

# Yahoo's Odd Couple

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Leave it to Carl Icahn to make his last-minute Yahoo board fight interesting.

Carl Icahn is proposing 10 directors for Yahoo's board. Among them are Harvard corporate governance expert **Lucian Bebchuk** and Dallas Mavericks owner/blog maverick/Dancing With the Stars Contestant/Ayn Rand fan Mark Cuban (below).

That sounds like a fun board meeting. You couldn't find two people more opposite in temperament than Bebchuk, who maintains an intellectual, diplomatic, somewhat formal manner and a deep interest in research, and Cuban, who is famously outspoken and is known for his good instincts on business. (Cuban is a director of HDNet and sold Broadcast.com to Yahoo, which is where he got the money to buy the Mavs. He also made millions by hedging his Yahoo stock, which indicates he wasn't fooled by the company.)

Cuban, Bebchuk will join seven other Icahn board cohorts: Icahn, Keith Meister, former Viacom CEO Frank Biondi Jr., private equity investor John Chapple, Adam Dell, Edward Meyer, former Legg Mason executive Brian Posner and former New Line Cinema co-head Robert Shaye, who likely understands Icahn's scorn for Time Warner.

(Deal Journal Trivia: In 1996, Ken Auletta wrote an article about Biondi's push out of Viacom by Sumner Redstone who apparently maneuvered Biondi's departure with the help of outside communications counsel — and former Time Warner executive — Ken Lerer. Lerer's firm, Robinson Lerer Montgomery, now represents Yahoo.)

It's a little hard to tell how this board would improve Yahoo. But they can't do worse for shareholders than the current board, and therein lies their appeal. Claudia Allen, Chair of Neal Gerber & Eisenberg's corporate governance practice group, noted to Deal Journal that Icahn "is tapping into a strong sentiment of stockholders that management and the board have not done a good job. There is lots of discontent out there."

Yahoo shareholders, in a show of defiance, withheld 31% of their votes from Chairman Roy Bostock last year, and 33% of shareholders disdained to vote on the re-election of directors Ron Burkle and Arthur Kern.

"That's high in a normal world," said Allen. Of Bostock, she said, "It's unusual for a person who has received a lot of withholds to become chairman of the company. Someone who had received a high withhold like that would want to consider whether they want to remain on the board."

The highest and best use of Yahoo's board is to win back an offer from Microsoft. Icahn's involvement "leaves Microsoft on the sidelines not having to commence a hostile offer with employees. Microsoft can remain pristine and wait as he does his work."

If there was any doubt that Icahn is carrying water for Microsoft, this should dispel some of it: Chappel and Meyer were also on Microsoft's slate of nominees for Yahoo's board. So, while Bebchuk and Cuban might be an odd couple, Icahn and Microsoft together make perfect sense.