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F.#2004R00736

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

I N F O R M A T I O N

- against -

Cr. No. 04-329(ILG)  
(T. 18, U.S.C., §§ 371  
and 3551 et seq.)

DAVID RIVARD,

Defendant.

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THE UNITED STATES ATTORNEY CHARGES:

INTRODUCTION

At all times relevant to this Information, unless otherwise indicated:

I. Background

A. Computer Associates

1. Computer Associates International, Inc. ("CA"), was a Delaware corporation with its headquarters and principal place of business located in Islandia, New York. CA was one of the world's leading manufacturers and distributors of computer software for use by businesses. CA's reported revenues for the fiscal year ending March 31, 1999 were \$5.253 billion. CA's reported revenues for the fiscal year ending March 31, 2000 were \$6.776 billion.

2. CA was a publicly-traded corporation, the common stock of which traded on the New York Stock Exchange. CA's

shareholders were located throughout the United States, including in the Eastern District of New York.

3. CA did not sell or transfer title to its products to its customers. Instead, CA licensed its products pursuant to license agreements under which CA's customers agreed to pay a one-time license fee and an annual usage and maintenance fee.

B. Certain Relevant Accounting Principles

4. As a public company, CA was required to comply with the rules and regulations of the United States Securities and Exchange Commission (the "SEC"). The SEC's rules and regulations were designed to protect members of the investing public by, among other things, ensuring that a company's financial information was accurately recorded and disclosed to the investing public.

5. Under the SEC's rules and regulations, CA and its officers were required to (a) make and keep books, records and accounts which, in reasonable detail, fairly and accurately reflected the company's business transactions, including its revenues and expenses; (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that the company's transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles ("GAAP"); and (c) file with the SEC quarterly reports (on Form

10-Q) and annual reports (on Form 10-K) which included financial statements that accurately presented CA's financial condition and the results of its business operations in accordance with GAAP.

6. Under GAAP, four conditions were required to be met in order for revenue associated with a license agreement to be recognized: (a) persuasive evidence of an arrangement was required to have existed; (b) delivery of the licensed products was required to have occurred; (c) the license fee was required to have been fixed or determinable; and (d) the collectibility of the license fee was required to have been probable. When written contracts were used to memorialize a license agreement, the GAAP "persuasive evidence" criterion required the contracts to have been signed by both vendor and customer. Accordingly, under GAAP, in order for CA properly to have recognized revenue from a license agreement in a particular fiscal quarter, the license agreement was required to have been signed by both CA and its customer within that quarter.

C. The Defendant

7. The defendant DAVID RIVARD, a certified public accountant, was employed by CA from 1998 to 2003. From 1998 to 2001, RIVARD served as CA's Vice President of Sales Accounting. From 2001 until 2003, RIVARD served as CA's Vice President of Finance. As head of CA's Sales Accounting department, RIVARD and those he supervised worked with CA's sales and legal departments

as well as a department called the Global Sales Organization to ensure that the revenue generated by license agreements could be recognized by CA for accounting purposes. The revenue from these agreements could not be recognized by CA until Sales Accounting approval was obtained. Accordingly, RIVARD and Sales Accounting personnel reviewed license agreements and recommended changes when necessary to ensure revenue recognition. In most instances, RIVARD or a Sales Accounting manager signed the license agreements on behalf of CA.

D. Consensus Estimates

8. CA regularly issued public predictions at the outset of each fiscal quarter of the revenues it expected to earn during that quarter. Based in part on these predictions, professional stock analysts estimated what they believed would be CA's total revenue during the period and predicted the earnings per share of CA stock. The average of the estimates of the professional analysts was commonly referred to as the "consensus estimate."

9. CA's officers, executives and directors, including the defendant DAVID RIVARD, understood that CA's failure to meet or exceed the consensus estimate for a quarter would likely result in a substantial decrease in the company's stock price. For example, on July 3, 2000, CA issued a press release which reported that the company expected "financial results for the

first quarter ending June 30, 2000 to be less than current Wall Street estimates." In the press release, CA cited as one of the factors contributing to its failure to meet the consensus estimate "the fact that several large contracts that were expected to close in the final days of the quarter have been delayed . . . ." On the date of the press release, which was issued after the market closed, CA's stock price closed at \$51.12 per share. On the next trading day, July 5, 2000, CA's stock price opened at \$29.00 per share, representing a percentage drop of slightly more than 43 percent.

E. The Scheme to Defraud: the "35-Day Month"

10. Prior to and during CA's fiscal year 2000, which ended March 31, 2000, numerous CA officers and executives, including the defendant DAVID RIVARD, engaged in a systemic, company-wide practice of falsely and fraudulently recording and reporting within a fiscal quarter revenues associated with certain license agreements even though those license agreements had not in fact been finalized and signed during that quarter. This practice, which was sometimes referred to within CA as the "35-day month" or the "three-day window," violated GAAP.

11. The practice was referred to as the "35-day month" because it involved artificially extending months, primarily the last month of a fiscal quarter, for accounting purposes beyond the true end of the month. The practice did not,

however, only result in months that had, for accounting purposes, 35 days. Instead, months were often extended even longer. Nonetheless, for the sake of simplicity, the practice is referred to hereinafter as the "35-day month practice."

12. The central goal of the 35-day month practice was to permit CA to report that it had met or exceeded its projected quarterly revenues and earnings when, in truth, CA had not met its projected quarterly revenues and earnings. As a result of the practice, CA reported falsely to investors and regulators during multiple fiscal quarters, including each of the four quarters of CA's fiscal year 2000, that it had met or exceeded its consensus estimates. Indeed, in the last three quarters of fiscal year 2000 alone, CA improperly recognized and falsely reported hundreds of millions of dollars of revenue associated with numerous license agreements that had been finalized after the quarter close. In so doing, CA made misrepresentations and omissions of material fact which were relied upon by members of the investing public.

13. As part of the 35-day month practice, CA sales managers and salespeople were trained, instructed and pressured by high-level CA executives to, among other things, back-date license agreements finalized in the days immediately following the end of a fiscal quarter to make it appear as though the agreements had been finalized before the end of that fiscal

quarter.

14. As a further part of the 35-day month practice, the defendant DAVID RIVARD and other high- and mid-level executives at CA routinely extended CA's fiscal quarters, normally for three business days. This practice, which was often referred to as "keeping the books open," was designed and executed so that CA could falsely record and report revenues associated with back-dated license agreements finalized after the end of fiscal quarters. The period between the true end of CA's fiscal quarter and the date on which CA's books were actually closed was referred to within CA as the "flash period."

15. As a further part of the 35-day month practice, the defendant DAVID RIVARD signed multiple license agreements for CA which he knew, or had reason to know, had been finalized and executed by CA's customers after the fiscal quarter had ended but that bore execution dates that falsely indicated that the agreements had been signed before the end of the fiscal quarter. RIVARD routinely signed these falsely dated agreements and, in some instances, falsely dated his signature to make it appear that these agreements had been finalized in the preceding quarter. In each instance, knowing that agreements had been finalized after a fiscal quarter had ended, RIVARD caused the license revenue from the agreements to be recorded and reported falsely as earned in the earlier fiscal quarter.

16. As a further part of the 35-day month practice, the defendant DAVID RIVARD advised and assisted CA sales personnel in finalizing license agreements during the flash period. At the same time, RIVARD met with high-level CA executives to review and report on the progress of the negotiation of these agreements.

17. Numerous CA officers and executives, including the defendant DAVID RIVARD, concealed the existence of the 35-day month practice from CA's outside auditors. Among other things, CA executives engaged in a practice of "cleaning up" copies of back-dated license agreements before providing copies of the agreements to CA's auditors. This practice included, but was not limited to, removing from license agreements facsimile stamps and other notations which showed the true date on which the agreements were finalized. RIVARD engaged in this practice and directed other CA employees to engage in this practice, which was designed and carried out to prevent CA's auditors, and by extension the investing public, from learning of CA's failure to meet or exceed the consensus estimates for the given quarter.

F. The Investigations

18. In or about the beginning of 2002, the United States Attorney's Office for the Eastern District of New York (the "United States Attorney's Office"), the Federal Bureau of Investigation (the "FBI") and the Northeast Regional Office of

the SEC began investigations into CA's accounting practices, including whether, during the late-1990s and thereafter, CA engaged in improper accounting practices with the intent to overstate its fiscal quarterly revenues to make it appear as though the company had met consensus estimates. Since June 2002, a grand jury sitting in the Eastern District of New York has been considering evidence about CA's accounting practices (these investigations are referred to collectively as the "Government Investigations").

19. In or about February 2002, CA retained a law firm (the "Company's Law Firm") to represent it in connection with the Government Investigations. Through the Company's Law Firm, CA represented to the United States Attorney's Office and the SEC that it was committed to cooperating fully with the Government Investigations. This representation was also made publicly by CA in press releases, SEC filings and other public statements. Additionally, in a press release issued on February 20, 2002, CA denied that it had engaged in any improper accounting practices, declaring: "The reporting of our financial results has always been in accordance with applicable accounting principles."

20. After being retained in February 2002, the Company's Law Firm met with the defendant DAVID RIVARD and other CA executives in order to inquire into their knowledge of the practices that were the subject of the Government Investigations.

During these meetings, RIVARD and others did not disclose, falsely denied and otherwise concealed the existence of the 35-day month practice. Moreover, RIVARD and others concocted and presented to the Company's Law Firm an assortment of false justifications the purpose of which was to counter or explain evidence of the 35-day month practice. RIVARD and others knew, and in fact intended, that the Company's Law Firm would present these false justifications to the United States Attorney's Office, the SEC and the FBI.

21. For example, during a meeting with attorneys from the Company's Law Firm, the defendant DAVID RIVARD falsely denied that the 35-day month practice existed. RIVARD falsely stated that the flash period existed merely to provide sales personnel with a period of time to submit agreements that had been properly finalized in the fiscal quarter that had ended. RIVARD falsely explained that any improper booking of revenues from agreements finalized after the end of fiscal quarters was caused by "human error." RIVARD knew that these explanations were false and intended that the Company's Law Firm would present these false explanations to the United States Attorney's Office, the SEC and the FBI as part of an effort to persuade those entities that accusations about the 35-day month practice were unfounded.

COUNT ONE  
(Securities Fraud Conspiracy)

22. The allegations contained in paragraphs 1 through 21 are realleged and incorporated as if fully set forth in this paragraph.

23. In or about and between June 1998 and December 2000, within the Eastern District of New York and elsewhere, the defendant DAVID RIVARD, together with others, did knowingly and willfully, directly and indirectly, conspire:

(a) to commit fraud in connection with the purchase and sale of common stock issued by CA, in violation of Title 15, United States Code, Sections 78(j) and 78(ff), and Title 17, Code of Federal Regulations, Section 240.10b-5;

(b) to make and cause to be made false and misleading statements of material fact in applications, reports and documents required to be filed under the Securities and Exchange Act of 1934 and the rules and regulations thereunder, in violation of Title 15, United States Code, Section 78ff;

(c) to falsify CA's books, records and accounts, the making and keeping of which was required by Title 15, United States Code, Section 78(b)(2)(A) and Title 17, Code of Federal Regulations, Section 240.13b2-1, in violation of Title 15, United States Code, Sections 78m (b)(5) and 78ff; and

(d) to circumvent CA's internal accounting controls as required by Title 15, United States Code, Section

78m(b)(2)(B), in violation of Title 15, United States Code, Sections 78m (b) (5) and 78ff.

24. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, the defendant DAVID RIVARD, together with others, committed and caused to be committed, among others, the following:

OVERT ACTS

a. On or about December 29, 1998, at CA's headquarters in Islandia, New York, the defendant DAVID RIVARD sent an email to other CA executives informing them that "January 5" would be the "last day of business for December" for CA's third quarter of CA's fiscal year 1999 which ended December 31, 1998.

b. On or about October 5, 1999, at CA's headquarters in Islandia, New York, the defendant DAVID RIVARD signed on behalf of CA an approximately \$176 million license agreement which was back-dated to make it appear as though the agreement had been executed on September 30, 1999, the last day of the second quarter of CA's fiscal year 2000.

c. On or about April 7, 2000, at CA's headquarters in Islandia, New York, the defendant DAVID RIVARD signed on behalf of CA an approximately \$32 million license agreement which was back-dated to make it appear as though RIVARD

had executed it on March 31, 2000, the last day of the fourth quarter of CA's fiscal year 2000.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNT TWO  
(Conspiracy to Obstruct Justice)

25. The allegations contained in paragraphs 1 through 21 are realleged and incorporated as if fully set forth in this paragraph.

26. In or about and between February 2002 and February 10, 2004, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant DAVID RIVARD, together with others, did knowingly, intentionally and corruptly conspire to obstruct, influence and impede official proceedings, to wit: the Government Investigations, in violation of Title 18, United States Code, Section 1512(c)(2).

27. It was a part of the conspiracy that, beginning in or about February 2002, the defendant DAVID RIVARD and other high-level CA executives agreed to deny falsely and otherwise conceal the existence of the 35-day month practice, and to devise false justifications whose purpose was to counter or explain away evidence of the 35-day month practice. The conspirators communicated these false justifications to the Company's Law Firm and others knowing and with the intent that they would, in turn, be presented to the United States Attorney's Office, the SEC and

the FBI. RIVARD and others well knew and believed that these false statements, together with their concealment of material information, would have the effect of obstructing and impeding the Government Investigations.

28. It was further part of the conspiracy that, after February 2002, the defendant DAVID RIVARD met with CA executives and employees and agreed with those individuals to deny the existence of the 35-day month practice and to conceal its existence by presenting various false justifications for conduct that was improper. RIVARD and others well knew and believed that such false statements and concealment of material information would have the effect of obstructing and impeding the Government Investigations.

29. It was a further part of the conspiracy that, on or about August 5, 2002, the defendant DAVID RIVARD, while being interviewed by members of the Company's Law Firm, did not disclose but instead denied and otherwise concealed the existence of the 35-day month practice. RIVARD well knew and believed that his false statements and concealment of material information would have the effect of obstructing and impeding the Government Investigations.

OVERT ACT

30. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere,

on or about August 5, 2002, the defendant DAVID RIVARD met with members of the Company's Law Firm in Islandia, New York.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

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ROSLYNN R. MAUSKOPF  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK