

CA Board Faces Test At Shareholder Meeting Monday

Dow Jones Newswire

Kaja Whitehouse

September 15, 2006

NEW YORK -(Dow Jones)- Amid ongoing concerns about a declining stock price and continuous revelations of financial-reporting errors, software maker [CA Inc.](#) (CA) faces opposition to members of the board and its independent auditor ahead of its annual shareholder meeting Monday.

Proxy advisory firms Institutional Shareholder Services and Glass Lewis & Co. are recommending shareholders withhold their votes for four CA directors including former U.S. Sen. Alfonse M. D'Amato. Glass Lewis is also recommending shareholders oppose the reappointment of CA's independent auditor, KPMG LLP, due to concerns about CA's recent financial restatements.

The influential vote-recommendation firms are also supporting a shareholder proposal to limit CA's ability to adopt a takeover-thwarting "poison pill."

CA's shareholders will meet to discuss these issues at the company's annual meeting, which will be held at the Roosevelt Hotel in midtown Manhattan. The slew of issues could create a contentious meeting.

"Each member of CA's board has been invaluable to the company in their capacity as a director," according to a CA statement provided by spokeswoman Jennifer Hallahan, adding that the company recommends shareholders re-elect all of CA's directors.

Financial Reporting Woes

The recommendations come at a weak moment for the Islandia, N.Y., company, which has been struggling to overcome a financial-reporting scandal that dates back to 2000. On top of its earlier reporting woes, CA continues to announce the need to make financial restatements. Recently, it disclosed a \$31 million commission-expensing error in its third-quarter fiscal 2006 financial results.

The company in late July also told investors that it fiddled with the timing of stock-option grants issued to employees between 1996 and 2001, making it part of the stock-option "backdating" scandal that has ensnared a growing number of U.S. companies.

Meanwhile, the stock price has been sagging. CA shares, down 13.6% this year, recently traded at \$23.62, down from a 52-week high of \$29.71 a share.

"This is a good opportunity to send the board a message," said Con F. Hitchcock, a lawyer who represents an institutional shareholder that attempted to wage a campaign this year to oust two CA directors via a shareholder resolution. The Securities and Exchange Commission's staff blessed CA's decision to exclude the resolution, submitted by funds of union-owned Amalgamated Bank, from its proxy statement.

Amalgamated, which owns 165,000 CA shares, is withholding its votes from D'Amato and CA Chairman Lewis S. Ranieri.

Proxy Recommendations

ISS is recommending shareholders withhold votes from D'Amato Monday, because he was a member of the company's compensation committee at the time the company issued the questionable stock grants.

Glass Lewis is recommending shareholders withhold votes from D'Amato, Ranieri, Robert E. La Blanc and Walter P. Schuetze. Ranieri, CA's chairman, has been at the helm of the board during a time of significant stock underperformance and management turnover, Glass said in a report to shareholders. As members of CA's audit committee, D'Amato, La Blanc and Schuetze oversaw financial reporting that later had to be restated.

"This ongoing saga of continually changing numbers" raises questions about "the competence for those responsible," Glass Lewis said.

Glass Lewis' reasons for opposing KPMG are similar: "The fact that KPMG served as the company's auditor during the periods in which the company's financials were subject to restates raises serious concerns," the firm said.

KPMG officials declined to comment, said spokesman Tom Fitzgerald.

Shareholders will also be presented with the opportunity to vote on a controversial proposal that seeks to change CA's rules on poison pills. Poison-pill plans are used to avoid hostile takeovers, usually by allowing shareholders to cheaply acquire stock once anyone else acquires more than a set amount. Shareholder proposals on poison pills usually ask that shareholders be allowed to vote on the terms of these plans to ensure they aren't overly protective.

In this case, the proposal would require an unanimous vote by the board to approve or extend the terms of any poison-pill proposal that is not approved by shareholders. It would also require that any poison-pill plan adopted by the board expire in 12 months.

Fight Over Poison Pill

CA asks that shareholders oppose the proposal, mainly because of the requirement for an unanimous vote by directors. The company feels it is "bad corporate governance" that "could serve to harm stockholder interests," said Hallahan, the CA spokeswoman.

Initially, CA barred the proposal from its official voting materials, or proxy, saying it was a violation of Delaware law, because it would require the company to change its bylaws if a majority of shareholders supported it. Usually proposals are advisory, meaning that companies don't have to adopt them.

SEC staff backed CA's decision, but the drafter of the resolution - Harvard professor and shareholder-rights activist Lucian Bebchuk - took the case to court. There, a Delaware judge refused to rule on the legality of CA's rejection of the proposal, saying the issue wasn't "ripe" for a decision. This allowed the proposal to appear on CA's proxy.

A ruling would have shed light on the issue of whether shareholders have the power to force bylaws amendments on certain issues, like poison pills, via resolutions. The failure of the court to rule on this issue means that the legality of the bylaw proposal remains an unsettled question.

Both ISS and Glass Lewis recommend shareholders vote in favor of the proposal, but they acknowledge outstanding concerns about its validity. "ISS recognizes that, if adopted by shareholders, this binding shareholder proposal will be subject to legal challenges," ISS said in its report to shareholders.

Bebchuk declined to comment and pointed to his statements in CA's proxy.

-By Kaja Whitehouse, Dow Jones Newswire; 201-938-2243; kaja.whitehouse@ dowjones.com

(END) Dow Jones Newswires
09-15-06 1415ET
Copyright (c) 2006 Dow Jones & Company, Inc.