

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

CERTIFICATION OF QUESTIONS OF LAW  
Arising from Rule 14a-8 Proposal by Shareholder of CA, Inc.

This 27<sup>th</sup> day of June, 2008, the Commission having found that:

(1) The nature and stage of this matter are:

a. On March 13, 2008, the AFSCME Employees Pension Plan (“AFSCME”) submitted a shareholder proposal to CA, Inc. (“CA”) for inclusion in CA’s proxy materials for CA’s annual meeting of shareholders scheduled to be held on September 9, 2008. The proposal, which is set forth below, seeks to amend CA’s bylaws to require the company to reimburse the reasonable expenses incurred by a stockholder or group of stockholders in running a short slate of director nominees for election, provided that at least one nominee on the short slate was elected to the board of directors (the “AFSCME Proposal”).

b. CA asserts that the AFSCME Proposal may be excluded from its 2008 proxy materials in reliance on the following bases for exclusion provided by Exchange Act Rule 14a-8 (17 C.F.R. §240.14a-8):

- Rule 14a-8(i)(1) on the ground that the proposal is an improper subject for shareholder action under Delaware law;
- Rule 14a-8(i)(2) on the ground that the proposal, if adopted, would cause CA to violate Delaware law;
- Rule 14a-8(i)(3) on the ground that the proposal conflicts with Exchange Act Rule 14a-7; and
- Rule 14a-8(i)(8) on the ground that the proposal relates to a procedure for the election of directors.

c. On April 18, 2008, CA’s counsel requested a no-action letter from the Division of Corporation Finance (the “Division”) concurring in CA’s position and confirming that the staff would not recommend enforcement action if CA omitted the AFSCME Proposal from its 2008 proxy materials.

d. CA’s no-action request was accompanied by an opinion from the Delaware law firm of Richards, Layton & Finger P.A. stating that, “in our opinion the Proposal is not a proper subject for stockholder action and, if implemented by the Company, would violate the General Corporation Law.” A copy of this opinion is included in Attachment A.

e. On May 21, 2008, AFSCME submitted a response to CA's no-action request. This response was accompanied by an opinion from the Delaware law firm of Grant & Eisenhofer P.A. stating that it is "Our Opinion" that "the Proposed Bylaw is valid under Delaware law" and that "Delaware law recognizes stockholders' ability to enact bylaws such as the one contained in the Proposal." A copy of this opinion is included in Attachment B.

f. On June 3, 2008, CA submitted a reply to AFSCME's response.

g. The Division does not concur in CA's view that CA may exclude the proposal from its proxy materials in reliance on Rule 14a-8(i)(3) or Rule 14a-8(i)(8).

h. The Division, faced with two conflicting opinions on Delaware law from Delaware law firms, does not resolve disputed questions of Delaware law. If there is no way to obtain any such resolution, the Division intends to inform CA that it has not satisfied its burden of demonstrating that it may exclude the AFSCME Proposal under Rule 14a-8(i)(1) or Rule 14a-8(i)(2). Therefore, resolution of the state law issues discussed below will determine whether the Division will ultimately concur in CA's view that it may exclude the AFSCME Proposal from its proxy materials in reliance on Rule 14a-8(i)(1) or Rule 14a-8(i)(2).

i. At the Division's request, the Commission has determined to make a certification to this Court in order to secure its determination of significant questions of Delaware corporation law, and thereby assist the Division in applying Rule 14a-8 to CA's no-action request and to similar requests in the future.

(2) The following facts are undisputed:

(a) CA is incorporated in Delaware.

(b) The bylaw amendment set forth in the AFSCME Proposal reads as follows:

"RESOLVED, that pursuant to section 109 of the Delaware General Corporation Law and Article IX of the bylaws of CA, Inc., stockholders of CA hereby amend the bylaws to add the following Section 14 to Article II:

'The board of directors shall cause the corporation to reimburse a stockholder or group of stockholders (together, the "Nominator") for reasonable expenses ("Expenses") incurred in connection with nominating one or more candidates in a contested election of directors, including, without limitation, printing, mailing, legal, solicitation, travel, advertising and public relations expenses, so long as

(a) the election of fewer than 50% of the directors to be elected is contested in the election, (b) one or more candidates nominated by the Nominator are elected to the corporation's board of directors, (c) stockholders are not permitted to cumulate their votes for directors, and (d) the election occurred, and the Expenses were incurred, after this bylaw's adoption. The amount paid to a Nominator under this bylaw in respect of a contested election shall not exceed the amount expended by the corporation in connection with such election.”

(c) CA's 2008 annual meeting of shareholders is scheduled to be held on September 9, 2008. CA intends to file its definitive proxy materials on or about July 17, 2008.

(3) The questions of law set forth below should be certified to the Supreme Court of the State of Delaware for the following reasons:

(a) The Division has received two conflicting opinions on Delaware law submitted by Delaware law firms. Accordingly, the proposed bylaw appears to raise unsettled questions of Delaware law and to relate to the construction or application of the Delaware General Corporation Law which has not, but should be, settled by the Court.

(b) The bases on which CA claims to be entitled to exclude the AFSCME Proposal depend on the proposition that the proposed bylaw is contrary to Delaware law. A prompt resolution by this Court of the questions set forth below will effectively determine whether AFSCME has the right to require CA to include the AFSCME Proposal in its 2008 proxy materials. If the unsettled questions of state law are not resolved before CA begins printing its proxy materials, the Division will inform CA that the Division is unable to concur in CA's view that CA may exclude the AFSCME Proposal from its proxy materials for CA's 2008 annual meeting of shareholders because CA will not have met its burden under Rule 14a-8(g) of demonstrating that CA is entitled to exclude the proposal under Rule 14a-8.

(c) While the Division determines in the first instance the application of Rule 14a-8 in any particular case, where that Rule by its terms makes state law controlling, issues of such state law must be resolved in order to make a definitive determination of the application of Rule 14a-8. Such a resolution can be made most authoritatively by the highest appellate court of the state in question. With respect to CA's no-action request, the law of Delaware will control the question of whether the AFSCME Proposal is a proper subject for shareholders under the Delaware law or would, if adopted, cause CA to violate Delaware law.

(d) While no other no-action requests under Rule 14a-8 regarding the inclusion of bylaw amendment proposals similar to the AFSCME Proposal are currently outstanding in the Division, no-action requests regarding substantially similar proposals

have been submitted in the past. In at least one instance, the Division determined that the company was required to include the proposal in its proxy materials because the Division had received conflicting opinions from Delaware counsel on Delaware law, and the Division was unable to conclude that the company had met its burden under Rule 14a-8(g) of demonstrating that it was entitled to exclude the proposal under Rule 14a-8. The extent to which the Division can expect to receive future requests to exclude proposals similar to the AFSCME Proposal will necessarily be affected by the outcome of proceedings before this Court on the questions of law certified below.

(4) The important and urgent reasons for an immediate determination by the Supreme Court of the question certified are:

(a) The resolution of these questions of Delaware law will determine whether the Division will concur in CA's view that CA may exclude the AFSCME Proposal from its 2008 proxy materials for its 2008 annual meeting of shareholders. If there is no such resolution, then the Division will deny CA's request for no-action relief to exclude the proposal from its proxy materials.

(b) As noted in paragraph (2)(c) above, CA intends to file its proxy materials on or about July 17, 2008 and most likely will begin printing such materials before this date. If a determination of the questions certified to the Delaware Supreme Court is to be brought to bear meaningfully, that determination must be obtained reasonably in advance of July 17, 2008.

(5) If certification is accepted, it is recommended that CA be appellant for purposes of the caption on any filings in the Supreme Court of Delaware and that AFSCME be appellee for purposes of the caption on any filings in the Supreme Court of Delaware with respect to the questions certified.

NOW, THEREFORE, IT IS ORDERED that the following questions of law are certified to the Supreme Court of the State of Delaware for disposition in accordance with Rule 41 of the Supreme Court:

(I) Is the AFSCME Proposal a proper subject for action by shareholders as a matter of Delaware law?

(II) Would the AFSCME Proposal, if adopted, cause CA to violate any Delaware law to which it is subject?

Dated: June 27, 2008

By the Commission.

Florence E. Harmon  
Acting Secretary

Attachments

- A. No-action request from CA's counsel to the Division, dated April 18, 2008 (including opinion from Richards, Layton & Finger P.A.)
- B. Response by AFSCME to the Division, dated May 21, 2008 (including opinion from Grant & Eisenhofer P.A.)
- C. Reply by CA's counsel to the Division, dated June 3, 2008

List of counsels

For:

**CA**

David Harms  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, NY 10004-2498

Richards, Layton & Finger P.A.  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801

For:

**AFSCME**

Charles Jurgonis  
Plan Secretary  
AFSCME Employees Pension Fund  
1625 L Street, N.W.  
Washington, DC 20036-5687

Grant & Eisenhofer P.A.  
Chase Manhattan Centre  
1201 North Market Street  
Wilmington, DE 19801