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Private equity firm to acquire SafeNet

Vector to pay $634 million for Harford firm hurt by option woes

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sun reporters
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SafeNet Inc., the Harford County technology company under federal investigation for its stock option grants, said yesterday that it has agreed to be acquired by a San Francisco private equity firm for about $634 million.

Vector Capital will acquire all of SafeNet's outstanding shares for $28.75 per share - a 12 percent premium over the company's average closing share price for the 30 trading days that ended Friday.

Shares of SafeNet closed up 5 cents yesterday at $28.35.

A sale would end the Belcamp company's tenure in the public arena, where its shares have been subject to the ups and downs of the volatile technology sector.

But it was the announcement in May that its options grants were under federal scrutiny that threw the company into turmoil, sending its shares plunging 22 percent in a single day.

The probe sparked an internal investigation that's still under way and forced the ouster of its top two executives. The company's shares also are under threat of de-listing by Nasdaq because of SafeNet's delays in issuing financial reports.

Going private will help the company, continue to build its business, representatives of both sides said yesterday. Safenet makes a range of encryption technologies to protect communications and sensitive data for government and the private sector.

"The challenges of being a public company today can sometimes inhibit growth in companies like SafeNet," said David Fishman, a principal at Vector Capital, in a press release.

"We believe SafeNet will significantly benefit from being a private company, and will be in a better position to help achieve its goal of providing leading security solutions to both its government and commercial customers."

Vector Capital declined further comment. SafeNet is planning to remain headquartered in Belcamp, and there are no immediate plans to cut jobs as a result of the acquisition, said Donna St. Germain, a company spokeswoman.

The company employs 1,100 worldwide, including about 200 at its headquarters.

SafeNet's directors unanimously approved the acquisition and agreed to tender their shares. They are recommending shareholders do the same, according to a company press release.

The deal, financed through equity and debt, hinges on the tendering of 78 percent of SafeNet's shares. If that threshold is reached, the deal is expected to close in the second

quarter.
If SafeNet becomes current in its SEC filings, the company will need only a majority of its shares tendered for the deal to go through, according to the press release.
SafeNet said in September that it would have to revise financial statements from 2000 through March 31, 2006, because of improper accounting for options grants.
The tender price is a 57 percent premium over SafeNet's closing price Oct. 2, when the company began seeking "strategic alternatives."
But analysts said yesterday the price seemed low, and one analyst believes the 78 percent threshold is not likely to be met.
"I will be very surprised if they're able to get 78 percent of the shares to tender," said Todd C. Weller, an analyst for Stifel Nicolaus in Baltimore who does not own shares of SafeNet.
"If you look at comparable valuations [of mergers and acquisitions] and you look at the quality of company and where these things are tending to be valued at, and you categorize SafeNet along those lines, it just feels like this is too cheap."
In the press release, SafeNet said that Vector presented the best deal to the company, which began seeking "strategic alternatives" in October.
"Over the past five months, our board of directors engaged in an extremely thorough review of all strategic options available ... including a broad solicitation process that resulted in significant competitive interest in our company," said Walter W. Straub, SafeNet's chairman and chief executive, in a statement.
"Based on this comprehensive process, the board determined that being acquired by Vector Capital and its partners represents a compelling opportunity that is in the best interest of our shareholders, customers and employees."
The company declined to comment on what other offers it entertained. That information will be disclosed in an SEC document expected to be filed next week, said Ian Dix, SafeNet's chief marketing officer.
SafeNet is one of dozens of publicly traded companies that have come under federal investigation for possible illegal backdating of option grants.
Backdating involves the awarding of options with an effective date other than their grant date to take advantage of previous declines in the stock. The effect is to make the option potentially more valuable. SafetNet's internal probe into the option grants is being undertaken by a special committee, aided by counsel and forensic accountants.
The company announced in September that it would have to revise financial statements from 2000 through March 31, 2006, because the accounting of some options grants used "incorrect measurement dates under applicable accounting rules in effect at the time."
The probe led to the resignations in October of SafeNet Chairman and Chief Executive Officer Anthony A. Caputo, along with Carole D. Argo, who was president, chief operating officer and acting chief financial officer.
It's not rare for a public company to go private in the midst of an investigation, said Abba David Poliakoff, a partner at the law firm of Gordon, Feinblatt, Rothman, Hoffberger & Hollander in Baltimore.
"It happens all the time," said Poliakoff, who specializes in corporate and securities law and worked for the SEC from 1977 to 1980.
The SEC could put up roadblocks, or it could allow the move but continue to hold the company accountable after it is private, he said. The latter is more common in cases that

aren't "the most egregious," he said. It helps if a company has already disclosed the investigation and is cooperating.

Still, if the SEC later determines that a once-public company broke the law, it's not only the government that executives have to worry about. "The real concern would be a plaintiffs' class action suit," Poliakoff said.

It's difficult to speculate how the SEC would handle SafeNet's case, he said. But he noted that the SEC has the option of concluding that a company has taken the right steps to fix its problems and doesn't need anything but a slap on the wrist.

"Just like in every other case, the division of enforcement and the commission will assess the good to be accomplished by bringing an action versus the administrative burden, the cost and the remedies that the company has already instituted," Poliakoff said.

John Heine, a spokesman for the SEC, said he could not comment on specific situations. But in general, going private doesn't get a company off the hook.

"A violation of our rules is a violation of our rules," Heine said. "We take action against individuals and private companies and all sorts of people for various violations of securities laws, so whether a party is a public company or not ... doesn't dispose of the question of whether the SEC could take action."

It's less clear whether a company in SafeNet's situation would still have to restate its earnings.

"It all hinges on the facts and circumstances," Heine said. "We don't have a rule that would dictate one way or another."

Dix, the SafeNet marketing executive, said it is unclear whether SafeNet will have to file restatements.

The company said yesterday that it was canceling its conference call on fourth quarter and 2006 financial results, which was originally scheduled for tomorrow.