

CA Inc. To Add Proposal Bounced By Court To July Proxy

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CA Inc. (CA) said it will add to its July proxy a shareholder proposal that seeks to change the company's bylaws after a Delaware court refused to rule on the company's original decision to reject the proposal.

The Islandia, N.Y., technology company originally denied a request to add the proposal to its upcoming proxy statement, claiming the proposal was a violation of Delaware law. The rejection resulted in a court challenge by the drafter of the resolution, Harvard professor and shareholder rights activist Lucian Bebchuk.

Last week, a Delaware judge refused to rule on the legality of CA's decision to reject the proposal, saying the issue wasn't "ripe" for a decision.

A ruling by the court would have shed light on the currently murky issue of whether shareholders have the power to decide bylaw issues, which are normally governed by directors. A company's bylaws are the official rules that govern its management.

Shareholder proposals are typically advisory, meaning management has the option to adopt or ignore the recommended action. As part of a growing effort by shareholders to gain more control over how public companies are governed, more shareholders are looking to submit proposals that would require companies to adopt their plans if approved by a majority of shareholders.

The CA case has broader legal and governance consequences for corporations. For one, companies may be more reluctant to reject proposals that seek to change the bylaws. Companies can reject shareholder proposals for a number of reasons, including concern that a resolution would interfere with internal affairs.

Before definitively rejecting a proposal, however, corporations tend to seek the blessing of the Securities and Exchange Commission in the form of a "no-action" letter.

Before Bebchuk brought the case to court, CA sought a no-action letter from the SEC to test whether its rejection would pass muster. The SEC refused to issue a letter in this case, citing the pending ruling.

Without a clear answer from the Delaware courts on the legality of this issue, the SEC may not feel comfortable issuing no-action letters for similar requests, said Michael Barry, of Grant & Eisenhofer, the Wilmington, Del., law firm that filed the lawsuit on behalf of Bebchuk.

“They’re hesitant to opine on matters of unsettled state law,” said Barry, adding, “It would put them in an awkward position.”

SEC officials declined to comment on the matter, said spokesman John Heine. Agency staff will make its position known when the issue comes up again, said Heine.

A lack of clarity from the court system, which indicates that Delaware judiciaries feel shareholders could have a right to change a company’s bylaws, prompted CA’s change of heart about the proposal.

“The Delaware Court has ruled that it should not decide the legality of the by-law [issue] until our stockholders have first voted on it,” said Jennifer Hallahan, a spokeswoman for the company.

CA shareholders will be able to vote on the resolution, which seeks to limit the company’s poison-pill provisions, at the shareholders’ annual meeting, which is scheduled for late August.

The company’s stock recently traded at \$20.91, down slightly from Monday’s close of \$21.03.

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