

**IN THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

LUCIAN A BEBCHUK

v

CA, INC.

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COMPLAINI

INTRODUCTION

1. This is an action seeking: (1) a declaratory judgment regarding the validity, under Delaware law, of a proposed bylaw that would establish voting requirements for action by a board of directors regarding a shareholders rights plan (the "Proposed Bylaw"); and (2) an injunction requiring Defendant to withdraw a submission that it made to the Securities and Exchange Commission in which it asserted that the proposed bylaw would be invalid under Delaware law.

2. This case presents a live controversy between the parties that is capable of resolution by this Court. A decision by this Court regarding the legality of the Proposed Bylaw under Delaware law will establish Plaintiff's right to submit the Proposed Bylaw in a proposal (the "Proposal") for consideration by CA's shareholders at the Company's 2006 annual meeting. CA has stated that it intends to exclude Plaintiffs' Proposal because it believes the Proposed Bylaw, if adopted by the shareholders, will violate Delaware law.

3. Plaintiff respectfully requests expedited resolution of this matter. CA has stated its intent to publish its proxy materials for use in connection with the Company's 2006 annual meeting of shareholders by July 14, 2006. If Plaintiff's proposal is wrongfully excluded based on

CA's incorrect argument that somehow the proposed bylaw violates Delaware law, Plaintiff will suffer irreparable injury.

PARTIES

A. Plaintiff

4. Lucian Bebchuk ("Bebchuk") is the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics and Finance, and Director of the Program on Corporate Governance at the Harvard Law School. He is also the owner of 140 shares of CA and has held that stock continuously for more than a year.

B. Defendant

5. Defendant CA, Inc. ("CA" or the "Company") (formerly known as Computer Associates International, Inc.) is incorporated in Delaware with its headquarters in Islandia, NY. It is an information technology management software provider that develops and delivers information technology management software to its customers. In recent news Computer Associates has been the center of a \$2.2 billion accounting fraud that resulted in a guilty plea for securities fraud and obstruction of justice by the Company's ex-CEO, Sanjay Kumar.

FACTUAL ALLEGATIONS

I. Background of the Dispute

6. The dispute at issue here, and described below, is a question solely of state law. Although the resolution of this state law issue collaterally would affect Prof. Bebchuk's federal right to require CA to include a shareholder proposal in the Company's proxy materials circulated for consideration by the shareholders at the Company's 2006 annual meeting, there is no federal question that requires resolution in order that complete relief may be afforded the parties before the Court. A brief explanation of the federal issue is necessary to explain the source and forum of the parties' dispute, and to explain how a resolution by this Court of the state law issue presented will resolve this dispute.

A. **SEC Rule 14a-8**

7. Under federal law, a shareholder of a publicly traded corporation has a right to introduce a proposal that must be included in the company's proxy statement provided the shareholder meets the procedural and eligibility requirements for submitting proposals set forth in rules promulgated by the Securities and Exchange Commission (the "SEC"). Prof. Bebchuk's federal right in this regard is not in dispute here. Prof. Bebchuk is eligible to submit a proposal because he has continuously held at least \$2,000 in market value of CA stock and plans to continue holding that stock through the date of the meeting (17 C.F.R. § 240.14a-8(b)(1)), and has established his eligibility to the company by submitting a written statement from the record holder of his stock verifying his ownership of stock and also submitted a written statement stating that he would continue to hold the stock through the date of the annual meeting. 17 C.F.R. § 240.14a-8(b)(2)

8. If a shareholder satisfies the procedural and eligibility requirements (as Prof. Bebchuk has), a Company may *only* exclude a proposal if it falls within one of thirteen enumerated exceptions contained in SEC Rule 14a-8(i). Among these thirteen exclusions, Rule 14a-8(i)(2) (the only exclusion at issue here), provides that a Company may exclude a proposal if the proposal, if adopted, would cause the Company to violate state law. It states: "Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? . . . (2) Violation of law: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." 17 C.F.R. § 240.14a-8(i)(2).

B. Prof. Bebchuk's Proposal

9. On March 23, 2006, Prof. Bebchuk submitted to CA a proposal (the "Proposal"), which included the Proposed Bylaw and Supporting Statement, for inclusion in the Company's 2006 Proxy Statement. Prof. Bebchuk's Proposal stated as follows:

It is hereby RESOLVED that pursuant to Section 109 of the Delaware General Corporation Law, 8 Del. C. § 109, and Article IX of the Company's By-Laws, the Company's By-Laws are hereby amended by adding a Article XI as follows:

Section 1 Notwithstanding anything in these By-laws to the contrary, the adoption of any stockholder rights plan, rights agreement or any other form of "poison pill" which is designed to or has the effect of making an acquisition of large holdings of the Company's shares of stock more difficult or expensive ("Stockholder Rights Plan") or the amendment of any such Stockholder Rights Plan which has the effect of extending the term of the Stockholder Rights Plan or any rights or options provided thereunder, shall require the affirmative vote of all the members of the Board of Directors, and any Stockholder Rights Plan so adopted or amended and any rights or options provided thereunder shall expire no later than one year following the later of the date of its adoption and the date of its last such amendment.

Section 2. Section 1 of this Article shall not apply to any Stockholder Rights Plan ratified by the stockholders.

Section 3. Notwithstanding anything in these By-laws to the contrary, a decision by the Board of Directors to amend or repeal this Article shall require the affirmative vote of all the members of the Board of Directors

This By-law Amendment shall be effective immediately and automatically as of the date it is approved by the vote of stockholders in accordance with Article IX of the Company's By-laws

10. Prof. Bebchuk's Proposal also contained the following statement in support of the Proposed Bylaw:

SUPPORTING STATEMENT

I believe that poison pills adopted by the Board of Directors without ratification by stockholders can deny stockholders the ability to make their own decisions regarding whether or not to accept a premium acquisition offer for their stock

and, under certain circumstances, could reduce stockholder value. In my view, when one or more directors do not support a decision to adopt or extend a pill, the board should not make such a decision without obtaining shareholder ratification for the pill. Additionally, I believe that it is undesirable for a poison pill not ratified by the stockholders to remain in place indefinitely without periodic determinations by the Board of Directors that maintaining the pill continues to be advisable.

The proposed By-law amendment would not preclude the Board from adopting or maintaining a poison pill not ratified by the stockholders for as long as the Board deems necessary consistent with the exercise of its fiduciary duties, but would simply ensure that the Board not do so without the unanimous vote of the directors and without considering, within one year following the last decision to adopt or extend the pill, whether continuing to maintain the pill is in the best interests of the Company and its stockholders.

I urge you to vote “yes” to support the adoption of this proposal.

C. CA States Its Intent To Exclude Prof. Bebchuk’s Proposal Based On Its Assertion That The Proposed Bylaw Violates Delaware Law.

11 By letter dated April 21, 2006, CA stated its intent to exclude Prof. Bebchuk’s Proposal from the Company’s 2006 proxy based on its assertion that the Proposed Bylaw, if adopted by the CA shareholders, would violate Delaware law. Specifically, in a letter to the SEC’s Division of Corporation Finance (the “Division”), CA asserted that the Proposed Bylaw would be invalid under Delaware law, stated its intent to exclude Prof. Bebchuk’s proposal, and sought to use its assertion that the Proposed Bylaw was illegal to invoke the SEC’s “no-action” review process and to obtain the Division’s assurance that it would not recommend an enforcement action against the Company for excluding Prof. Bebchuk’s proposal.

12 In support of its argument to exclude Prof. Bebchuk’s proposal, CA advanced one argument: Prof. Bebchuk’s proposal, CA argued, could be excluded under SEC Rule 14a-8(i)(2), which allows a company to exclude a proposal if it would cause the company to violate state law.

13. By this action, Prof. Bebchuk seeks a declaratory judgment from this Court to resolve this dispute and to confirm that the Proposed Bylaw would not cause CA to violate

Delaware law if enacted, and an injunction compelling CA to withdraw the Opinion Letter. Prof. Bebchuk also seeks an injunction requiring CA to withdraw its submission to the SEC in which it asserted that the Proposed Bylaw is illegal, and enjoining CA from taking any other action designed to contest the legality of the Proposed Bylaw under Delaware law.

14. Prof. Bebchuk respectfully requests expedited treatment of this case because, in the absence of a ruling from this Court on the validity of the Proposed Bylaw under Delaware Law, CA will continue to rely on and use its incorrect assertion that the Proposed Bylaw is somehow illegal and will wrongfully exclude Prof. Bebchuk's Proposal from the Company's 2006 proxy materials.

II. THE PROPOSED BYLAW IS VALID UNDER DELAWARE LAW

15 Pursuant to Section 109(a) of the DGCL, "[a]fter a corporation has received any payment for any of its stock, the power to adopt, amend or repeal bylaws shall be in the stockholders entitled to vote." 8 DEL C. § 109(a).

16 Under Delaware law, corporate bylaws "may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees." 8 DEL C § 109(b).

17 Prof. Bebchuk's Proposal, if adopted by the CA shareholders, would establish voting requirements for the Company's Board of Directors regarding the adoption or extension of any shareholders' rights plan. Specifically, the Proposed Bylaw would require CA's Board to act by unanimous vote to adopt or extend any "poison pill," and would require such a vote to take place annually.

18 The Proposed Bylaw is not inconsistent with Delaware law. To the contrary, Section 141 of the DGCL specifically authorizes bylaws that establish voting requirements for

Board action: “The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the bylaws shall require a vote of a greater number.” 8 DEL C § 141(b) Therefore, under the DGCL, bylaws may require unanimity of directors to constitute an act of the board.

19. The Proposed Bylaw also is not inconsistent with CA’s certificate of incorporation. There is no provision in CA’s certificate of incorporation that limits shareholders power to enact bylaws relating to voting requirements for the Board or relating to the issuance of stock rights.

COUNT ONE
(Declaratory Judgment)

20. Plaintiff repeats and realleges the paragraphs above as set forth herein

21. Prof. Bebchuk’s Proposed Bylaw is valid under Delaware law

22. A declaratory judgment by this court would cause the company to place the Proposal on its 2006 Proxy Statement; its only basis for excluding the proposal is the mistaken belief that it would cause the company to violate state law. Therefore a declaratory judgment would resolve the present dispute between the parties.

23. A declaratory judgment is appropriate because the case involves the legal right of the Plaintiff to submit a shareholder proposal. Also, CA has an interest in defending the claim as it wishes to exclude the shareholder proposal. Therefore Prof. Bebchuk’s and the Company’s interests are real and adverse

24. Declaratory judgment is further appropriate because the controversy is ripe for judicial determination. Harm to Prof. Bebchuk’s rights is not speculative as CA has clearly and unambiguously stated its intent, in the April 21, 2006 Letter, to exclude the Proposal from its 2006 proxy materials, and has actively advanced incorrect statements of Delaware law in support of its decision to so exclude Prof. Bebchuk’s Proposal.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Lucian A Bebchuk prays for relief and judgment as follows:

- (a) Declaratory Judgment stating that the Proposed Bylaw is legal under Delaware law;
- (b) Injunctive Relief, requiring Defendant CA to withdraw its submission to the SEC's Division of Corporation Finance in which it incorrectly asserted that the Proposed Bylaw violated Delaware law, and enjoining Defendant CA from taking any other action to contest the legality of the Proposed Bylaw under Delaware law;
- (c) Awarding Plaintiff reasonable attorneys fees and costs associated with the prosecution of this action; and
- (d) Whatever further relief this Court deems just and proper

Date: May 11, 2006

GRANT & EISENHOFER P.A.

/s/ Jay W. Eisenhofer

Jay W. Eisenhofer (DE Bar I.D. 2864)
Michael J. Barry (DE Bar I.D. 4368)
P Bradford deLeeuw (DE Bar I.D. 3569)
Chase Manhattan Centre
1201 North Market Street
Wilmington, DE 19801
Tel: 302-622-7000
Fax: 302-622-7100

Attorneys for Plaintiff Lucian A Bebchuk