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Kumar Gives Up Leadership Posts Under Pressure

Computer Associates Board Worried Embattled CEO Faces Indictment in Probe

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Sanjay Kumar, the long-embattled chairman and chief executive of **Computer Associates International Inc.**, stepped down under pressure from directors worried he could face a criminal indictment in a burgeoning federal accounting probe.

Mr. Kumar's resignation was settled in a lengthy meeting of the software maker's directors on Tuesday. Federal prosecutors have obtained guilty pleas from four former top CA executives in their continuing investigation of a massive accounting fraud at the company. People close to the situation said directors were concerned not only about Mr. Kumar's personal legal peril but the possibility that the company itself could be indicted if he stayed at the helm.

Computer Associates delayed the announcement of the move until midmorning yesterday, after a board delegation trooped to the U.S. attorney's office in Brooklyn, N.Y., to inform prosecutors. On the news, CA's stock rose \$1.09, or 4%, to \$26.66 in 4 p.m. composite trading on the New York Stock Exchange, on heavy volume of 12.6 million shares.

In a statement, Computer Associates said the 42-year-old Mr. Kumar would remain with the company as chief software architect, a new position, but had resigned from the board. The board named Lewis Ranieri, a former vice chairman of Salomon Brothers who has been an outside director since 2001, as chairman. (See [related article](#)¹.) It also said an interim chief executive would be named "shortly," and that a search for a permanent CEO is under way.




Sanjay Kumar

Kenneth Cron, former chief executive of Vivendi Universal Games and an outside director since 2002, has been offered the job of interim chief, a person close to the situation said. Mr. Cron, who couldn't be reached, has experience as a technology executive.

The board blamed Mr. Kumar's downfall on the fact that "the conduct in question occurred during his tenure." It stressed that the moves were not based on a conclusion that he engaged in wrongdoing.

But directors also believed "there's a likelihood that he is going to be indicted" in the criminal probe, according to a person familiar with the board's deliberations. If indicted, Mr. Kumar couldn't keep running the company, this person said, noting that CA would

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"have all kinds of problems here, like financial statements that need to be signed." Despite board concerns, the U.S. attorney's office has given no public indication of its plans.

A company spokesman said Mr. Kumar was not available for comment. His attorney, Jack Cooney, released a short statement that read: "Mr. Kumar looks forward to fully engaging in his new role to serve the interests of CA's shareholders, customers and employees." He declined to comment further.

In an internal e-mail to CA employees, Mr. Kumar said he would remain "very much involved with our products and technology," and would be back on the road today meeting with customers. "I intend to pursue my new role with the same energy and determination with which I have approached every challenge at CA," he wrote. In the past, Mr. Kumar has denied any wrongdoing.

Mr. Ranieri declined through a spokesman to be interviewed, but he said in a statement that the board decisions were "fair and responsive to the situation and in the best interests of CA's customers, shareholders and employees." He added that Mr. Kumar has made "remarkable contributions to CA's business," and the board was "pleased" that he agreed to stay on in the new role.

Yesterday's meeting with prosecutors in Brooklyn was focused on steps taken by the company, based in Islandia on New York's Long Island, to clean up its accounting troubles, which revolved largely around a widespread practice of backdating contracts to shift revenue to earlier quarters in order to meet Wall Street expectations. Mr. Kumar was president and chief operating officer during the period of the fraud alleged by prosecutors, and he was chief executive during the subsequent cover-up.

Present during the meeting, which lasted more than an hour, were representatives from the U.S. Attorney's Office in New York, the Securities and Exchange Commission, law firms representing CA, new finance chief Jeff Clarke and at least three board members. They were Mr. Ranieri; Walter Schuetze, the audit-committee chairman, who drove CA's internal probe; and Alex Serge Vieux, a longtime technology executive.

Mr. Kumar's resignation offers several advantages to prosecutors, who have been concerned that, as CEO, he was in a position of authority while investigators were trying to interview subordinates about his conduct, according to people familiar with the investigation.

But government investigators also told the board delegation that the continued employment of one senior sales executive is also an issue of concern, according to people familiar with the matter. Sales representatives were instructed to participate in the backdating scheme, prosecutors have charged.

The presentation to prosecutors followed a nearly seven-hour board meeting Tuesday at the Park Avenue offices of Sullivan & Cromwell, the Manhattan law firm hired by the board to conduct its internal inquiry. "It has been a very traumatic 24 hours and there's still a lot of work to do," said one person close to the situation. CA directors have yet to decide whether Mr. Kumar will receive severance -- or how much he will be paid in his new role.

Mr. Kumar "wasn't there" for 90% of Tuesday's debate, the knowledgeable individual said. Many board members felt strongly that he had done a tremendous job improving the company's operations and governance, this person said. "He's very, very respected by employees and the industry," this person said.



Lewis Ranieri

Meeting in an executive session without Mr. Kumar, directors quickly endorsed the notion that he had to relinquish his board seat, too. They concluded they "don't want to take any chances of him being anywhere near any of the compliance issues," the knowledgeable individual said. Directors "want to make sure [CA's] accounting and compliance are squeaky clean," this person said, adding that no one adamantly advocated cutting all ties to Mr. Kumar, who was seen as a highly effective chief executive.

In recent months, the board has fired or forced out 14 other employees, including several top finance

executives and the general counsel. The board has repeatedly stressed that it is conducting a vigorous investigation.

People familiar with the matter said that an indictment of the company remains an option on the table. Under Justice Department guidelines on charging companies, prosecutors are instructed to weigh such factors as the cooperation of the company, the replacement of "responsible management" and the "pervasiveness" of the conduct.

ROCKY ROAD

A look at some recent milestones for Computer Associates International:

- January 1994: Sanjay Kumar becomes president and chief operating officer.
- April 1, 1999 to March 31, 2000: Several finance and sales executives participate in widespread accounting fraud, according to federal investigators.
- August 2000: Mr. Kumar becomes chief executive.
- Throughout parts of 2002 and 2003: Several executives cover up wrongdoing by lying to investigators and lawyers, government charges.
- October 2003: Board forces out Chief Financial Officer Ira Zar and two lieutenants.
- April 8, 2004: Mr. Zar pleads guilty, points to two unnamed executives also involved. One is said to be Mr. Kumar.
- April 21: Mr. Kumar steps down as chairman and chief executive, takes a lesser role.

"It is obvious we're trying to get a settlement, but you can't bargain that way," a person familiar with the matter said. "We gave them Sanjay because it is the right thing to do."

Still, pervasiveness is likely to be a sticking point: The charges filed by the SEC and prosecutors against the four executives paint a picture of a widespread fraud and cover-up that spanned the corporate ladder. The people forced out by the board now run the gamut from the chief executive to midlevel finance employees.

The changes mark a stunning setback to Mr. Kumar's career at CA, one of the world's largest software companies. He arrived there as a young software development director by way of a merger in 1987, and quickly caught the eye of founder Charles Wang. By 1994, Mr. Kumar had risen to president and chief operating officer, and in 2000 he succeeded Mr. Wang as CEO; Mr. Wang stayed as chairman until 2002.

But rumors of accounting shenanigans -- such as a "35-day month" to book contracts after quarters closed -- were longstanding at CA, and the company gained a reputation for aggressively pushing its software, which runs critical back-office systems at major corporations, a

specialty that makes it hard to switch vendors once the code is installed. A change in accounting method in 2000 provided fuel to critics who suggested that the move masked a more serious problem in the company's finances. Mr. Kumar and CA's then-chief financial officer, Ira Zar, heartily defended the new accounting method, but federal investigators later began looking at the company.

A red flag was a restricted stock award contingent on a rising share price and valued at more than \$1 billion that the board in 1998 handed to Messrs. Wang and Kumar, and a third executive, co-founder Russell Artzt. (The men later returned a portion of the grant to settle a shareholder lawsuit, but the award became emblematic of the excesses of corporate pay.)

Speculation about Mr. Kumar's fate came to the fore last October, when the board's audit committee forced out Mr. Zar and two of his lieutenants. Earlier this month, Mr. Zar pleaded guilty to securities fraud and other charges, and has been cooperating with federal prosecutors. Mr. Zar said that he met with two unnamed executives who decided with him to hold the books open at the end of quarters. People familiar with the matter have said one of the two is Mr. Kumar.

Investors, who had edged the stock lower in recent days amid uncertainty about Mr. Kumar's future, welcomed the news of the executive changes. "The reality is it sets you up for a whole series of positive announcements," said Nitsan Hargil, an analyst at Friedman, Billings, Ramsey & Co. "You'll have brand-new management across the board coming in from the outside."

But the credit-rating agency Standard & Poor's cut CA's debt to triple-B-minus, one notch above junk status, from triple-B-plus. S&P cited a "near-term management void" and the potential disruption caused by new executives moving into place.

Mr. Kumar's reassignment also highlighted concerns that CA has a limited bench of executive talent. Mr. Kumar hadn't named an heir apparent, and he had parceled out responsibility among 17 top executives. "There is nobody at the company now that makes sense to be the leader," said John DiFucci, an analyst at Bear Stearns.

Given its troubles, CA could have a hard time attracting a star player to run the company. "Nobody is going to want to touch something where there are a lot of unknowns," said Peter D. Crist, chairman and CEO of Crist Associates, an executive-search firm in Hinsdale, Ill. "We are in a very risk-averse environment right now."

By staying with the company, Mr. Kumar retains the lucrative stock options and restricted shares he recently was awarded. CA disclosed that he got 281,300 restricted shares last month, which were valued at \$7.55 million when granted and vest over time. He also got options to acquire another 562,600 shares.

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