

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-958-3588
WWW.SULLCROM.COM

*125 Broad Street
New York, NY 10004-2498*

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.
FRANKFURT • LONDON • PARIS
BEIJING • HONG KONG • TOKYO
MELBOURNE • SYDNEY

September 18, 2008

By Facsimile (718-613-2446)

The Honorable I. Leo Glasser,
United States District Judge,
United States District Court for the
Eastern District of New York,
225 Cadman Plaza East,
Brooklyn, New York 11201.

Re: United States v. Computer Associates International, Inc.,
04 Cr. 837 (E.D.N.Y.) (ILG); SEC v. Computer Associates
International, Inc., 04 Civ. 4088 (E.D.N.Y.) (ILG)

Dear Judge Glasser:

On behalf of Computer Associates International, Inc., now known as CA, Inc. ("CA"), I write in response to the September 17, 2008 letter sent to the Court by Gary Lutin, an investment banker who is not a shareholder of CA. Mr. Lutin requests that the Court compel CA to disclose to him the sealed reports of CA's Independent Examiner ("IE"). For the reasons set forth below, Mr. Lutin's request should be denied.

Background

On September 22, 2004, this Court approved a Deferred Prosecution Agreement ("DPA") that CA entered into with the United States Attorney's Office ("USAO"). (Docket #5.) Under the terms of the DPA, CA agreed to retain an Independent Examiner ("IE") to "conduct a comprehensive review [and] make recommendations to [CA's] Board of Directors for review and implementation, after consultation with the [USAO], regarding best practices" in six areas identified in the DPA. (Docket #5, ¶ 19.)

On March 16, 2005, this Court appointed Lee S. Richards III as CA's IE. The Court's Order appointing Mr. Richards provides:

CA may publicly disclose information contained in the [IE's]
reports to the degree that the reports contain material,

nonpublic information that CA is obligated to disclose. *CA shall not publicly disclose information contained in the [IE's] reports for any other purpose without prior approval by the Court, after briefing by all interested parties as to the need and propriety of disclosing such report(s), in whole or in part.*

(Docket #8, ¶ 10 (emphasis added).)

On March 31, 2005, this Court signed a Protective Order that reflected the sensitive nature of the information that would be provided by CA to the IE during the course of the IE's review. The Order provides:

All information obtained by the [IE] and his agents, counsel, accountants and other experts shall be used solely in furtherance of fulfilling the duties of the [IE] as set forth in the March 16 Order and shall not be disclosed to or made accessible to any person, corporation, partnership, firm, agency, association or any other entity other than this Court and, to the extent deemed necessary by the [IE] to fulfill his duties under the March 16 Order, representatives of (i) the [USAO], (ii) the [SEC] and/or (iii) CA.

(Docket #10, ¶ 1.)

Unequivocally, all parties—CA, the USAO, the SEC and the IE—agreed that the information provided by CA to the IE would not be publicly disclosed. For example, none of the IE's reports was publicly filed. Moreover, in a May 23, 2007 letter CA's counsel wrote to the Court following the IE's *in camera* submission to the Court of the IE's Final Report, CA requested that the IE's Final Report "remain under seal":

On behalf of [CA], and as discussed during yesterday's teleconference, CA respectfully requests that the [IE's] Final Report remain under seal, in accordance with paragraph 10 of the Court's March 16, 2005 Order of Appointment of Independent Examiner. The [USAO] and the [IE] support CA's request. *The parties did not intend that the [IE's] Final Report (or any of the interim reports) be made available to the public.*

Discussion

CA respectfully requests that the Court deny Mr. Lutin's improper request, for three reasons:

First, Mr. Lutin does not have standing to move in this Court to compel CA to disclose the IE's reports. He is obviously not a party to the USAO's criminal action against CA or the SEC's civil action against CA, both of which are closed. (Indeed, Mr. Lutin is not a shareholder of CA or in any way affiliated with CA, but instead is purporting to act on behalf of an individual who claims to be a CA shareholder.) Under the express terms of the Court's March 16, 2005 Order, only "parties" may be heard on the question of whether CA may publicly disclose information contained in the IE's reports. (Docket #8, ¶ 10.) As stated in the May 23, 2007 letter from CA's counsel, all parties agree that the information provided by CA to the IE would not be publicly disclosed and would remain under seal.

Second, according to Mr. Lutin, he seeks to obtain the IE's reports so that he can evaluate how each CA director "conducted his or her responsibilities to establish corporate integrity and otherwise comply with the provisions of the [DPA]." But, there is already substantial information that is publicly available concerning CA's compliance with the DPA. From 2005 through 2007, CA's annual proxy filings, annual reports on SEC Form 10-K, and quarterly reports on SEC Form 10-Q described, in detail, the numerous steps CA had taken to comply with the DPA. Moreover, on May 15, 2007, the USAO filed a declaration stating that "CA has complied with the terms of the [DPA]." (Docket #19, ¶ 5.) Following this Court's review of the IE's Final Report, by Order dated May 21, 2007, the Court dismissed the Information filed against CA with prejudice. (Docket #20.) Thus, given the publicly available information concerning CA's compliance with the DPA, there is no need for Mr. Lutin to have access to the IE's reports.

Third, CA believes that the purpose of this Court's March 31, 2005 Protective Order was to ensure candid communications between CA and the IE concerning matters of a highly confidential and proprietary nature to CA, including CA's ongoing business practices. The public disclosure of information contained in the IE's reports is contrary to this purpose and might, in future prosecutions against other corporations, lead to less candid discussions between those corporations and their independent examiners. Moreover, the disclosure of CA's confidential business information would pose significant commercial and competitive risks to CA.

Accordingly, CA respectfully requests that the Court deny Mr. Lutin's request to compel CA to disclose the IE's reports.

Respectfully,



Robert J. Giuffra, Jr.

The Honorable I. Leo Glasser

-4-

cc: Jason A. Jones, Esq.
(United States Attorney's Office for the Eastern District of New York)

Alexander M. Vasilescu, Esq.
(United States Securities and Exchange Commission)

Lee S. Richards III, Esq.
(Richards Kibbe & Orbe LLP)

Gary R. Brown, Esq.
(CA, Inc.)

Mr. Gary Lutin
(Lutin & Company)