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OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

Securities and Exchange Commission,
Office of Chief Counsel,
Division of Corporation Finance,
100 F Street, N.E.,
Washington, DC 20549.

Re: CA, Inc. – Request Under Rule 14a-8 to
Exclude Stockholder Proposal

Ladies and Gentlemen:

CA, Inc., a Delaware corporation (“CA” or the “Company”), proposes to exclude a stockholder proposal (the “Proposal”) from the proxy statement for its upcoming annual meeting of stockholders, to be held on September 9, 2008. The Proposal was submitted by AFSCME Employees Pension Plan (“AFSCME”). For the reasons set forth below, CA believes the Proposal may be excluded under Sections (i)(8), (i)(1), (i)(2) and (i)(3) of Rule 14a-8 because it relates to an election of directors, conflicts with Delaware law and is inconsistent with the Commission’s proxy rules. On behalf of CA, I ask the Staff to please confirm that it will not recommend any enforcement action to the Commission if CA excludes the Proposal from its proxy statement and proxy card for the 2008 annual meeting.

CA currently plans to file its definitive proxy statement for the 2008 annual meeting on or about July 17, 2008, which is more than 80 days after the date I am submitting this letter to the Staff. I have filed six paper copies of this letter, including the Proposal and the supporting opinion of counsel described in part two below, with the Staff and have sent copies of these materials to AFSCME.

The Proposal

If adopted, the Proposal would require CA to amend its by-laws to include a provision that would require the Company to reimburse any stockholder who wages a “short-slate” proxy contest for related expenses if the contest is at least partially successful. Specifically, the proposed by-law would require that any stockholder or group of stockholders be reimbursed by the Company for reasonable expenses incurred in nominating one or more candidates in a contested election of directors at any time in the future, as long as fewer than 50% of the directors to be elected are contested and at least one of the stockholder nominees is elected.¹ Reimbursable expenses would include all those reasonably incurred in connection with the contest, including those relating to printing, mailing, legal services, solicitation, travel, advertising and public relations, up to the amount expended by the Company in connection with the contest.

In its supporting statement, AFSCME notes that the Proposal focuses on successful “short-slate” contests – those involving a competing slate of candidates that, if elected, would not comprise a majority of the board – with success defined as the election of at least one candidate. A successful “long-slate” contest would result in a change of control and the new board would have the authority to approve reimbursement for contest expenses if it decided to do so. Thus, as a practical matter, there is no need for a mandatory reimbursement by-law in those situations, according to AFSCME. Rather, the Proposal seeks to mandate reimbursement when contest proponents do not gain control of the board, so that they can by-pass the board and obtain reimbursement without board approval.

A copy of the Proposal and AFSCME’s supporting statement is attached as Annex A.

It is important to note that the Proposal is not precatory. It does not merely recommend that the CA board provide for reimbursement in short-slate contests. Rather, the Proposal would amend the CA by-laws to require that the reimbursement be provided in all future contests meeting the proposed criteria. The board of directors would have no discretion to review any reimbursement request covered by the Proposal, regardless of the circumstances, nor would the board have the ability to consider the merits of adopting a mandatory reimbursement rule as a matter of corporate policy. If the Proposal is adopted, such a rule will become binding on CA.

¹ The Proposal also requires that the election may not be subject to cumulative voting. CA’s certificate of incorporation does not provide for cumulative voting.

Recent Changes to Section (i)(8) of Rule 14a-8

In 2006 and 2007, the Staff denied several requests by other companies to exclude similar proposals from their proxy statements.² Since that time, however, the Commission has amended Rule 14a-8 to confirm that proposals relating to the election of directors may be excluded from proxy statements. Following a 2006 federal appeals court decision that significantly narrowed the scope of the election exclusion in Section (i)(8),³ the Commission acted to re-confirm its longstanding, much broader interpretation of the exclusion. In a release issued in December 2007,⁴ the Commission stated definitively that the purpose of Section (i)(8) is to permit exclusion of any stockholder proposal that results in a contested election of directors, or that establishes a procedure that would make a contested election more likely in the future. In addition to confirming this broad interpretation of Section (i)(8), the Commission also amended the text of the election exclusion to make its broader scope explicit. As amended, the exclusion in Section (i)(8) now expressly covers not only proposals relating to the election of directors, but also those relating to the nomination of directors and those relating to procedures for the nomination or election of directors.

The Staff's prior decisions on similar proposals, which I cited above, were rendered before the Commission acted in December 2007 to re-affirm its broad interpretation of Section (i)(8) and to expand the scope of the text of that Section. Given the Commission's recent action, as well as the importance of that action as a statement of Commission policy on the treatment of stockholder proposals in this area, CA respectfully asks the Staff to consider its request to exclude the Proposal notwithstanding the prior decisions and, for the reasons set forth below, confirm that the Proposal may be excluded from the proxy statement for the 2008 annual meeting.

The Proposal Relates to a Procedure for the Election of Directors and May Be Excluded Under Section (i)(8)

Section (i)(8) of Rule 14a-8, as recently amended, permits a company to exclude a stockholder proposal from its proxy statement if the proposal "relates to a nomination or an election for membership on the company's board of directors ... or a procedure for such nomination or election." In 1976, when Rule 14a-8 was adopted, the

² Letters to Apache Corporation (February 8, 2007), Citigroup Inc. (March 2, 2006), The Bank of New York Company, Inc. (February 28, 2006) and American Express Company (February 28, 2006).

³ *AFSCME v. AIG*, 462 F3d 121 (2d Cir. 2006).

⁴ Release No. 34-56914 (December 6, 2007).

Commission stated that the principal purpose of Section (i)(8) is to make clear, with respect to corporate elections, that Rule 14a-8 is not the proper means for conducting campaigns or effecting reforms in elections of that nature.⁵ More recently, when it amended Section (i)(8), the Commission re-affirmed this fundamental position:

The express purpose of the election exclusion is to make clear that Rule 14a-8 is not a proper “means” to achieve election contests because “other proxy rules” are applicable to such contests. We are acting today to state clearly that the phrase “relates to an election” in the election exclusion cannot be read so narrowly as to refer only to a proposal that relates to the current election, or a particular election, but rather must be read to refer to a proposal that “relates to an election” in subsequent years as well.⁶

The Commission made clear that its position is based on a concern about stockholders using a company’s proxy statement to contest director elections, not only by seeking to include alternative candidates in the proxy statement but also by seeking to establish a procedure that is likely to result in a contested election in the future. Consequently, as explained in the December 2007 release, the election exclusion, as now amended, specifically applies to stockholder proposals that seek to establish any procedure “that would result in a contested election either in the year in which the proposal is submitted or in any subsequent year.”⁷

The Proposal relates to such a procedure. It would establish a mechanism requiring the Company to fund any future stockholder effort to elect an alternative candidate if the proposed criteria were met. The Proposal is intended to facilitate contested elections by requiring the Company to pay the contestants’ expenses to the extent provided. AFSCME makes clear in its supporting statement that the purpose of the Proposal is to create “a meaningful threat of director replacement.” AFSCME states that the “unavailability of reimbursement for director election campaign expenses for so-called ‘short-slates’ ... contributes to the scarcity of such contests.” It is quite clear, then, that the Proposal is intended to facilitate stockholder efforts to contest director elections. It would do so by creating a procedure for funding those contests when the proposed criteria are met. As such, the Proposal falls squarely within the scope of the

⁵ Release No. 34-12598 (July 7, 1976).

⁶ Release No. 34-56914, at text following note 42.

⁷ Id., at text following note 47.

election exclusion as recently amended because its primary purpose is – and if adopted its principal effect would be – to make election contests more likely.

The Commission's position reflects its fundamental concern that contested elections be subject to and comply with the proxy rules governing contested elections. Those rules require stockholders who wage election contests to provide extensive disclosure about their background, including whether they have been convicted in a prior criminal proceeding, the amount they are spending and by whom the cost will be borne, their interests in the contest and any relationships or understandings they have with other parties concerning the company's securities or transactions with the company. Those rules also require extensive information about the director nominees, including their experience, their involvement in certain legal proceedings, their arrangements with others concerning the election and their dealings with the company.⁸ As the Commission noted, allowing a stockholder to contest an election by including candidates in a company's proxy statement, rather than by soliciting proxies on his or her own, would enable the stockholder to avoid providing the critical disclosures required of those who solicit proxies in opposition to a company. As emphasized in the December 2007 release, the Commission is particularly concerned about stockholder proposals that make contested elections more likely because it wants to ensure that those who contest elections comply with the disclosure requirements applicable to such contests. Consequently, any stockholder proposal that makes inclusion of an alternative candidate in a company's proxy statement more likely would raise serious disclosure concerns.

One might observe that the Proposal is cleverly designed not to require inclusion of stockholder nominations in the Company's proxy statement. Rather, the Proposal purports to focus on funding the cost of short-slate proxy contests waged by stockholders – that is, on facilitating the inclusion of a stockholder nomination in proxy materials prepared by the stockholder rather than in the Company's proxy statement. In reality, however, the Proposal would force CA to choose between including any future candidate proposed by a stockholder in the Company's proxy statement, or potentially having to fund the cost of the stockholder including the candidate in its own proxy materials and conducting its own solicitation – a cost that is likely to be substantially greater than the cost of simply including the candidate in the Company's proxy statement. In reality, therefore, the Proposal would create a substantial financial incentive for CA to include – or rather, would impose a substantial financial cost on the Company if it did not include – future stockholder nominations in its proxy statement. Section (i)(8) is intended to prevent results of this kind. The election exclusion is intended to ensure that a stockholder cannot force a company to include a director nomination in its proxy statement, and neither should a stockholder be permitted to coerce, or establish a

⁸ See Rules 14a-3(a) and 14a-12(c) and Items 4(b), 5(b) and 7 of Schedule 14A.

financial incentive for, a company to do so by establishing a procedure that makes exclusion of stockholder candidates more costly.

The Proposal would create a procedure for funding the efforts of stockholders to nominate and elect directors. It is intended to make contested elections more likely, and it would make it costly for the Company *not* to include stockholder nominations for those elections in the Company's proxy statements. Thus, the Proposal could make it more likely that any future election contests will be waged through the Company's proxy statements, which is precisely what Section (i)(8) is intended to prevent.

The Proposal Is Improper Under and, If Implemented, Could Violate State Law

Section (i)(1) of Rule 14a-8 permits a company to exclude a stockholder proposal from the proxy statement if the proposal "is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." In addition, Section (i)(2) permits exclusion of a proposal that, if implemented, would cause a company to violate any state law to which it is subject. Based on the supporting opinion of Richards, Layton & Finger, P.A. special Delaware counsel to the company ("RLF"), which opinion is attached as Annex B, the Proposal, if adopted, would cause the Company to violate the Delaware General Corporation Law ("DGCL") as well as the certificate of incorporation by depriving the CA board of its statutory authority to manage the use of the Company's funds with regard to contested elections. Consequently, CA should be permitted to exclude the Proposal from the proxy statement for the 2008 annual meeting under Sections (i)(1) and (i)(2).

As RLF notes in the supporting opinion, the Delaware courts have permitted Delaware corporations to use corporate funds to pay proxy solicitation expenses of stockholders when the contest involves clear disagreements between competing slates of directors over concrete policy issues, but not when the contest involves personal disagreements or disputes that are not shared by the stockholders generally. By mandating reimbursement in all successful short-slate contests, regardless of the reasons why the contests are waged, the Proposal would disregard the distinction at law between permissible and impermissible reimbursement. While stockholders are free to nominate and vote for directors for any reason, including self-serving reasons, they are not entitled under Delaware law to use corporate funds to pay their proxy solicitation expenses if their motivation is personal or self-serving. By mandating reimbursement in all successful short-slate contests, the Proposal would compel the Company to disregard

the legal distinction between contests that promote personal interests and those that promote broader corporate purposes.⁹

In addition, the Proposal would remove the board of directors from the decision whether to provide reimbursement in successful short-slate contests, making it automatic in all such cases regardless of the board's view. As a result, according to the supporting opinion, the Proposal effectively vests in the stockholders, rather than the board, the ability to manage the corporate assets in this context. This in turn conflicts with Section 141(a) of the DGCL, which mandates that the business and affairs of a Delaware corporation be managed by or under the direction of the board of directors, not by the stockholders. The opinion notes that this principle is particularly important when it comes to the expenditure of corporate funds.

RLF also notes that CA's certificate of incorporation expressly provides that "[t]he management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors," which is consistent with Section 141(a) of the DGCL. This provision evidences an intent to require that placing restrictions on the board's substantive power to manage the Company be effected through an amendment to the certificate of incorporation, which in turn requires the prior approval of the both the board and the stockholders. Thus, the apparent intent of the certificate of incorporation is to require that the board relinquish its statutorily granted power to manage the Company only with its prior consent. Because the by-law contemplated in the Proposal would be adopted solely by the stockholders, however, it would remove the board's statutory power with regard to reimbursement of election expenses without board consent. The proposing opinion concludes that, while Delaware courts will generally seek to interpret a by-law in a manner that is consistent with the certificate of incorporation, where a conflict is unavoidable – as it would appear to be here – the by-law must yield and would likely be declared void by a Delaware court.

RLF notes that the Staff has previously accepted the view that under Delaware law the stockholders cannot, by a requested amendment of the by-laws, lawfully require the board of directors to expend corporate funds. In a 1993 no-action letter, the Staff permitted a company to omit a stockholder proposal providing for expense reimbursement under Section (i)(1), based on an opinion of RLF that effecting

⁹ The supporting opinion notes that management have fiduciary duties to the stockholders and, when they nominate candidates, owe stockholders a duty to apprise them of all information necessary to cast an intelligent vote. Stockholders, in contrast, are not fiduciaries and generally do not owe such a duty to each other. Consequently, stockholders are not entitled by right to use corporate funds to pay the cost of the proxy contests they choose to wage. Rather, before reimbursement may be provided for any particular contest, the board of directors must, in the exercise of their fiduciary duties, determine that reimbursement is appropriate under the relevant facts and circumstances.

such a by-law without any concurring action by the board was inconsistent with DGCL Section 141(a) unless otherwise provided in the certificate of incorporation.¹⁰ In the present case, CA's certificate of incorporation expressly follows Section 141(a) and does not permit the stockholders unilaterally to restrict the statutory power of the board in this area.

The supporting opinion notes that, while there is no Delaware court case directly on point, there is a significant body of law supporting the conclusions summarized above. Both the case law and the foregoing conclusions are discussed in detail in the supporting opinion. In light of the opinion, there is a serious question under Delaware law as to whether the Company could lawfully implement the Proposal, at least in all cases as mandated by the Proposal, and whether the Proposal improperly divests the CA board of its lawful power to manage the Company's business and affairs in this area. Accordingly, the Company should be permitted to exclude the Proposal from the proxy statement for the 2008 annual meeting under Sections (i)(1) and (i)(2) of Rule 14a-8.

The Proposal Would Conflict with the Proxy Rules

Section (i)(3) of Rule 14a-8 permits a company to exclude a stockholder proposal from its proxy statement if the proposal is "contrary to any of the Commission's proxy rules." The Proposal, if adopted, would conflict with Rule 14a-7, which requires stockholders to bear the cost of mailing their own proxy solicitation materials. In essence, if any stockholders notify a company of their intention to solicit proxies for an election contest, the company either must provide them with a list of names and addresses to enable them to mail their solicitation materials to other stockholders on their own, or must itself mail the materials on their behalf. If the company conducts the mailing itself, the stockholder must reimburse the company for its reasonable expenses incurred in doing so.

Rule 14a-7, in other words, provides that stockholders who wish to solicit proxies must do so at their own expense, either by doing so directly or by reimbursing the company for doing so on their behalf. The Proposal, in contrast, would shift the cost of the proxy solicitation effort in a successful short-slate contest to the Company, which is the opposite of what Rule 14a-7 contemplates. If adopted, the Proposal would override the cost-allocation procedure established by Rule 14a-7 and replace it with a fundamentally contrary mechanism. Rule 14a-7 ensures that a single stockholder that wishes to wage a proxy contest must do so at his or her own expense, and not at the

¹⁰ Letter to Pennzoil Co. (February 24, 1993). The proposed by-law at issue in that letter would have created an advisory committee of stockholders to review the board's activities and would have provided for the payment of fees and expenses to the committee members without board approval.

