

**THE FEINBERG GROUP, LLP**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
CR. NO. 04-837 (ILG)**

**In Re: United States of America  
v.  
Computer Associates International, Inc**

**PLAN OF ALLOCATION  
FOR THE RESTITUTION FUND**

On November 4, 2004, I was appointed by Roslynn R. Mauskopf, United States Attorney for the Eastern District of New York, as Fund Administrator of the Restitution Fund totaling \$225,000,000 arising out of the Deferred Prosecution Agreement entered into between the United States Attorney's Office ("The Office") and Computer Associates International, Inc. ("CA"). My responsibilities, as defined in the Deferred Prosecution Agreement include:

- holding the funds paid by CA in my custody;
- developing a formula by which the funds will be distributed to present and former CA shareholders<sup>1</sup> who were victims of the accounting fraud and obstruction of justice; and
- distributing the funds to the eligible victims.

Pursuant to the Deferred Prosecution Agreement, I was obligated by May 4, 2005, to prepare and submit to The Office, a Restitution Plan setting forth the procedures governing my activities, including but not limited to:

- the procedures by which present and former CA injured shareholders will be identified; and
- the procedures by which the financial losses of such shareholders will be determined and restitution for such losses will be paid.

Pursuant to this obligation I submitted a proposed Restitution Plan to The Office on March 17, 2005. Thereafter, The Office responded with comments. I hereby submit a final Plan of Allocation. I have been guided in defining this Plan by two principals: first and foremost to fairly allocate and distribute the Fund to

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<sup>1</sup> I note that the Deferred Prosecution Agreement refers to "CA shareholders." I have interpreted this language not to exclude those who purchased options. See VI. Treatment of Options, at p. 11.

those individuals and entities who suffered damages resulting from CA's accounting fraud; and second, to accomplish this task as efficiently as possible while still ensuring that all of those entitled will receive Notice and the opportunity to participate in the Fund.

In order to accomplish these goals, I have formulated a Plan that attempts to avoid "re-inventing the wheel" when certain relevant work has been done and approved by Judge Platt in In Re Computer Associates Class Action Securities Litigation, 98 Civ. 4839, Order and Final Judgment (E.D.N.Y., December 10, 2003), ("the Securities Class Action"). At the same time, I have formulated different approaches when called for by the unique circumstances presented by the Restitution Fund. Set forth below are the significant features of the Plan.

## **I. Background**

The formulation of the Plan has been informed by my review of the relevant documentation, meetings and discussions with the government attorneys responsible for the criminal case, meetings and discussions with plaintiffs' and defense counsel in the Securities Class Action, review of the proceedings before Judge Platt in the Securities Class Action, review of the Complaint filed against CA by the SEC, and meetings with various other interested parties, including shareholders, journalists, and academics.<sup>2</sup>

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<sup>2</sup> At a meeting on March 9, 2005 hosted by Gary Lutin of Lutin & Company and attended by attorneys from the United States Attorney's Office, various law professors, and other interested parties, a number of issues regarding the Restitution Fund formula were discussed. Certain participants argued that, while holders of CA stock do not have cognizable losses under the security laws, these holders did in fact sustain damages due to the impact of the fraud on the enterprise value of CA. According to this view, the United States Attorney and the Administrator of the Restitution Fund are not bound by private law to recognize only damages as a result of the purchase of securities, but can apply a more creative standard that would compensate holders of CA stock on a particular date who were not able to recover through the Securities Class Action due to standing limitations. It has been suggested to the Administrator that the following shareholders should be compensated: (1) holders on a date (to be determined by an expert) when the market has largely appreciated the falsity of CA's earlier statements, or alternatively (2) holders who purchased before the beginning of the Securities Class Action class period and did not sell, if at all, until after the end of the period.

The issues raised regarding damages to holders merit serious debate by shareholders, companies, the government, and ultimately Congress. I do not believe, however, that such a dramatic departure from current securities law damage theories is appropriate here. The Restitution Fund was the result of securities law violations. In my view, the debate has not yet advanced to the point where this Restitution Fund should be allocated pursuant to the suggested models. First, while "holders" of CA stock may not have recovered in the Securities Class Action due to the current state of securities law, those shareholders who were compensated in the Securities Class Action as a result of damages resulting from the purchase of CA securities received only a fractional percentage of their actual losses and will not be made whole, even if they receive compensation from the Restitution Fund. Second, it is unclear how a holder's damages would be measured. The suggestion by some that all holders should receive a pro rata share of the Fund appears to me to carry "rough justice" too far, particularly when the degree of harm suffered by purchasers of CA stock relative to the inflation of the stock price is determinable. Finally, I am concerned about the wisdom of compensating all holders on a particular date because of the potential dilution of benefits. In sum, at this juncture I am not persuaded that a departure from the model of currently accepted methodology for the determination of securities fraud damages is warranted. Accordingly, the proposed formula presented here is based on the determination of securities fraud damages to those who purchased shares or options of CA stock during the Period of Participation.

In addition, I have retained Dr. Scott Hakala, an expert in securities fraud damages, for assistance in formulating this proposal. Dr. Hakala had been retained by the plaintiffs in the Securities Class Action as an expert on the damages resulting from CA's fraudulent conduct. During the course of that litigation, Dr. Hakala performed an event study and an inflation per share analysis to determine the inflation in the price of CA's publicly traded common shares due to CA's fraudulent accounting practices. After reviewing Dr. Hakala's study and conducting numerous subsequent meetings and interviews with Dr. Hakala, I asked him to prepare a report that would explain his analyses, See Hakala Report attached hereto as Exhibit 1. I retained Dr. Hakala due to both his expertise and reputation in the field and due to his familiarity and previous substantial work on the CA case. Once again my goal was to obtain the best advice to assist in proposing a fair formula without necessarily "reinventing the wheel."

## **II. The Period for Participation in the Restitution Fund**

According to the Deferred Prosecution Agreement, CA agreed to pay an additional \$225,000,000 in restitution to current and former shareholders who had already received compensation in connection with the civil litigation. Deferred Prosecution Agreement, ¶ 8. Accordingly, the time period used to define the CA shareholders who will participate in the Restitution Fund is from January 20, 1998 through February 25, 2002, the Class Period approved by Judge Platt in the Securities Class Action.

## **III. Notice**

In the Securities Class Action, 792,000 Notices and Proof of Claim forms were mailed to shareholders and broker/nominees. This notice was distributed to the following persons or entities who could be reasonably identified:

- All persons or entities who purchased or transacted<sup>3</sup> in the common stock of CA or common stock options during the period January 20, 1998 through and including February 25, 2002;
- All participants in the Computer Associates Savings Harvest Plan ("the CA Harvest Plan") and their beneficiaries whose plan accounts were invested in CA common stock or any investment fund under the CA Harvest Plan that invested in CA stock during the period January 20, 1998 through and including May 30, 2003 (The ERISA Class); and
- All registered shareholders of CA common stock.

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<sup>3</sup> The term "transacted" is defined to include any acquisition where CA stock was used as currency, e.g. a merger.

As a result of this Notice, 127,597 claim forms were returned. Of these, 97,327 were recognized, i.e., eligible.<sup>4</sup> There were 565 optouts.

I propose that Notice and Proof of Claim forms for the Restitution Fund be sent to all potential claimants to the Fund including those who received Notice of the Securities Class Action and did not submit a claim or opted out. See Notice of Claims Process for Distribution of the Restitution Fund and Proof of Claim, attached hereto as Exhibits 2 and 3 respectively. While these potential claimants received Notice of the prior settlement with CA and may have “elected” not to participate in the settlement, in my view these claimants should be provided the opportunity to evaluate their participation in this distinct fund. Accordingly, I propose the following:

- Notice and Proof of Claim forms to the approximately 792,000 potential claimants who received notice in the Securities Class Action;
- Notice and Proof of Claim forms to the 565 individuals or entities who opted out of the Securities Class Action,<sup>5</sup>

In addition, in my experience in the administration of settlements, claimants make inquiries throughout the administration of a fund regarding filing procedures and the status of their claims. Accordingly, I propose establishing a toll-free telephone line for claimant assistance staffed by knowledgeable personnel. This number will be included in the Notice and Proof of Claim forms and will be published on the CA website.

To the extent possible, the claims database compiled and maintained by the claims administrator for the settlement of the Securities Class Action will be utilized both for Notice and claims processing. Once again, in the interest of efficiency, I have retained Gilardi & Co., the claims administrator for the Securities Class Action settlements, to assist in sending Notice and processing claims. See Gilardi & Co. Brochure, attached hereto as Exhibit 4. Through my work to date with the General Manager and Gilardi personnel who would be responsible

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<sup>4</sup> The 97,327 claims set forth above include the 18,000 participants in the CA Harvest Plan although the Harvest Plan submitted one omnibus claim on behalf of its 18,000 participants.

<sup>5</sup> Under the Plan of Allocation, securities brokers and other nominees shall within seven days of receipt of the Notice of Claims Process for Distribution of the Restitution Fund either (a) provide to the Fund Administrator the name and last known address of each person or organization for which the broker or nominee purchased relevant stock or options or for whom the broker or nominee holds CA common stock, or (b) request additional copies of the Notice and Proof of Claim Form which will be provided to the broker or nominee and within seven days will be mailed by the broker or nominee directly to the beneficial owners of the securities. Pursuant to the Plan, the broker or nominee will be entitled to reimbursement for reasonable expenses incurred and these expenses will be paid upon request and submission of documentation.

for assisting in sending Notice and processing claims, I have been impressed with both their expertise and their knowledge of the administration of the Securities Class Action settlement.

### **III. Distribution Schedule for Restitution Fund**

In accordance with Paragraph 8 of the Deferred Prosecution Agreement, Computer Associates agreed to pay the sum of \$225,000,000 according to the following schedule:

- \$75,000,000 within 30 days of the date of approval of the Agreement by the Court (October 22, 2004). This amount has been received by the Fund Administrator and has been deposited into an interest bearing account;
- \$75,000,000 within one year of the date of approval of the Agreement by the Court (October 22, 2005); and
- \$75,000,000 within 18 months of the date of approval of the Agreement by the Court (April 22, 2006).

As stated, in my capacity as Fund Administrator I intend to provide Notice to potential claimants identified in the Securities Class Action, and to those individuals who opted out of the Securities Class Action. My goal in distributing the Restitution Fund is to distribute the funds as quickly and efficiently as possible. I anticipate that upon approval by the Court of the Plan of Allocation, Notice and Proof of Claim forms will be completed within 60-75 days (this estimate includes the time necessary for document preparation, broker solicitation, printing and mailing). I estimate approximately 150-200 days for the receipt and processing of all claims (this estimate includes a 90-day claimant filing period). Distribution of payments to eligible claimants will be made at approximately the same time that CA has made its final payment installment to the Restitution Fund on or before April 22, 2006 (estimate of 15 days to complete). Given this timeline, I plan to make one distribution to eligible claimants shortly after the third and final payment installment by CA into the Restitution Fund.

### **IV. The Formula**

The formula I propose for allocation of the Restitution Fund will calculate damages based on the fraudulently induced inflation in the CA share price at the time of purchase and sale. In Dr. Hakala's June 22, 2005 report, he calculates the inflation as a percentage of the purchase or sale price for each day until the inflation is zero. Hakala Report, Exhibit C. The Plan of Allocation approved by Judge Platt in the Securities Class Action relied in part upon Dr. Hakala's analysis of inflation as a percentage of the purchase or sale price

of CA stock for the Settlement Period. However, the Plan approved by Judge Platt weighted Dr. Hakala's formula to account for the different litigation risks posed to individual claims based on purchases and sales on different dates. For example, shareholders facing a significant statute of limitations defense had their claims discounted to reflect this litigation risk. In my view, a weighting of Dr. Hakala's formula based on the analysis of litigation risk in the Securities Class Action is not appropriate for the Restitution Fund which should compensate for real losses suffered by victims of the fraudulent conduct. Accordingly, the formula proposed here does not discount or weight claims based on litigation risk, but instead calculates the damages for each shareholder based only on the inflation in the share price due to the fraud at the date of purchase and sale. After such a calculation is completed, the shareholder would receive a pro rata share of the Restitution Fund based on the calculated loss. See Hakala Report, p.11 for an illustration of how an individual shareholder's damages and distribution from the Fund would be calculated.

**V. The Harvest Plan Claim**

In Ambler v. Computer Associates International, Inc., the District Court approved a settlement of ERISA claims that were litigated on behalf of the CA Harvest Plan. Former counsel for the ERISA class has suggested to me that not only should the Harvest Plan be treated under the Restitution Fund formula as a shareholder, but also additional funds should be allocated to the Harvest Plan based on the breach of CA's fiduciary duties under ERISA. I have met with former counsel for the ERISA class to discuss the Restitution Fund's treatment of the Harvest Plan and its participants. In my view, which is informed in part by my discussions with government counsel and my review of the Deferred Prosecution Agreement and Information, the Restitution Fund is intended to compensate victims for damages resulting from violation of the securities laws, rather than ERISA. Accordingly, this proposal does not include any additional amounts for Harvest Plan participants based on ERISA violations. Instead, the Harvest Plan's damages will be calculated in a manner analogous to the calculation of damages for other shareholders. However, in recognition of the unique status of the Harvest Plan, the calculation of damages for the Harvest Plan will ensure that an appropriate accounting methodology is utilized. In furtherance of this objective, I propose the following:

- The Harvest Plan will submit an omnibus claim on behalf of all participants;

- The net loss for each Plan participant will be determined pursuant to a formula that accounts for the investment of the participant's account in CA common stock and not cash;<sup>6</sup>
- The net losses of all individual participants will be totaled to determine the amount of damages asserted in the Harvest Plan's claim;
- The Harvest Plan's distribution amount will be distributed to the Harvest Plan for allocation to the individual account of each eligible participant.

## **VI. Treatment of Options**

I recommend that purchasers of options who were damaged by CA's fraudulent conduct be given the opportunity to participate in the Restitution Fund. Purchasers of options were not initially included as part of the Settlement Class in the Amended and Consolidated Complaint in the Securities Class Action. In Re Computer Associates 2002 Class Action Securities Litigation, 98 Civ. 4839, Amended and Consolidated Complaint (E.D.N.Y. October 22, 2002). Upon objection by a member of the class who also traded in options, individuals and entities who transacted in stock options were included in the Settlement Class approved by Judge Platt. In re Computer Associates 2002 Class Action Securities Litigation, 98 Civ. 4839, Order and Final Judgment, p.2, (E.D.N.Y. December 10, 2003). In addition, Dr. Hakala has concluded in his June 22, 2005, report that certain individuals or entities who transacted in options during the period of participation were damaged by CA's fraudulent conduct. While option damages will undoubtedly represent a small fraction of the damages suffered by purchasers of common stock (less than 1% of the total damages in the Securities Class Action settlement was awarded to option traders), the Restitution Fund should include these victims.

I recommend that the formula utilized to determine the allocation of the Restitution Fund to traders in stock options should (like the calculation of damages for common stock) calculate damages based on the fraudulently induced inflation in option prices. The value of the option would be calculated using the Black-Scholes pricing formula and the closing share price of CA on the transaction date and then compared with the Black-Scholes pricing formula value using the uninflated share price of CA on that same day. Hakala Report, pp. 9-10; see also, pp. 11-12 for an illustration of how options damages would be calculated. This methodology is a departure from that utilized in the Securities Class Action settlement where damages for option traders were determined based on a negotiated percentage of the damages of those who purchased common stock. However,

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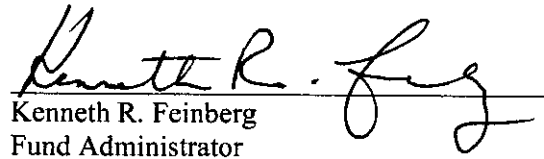
<sup>6</sup> The Harvest Plan invested in the Computer Associates Company Stock Fund which invested primarily in CA common stock but also maintained a portion of the account in cash.

based on the expert opinion of Dr. Hakala, the methodology I recommend is a more accurate mechanism to value the actual damages to those who transacted in options. Hakala Report, pp. 9-10.

**VII. Conclusion**

Pursuant to the Deferred Prosecution Agreement, the Restitution Plan must be approved by The Office. After such approval, The Office and CA will jointly submit the approved Restitution Plan to the Court for its approval. After approval by the Court, I will begin the implementation of the Plan by initiating the Notification process.

Respectfully submitted,

  
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Fund Administrator

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June 28, 2005