

# PROXY Governance, INC.

Contact: Alesandra Monaco

## CA INC (NYSE : CA)

**Annual Meeting****Record Date:** 06/28/2007 **Meeting Date:** 08/22/2007**Classification:** Russell 3000, S&P 500**Fiscal Year End:** 03/31/2007**Market Capitalization:** \$13.7B**Solicitor:** Innisfree M&A Incorporated**Shareholder Proposal Deadline:** 03/15/2008

- Investor Relations
- Proxy Statement
- SEC Filing 10k
- Company Description

## Meeting Agenda

Proposals	Recommendations		
	Management	PROXY Governance	
<b>MGT 1A</b> Elect: RAYMOND J. BROMARK	FOR	FOR	<b>Analysis</b>
<b>MGT 1B</b> Elect: ALFONSE M. D AMATO	FOR	AGAINST	<b>Analysis</b>
<b>MGT 1C</b> Elect: GARY J. FERNANDES	FOR	FOR	<b>Analysis</b>
<b>MGT 1D</b> Elect: ROBERT E. LA BLANC	FOR	FOR	<b>Analysis</b>
<b>MGT 1E</b> Elect: CHRISTOPHER B. LOFGREN	FOR	FOR	<b>Analysis</b>
<b>MGT 1F</b> Elect: JAY W. LORSCH	FOR	FOR	<b>Analysis</b>
<b>MGT 1G</b> Elect: WILLIAM E. MCCRACKEN	FOR	FOR	<b>Analysis</b>
<b>MGT 1H</b> Elect: LEWIS S. RANIERI	FOR	FOR	<b>Analysis</b>
<b>MGT 1I</b> Elect: WALTER P. SCHUETZE	FOR	FOR	<b>Analysis</b>
<b>MGT 1J</b> Elect: JOHN A. SWAINSON	FOR	FOR	<b>Analysis</b>
<b>MGT 1K</b> Elect: LAURA S. UNGER	FOR	FOR	<b>Analysis</b>
<b>MGT 1L</b> Elect: RON ZAMBONINI	FOR	FOR	<b>Analysis</b>
<b>MGT 2</b> Approve Poison Pill	FOR	AGAINST	<b>Analysis</b>
<b>MGT 3</b> Ratify Appointment of Auditors - KPMG LLP	FOR	FOR	<b>Analysis</b>
<b>MGT 4</b> Approve 2007 Incentive Plan	FOR	FOR	<b>Analysis</b>
<b>SH 5</b> Independent Director Approval of CEO Compensation	AGAINST	AGAINST	<b>Analysis</b>

*MGT = Management, SH=Shareholder, SHB=Shareholder— binding proposal*

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## Comparative Performance Analysis

PROXY Governance's Comparative Performance Analysis contains calculations and graphs that reflect a company's historical performance and

that of its industry peers (listed below) based on certain key financial metrics generally over a five-year period.

Comparative Performance Analysis

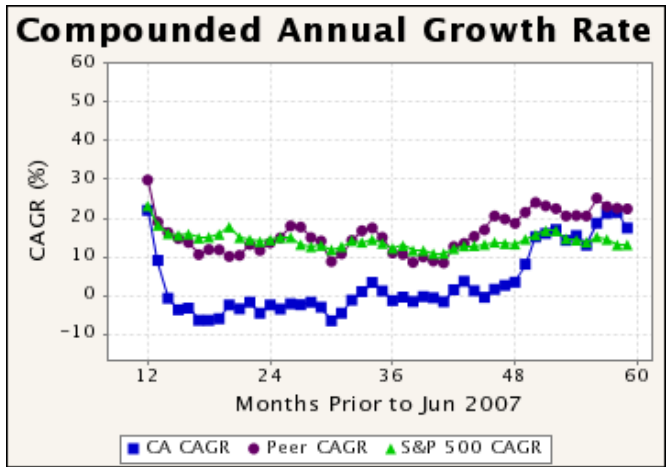
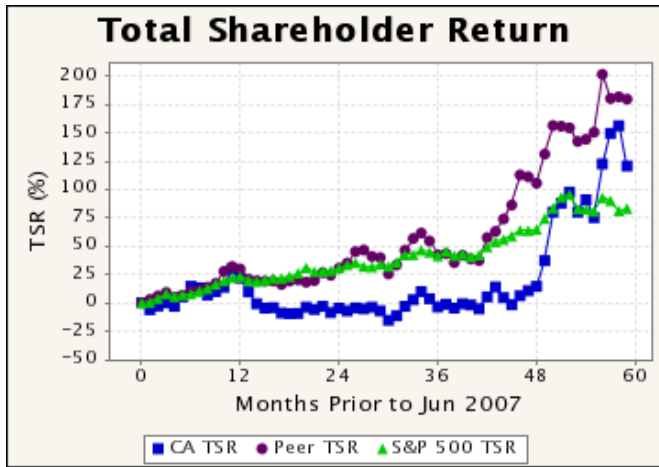
Peer Companies

For the Comparative Performance Analysis, generally up to 10 peer companies are selected primarily based on industry, but also considering market capitalization.

Peer Companies			
BMC SOFTWARE INC	CHECK POINT SOFTWARE TECHN	MACROVISION CORP	MCAFFEE INC
MICROS SYSTEMS INC	NOVELL INC	PROGRESS SOFTWARE CORP	RED HAT INC
SYBASE INC	SYMANTEC CORP		

Comparative Performance Analysis

Comparative Return to Shareholders



Source: FAME North American Pricing [NAP]

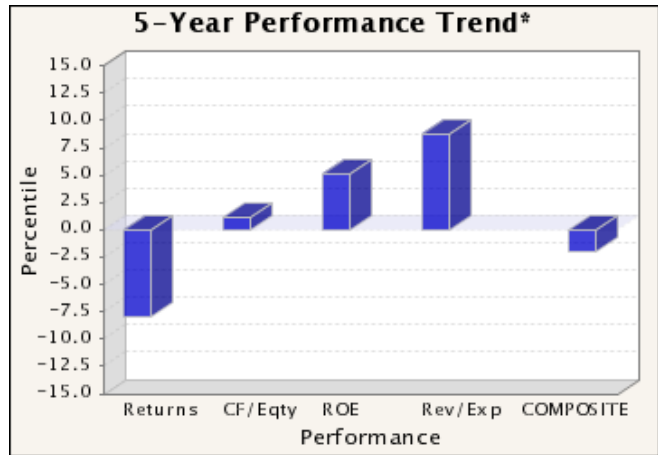
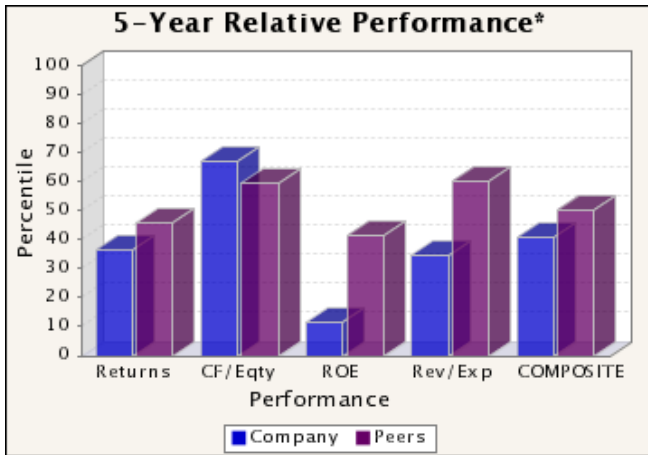
The graphs above depict total shareholder return and compounded annual growth rate at specific points in time over the past five years based on average monthly stock prices. The graphs should be read from left (present time) to right (60 months before present time). The graphs allow the user to determine either the company's total shareholder return or compounded annual growth rate to date based on an investment made at a specific point in time over the last five years. Assumes payment, but not reinvestment, of dividends.

Comparative Performance Analysis

Composite Performance Summary

Composite Performance:

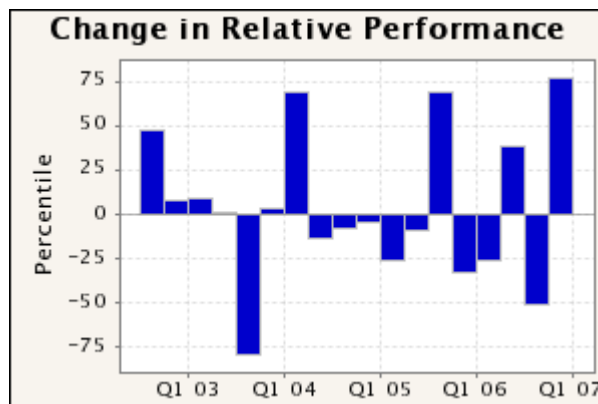
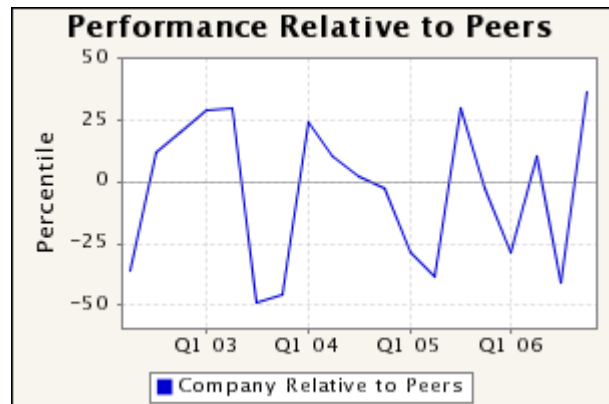
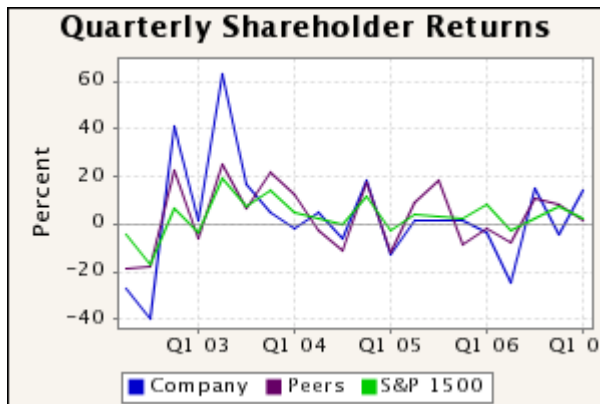
	Percentile relative to S&P 1500		Percentile Pts.
	Company	Peers	Trend
<b>Composite:</b>	41	51	↓ -2
Quarterly Shareholder Returns:	37	46	↓ -8
Cash Flow from Operations/Equity:	67	59	↑ 1
Return on Equity:	11	41	↑ 5
Revenue/Expenses:	35	60	↑ 9



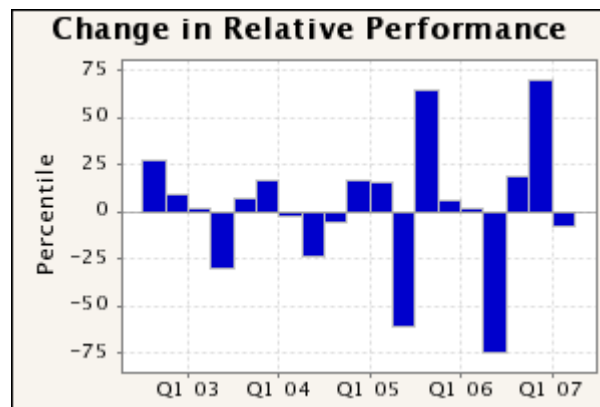
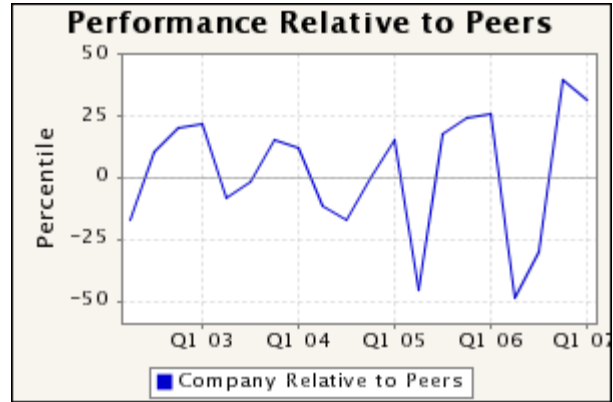
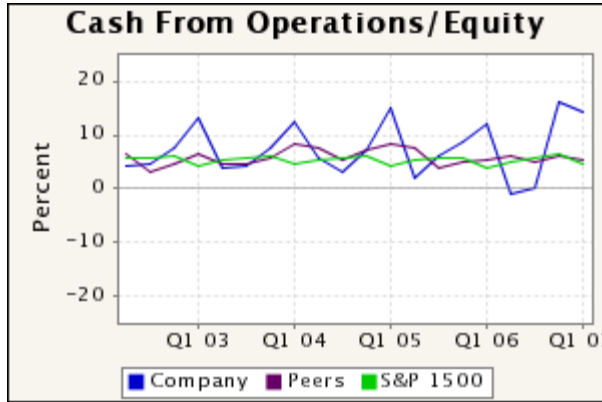
\*Based on five-year data when available

Comparative Performance Analysis

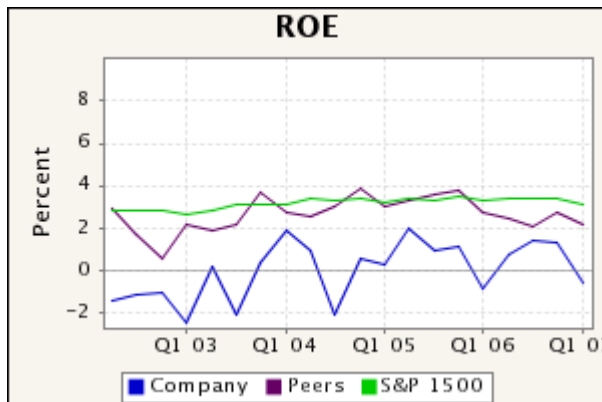
Performance Summary

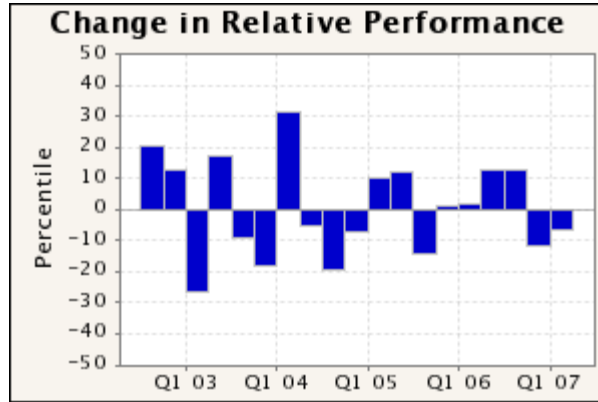


Source: Stock Price — North American Pricing [NAP]

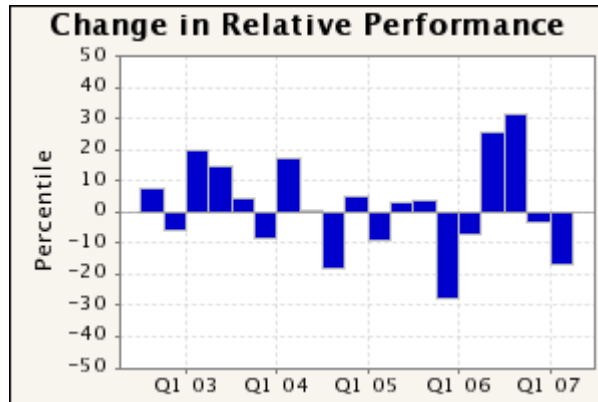
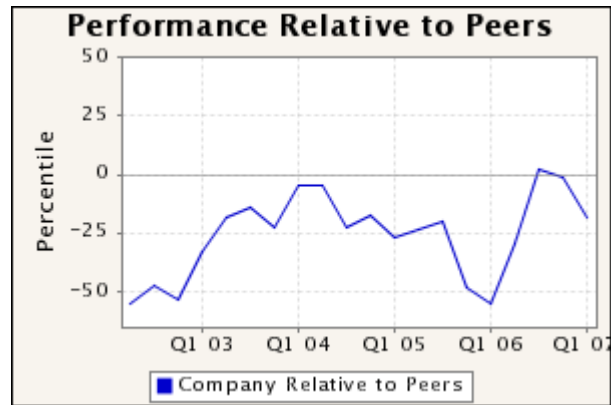
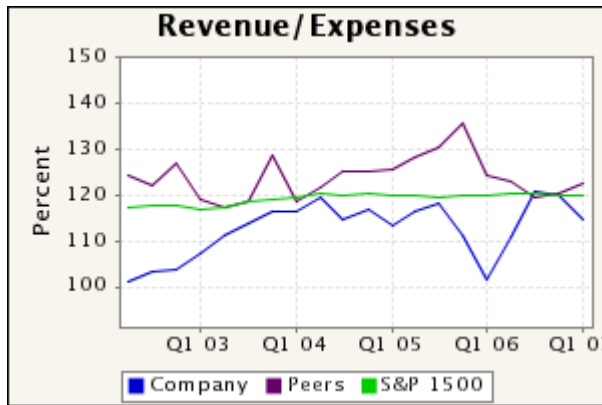


Source: Cash Flow/Equity — Compustat





Source: ROE — Compustat



Source: Revenues/Expenses — Compustat

## Governance Analysis

Governance Analysis

## Executive Compensation

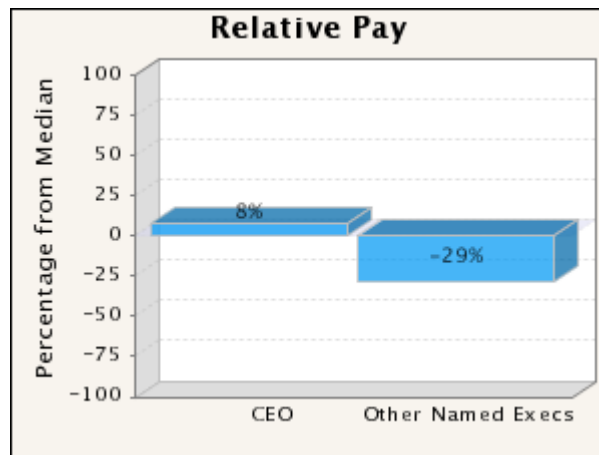
PROXY Governance evaluates a company's executive compensation over the last three years, as available, and compares that to the median compensation paid by its peers over the same time frame. For our compensation model, generally 20 peer companies are selected based on

similarity of market capitalization and broad economic sector using the GICS. Only U.S. and certain U.S. reporting companies that are incorporated offshore are included in this peer group.

The graph that follows shows:

- The average three-year CEO compensation paid by the company expressed as a percentage from median peer compensation.
- The average three-year compensation paid to the company's other named executives (excluding the CEO) as a percentage from median peer compensation.

Domestic Peer Companies			
AGILENT TECHNOLOGIES INC	AKAMAI TECHNOLOGIES INC	ANALOG DEVICES	AUTODESK INC
BROADCOM CORP -CL A	COGNIZANT TECH SOLUTIONS	COMPUTER SCIENCES CORP	ELECTRONIC ARTS INC
ELECTRONIC DATA SYSTEMS CORP	FIDELITY NATIONAL INFO SVCS	FISERV INC	INTUIT INC
JUNIPER NETWORKS INC	MASTERCARD INC	MEMC ELECTRONIC MATERIALS INC	NVIDIA CORP
PAYCHEX INC	SYMANTEC CORP	VERISIGN INC	WESTERN UNION CO



Executive Compensation									
	Salary	Bonus	Stock Awards	Option Awards	Cash Incentive	Pension Deferred Compensation	All Other	1-yr Pay <sup>2</sup>	Avg. Pay <sup>2</sup>
<b>John A. Swainson</b> President and Chief Executive Officer	\$1,000,000	\$0	\$4,312,774	\$3,659,715	\$1,393,750	\$0	\$250,263	\$9,051,232	\$10,411,156
<b>Russell M. Artzt</b> Executive Vice President, Products	\$750,000	\$0	\$2,255,657	\$1,829,858	\$780,500	\$0	\$47,250	\$4,529,912	\$4,324,412
<b>Michael Christenson</b> Executive Vice President and Chief Operating Officer	\$618,750	\$0	\$2,096,480	\$1,829,858	\$724,750	\$0	\$28,093	\$3,890,554	\$2,160,046
<b>Nancy Cooper</b> Executive Vice President and Chief Financial Officer	\$314,394	\$250,000	\$2,265,497	\$1,176,290	\$557,500	\$0	\$548,938	\$3,413,497	\$3,413,497
<b>Robert Davis</b> Former Chief Financial Officer	\$173,011	\$0	\$436,506	\$0	\$0	\$0	\$654,340	\$936,478	\$936,478
<b>Robert Cirabisi</b> Interim Chief Financial Officer, Senior Vice President and Corporate Controller	\$337,500	\$25,000	\$814,555	\$318,066	\$256,875	\$0	\$22,250	\$1,163,330	\$1,163,330
<b>Kenneth Handal</b> Executive Vice President, Global Risk & Compliance, and Corporate Secretary	\$500,000	\$0	\$1,725,106	\$1,463,883	\$669,000	\$0	\$80,400	\$3,144,559	\$3,144,559

<sup>1</sup>Options valued using binomial formula.

<sup>2</sup>Average pay is based on three-years of pay data, when available.

Source: Salary.com (www.executive.salary.com)  
As disclosed for fiscal year end 2007.

## Board Profile

Name	Nominee	Term Ends	Not Ind.	Position	Audit	Comp. Nom.	Age	Tenure	Other Board Seats	<75% Att.	No stock	Prev. yr. withhold votes	Total Compensation
Raymond J. Bromark	<input checked="" type="checkbox"/>	2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Financial Expert	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	61	0	--	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	--
Alfonse M. D'Amato	<input checked="" type="checkbox"/>	2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	69	8	--	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	25.9%
Gary J. Fernandes	<input checked="" type="checkbox"/>	2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	63	4	2	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	7.0%
Robert E. La Blanc	<input checked="" type="checkbox"/>	2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	73	5	2	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	6.5%
Christopher B. Lofgren	<input checked="" type="checkbox"/>	2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	48	2	--	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	6.9%
Jay W. Lorsch	<input checked="" type="checkbox"/>	2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Chair	74	5	--	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	7.1%
William E. McCracken	<input checked="" type="checkbox"/>	2008	<input checked="" type="checkbox"/>	Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	64	2	1	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	6.9%
Lewis S. Ranieri	<input checked="" type="checkbox"/>	2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Chair	<input checked="" type="checkbox"/>	60	6	3	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	8.6%
Walter P. Schuetze	<input checked="" type="checkbox"/>	2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Chair, Financial Expert	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	74	5	--	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	8.2%
John A. Swainson	<input checked="" type="checkbox"/>	2008	<input checked="" type="checkbox"/>	CEO, President	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	53	3	1	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	2.0%
Laura S. Unger	<input checked="" type="checkbox"/>	2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	46	3	1	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	6.9%
Ron Zambonini	<input checked="" type="checkbox"/>	2008	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	60	2	2	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	6.9%

Independence	
Board	91.7%
Audit	100.0%
Compensation	100.0%
Nominating/Governance	100.0%

PROXY Governance believes that the Self-Regulatory Organizations' (SROs) standards of independence are satisfactory and does not support the use of an additional overlay of independence standards, which may vary among advisory services, institutional investors, and commentators. PROXY Governance believes that if the SROs standards are perceived to be inappropriate, interested parties should reopen the debate with the SROs or the SEC to have those standards adjusted.

### Governance Analysis

## Stock Ownership/Voting Structure

Type of stock	Outstanding shares	Vote(s) per share
Common	514,830,010	1

Director & Officer Ownership	Significant Shareholders
0.9%	Walter H. Haefner 24.4%
	Hotchkis and Wiley Capital Management, LLC 13.1%
	Private Capital Management, L.P. 12.5%
	NWQ Investment Company, LLC 10.1%
	Pzena Investment Management, LLC 6.3%
	Legg Mason Capital Management, Inc. and LMM LLC 5.1%

### Governance Analysis

## State Law/Charter/Bylaw Provisions

State Law Statutory Provisions	Charter/Bylaws Provisions
State of incorporation Delaware	Classified board <input checked="" type="checkbox"/>

Business combination	<input checked="" type="checkbox"/>
Control share acquisition	<input checked="" type="checkbox"/>
Fair price provision	<input checked="" type="checkbox"/>
Constituency provision	<input checked="" type="checkbox"/>
Poison pill endorsement	<input checked="" type="checkbox"/>

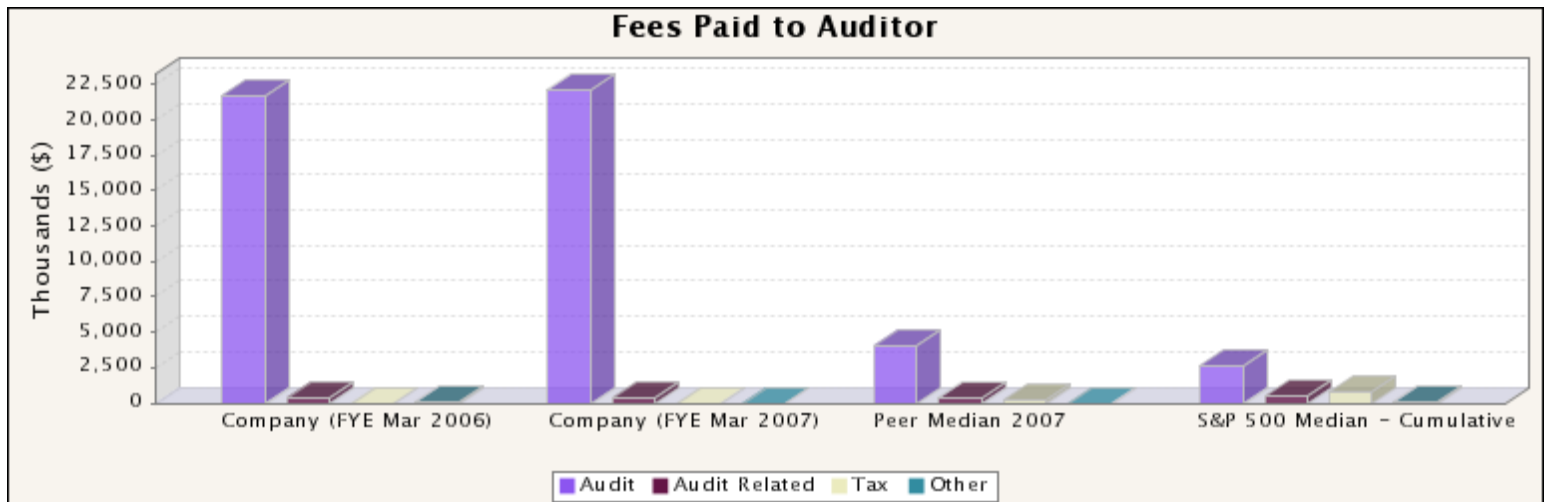
Cumulative voting	<input type="checkbox"/>
Dual class/unequal voting rights	<input type="checkbox"/>
Blank check preferred stock	<input checked="" type="checkbox"/>
Poison pill	<input checked="" type="checkbox"/>
Directors may be removed only for cause	<input type="checkbox"/>
Only directors may fill board vacancies	<input type="checkbox"/>
Only directors can change board size	<input checked="" type="checkbox"/>
Supermajority vote to remove directors	<input type="checkbox"/>
Prohibit shareholders to call special meetings	<input checked="" type="checkbox"/>
Prohibit action by written consent	<input type="checkbox"/>
Fair price provision	<input type="checkbox"/>
Supermajority vote for mergers/business transactions	<input type="checkbox"/>
Supermajority to amend charter/bylaw provisions	<input type="checkbox"/>
Constituency provision	<input type="checkbox"/>

**Note:**

Effective Feb. 3, 2007, the board amended its bylaws to implement a majority voting standard, which provides that a director nominee will be elected only if the number of votes cast "for" exceeds the number of votes "against" his or her election. If a director does not receive a majority of the votes cast at an annual meeting, the board will have 90 days to accept or reject the individual's irrevocable resignation that all incumbent directors are required to submit before the annual meeting.

Governance Analysis

**Auditor Profile**



Peer group includes companies listed under *Executive Compensation*.

KPMG LLP has served as the company's independent auditors since 2000.

Audit Fees					
	Audit fees	Audit Related fees	Tax fees	Other fees	Total fees paid
CA INC	\$22,136,000	\$395,000	\$0	\$0	\$22,531,000

As disclosed for fiscal year end 2007.

Governance Analysis

**Vote Results of Last Annual Meeting**

Proposals	% FOR Votes <sup>1</sup>	For Votes	Against Votes	Abstentions	Broker Non-Votes
MGT Elect directors <sup>2</sup>	74.1% - 98.0%				



MGT	Ratify Appointment of Auditors - KPMG LLP	92.1%	480,469,637	41,402,771	655,054	0
SH	Allow Shareholder Approval of Poison Pill	48.5%	232,769,875	247,025,791	2,554,501	40,177,295

<sup>1</sup> As a % of votes cast for and against; may not reflect passage of proposal. <sup>2</sup> Low — High director votes.

**Note:** See the Board Profile for individual director votes.

## Proposal Analysis

### Management

#### 1 | Elect Nominees

#### PROXY Governance Vote Recommendation: SPLIT

##### Proposal:

To elect the following 12 nominees to the board for a one-year term: R. Bromark, A. D'Amato, G. Fernandes, R. La Blanc, C. Lofgren, J. Lorsch, W. McCracken, L. Ranieri, W. Schuetze, J. Swainson, L. Unger, and R. Zambonini.

##### Analysis:

- Board size: 12
- New directors since last year: 1
- Independent directors: 11
- Non-Independent directors: 1

Non-Independent directors: CEO/President J. Swainson

**Withhold Vote:** At last year's annual meeting, shareholders cast a relatively high percentage of withhold votes for former N.Y. Senator A. D'Amato (25.9%). When directors receive a high percentage of withhold votes in the preceding year, we believe that the proxy statement should address that subject, since the company presumably knows what issue or issues led to the withhold vote, and should discuss what, if any, action was taken on that issue. D'Amato became a director in 1999 (at this point, he is the only holdover director from that era). He currently serves on the Corporate Governance Committee, and has served on the Audit and Compliance Committee since 2000. Shareholders appear to have been voicing displeasure after court filings disclosed that D'Amato, while serving on the CA board in 2000, played an important role in brokering a deal for former CEO Sanjay Kumar to buy the New York Islanders hockey team. Such a deal was possible only because the CA board had, just a few days earlier, eased restrictions on the sale or transfer of Kumar's stock, which allowed him to use the stock as collateral for a \$51 million loan used to fund the acquisition. Only a few days after Kumar secured the loan, the company announced that it would miss financial projections, which resulted in a 43% decline in the company's stock and erased \$13 billion of the company's market value.

The entire history surrounding the ensuing "35-day month" scandal is tawdry, and it has led to derivative actions and shareholder litigation that have continued to the present. The report of the company's Special Litigation Committee, issued in April 2007, effectively says that the then-current directors, which included D'Amato, were asleep at the switch ("The CA Board, at various points in time, too often accepted the explanations and assurances of CA management and its advisors without applying a high degree of skepticism or fully understanding the details of what was being done. Such skepticism and careful probing of management and advisors might have led the directors to take further action in situations where, although action was not required to satisfy their fiduciary duties under Delaware law, it nonetheless might have benefited the Company and saved it from further harm.") We recognize that the company has taken pains to portray D'Amato as having been part of the solution to its problems and not part of the problem. However, notwithstanding that the Special Litigation Committee was of the opinion that D'Amato should not be held legally liable to the company, that does not mean, particularly in view of the understated but still devastatingly critical language of the committee's report, that shareholders should vote to continue his presence on the board. We believe that the company, which has spent the last several years striving to put its past behind it, would be better served if the sole remaining director from that era departed from the board. We therefore recommend that shareholders withhold votes for D'Amato.

**Recent Developments:** In 2002, the U.S. Attorney's office and the SEC began an investigation into the company's past accounting practices that centered on the company's recognition of revenue for periods prior to October 2000, and resulting misstatements of financial information in filings for that period and afterward. The company restated its financial results for fiscal years 2000 and 2001. The investigation eventually led to the resignations of several executives and the criminal convictions of former CEO Kumar, former CFO Ira Zar, former head of Worldwide Sales Stephen Richards, former General Counsel Steven Woghin and several others. Pursuant to an April 2007 settlement agreement with the government, Kumar was ordered to pay restitution of nearly \$800 million.

The Special Litigation Committee (noted above) determined in April 2007 to pursue additional claims against former Chairman/CEO Charles Wang and several other former executives, but not against any current executives or directors of the company. While the report was critical of the board's unquestioning acceptance of management, it stated that directors had satisfied their fiduciary duties to shareholders. However, dissident shareholder Sam Wyly has criticized the report as a "whitewash," noting that one member of the committee (L. Unger) formerly

worked for director D'Amato while he was in the U.S. Senate. It should be noted, however, that Ms. Unger was only on the committee in its very early stages and for a very short time.

As the scandal had begun to subside, shareholders were hit with further revelations in 2006 that the company would again restate earnings, this time for the period from 2002 to 2006, primarily to account for additional stock compensation expense of \$342 million related to improper reporting of stock option grant dates for the years 1996 to 2002. In addition, management identified several material weaknesses in its internal control over financial reporting, most significantly that monitoring of stock option grants had not been effective to ensure that their valuations were correctly reported. The company states that it has implemented procedures to ensure that option grants are properly communicated to employees, recorded and reported. We note that although almost no directors or executive management remain from that era, the lone remaining director, D'Amato, served on the Stock Option and Compensation Committee during fiscal years 2000 and 2001.

**Performance:** According to PROXY *Governance's* performance analysis, the company has **underperformed** peers over the past five years; the company ranks at the 41st percentile relative to the S&P 1500 compared to peers at the 51st percentile, and is **declining** relative to peers at a rate of 2 percentile points per year. The company significantly trails peers with regard to return on equity (at the 11th percentile relative to the S&P 1500, compared to peers at the 41st percentile) and revenue/expense ratio (at the 35th percentile compared to peers at the 60th percentile).

On June 20, 2007 the company announced it had repurchased approximately 16.9 million common shares, or 3% of its outstanding common shares, at a cost of approximately \$435 million. The repurchase was done under an accelerated share repurchase agreement and was funded with existing cash. Most recently, the company has reported sharply higher net profits. For the quarter ended June 30, earnings of \$129 million (on \$1 billion in revenue) were more than 3.5x the previous year's quarter.

**Compensation:** The average three-year compensation paid to CEO Swainson is 8% above the median paid to CEOs at peer companies and the average three-year compensation paid to the other named executives is 29% below the median paid to executives at peer companies. We note that the company's average compensation numbers are slightly inflated due to the company's double reporting of 2006 LTIP awards in the form of restricted stock grants. The grants, which were valued at approximately \$1.0 million for CEO Swainson and from \$300,000 to \$590,000 for the other named executives, were disclosed in both the company's 2006 and 2007 proxy statements.

The company's executive compensation appears **reasonable** given its financial performance relative to peers.

#### **Rationale/Conclusion:**

PROXY *Governance* generally believes that the current board is properly discharging its oversight role and adequately policing itself. However, we recommend withholding votes from D'Amato given his role in brokering a major business deal involving Kumar in 2000, which appears to be a clear conflict of interest, and the fact that he is the sole remaining director that served on the board during the period when the company's initial accounting scandal was occurring.

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#### **Management**

### **2 Approve Poison Pill**

#### **PROXY Governance Vote Recommendation: AGAINST**

#### **Proposal:**

Approve a Stockholder Protection Rights Agreement adopted by the board on Oct. 16, 2006.

#### **Management View:**

The plan serves as an anti-takeover device and encourages third parties who may be interested in acquiring the company to negotiate directly with the board. While the pill will not prevent a takeover of the company, it will, unless redeemed by the board, cause substantial dilution to a person or group that acquires 20% or more of the company's common stock.

The board believes that the amended rights agreement is in the best interests of shareholders because it would provide time and bargaining power for the board in the face of coercive, opportunistic or hostile takeover offers. The agreement would give the board time to evaluate an offer, consider alternative offers, and to negotiate the best price for shareholders if a change of control transaction is to occur.

In crafting the new the rights agreement, the company consulted proxy advisors, published guidelines, and market literature and modified the rights agreement to include progressive, shareholder-friendly provisions, including a qualified offer provision which would, in the face of a takeover bid, permit a shareholder vote on whether to redeem the rights.

If the agreement is not ratified by stockholders as proposed, the board intends to reevaluate the pill and determine whether it believes the pill continues to be in the stockholders' best interests. In that event, the board may terminate the agreement, modify its terms or allow it to remain in place without change. If it is approved, it will expire at the close of business on Nov. 30, 2009, unless earlier redeemed, exercised or exchanged as described above, or, unless an extension is approved by stockholders prior to that date.

#### **Analysis:**

PROXY Governance generally believes there are valid reasons to have a rights plan – including empirical evidence that pills can yield higher takeover premiums in the hands of a genuinely independent board. We are, therefore, not ordinarily inclined to oppose a pill unless the rights plan contains egregious features or the company has abused its pill or its takeover protections in the past.

At the same time, however, we would note that the reasons for which pills were designed and implemented more than twenty years ago - - creeping acquisitions and hostile tender offers - - are much less prevalent today, and that, combined with shareholder disapprobation, has caused many corporations that formerly had pills to either rescind them or let them expire. Where pills function as a tool to enable a board to take the time needed to negotiate from a position of strength with a potential acquiror, and to explore alternatives such as an auction for the company, they serve a useful purpose. However, where they are used as a shield, allowing the board to place hurdles in the way of an offer that might prove attractive to shareholders, they fly in the face of what would be considered acceptable corporate governance practice today.

We note that in the case of CA, Inc., a shareholder proposal to require a unanimous board vote in relation to a shareholder rights plan (unless it is approved by shareholders) received support from 48.5% of the votes cast at last year's annual meeting. We also note that the board is 91.7% independent and the average tenure on the board is 3.75 years. The company amended its rights plan in 2001 to advance the expiration date from May 23, 2011 to Nov. 30, 2006.

The plan contains the following features cited by management as favorable to shareholders:

- Setting the threshold for triggering exercise of the plan at 20% of outstanding shares;
- A fixed term of three years for the plan;
- A provision requiring a committee of independent directors to assess annually whether the plan remains in the best interests of the stockholders;
- A provision that the plan will not be triggered by a "qualifying offer" supported by shareholders at a special meeting (which may be called upon the request of holders of 10% of the outstanding common stock).

The "qualifying offer" provision, which management characterizes as "generally intended to preclude offers that are coercive, abusive, or clearly illegitimate," would in fact require a potential acquiror to jump through a series of hoops that, in practice, might have the effect of discouraging offers that the shareholders, as the owners of the company, should be capable of evaluating for themselves. At the very least, the lengthy time periods built into the provision - - the fact that the stockholders would have to wait ninety business days before requesting a special meeting and the board would then have ninety business days in which to hold such a meeting - - would mean that at up to eight months could elapse from the commencement of the offer. It is difficult to take seriously management's contention that this provision is aimed only at offers that are "coercive, abusive or clearly illegitimate." In reality, it is a very complicated provision, obviously authored by lawyers who are experts in the field, that seems designed to permit management to contend that the erection of an obstacle course is a shareholder-friendly act.

In addition, the wording of the proposal is somewhat puzzling. It would appear that the board "authorized" the decision to enter into the shareholder rights plan, but that it also directed that the stockholders "be given the opportunity to vote on the plan at the next annual meeting." The vote is characterized as a "ratification," but it seems more like an opinion poll or advisory vote, since the board states that, if a majority of shareholders vote against the proposal, it will "reevaluate the Rights Agreement and determine whether it believes the Rights Agreement in its current form continues to be in the stockholders' best interests." So in other words, the board wants to take the pulse of the shareholders, but will not feel bound by what they say. In fact, the board explicitly states that, even if the vote is against it, it may "allow the Rights Agreement to remain in place without change."

#### **Rationale/Conclusion:**

The board "authorized" the adoption of the poison pill last October. However, it did not make the pill subject to shareholder approval. Rather it is asking that shareholders "ratify" their act, while explicitly stating that they will not feel bound by what they say and may in fact elect to keep the pill in place even if a majority of shareholders signify their disapproval by failing to "ratify." So what this amounts to is a straw vote. Given the history of the company over the last several years, the amount of shareholder value lost as a result of the recurrent scandals, and the somewhat disingenuous way in which this proposal has been framed, we recommend a vote against it.

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#### **Management**

### **3 Ratify Appointment of Auditors - KPMG LLP**

#### **PROXY Governance Vote Recommendation: FOR**

#### **Proposal:**

The Audit Committee has selected KPMG LLP as the company's independent auditors for the next fiscal year.

#### **Analysis:**

Barring circumstances where there is an audit failure due to the auditor not following its own procedures or where the auditor is otherwise complicit in an accounting treatment that misrepresents the financial condition of the company, PROXY Governance recommends the company's choice of auditor. PROXY Governance believes that concerns about a corporation's choice of auditor and the services performed (e.g., high non-audit fees) should be directed through withhold votes from the members of the audit committee, which is responsible for

retaining and compensating the auditor.

**Rationale/Conclusion:**

We believe that, in this circumstance, the board/audit committee should be accorded discretion in its selection of the auditor.

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**Management**

**4 Approve 2007 Incentive Plan**

**PROXY Governance Vote Recommendation: FOR**

**Proposal:**

Adopt the 2007 Incentive Plan, which reserves 30 million shares for issuance.

**Management View:**

Approval of the proposal will ensure that bonus awards to executive officers will be considered qualified performance-based compensation and will be fully-deductible to the company for federal tax purposes.

**Analysis:**

- Award Types: Annual performance bonuses, long-term performance bonuses, nonqualified stock options, incentive stock options, restricted stock, and other equity based awards
- Eligibility: 14,500 employees of the company and its subsidiaries (excluding seasonal and temporary employees); consultants will only be eligible to receive nonqualified stock options and other equity based awards
- Plan/Amendment Dilution: 5.7%
- Total Equity Dilution: 13.4%
- Concentration of Options to Named Executives (last fiscal year): 19.6%
- Repricing Permitted: No
- Minimum Option Exercise Price: 100% of fair market value

No more than 10 million shares may be issued under grants of incentive stock options during the term of the plan. The maximum annual performance bonus payable to any individual in a fiscal year is \$10 million in cash, and the maximum number of restricted shares which may be awarded to an individual in any fiscal year is one million (or \$20 million in value for LTIP awards). Restricted stock and stock options will vest in approximately equal installments on each of the first three anniversaries of the end of the applicable performance cycle or date of grant.

Shareholders must vote on equity plans by regulation, but the plans themselves and their features should not be the sole focus. PROXY Governance believes the emphasis should be on overall compensation costs for a company as a whole, company performance, and specifically, in terms of possible self-dealing, executive compensation. Where pay is unreasonable, the Compensation Committee should be held responsible, and we would recommend withhold votes accordingly.

According to PROXY Governance's analysis, the company's executive compensation appears reasonable compared to peers and given relative financial performance.

**Rationale/Conclusion:**

The company's overall compensation structure is reasonable and clearly disclosed. We support this proposal as part of that compensation structure.

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**Shareholder**

**5 Independent Director Approval of CEO Compensation**

**PROXY Governance Vote Recommendation: AGAINST**

**Proposal:**

Amend the company's bylaws to require that the CEO's compensation be approved by two-thirds of the board's independent directors.

**Proponent:**

Lucian Bebchuk

**Shareholder View:**

The proponent believes that an important matter such as CEO compensation should have widespread support from the board. In addition, the proposed arrangement could make it more likely that all the corporation's independent directors are kept informed of, and feel shared responsibility for, CEO compensation decisions. The proponent states that the arrangement would not prevent CEO compensation from being studied, examined, and put together by a committee or subcommittee composed of a small number of directors. However, any decisions made by such a committee or sub-committee must be subsequently ratified by additional independent directors.

**Management View:**

The board believes this proposal is unnecessary given that the compensation committee is 100% independent and that all other independent directors are given the opportunity to evaluate executive performance and compensation levels pursuant to the company's corporate governance guidelines. The board also fears that the proposal could erode the authority of the Compensation Committee without providing any additional benefit to shareholders.

**Analysis:**

*Proxy Governance* believes that the company's compensation committee is doing an adequate job in determining CEO compensation and that this proposal is unnecessary given that the company's compensation committee is 100% independent. The company's current CEO compensation is only 8% above the median of that paid to peer companies.

Also, it is difficult to conceive of "real world" circumstances where incorporating this proposal into the bylaws would make a difference. Conceivably, the compensation committee could recommend or approve the CEO's compensation by a bare majority, and the remaining independent directors not on that committee could likewise be split down the middle on whether the compensation was appropriate. But with all the attention today being focused on CEO compensation, we believe it is unlikely that a board, which has to function collegially on so many issues, would permit itself to be put in the position where a bare majority of the independent directors would run roughshod over the views of a substantial minority on such a key issue.

**Rationale/Conclusion:**

We believe that the company's executive compensation levels relative to its peers are reasonable and adequately disclosed and we therefore believe it is not a good target for the proposal at this time. We also believe that the proposal would have little practical effect.

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