

Icahn Prepares For War With Yahoo

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By Kenneth Corbin

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Billionaire investor Carl Icahn is planning a proxy war to replace Yahoo's (NASDAQ: YHOO) board of directors over their failure to reach an agreement to sell the company to Microsoft (NASDAQ: MSFT).

Calling the board's actions in the matter "irresponsible" and "unconscionable," the iconic activist investor said he had been approached by numerous shareholders who were angry over the rejection of the bid, which Microsoft had finally increased by \$2 per share before talks broke down earlier this month.

"It is clear to me that the board of directors of Yahoo has acted irrationally and lost the faith of shareholders and Microsoft," Icahn wrote in an open letter to Yahoo Chairman Roy Bostock. "It is quite obvious that Microsoft's bid of \$33 per share is a superior alternative to Yahoo's prospects on a standalone basis."

When Yahoo dug in its heels at a reported price of \$37 per share, Microsoft walked away. Icahn noted that Microsoft's increased offer represented a 72 percent premium over Yahoo's value at the close of the market Jan. 31, the day before Microsoft announced its initial offer.

In the letter, Icahn listed the 10 rival directors whom he hopes will seek to get elected at Yahoo's annual shareholder meeting July 3. The new directors, who would presumably attempt to reopen talks with Microsoft, include Frank Biondi, the former head of Universal Studios and Viacom, Dallas Mavericks owner Mark Cuban, Icahn's partner Keith Meister and Icahn himself.

Before buying the Mavericks, Cuban, an outspoken investor in his own right, had founded Broadcast.com, which he later sold to Yahoo for \$5.7 billion.

The other nominees are John Chapple, Adam Dell, Lucian Bebchuk, Edward Meyer, Brian Posner and Robert Shaye.

In the last week-and-a-half, Icahn said that he had purchased 59 million shares of Yahoo, and was seeking antitrust clearance from the Federal Trade Commission to purchase as much as \$2.5 billion in Yahoo stock.

In making its public case for holding out against Microsoft, Yahoo repeatedly said it was pursuing its strategic alternatives to restore value to the shareholders. One of those alternatives was a trial program to outsource a small portion of Yahoo's search advertising to Google. Microsoft, which had pitched the acquisition as a way to create a viable competitor to Google in the lucrative search ad market, said that the prospect of any Yahoo-Google tie-up made the buyout much less desirable.

Icahn urged Yahoo's board to give the company's shareholders a chance to weigh in before it executed any move that could torpedo future negotiations with Microsoft, should the software giant choose to reconsider the deal.

For Yahoo, its strategic alternatives are few, argues Jeffries & Company analyst Youssef Squali. In a research note addressing the prospect of an Icahn proxy fight, Squali wrote that "such a move is dreaded by Yahoo, because it's likely to pressure them into a deal with Microsoft."

He predicted that Yahoo would announce something dramatic in an attempt to derail the proxy war. Those moves could include an ad-serving deal with Google or some form of alliance with AOL or MySpace, both of which have been frequently cited as alternative partners that would allow Yahoo to remain at least semi-independent. Squali argued that neither of those options would be viable for Yahoo, however. Regulators would likely nix an outsourcing deal with Google, he wrote, and none of the alternative merger scenarios would deliver the same value as the Microsoft bid.

A Yahoo spokeswoman did not immediately respond to a phone call seeking comment.

Icahn closed his letter with a last-ditch plea for the board to reconsider: "I sincerely hope you heed the wishes of your shareholders and move expeditiously to negotiate a merger with Microsoft, thereby making a proxy fight unnecessary."