

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
BROOKS AUTOMATION, INC.,)
)
Defendant.)

JURY TRIAL DEMANDED

Case No. _____

MAGISTRATE JUDGE *Bender*

08 CA 10834 WGY
COMPLAINT

1. Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendant Brooks Automation, Inc. ("Brooks" or "the Company"), alleges the following:

SUMMARY

2. This Commission enforcement action concerns an illegal stock options backdating scheme wherein several option grants were backdated from at least 1999 through 2001 by the former Chairman of the Board and Chief Executive Officer ("CEO") of Brooks, a Chelmsford, Massachusetts based supplier of software and related services to manufacturers of computer chips. The scheme led to the issuance of inaccurate financials through 2005.

3. Under well-settled accounting principles in effect throughout the relevant period, Brooks was required to record an expense in its financial statements for any stock options granted below the current market price ("in-the-money"), while the Company did not need to record an expense for options granted to employees at the current market price ("at-the-money"). In order to provide Brooks' employees and executives, including

himself, with lucrative in-the-money options (which result in an immediate financial benefit to recipients), while avoiding having to inform shareholders of the millions of dollars in compensation expenses thereby incurred and the resulting impact on the Company's financial statements, the former CEO engaged in a scheme to falsify company records to create the false appearance that options granted in-the-money actually had been granted at-the-money on an earlier date.

4. On or about May 11, 2006, Brooks announced that it intended to restate its financial statements contained in filings with the Commission for some or all of the periods between 1999 and 2005, and that those financial statements should not be relied upon. The announcement stated that "[t]he Company believes that it accounted for certain matters concerning stock options incorrectly, and as a result recognized less compensation expense than it should have in periods prior to fiscal 2006."

5. On or about July 31, 2006, Brooks announced that "[d]riven by matters related to past stock option grants, the Company has revised its financial statements for the fiscal years 1996 through 2005 to record cumulative additional non-cash, pre-tax stock-based compensation expense of \$64.5 million." In effect, Brooks restated its results and wrote off more than \$64 million that had been reported as profit during that period.

6. By engaging in the acts alleged in this Complaint, Brooks violated Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] thereunder.

7. For the reasons discussed herein, the Commission seeks all of the relief sought herein.

JURISDICTION AND VENUE

8. The Commission is an agency of the United States of America established by Section 4(a) of the Exchange Act [15 U.S.C. §78d(a)].

9. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§77t(b), 77t(d) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e) and 78aa]. Venue is proper in the District of Massachusetts because Brooks is a Chelmsford, Massachusetts-based company and committed many of the acts and/or omissions discussed herein within the district.

10. The defendant, directly or indirectly, has made use of the means and instrumentalities of interstate commerce, of instruments of transportation or communication in interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, practices and courses of business alleged in this Complaint.

DEFENDANT

11. **Brooks** is a Delaware corporation with its principal place of business in Chelmsford, Massachusetts. Brooks is a supplier of, among other things, software and related services to manufacturers of computer chips. Since 1995, Brooks' common stock has been registered with the Commission pursuant to Sections 12(g) or 12(b) of the Exchange Act, as appropriate, and is traded on the Nasdaq National Market System. At all times relevant to this action, Brooks' fiscal year ended on September 30.

RELEVANT PERSON

12. **Robert J. Therrien**, of Osterville, Massachusetts, served as the President and Chief Executive Officer (“CEO”) of Brooks between at least 1989 and 2004, and as Chairman of the Board (“Chairman”) between at least 1989 and March 2006.

FACTS

Brooks’ Procedures for Option Grants

13. At relevant times, Brooks’ Board of Directors used a unanimous written consent procedure to approve option grants. Thus, Brooks’ primary record of Board authorization to issue options was typically a document captioned “Written Consent in Lieu of Special Meeting of Board of Directors.”

14. Brooks was a Delaware corporation, and Delaware law provided, at relevant times, that such consents were effective when signed. Brooks routinely failed to maintain a record of when written consents were signed. Rather, Brooks’ record was a signed copy faxed from its outside law firm, often received several weeks to months after the putative date of the option award.

GAAP Requirements for Stock-Based Compensation Accounting

15. In its annual reports on Form 10-K filed with the Commission, Brooks falsely represented that it accounted for its stock-based compensation in accordance with Accounting Principles Board Opinion No. 25 (“APB 25”), *Accounting for Stock Issued to Employees*, one of two alternative available methods under generally accepted accounting principles (“GAAP”) to account for stock-based compensation that were in effect throughout the time period discussed in this Complaint.