaged in doing business during my employment. "Competing Business" means any person or entity that is engaged in a line of business that would displace or compete with the business of the Company including but not limited to the design, development, marketing, distribution, or sale of network management software, hardware or anti-virus network security software anywhere in the world.. Competing Businesses include but are not limited to: Cisco Systems (security business unit only), Computer Associates, Dr. Ahn's, Fortinet, Fsecure, Internet Security Systems, Intrusion Inc., Juniper, Panda, RSA, Sophos, Sourcefire, Symantec, Tipping Point, Trend Micro, Kaspersky, Microsoft, Big Fix, Utimaco, Checkpoint, GuardianEdge, PGP, WinMagic, Baracuda, Proofpoint, Websense, Ciphertrust, BlueCoat, EMC (Tablus), Vericept, IBM (ISS), Qualys, nCircle, Blindview, NetIQ, and SonicWall, or any successor entity thereof. Should an opportunity present itself for me to perform work or a project for any competitor described herein, I agree to submit a request in writing to the CEO of McAfee, outlining in sufficient detail the name of the entity and subject matter of the work or project planned, for the CEO to make a determination on whether to give a limited waiver of the restrictions of this Section 3.a. . It is understood and agreed that the granting or rejection of such a request for a limited waiver shall be and is in the sole discretion of the CEO of McAfee.

b. For a period of two years following my termination of employment, I will not at any time, directly or indirectly solicit, encourage, or induce any individual to leave the employ of the Company, nor will I for any reason interfere in any other manner with the employment relationships existing between McAfee and its employees, nor will I directly or indirectly solicit any customers of McAfee to cease or reduce their business with McAfee

c. For a period of two years following my termination of employment, I will not hire or help any Competing Business hire, an employee who either was employed with the Company while I worked there and who remains with the Company., or who resigns from the Company during the six month period following my termination..

d. In the event I violate the restrictions in Paragraphs 3 b or c, above, and such is the cause in whole or in part of one or more employees leaving the Company, then I will

pay the Company a sum equal to one third of the total annual compensation of each such person in the preceding year; provided this remedy shall only apply for the loss of an individual employee(s) prior to the issuance of injunctive relief, it being understood that the loss of an employee is irreparable in nature and the liquidated damage payment is an incomplete remedy, and that injunctive relief to prevent further violations is a better remedy.

e. I hereby agree that I will continue to abide by all confidentiality agreements I have entered with the Company as well as the Employee Inventions and Proprietary Rights Assignment Agreement. In addition I agree that during my continued employment and for so long thereafter as it remains confidential information not readily available to the public, I will keep confidential information and trade secrets of the Company confidential. I agree that I will not use any such information to pursue any business interests outside the Company. If I am required to reveal confidential information I will cooperate in the Company's efforts to seek protective orders or other lawful protection against damage to its interest in confidential information and trade secrets. I further agree that all inventions, whether patentable or not, and all items of Intellectual Property made designed, created or conceived by me (whether made, designed, created or conceived solely by me or jointly with others) during my employment with the Company, are hereby assigned to the Company, if not previously assigned.

f Due to my high level of involvement in the business planning and intellectual property research and development efforts of the Company, I understand and agree that for a one year period following the termination of my employment, I will immediately notify the Company through written notice to its Chief Executive Officer and its General Counsel of any Intellectual Property (other than articles or books which I may write) made designed, created, or conceived by me either alone or in conjunction with others, that involves or relates to the Company's line of business. I agree that any such Intellectual Property shall be presumed to be made, designed, created or conceived through the use of the Company's confidential information and trade secrets or derived from the Company's Intellectual Property, and therefore subject to my assignment agreements with the Company. I hereby acknowledge and agree that I will not write any articles or books related to my knowledge of McAfee and/or its Intellectual Property without specific written permission. and hereby grant McAfee the right to review such for the purpose of insuring any confidential and/or proprietary information of McAfee is not included therein.

4. Provided that I sign this Agreement and return it to the Company to the attention of the undersigned within the time frame provided, and providing I do not thereafter revoke the releases or violate this Agreement or my continuing obligations to the Company, McAfee and I agree to the following:
 - a. I will be permitted to continue in an employee status with all current pay and benefits through June 30, 2009, including but not limited to normal stock vesting.
 - b. Thereafter, I will serve in a non-employee advisory role for McAfee (from July 1, 2009 through September 30, 2010), advising on such matters as may specifically be assigned to me by the Chief Executive Officer of the Company. During this period I accept that I will have the same degree of duty of loyalty to the Company as I had during my tenure as an employee. I will be obligated to not engage in any activity that would create a conflict of interest or use my time and resources to pursue any activity that would compete with or otherwise create a conflict of interest with the Company.
 - c. Within 30 days of September 30, 2009, I will receive a lump sum payment of \$117,500 (less withholdings) as consideration for this Retirement and Release
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Agreement, including but not limited to, the non-compete obligation in Section 3.a. above.

Upon signing this Agreement, I understand that I am not entitled to any compensation or benefits from the Company other than as described in this Agreement. . In the event that this Agreement is canceled or revoked, the Company shall have no obligation to furnish the payments and benefits described herein.

5. By accepting the benefit and payment described herein, I agree:

a. That I will keep the terms of and sums paid under this Agreement confidential and will not disclose such sums or the terms and contents of this Agreement or any discussions between myself and the Company related to the Agreement or the circumstances regarding the separation of my employment with McAfee, except as required by law, or for tax, accounting or financial purposes. However, I understand that I may discuss this Agreement with my attorney and immediate family members. If a disclosure by me is required for an appropriate business, tax or accounting purpose or is made by me to an immediate family member, I will communicate the confidentiality provisions of this Agreement to any person to whom such disclosure is made, and any further disclosure by such person to any individual or entity shall be deemed a disclosure by me in violation of this release.

b. That I understand and agree that I will make no disparaging comments or remarks whatsoever pertaining to McAfee, its officers, directors, employees, business practices, products or business, and that McAfee management likewise will make no disparaging comments or remarks related to me and McAfee likewise will provide no information to outside parties who may inquire about me or my performance of my duties, other than to confirm the period encompassed by my at will employment with the Company

c. That I will make no reply whatsoever to any third party who contacts me in relation to McAfee other than to refer them to McAfee public relations department. This restriction includes but is not limited to journalists, newspaper reporters, analysts, market makers, or any person or persons similarly situated thereto.

d. I further understand and acknowledge that as an employee of McAfee in a highly sensitive and important position with the Company, I am, and have been privy to and a recipient of confidential and proprietary information as well as trade secrets of McAfee. I acknowledge and specifically agree that I shall not use or disclose such information in any way to any third party. Nothing in this Agreement supersedes or renders the terms and conditions of the McAfee Employee Handbook void or unenforceable, nor does it diminish the enforceability of any other agreements I have with the Company. Any otherwise confidential information found to legitimately and legally be in the public domain through no direct or indirect action of my own, shall not be subject to the restrictions of this paragraph 5. d.

e. I agree to consult with McAfee, upon McAfee's reasonable request, when, and as is necessary, concerning any matters about which I may have knowledge arising from my employment. I also agree to make myself available to give testimony, if requested or required, if any dispute arises with respect to such issue. Nothing in this paragraph is intended to require or suggest that, if called to testify, I would testify other than truthfully. In the event such a request is made of me after September 2010, McAfee agrees to pay the reasonable expenses incurred by me in connection with my obligations under this paragraph. Should any such request of the Company result in my being required to expend other than minor amounts of time and effort in such consultation, I

will be entitled to submit reasonable costs for such time in advance of the time being expended, for consideration by the Company.

f. That if I fail to comply with any of the provisions of this Agreement, the Company shall be entitled, upon application to any court of competent jurisdiction, to specific performance or injunction or other relief in order to enforce or prevent violation of such provision or provisions. Nothing herein contained shall be construed as prohibiting the company from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages from me. In the event any action be instituted by McAfee to enforce any of the terms and provisions contained herein, and McAfee is the prevailing party in such action, McAfee shall be entitled to such reasonable attorneys' fees, costs and expenses as may be fixed by the court. Should McAfee fail to honor any of its obligations or agreements as contained herein, thus requiring an action to be filed by me, and I am the prevailing party in such an action, I will be entitled to seek to recover such reasonable attorneys' fees, costs and expenses as may be fixed by the court.

6. **I acknowledge that I have carefully read and fully understand this Agreement and I have not relied on any statement, written or oral, which is not set forth in this document. I have consulted with an attorney of my own choosing before signing this Agreement, and understand that I am giving up any legal claims I have or may have against the Company by signing this Agreement and Release. I also understand that I have 21 days in which to consider signing this Agreement, that I may revoke this Agreement within 7 days of signing it by providing written notice to the Company and that the Agreement will not become effective until the eighth day after I sign it without revocation (the "Effective Date"). I have had an adequate opportunity to make whatever investigation or inquiry I deem necessary or desirable in connection with the matters addressed in this Agreement. I understand the Company is not obligated to pay me the payment described in paragraph 4 unless I execute and do not revoke my signature on this Agreement. I further acknowledge that I am signing this Agreement knowingly, willingly and voluntarily in exchange for the payment set forth in Section 4 above.**
 7. I acknowledge that I have continuing obligations under any confidentiality and assignment of inventions agreement I may have signed in favor of the Company or under applicable law, which obligations will not be affected or impaired in any way by this Agreement.
 8. I acknowledge that as a condition precedent to receiving the monthly payments described in Section 4, following my termination of employment, I will return to the Company, all Company property in my possession, including but not limited to, software, equipment, documents, sales materials, or other company records, including any privileged or confidential materials, computers or computer related equipment, internal communications and data, parking cards, pass cards, access cards, keys, calling cards, mobile phones, beepers, pagers, credit cards, computers, fax machines, copy machines, personal digital assistants or any other equipment.
 9. I agree that this Agreement embodies the entire understanding between the Company and me, other than my prior agreements related to maintenance of confidentiality and assignment of inventions agreement, which remain in full force and effect, and agree that this Agreement may not be modified or amended unless such modification or amendment is in writing and is signed by me and by an authorized officer of McAfee, Inc.
 10. I agree that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time, for any purpose, an admission by the Company of any liability or unlawful conduct of any kind.
 11. I agree that this Agreement shall not be assigned, pledged or transferred in any way without the prior written consent of the Company.
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12. Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision shall immediately become null and void, leaving the remainder of this Agreement in full and effect.
13. The parties agree that any and all legal claims arising from or relating to this Agreement shall be resolved through an arbitration conducted in Portland, Oregon in accordance with the Rules of the American Arbitration Association. Notwithstanding the foregoing the Company shall have the right to pursue temporary or preliminary injunctive relief in a court of law located in Portland Oregon to secure specific performance, prevent violations, and avoid irreparable harm related to the Protective Covenants until such time as an arbitration on the merits for any final relief can be conducted. I consent to the exercise of personal jurisdiction over me by courts and /or arbitrators located in Portland, Oregon, and waive any and all objections to same.
14. Oregon law shall control the interpretation, application and enforcement of this Agreement without regard to any conflicts of law, rules or principles of Oregon or any other state law that may be to the contrary.
15. The Parties expressly waive trial by jury.

ACCEPTED AND AGREED:

Employee Signature

/s/ Christopher Scott Bolin
Christopher Scott Bolin

May 22, 2009
Date

McAfee Signature

/s/ Joseph Gabbert
Joseph Gabbert

May 27, 2009
Date

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