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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION  
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14 SECURITIES AND EXCHANGE COMMISSION,

Case No. \_\_\_\_\_

15 Plaintiff,

COMPLAINT

16 v.

17 MAXIM INTEGRATED PRODUCTS, INC. and  
18 JOHN F. GIFFORD,

19 Defendants.

20 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

21 **SUMMARY OF THE ACTION**

22 1. From at least 2000 through 2005, Maxim Integrated Products, Inc. ("Maxim" or the  
23 "Company"), a Sunnyvale, California semiconductor company, engaged in a scheme to illegally  
24 backdate stock options granted to Maxim employees and directors, concealing millions of dollars in  
25 expenses from investors and significantly overstating the Company's income. Defendant John F.  
26 Gifford, Maxim's former Chief Executive Officer, was aware of instances of backdating, and should  
27 have known that the Company did not properly account for or accurately disclose its resulting stock  
28

1 option compensation expenses.

2 2. Under well-settled accounting principles in effect during the relevant period, Maxim  
3 did not need to record an expense for options granted to employees with an exercise price equal to the  
4 current market price (“at-the-money”), while the Company was required to record an expense in its  
5 financial statements for any options granted with an exercise price below the current market price  
6 (“in-the-money”). In order to provide Maxim’s employees and outside directors with valuable “in-  
7 the-money” options without recording an expense, Maxim routinely backdated stock options to dates  
8 corresponding to historical lows in Maxim’s stock price, and falsified records to make it appear as  
9 though the options were granted “at-the-money.” For ten consecutive quarters, from the second  
10 quarter of fiscal year 2002 to the fourth quarter of fiscal year 2004, Maxim granted options to current  
11 employees with an exercise price equal to the lowest price of the quarter. Maxim then fraudulently  
12 failed to record compensation expenses for those options, thus overstating its income by millions of  
13 dollars and falsely representing in certain filings that it had incurred no expense for option grants.

14 3. Gifford several times authorized the granting of options on purported dates that had  
15 been selected with hindsight, which resulted in the issuance of undisclosed “in-the-money” options to  
16 Maxim employees and directors. Gifford was aware there were accounting implications for granting  
17 “in-the-money” options. He instructed other Maxim executives to record compensation expenses if  
18 they were material and/or consult with Maxim’s outside auditors. Gifford should have known that  
19 the Company was failing to report expenses for these “in-the-money” stock options and was falsely  
20 reporting that it only granted options at fair market value.

21 4. The Commission seeks an order enjoining Maxim and Gifford from future violations  
22 of the securities laws, requiring Gifford to pay disgorgement with prejudgment interest, requiring  
23 Gifford to pay a civil monetary penalty, and providing other appropriate relief.

24 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

25 5. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the  
26 Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and  
27 21(e) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d) and 78u(e)].



1 “at-the-money” when granted if the trading price of Maxim’s common stock on the date of the grant  
2 and the exercise price were the same.

3 12. Stock options were the most important part of Maxim’s compensation mix. Maxim  
4 generally paid its officers and technical employees lower salaries than its peers; it competed against  
5 other companies for employees by offering the potential gains provided by stock options. Maxim’s  
6 ability to recruit and retain the engineers who designed and produced its new products was closely  
7 tied to its stock option program. In addition, Maxim attributed its earnings growth and positive  
8 stockholder returns in part to its option practices. The Company repeatedly emphasized these facts in  
9 communications with its shareholders.

10 13. Maxim granted options to almost all new employees when they were hired. Maxim  
11 also granted employees additional options every year as part of their annual performance review.  
12 Because it granted so many options, Maxim had to ask shareholders to approve increases in the  
13 number of shares available for issuance under its primary stock option plan every year from 1999  
14 through 2005.

15 14. Maxim’s primary stock option plan authorized it to grant both “incentive” stock  
16 options and “non-qualified” stock options. Maxim’s plan defined an incentive stock option as an  
17 option intended to qualify as an incentive stock option within the meaning of certain provisions of the  
18 Internal Revenue Code. Maxim’s plan defined a “non-qualified” option as any option not intended to  
19 qualify as an incentive stock option.

20 **B. Maxim Told The Public It Granted Stock Options At Fair Market Value.**

21 15. From at least 2000 and continuing through June 30, 2004, Maxim’s primary stock  
22 option plan prohibited it from granting incentive stock options with an exercise price less than the  
23 stock’s fair market value on the date of grant. In other words, the plan did not allow incentive stock  
24 options to be granted “in-the-money.”

25 16. During the same time period, Maxim’s primary stock option plan allowed some  
26 flexibility in granting non-qualified stock options with an exercise price less than the stock’s fair  
27 market value on the date of grant, but only subject to certain conditions not applicable here.

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1           17. Under Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to  
2 Employees" ("APB 25") and the accounting rules in effect from 1997 through 2005, issuers were  
3 required to record an expense on their financial statements for the "in-the-money" portion of any  
4 option grant. According to APB 25, that difference must be recorded as a compensation expense to  
5 be recognized over the vesting period of the option. Consequently, granting "in-the-money" options  
6 to employees could have a significant impact on the expenses and income (or loss) reported to the  
7 shareholders of a public company. APB 25 allowed companies, where the key terms of an option  
8 grant were known, to grant employee stock options without recording any compensation expense so  
9 long as the option exercise price was not below the stock's market price on the date of the grant.

10           18. Maxim publicly reported, in its annual reports on Form 10-K for fiscal years 2000  
11 through 2005, that the Company accounted for its employee stock options in accordance with APB  
12 25. Additionally, during the relevant time period, Maxim represented that the Company generally  
13 granted options "at-the-money," not "in-the-money." Hence, in its annual reports for fiscal years  
14 2000 through 2005, Maxim did not report any compensation expenses for stock options.

15           **C. Maxim Backdated Employee And Director Option Grants.**

16           19. Maxim's primary stock option plan provided that it was to be administered by the  
17 Board of Directors or a committee designated by the Board. The Board had the ability to select  
18 employees, directors, and consultants to whom options would be granted, to determine the number of  
19 shares to be covered by each option, and to determine the terms and conditions of any option granted  
20 under the plan.

21           20. Maxim's Board delegated to Gifford the authority to grant stock options to non-officer  
22 employees as well as to outside directors. From at least 1999 and continuing through at least  
23 Maxim's 2004 fiscal year, Gifford approved all option grants made to non-officer employees and  
24 outside directors.

25           21. Maxim repeatedly backdated option grants made to current employees, to newly hired  
26 employees, and to outside directors. These backdated grants reflected historically low prices of  
27 Maxim stock for the weeks prior to the date on which the price actually was selected. For ten  
28 consecutive quarters, from the second quarter of fiscal year 2002 to the fourth quarter of fiscal year

1 2004, Maxim granted options to current employees with an exercise price equal to the lowest price of  
2 the quarter. By backdating the option grants to make it falsely appear that “in-the-money” option  
3 grants had been “at-the-money” when granted, Maxim avoided reporting in its financial statements  
4 compensation expenses for the options.

5 **a. Maxim’s Option Grants To Employees**

6 22. During the relevant time period, Maxim granted options to current employees on a  
7 quarterly basis. Each quarter, Maxim’s managers proposed to Gifford the number of options to be  
8 granted to employees whose annual performance reviews fell within that quarter. Gifford either  
9 approved, or first revised and then approved, the number of proposed options for each employee.  
10 Maxim’s stock administration department accumulated the employee options approved by Gifford  
11 until it learned the grant date for those options.

12 23. Gifford approved the grant date and price for some options awarded to current  
13 employees. The grant date then was communicated to Maxim’s stock administration department so  
14 that the grants could be recorded in Maxim’s books and records.

15 24. A number of grant dates used for options awarded to Maxim’s current employees were  
16 selected with hindsight. This allowed Maxim to select the lowest possible price for the options. No  
17 compensation expenses were recorded for the undisclosed “in-the-money” option grants to current  
18 employees.

19 25. During the relevant time period, Maxim also granted options to new hires on a  
20 quarterly basis. Similar to the current employee grants, Gifford approved the number of options to be  
21 granted to new hires. Maxim’s stock administration department accumulated the options approved by  
22 Gifford until it learned the applicable grant date.

23 26. As with stock options awarded to current employees, grant dates used for options  
24 awarded to new hires were selected with hindsight. Maxim determined the grant dates by  
25 determining a date with a low stock price for the quarter after the date on which the employee was  
26 hired. No compensation expenses were recorded for the undisclosed “in-the-money” grants to new  
27 hires.

1           27.     In connection with certain grants to current employees and new hires, Gifford signed  
2 backdated memoranda (drafted by Maxim's Chief Financial Officer and, at times, other Maxim  
3 employees) indicating that he had selected the grant date on the dates indicated in the memoranda.  
4 One of the purposes of the grant approval memoranda was to serve as an audit trail and make it  
5 appear as though the options had been granted at the market price on the earlier date. Gifford signed  
6 these memoranda and similar documents without making any effort to confirm that they accurately  
7 reflected the actual date on which the selection of the grant date in fact had been made. These  
8 memoranda did not accurately reflect the dates on which decisions were made to grant options.

9           28.     With respect to at least four backdated option grants, Gifford in writing instructed  
10 Maxim's CFO to record compensation expenses. But no compensation expenses were recorded.

11                   **b.     Examples Of Maxim's Backdated Employee Options**

12           29.     Maxim purportedly granted approximately 2.7 million options to employees on June  
13 30, 2003, with an exercise price equal to that day's closing stock price of \$34.10. This was Maxim's  
14 lowest stock price of the quarter. In reality, the grant was not made until on or around August 26,  
15 2003, when the stock was trading at \$43.26. On or around August 22, 2003, Gifford asked Maxim's  
16 CFO: "What is the lowest price we can use for Q1 options?" The CFO responded: "The best price is  
17 the first day of the quarter – June 30, 2003. The price was \$34.10 on that date." Gifford approved  
18 the grant using the June 30th price, but also instructed the CFO to record a compensation expense if it  
19 was material. Although the options were "in-the-money" when granted, Maxim failed to record  
20 compensation expenses for the options.

21           30.     In another example, Maxim purportedly granted 2.4 million options to certain  
22 employees on October 2, 2001, with an exercise price equal to that day's closing stock price of  
23 \$33.40. This was Maxim's lowest stock price of the quarter. In reality, the grant was not made until  
24 on or around December 28, 2001, when the stock was trading at \$54.61. On or around December 28,  
25 Maxim's CFO proposed to Gifford that Maxim use October 2 as the grant date for options awarded to  
26 certain current employees, and November 28 and December 24 for options awarded to certain new  
27 hires (depending on their hire date). Maxim used the dates suggested by its CFO to grant options.

1 Although the options were in-the-money when granted, Maxim failed to record compensation  
2 expenses for the options.

3 31. Additionally, Maxim purportedly granted 3.2 million options to existing employees on  
4 September 30, 2003, with an exercise price equal to that day's closing stock price of \$39.39. This  
5 was Maxim's lowest stock price of the quarter. In reality, the grant was not made until significantly  
6 later in the quarter. Maxim's stock administration department did not learn about the grant date until  
7 on or about November 25, 2003, when Maxim's stock was trading at \$51.47. Gifford later signed a  
8 memorandum (drafted by another Maxim employee) dated September 30, 2003, that stated: "I have  
9 granted options today for all existing employees for this quarter, and for new hires up through this  
10 date – the stock closed at \$39.39." Although the options were "in-the-money" when granted, Maxim  
11 failed to record compensation expenses for the options.

12 32. Maxim purportedly granted options to new employees hired after February 28, 2002  
13 on March 25, 2002, with an exercise price equal to the March 25th closing stock price of \$51.81. In  
14 reality, these grants were not made until sometime in late April 2002, after the quarter had ended. On  
15 or about April 22, Maxim's CFO asked Gifford to sign a grant approval memorandum dated March  
16 25, 2002, to "keep [Maxim's] documentation and records straight." Gifford signed the memorandum,  
17 which stated: "I want you to make sure that any new hire who started at Maxim between March 1,  
18 2002 and today has their stock granted at today's closing price of \$51.81." Maxim's stock  
19 administration department did not learn of the supposed March 25th grant date until on or about April  
20 24, 2002.

21 **c. Maxim's Option Grants To Outside Directors**

22 33. Maxim also backdated certain stock option grants to its outside directors. For  
23 example, Maxim purportedly granted the directors 36,000 options on October 1, 2001, at an exercise  
24 price equal to that day's closing stock price of \$34.06. This grant was not actually made until on or  
25 around December 11, 2001, when Maxim's stock was trading at \$57.90. In or around December  
26 2001, Maxim's CFO proposed to Gifford a range of historical dates for the outside director grants.  
27 On or around December 11, Gifford approved using a grant date of October 1, 2001, but also in  
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