

Icahn Proposes Dissident Yahoo Board

The New York Times

May 16, 2008

By Andrew Ross Sorkin

The billionaire investor, Carl C. Icahn, saying that the Yahoo board had acted irrationally in rejecting a \$47.5 billion offer from Microsoft, started a proxy fight on Thursday to try and force Yahoo to restart talks to sell itself.

In a letter addressed to Roy Bostock, the Yahoo chairman, Mr. Icahn said that he would put up a slate of 10 directors and would seek antitrust clearance from the Federal Trade Commission to acquire a stake of about \$2.5 billion in Yahoo, which would be about a 6 percent stake. He already has about 59 million shares of Yahoo.

“It is clear to me that the board of directors of Yahoo has acted irrationally and lost the faith of shareholders and Microsoft,” Mr. Icahn said in the letter. “It is quite obvious that Microsoft’s bid of \$33 per share is a superior alternative to Yahoo’s prospects on a standalone basis.”

Saying that he was perplexed by the board’s actions, Mr. Icahn told the Yahoo board that “It is unconscionable that you have not allowed your shareholders to choose to accept an offer that represented a 72 percent premium over Yahoo’s closing price of \$19.18 on the day before the initial Microsoft offer.”

The result, he said, was that “a number of shareholders have asked me to lead a proxy fight to attempt to remove the current board and to establish a new board which would attempt to negotiate a successful merger with Microsoft, something that in my opinion the current board has completely botched.”

Yahoo’s shares were up about 1.9 percent in afternoon trading.

Mr. Icahn received some support Thursday afternoon. John Paulson, the hedge fund manager, said he had acquired a 3.6 percent stake in Yahoo and would back the push to get the company back into takeover talks with Microsoft.

Besides Mr. Icahn, the slate of dissident directors includes Lucian A. Bebchuk, a law professor at Harvard; Frank J. Biondi Jr., a former chief executive of Viacom and Universal Studios; Mark Cuban, the owner of the Dallas Mavericks basketball team and a founder of Broadcast.com; Keith A. Meister, an executive at Icahn Enterprises; Brian S. Posner, the chief executive of the equity firm, ClearBridge Advisors; and Robert K. Shaye, a chairman and chief executive at New Line Cinema.

The deadline for nominating a dissident slate was Thursday.

Even as Mr. Icahn moves ahead with his efforts to get Yahoo back to the negotiating table, the potential suitor, Microsoft has given no indication that it would be willing to return.

Microsoft withdrew its \$33 a share offer about two weeks ago after Jerry Yang, Yahoo's chief executive and co-founder, said Yahoo needed a bid of at least \$37 a share. Microsoft, which had already raised its bid from \$31 a share, refused and walked away.

Since then, many large Yahoo shareholders have accused the board of pushing Microsoft away. In recent days, Yahoo's directors have received a deluge of letters criticizing the company's tactics during the negotiations.

Mr. Icahn's decision to try to oust the entire board — as opposed to proposing only a couple of candidates — is considered a high-risk maneuver, analysts said. He might have a better chance of winning a campaign by proposing a smaller slate, several analysts added.

As part of his proxy contest, Mr. Icahn is taking direct aim at Mr. Yang, who is revered inside the company and has the support of many of its employees. Some analysts question whether ousting Mr. Yang would destabilize Yahoo if were not sold and had to remain independent.

People included in Mr. Icahn's proxy effort say he wants to propose a full slate so that he will have enough leverage to push the company into the arms of Microsoft. Getting Microsoft, or any other suitor, to make a bid for Yahoo would raise the share price and yield a profit for Mr. Icahn.

Still, Microsoft has given Mr. Icahn no assurance it will re-enter talks, these people said. Mr. Icahn has tried to approach Steven A. Ballmer, Microsoft's chief executive, and his advisers through various channels.

Mr. Icahn has made a career of agitating for change at some of the nation's biggest companies. In the last three decades, he set his sights on companies as varied as T.W.A. and Time Warner.

While Mr. Icahn is often successful — he orchestrated a deal between Oracle and BEA Systems last year — he has also come up short. He was forced to abandon a proxy contest at Time Warner, and though he won seats on the board of Blockbuster, the company's value has fallen sharply since he joined it.