U.S. SECURITIES AND EXCHANGE COMMISSION

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Accounting and Auditing Enforcement Release No. 3177 / August 27, 2010

Securities and Exchange Commission v. Robert W. Davis, Civil Action No. 1:10-cv-01464 (D.D.C.) and *Securities and Exchange Commission v. Randall D. Imhoff, Civil Action No. 1:10-cv-01465 (D.D.C.)*

SEC CHARGES FORMER DELL CHIEF ACCOUNTING OFFICER WITH ACCOUNTING FRAUD

Former Corporate Assistant Controller Randall Imhoff Also Charged

The Securities and Exchange Commission today charged former Dell Inc. ("Dell") Chief Accounting Officer Robert W. Davis for his role in the company's accounting fraud. Last month, the SEC charged Dell with fraud for materially misstating its operating results from fiscal year 2002 to fiscal year 2005. The SEC's complaint against Davis alleges that he materially misrepresented Dell's financial results by using various "cookie jar" reserves to cover shortfalls in operating results and engaged in other reserve manipulations from FY2002 to FY2005. Davis agreed to pay a $175,000 penalty and to pay disgorgement and pre-judgment interest to settle the SEC's charges.

The SEC separately charged today former Dell Assistant Controller Randall D. Imhoff with aiding and abetting Dell's improper accounting. Imhoff agreed to pay a $25,000 penalty and to pay disgorgement and pre-judgment interest to settle the SEC's charges. The SEC's complaint against Davis, filed in federal district court in Washington, D.C., alleges that he directed the use of "cookie jar" reserves to cover shortfalls in operating results over three years. This fraudulent accounting made it appear that Dell was consistently meeting Wall Street earnings targets through the company's management and operations. The SEC's complaint further alleges that the reserve manipulations allowed Dell to materially misstate its operating expenses as a percentage of revenue - an important financial metric that Dell highlighted to investors. The manipulations also enabled Dell to materially misstate the operating income of its Europe, Middle East and Africa ("EMEA") segment.

The SEC's complaint alleges that Davis directed that Dell maintain cookie jar reserves - which he referred to as "contingencies" - to cover future liabilities. The SEC alleges that an example of this misconduct related to Dell's use of excess tax reserves identified in its Japanese business unit. The complaint alleges that Dell identified an excess tax reserve in Dell Japan in the fourth quarter of FY2003. Rather than releasing the entire excess to its income statement, as required by Generally Accepted Accounting Principles ("GAAP"), Dell transferred the bulk of the excess to a cookie jar reserve account in its corporate division that Davis tracked. Two quarters later, Dell released this excess to offset the income statement impact to Dell from a litigation settlement and otherwise provide a boost to Dell's operating results. In another example, the SEC's complaint alleges that Davis improperly manipulated Dell's bonus and profit sharing accounts by "bleeding down" the amounts of excess accruals over time, rather than recording the entire excess in its income statement when it was first identified as required by GAAP.

In a separate complaint also filed in federal district court in Washington, D.C., the SEC alleges that Imhoff aided and abetted Dell's improper use of "cookie jar" reserves and other reserve manipulations to cover shortfalls in Dell's operating results from FY2002 to FY2004. The SEC's complaint alleges that Imhoff, acting under his supervisors' general direction, planned and issued instructions regarding Dell's build-up and use of cookie jar reserves. In an example of his involvement in Dell's other improper reserve manipulations, the SEC's complaint alleges that Imhoff failed to ensure that Dell increased its reserves, as required by GAAP, after learning that an accrual to cover the costs of closing a Dell facility in Texas was inadequate.

Without admitting or denying the SEC's allegations, Davis consented to the entry of an order that permanently restrains and enjoins him from violation of Section 17(a)(2) and (3) of the Securities Act of 1933 and Section 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rules 13b2-1 and 13b2-2 thereunder, and from aiding and abetting violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 12b-20, 13a-1, and 13a-13. Davis also agreed to pay a penalty of $175,000, disgorgement of $19,080, and prejudgment interest of $9,078. In his settlement offer, Davis also consented to the issuance of an administrative order pursuant to Rule 102(e) of the Commission's Rules of Practice, suspending him from appearing or practicing before the SEC as an accountant, with the right to apply for reinstatement after five years.

Without admitting or denying the SEC's allegations, Imhoff consented to the entry of an order that permanently restrains and enjoins him from violation of Exchange Act Section 13(b)(5) and Rules 13b2-1 and 13b2-2, and from aiding and abetting violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 12b-20, 13a-1, and 13a-13. Imhoff also agreed to pay a penalty of $25,000, disgorgement of $12,852, and prejudgment interest of $6,197. In his settlement offer, Imhoff also consented to the issuance of an administrative order pursuant to Rule 102(e) of the Commission's Rules of Practice, suspending him from appearing or practicing before the SEC as an accountant, with the right to apply for reinstatement after three years.

See Also: SEC Complaints SEC v. Davis and SEC v. Imhoff

http://www.sec.gov/litigation/litreleases/2010/lr21634.htm

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