

# Fund seeks D'Amato, Ranieri ouster from CA board

By JEREMY HARRELL

ISLANDIA – The Securities and Exchange Commission will soon decide on a proposal allowing a CA Inc. shareholder vote to jettison two prominent members of the company's Board of Directors.

Last week, Lawrence M. Egan, CA's director of corporate governance, asked the SEC to block a proposal made by labor-union-owned Amalgamated Bank to remove Alfonse D'Amato, a former U.S. senator, and Lewis Ranieri, the board chairman, from CA's Board of Directors. The bank's management contends that D'Amato and Ranieri are holdovers from CA's scandal-plagued era, which just last week swallowed up Sanjay Kumar, the former chairman and chief executive who pleaded guilty to overseeing a \$2.2 billion accounting fraud.

"We're targeting them not as individuals, per se, but because they're the remaining board members from the accounting scandal," said Julie Gozan, Amalgamated's director of corporate governance. She added that CA has cleaned itself up, replacing nearly all of its top management, but still the changes have not come "fast enough."

Amalgamated Bank's LongView family of funds owns more than 200,000 shares of CA stock (NYSE: CA). The bank has asked CA to include a proposal in the company's proxy allowing shareholders to remove D'Amato and Ranieri at the company's next annual meeting, scheduled for August. Con Hitchcock, Amalgamated's outside

counsel, said the bank's fund is relying on the laws of Delaware, where CA is incorporated.

"Delaware law gives shareholders the clear right to remove directors, even without cause," Hitchcock said.

In his letter to the SEC, however, Egan said federal authority should trump state law. He asked the SEC to bless CA's omission of the proposal from the proxy because the request relates "directly to an election for membership on the company's Board of Directors."

The one-year terms of D'Amato and Ranieri expire in August, and both men are expected to be nominated again to the board, making the removal request an election matter, according to Egan's letter. The company's letter argues that SEC rules permit the omission.

Amalgamated Bank's proxy proposal notes that CA bylaws don't allow shareholders to call special meetings. The annual meeting would be the only forum for a vote on removing the directors, according to Hitchcock.

Alon Kapen, a partner and securities lawyer with Farrell Fritz in Uniondale, said the SEC is frequently called on to mediate disputes such as this. As shareholders are taking greater roles in corporate governance, they frequently attempt to include proposals in company proxies, while companies routinely ask the SEC to block the requests, and the SEC does.

"For activist shareholders, any attempt by a company to exclude them from the proxy is anti-democratic," said Kapen, who last year successfully helped a client thwart a similar shareholder action. "(But) there's got

be some kind of order. Otherwise, there would be a never-ending stream of shareholder requests."

Egan said that CA would issue its proxy by July 14, about a month before the annual meeting. The SEC would render a decision before then, most likely in June, Hitchcock said, adding that Amalgamated is preparing a formal response to CA's letter.

Both Ranieri and D'Amato served on the CA board in 2001, when the company's accounting irregularities – including the now infamous "35-day months" – first came to light. In 2004, CA entered in a deferred prosecution agreement with the SEC and Justice Department and established a \$225 million restitution fund for shareholders.

In a statement, CA praised both Ranieri and D'Amato, calling them "strong examples of how board members should serve shareholders."

Ranieri launched the board's investigation of accounting practices, a move aided by D'Amato that ended up leading to the executive house-cleaning at CA, according to the statement. Ranieri also played a crucial role in negotiating the deferred prosecution agreement and he played an important leadership position while the company was temporarily without a CEO, according to the statement.

"CA, without question, has two outstanding Board members in Lewis Ranieri and former U.S. Sen. Alfonse D'Amato," the company said in the statement.

Two years ago, Amalgamated Bank submitted a proposal forcing CA to return executives' performance-based compensation to shareholders.