

Icahn expected to nominate directors for Yahoo board

The billionaire has asked 12 people whether they would be willing to serve if asked, sources say. But is Microsoft still interested in a deal?

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Saying Yahoo Inc.'s board "completely botched" takeover talks with Microsoft Corp., billionaire investor Carl Icahn today launched a bid for control of the Internet giant by nominating a slate to unseat the board of directors.

The candidates include Icahn, former Viacom Inc. Chief Executive Frank Biondi Jr., Dallas Mavericks owner Mark Cuban and New Line Cinema co-chairman Robert Shaye.

In a letter to Yahoo Chairman Roy Bostock, Icahn said he had snapped up 59 million Yahoo shares and was seeking permission from the Securities and Exchange Commission to amass up to \$2.5 billion in the Sunnyvale, Calif. company's stock. Yahoo's market value was nearly \$38 billion this morning.

"It is unconscionable that you have not allowed your shareholders to choose to accept an offer that represented a 72% premium over Yahoo's closing price of \$19.18 on the day before the initial Microsoft offer," Icahn wrote. "I and many of your shareholders strongly believe that a combination between Yahoo and Microsoft would form a dynamic company and more importantly would be a force strong enough to compete with Google on the Internet."

He added that he hoped Yahoo would listen to its shareholders and "move expeditiously" to close a deal with Microsoft, which earlier this month withdrew a \$47.5-billion offer for Yahoo after they failed to agree on a price.

Yahoo didn't immediately comment. Its annual meeting is scheduled for July 3.

Other candidates nominated by Icahn include Harvard Law School professor Lucian Bebchuk, Hawkeye Investments President John Chapple, Impact Venture Partners Managing General Partner Adam Dell, Icahn Enterprises Principal Executive Officer Keith Meister, Ocean Road Advisors Chairman Edward Meyer and private investor Brian Posner.

Reports Wednesday that Icahn was considering running a full slate surprised some major shareholders, who had been told by Icahn's allies just a day before that he intended to put forward only a few names to serve as agitators.

"I hadn't heard it even contemplated he would do a full slate," one big Yahoo investor said before Icahn released his slate. "It puts more pressure, to the extent he actually does it, on Yahoo. But it also comes with attendant risks for Icahn. Getting a full slate elected is more difficult."

Still unclear was whether Icahn would be able to entice Microsoft back to the bargaining table. The Redmond, Wash.-based maker of Windows and Office software wants to combine with

Yahoo in order to compete better with Google Inc. in the burgeoning market for Internet advertising. Microsoft earlier this month dropped plans to run its own slate of deal-friendly candidates for the board. It declined to comment Wednesday.

"The million-dollar question now is: Is Microsoft a buyer or not?" said Anthony Valencia, an analyst at Yahoo investor Trust Co. of the West.

Many investors have criticized Yahoo's incumbent directors for failing to accept Microsoft's unsolicited takeover offer. Microsoft made a public bid of \$31 a share in cash and stock Feb. 1 and eventually raised its offer to \$33 a share. But it broke off talks May 3 after Yahoo asked for \$37 a share.

That breakdown left investors plotting how best to pressure Yahoo to restart the negotiations. Some welcomed Icahn's entry into the fray this week but said they were nervous about putting the maverick strategist in full charge of the company.

Yet Icahn may have found enough support in his conversations that he thought he could win control, according to allies and analysts.

"Icahn knows he has a higher burden to meet to get the support of shareholders when you are handing the keys to the car to an entirely new board," said Chris Young, director of mergers and acquisitions research at advisory firm RiskMetrics Group.

Some who have studied Icahn's past moves said they thought he had either gotten confirmation that Microsoft was still interested in Yahoo or was playing a hunch that it would be.

"When Carl acts, shareholders usually benefit, because he has an extraordinary intellect and an extraordinary amount of money to make things go his way," said Mark Stevens, author of the book "King Icahn."

"All of these CEOs think one or two moves ahead," said Stevens, owner of management and marketing consulting firm Mark Stevens & Co. "He's thinking 10 moves ahead."

Yahoo may attempt to derail Icahn's campaign before the annual meeting by announcing a long-anticipated deal to run Google advertising next to Yahoo's Web search results, said analyst Youssef Squali of Jefferies & Co.

When he withdrew his offer for Yahoo, Microsoft Chief Executive Steve Ballmer complained that a Google pact could complicate any acquisition considerably.

Because Icahn is believed to be acting strictly for the sake of a company sale, it's reasonable for him to run a full slate, said Young of RiskMetrics.

"It really becomes a referendum on a deal, rather than a referendum on the quality of the board," he said. "There is no hidden agenda."

Late Wednesday, before Icahn released his slate, Bill Miller, who manages billions of dollars for Legg Mason Capital Management and is among the largest Yahoo investors, said he didn't know whether he would want an Icahn-dominated board.

"We would have a fiduciary duty to consider an alternative slate," Miller said. "Whether we would support it would depend on the facts and circumstances. It would depend on the people nominated, the platform, the response of Yahoo's directors, etc."

Yahoo shares gained 50 cents to \$27.64 in early trading today. They had tumbled to \$24.37 the first trading day after Microsoft walked away.

"We continue to believe Microsoft is the most likely suitor for Yahoo and that there is still a strong likelihood the deal happens, whether through shareholder activism or Microsoft returning on its own," Piper Jaffray & Co. analyst Gene Munster said.