

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ APR 1 2004 ★

UNITED STATES OF AMERICA

- against -

P.M. _____
TIME A.M. _____
Cr. No. 04-837 (ILG)

COMPUTER ASSOCIATES
INTERNATIONAL, INC.,

Defendant.

SECURITIES AND EXCHANGE
COMMISSION

- against -

Civ. No. 04-4088 (ILG)

COMPUTER ASSOCIATES
INTERNATIONAL, INC.,

Defendant.

ORDER OF APPOINTMENT OF INDEPENDENT EXAMINER

WHEREAS, on September 22, 2004, the United States Attorney's Office for the Eastern District of New York (the "USAO") and Computer Associates International, Inc. ("CA") executed a Deferred Prosecution Agreement (the "DPA") in connection with the above-captioned criminal case, which was So Ordered by the Court, and which is incorporated by reference herein; and

WHEREAS paragraphs 19 through 22 of the DPA provide for the appointment by the Court of an Independent Examiner to examine CA's compliance with

the terms and conditions of the DPA, to conduct a comprehensive review of certain areas specified in paragraphs 19(a) through 19(f) of the DPA, and to make recommendations to CA's Board of Directors for review and implementation, after consultation with the USAO, regarding best practices in the specified areas; and

WHEREAS, on September 21, 2004, CA consented to the entry of a Final Consent Judgment of Permanent Injunction and Other Relief ("Final Judgment") in connection with the above-captioned civil case, which was entered by the Court on October 1, 2004, and which is incorporated by reference herein; and

WHEREAS paragraphs VI(K) through VI(L) of the Final Judgment provide for the appointment by the Court of an Independent Examiner to examine CA's compliance with the terms and conditions of the Final Judgment, to conduct a comprehensive review of certain areas specified in paragraphs VI(K)(1) through VI(K)(6) of the Final Judgment, and to make recommendations to CA's Board of Directors for review and implementation, after consultation with the Securities and Exchange Commission ("Commission"), regarding best practices in the specified areas; and

WHEREAS, on February 10, 2005, pursuant to paragraph 20 of the DPA and paragraph VI(L) of the Final Judgment, the USAO, the Commission, and CA jointly submitted to the Court three approved candidates for Independent Examiner; and

WHEREAS the Court has reviewed the qualifications of and interviewed each of the three approved candidates for Independent Examiner;

IT IS HEREBY ORDERED that:

1. Lee S. Richards, Esq., is appointed Independent Examiner, effective as of the date of this Order.

2. The Independent Examiner shall perform the duties set forth in paragraph 19 of the DPA and paragraph VI(K) of the Final Judgment, and consistent with all of the other terms and conditions of the DPA, the Final Judgment, and this Order. In connection with the performance of his duties, the Independent Examiner may meet with the USAO and the Commission, with or without providing notice of any such meetings to CA.

3. CA, its directors, officers, employees and attorneys shall provide assistance and support to the Independent Examiner in connection with any activities carried out in accordance with this Order including, among other things, providing reasonable access to CA's documents, employees, premises and agents. The Independent Examiner shall advise the Court if CA, or any of its directors, officers, employees or attorneys interfere with the Independent Examiner's ability to exercise his powers and perform his duties as described in this Order, the DPA and the Final Judgment.

4. To the extent that CA provides to the Independent Examiner "Confidential Materials" (as defined under paragraph 6(c) of the DPA and paragraph V(A)(3) of the Final Judgment), CA does not waive as to third parties the protections of the attorney-client privilege or the attorney work-product doctrine, or any other applicable privilege. The Independent Examiner shall maintain the confidentiality of the Confidential Materials and shall not disclose them to any third party, except to the extent disclosure is required by law or would be in furtherance of the Independent Examiner's duties and responsibilities and otherwise consistent with this Order.

5. The Independent Examiner may engage and employ such persons as he, in his discretion, deems necessary to assist him in carrying out his duties hereunder, including accountants, attorneys and other experts.

6. CA shall pay all reasonable expenses of the Independent Examiner, including all fees charged and expenses incurred by the Independent Examiner and any other persons engaged or employed pursuant to paragraph 5 above. The Independent Examiner shall submit to CA monthly invoices, with copies to the USAO and the Commission. CA must issue payment on such invoices within 30 days, unless it believes that all or part of the invoice reflects unreasonable expenses. Any expenses deemed unreasonable by CA may be contested by CA in a written application to the Court on notice to the Independent Examiner, the USAO and the Commission.

7. The Independent Examiner shall make no public statements regarding CA without prior approval by the Court, except in an official proceeding of the executive, legislative or judicial branches of the United States Government.

8. Pursuant to paragraph 19 of the DPA, the Independent Examiner shall issue quarterly reports to the USAO, the Commission and CA's Board of Directors during the term of the Independent Examiner's appointment.

9. At the conclusion of the term of the Independent Examiner's appointment, the Independent Examiner shall prepare and deliver to the Court, the USAO, the Commission and CA's Board of Directors a Final Report describing CA's compliance (or partial compliance, or lack of compliance) with this Order, the DPA and the Final Judgment. The Court will review the Final Report before ruling on any motion

filed by the USAO pursuant to paragraph 24 of the DPA concerning the Information filed in the above-captioned criminal case.

10. The Independent Examiner, the USAO and the Commission shall not publicly disclose or disseminate any of the Independent Examiner's quarterly reports and/or the Final Report, except in an official proceeding of the executive, legislative, or judicial branches of the United States Government, 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. CA may publicly disclose information contained in the Independent Examiner's reports to the degree that the reports contain material, non-public information that CA is obligated to disclose. CA shall not publicly disclose information contained in the Independent Examiner'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.

11. Pursuant to paragraph 22 of the DPA and paragraph VI(K)(10) of the Final Judgment, the term of appointment of the Independent Examiner will be for a period of 18 months from the date of this Order, unless extended by the USAO and the Commission pursuant to paragraph 22 of the DPA and paragraph VI(K)(10) of the Final Judgment.

12. The Independent Examiner is an agent of this Court. The Independent Examiner is not an officer, director, employee or agent of CA and shall not owe any fiduciary duties or other duties or obligations of any kind to CA or CA's

directors, officers, employees, shareholders, bondholders or creditors, or any person or entity other than this Court.

Dated: Brooklyn, New York
March 1st, 2005

THE HONORABLE I. LEO GLASSER
UNITED STATES DISTRICT JUDGE

AGREED AND CONSENTED TO BY:

INDEPENDENT EXAMINER

Lee S. Richards
Lee S. Richards, Esq.
Richards, Spears, Kibbe & Orbe

By:

ROSLYNN R. MAUSKOPF
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

David B. Pitofsky
David B. Pitofsky
Principal Deputy Chief, Criminal Division

COMPUTER ASSOCIATES
INTERNATIONAL, INC.

Robert Giuffra
Robert Giuffra, Esq.
Counsel to Computer Associates
International, Inc.

Eric O. Cornfeld
Eric O. Cornfeld
Chief, Business & Securities Fraud Section

U.S. SECURITIES AND EXCHANGE
COMMISSION

By:

Alexander Vasilescu
Alexander Vasilescu
Senior Trial Counsel