Icahn launches effort to unseat Yahoo's board
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By Verne Kopytoff
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A takeover bid by Microsoft Corp. recently averted, Yahoo Inc. found itself back in the crosshairs Thursday after billionaire investor Carl Icahn took aim at replacing the Web portal's board with a new slate of directors in the wake of what he called their "botched" merger negotiations.

His 10 nominees, which include himself, Dallas Mavericks owner Mark Cuban, former Viacom CEO Frank Biondi and New Line Cinema co-CEO Robert Shaye, will be up for election at the company's July 3 shareholder meeting.

The move is intended to pressure Yahoo's current directors to restart talks with Microsoft, two weeks after the Redmond, Wash., software giant withdrew its $47.5 billion acquisition proposal. Yahoo's board had rebuffed the offer as being too low, after a three-month standoff marked by thinly veiled hostility and intermittent talks.

"It is clear to me that the board of directors of Yahoo has acted irrationally and lost the faith of shareholders and Microsoft," Icahn said in a letter Thursday morning to Roy Bostock, Yahoo chairman.

Many big investors blamed Yahoo's board for failing to sign off on a deal that they insisted was in their financial interest. Icahn, who has amassed 59 million Yahoo shares - about 4 percent of the company - in recent days, said that other disenchanted investors encouraged him to wrest control of the board and return the company to the bargaining table.

Paulson & Co., a New York hedge fund that bought 50 million Yahoo shares, roughly 4 percent of the company, during the first three months of this year, said that it would support Icahn's slate. In a statement, John Paulson, the company's founder, who reaped big returns by betting correctly on the mortgage meltdown last year, said that Yahoo and Microsoft joining forces would provide a stronger competitor to mutual rival Google Inc.

"We intend to support the Icahn slate but sincerely hope that Yahoo will negotiate an agreement with Microsoft, thereby making a proxy fight unnecessary," he said.

The other Icahn nominees are Harvard business law Professor Lucian Bebchuk, Hawkeye Investments LLC President John Chapple, Impact Venture Partners executive Adam Dell (brother of PC leader Michael Dell), Icahn colleague Keith Meister, former Grey Global Group advertising CEO Edward Meyer, and former ClearBridge Advisors LLC CEO Brian Posner.

After walking away from Yahoo, Microsoft CEO Steve Ballmer has repeatedly said that he intends to bolster his online business by following a go-it-alone strategy. A person familiar with the matter reaffirmed that tack on Thursday, although many analysts suspect such comments are merely a negotiating tactic.
Microsoft had offered $33 per share for Yahoo, a 72 percent premium from where the shares traded just prior to the takeover bid Jan. 31. But Yahoo executives sought at least $37 per share before the talks ended. (Yahoo's shares closed at $27.75 Thursday.)

**Defending behavior**

Yahoo's Bostock responded to Icahn's call to arms Thursday with a broad defense of his company's behavior during the takeover bid and insisted that it remains open to a merger as long as the offer is fair. He underscored his confidence in the current board, citing its "independence, the knowledge and the commitment to navigate the company through the rapidly changing Internet environment."

"A fair-minded review of the factual record leads to one conclusion: that Yahoo's 10-member board, comprised of nine independent directors along with Yahoo CEO Jerry Yang, remains the best and most qualified group to maximize value for all Yahoo stockholders," Bostock said. "Conversely, we do not believe it is in the best interests of Yahoo stockholders to allow you and your hand-picked nominees to take control of Yahoo for the express purpose of trying to force a sale of Yahoo to a formerly interested buyer who has publicly stated that they have moved on."

Taking aim at Yahoo is a big financial risk for Icahn, who makes a business of taking big risks. Whether Microsoft still wants to acquire the Sunnyvale company is unclear, leaving him with the possibility that there may be no quick payoff for his $1.5 billion investment. He said in his letter than he has sought clearance with the Federal Trade Commission to purchase up to $2.5 billion in stock.

Icahn, 72, is a widely known investor activist who has intervened with many companies over the years, including TWA, Motorola Corp. and MedImmune, to maximize shareholder value, as is the common parlance. In practice, that means agitating for board seats as a big investor or filing lawsuits to get companies to overhaul their business or put the entire company up for sale.

Last year, Icahn pushed business-software-maker BEA Systems Inc. to return to the negotiating table with rival Oracle, whose overtures had initially been rebuffed. The two sides eventually agreed to a sweetened $8.5 billion deal that was completed last month.

**Some efforts fail**

But not all his investments pay off quickly. Since his intervention at video rental chain Blockbuster Inc., for example, the company's shares have declined.

Barry Genkin, an attorney with law firm Blank Rome and chair of its shareholder activist practice, said that Icahn holds the upper hand with Yahoo. The only way out for Yahoo is to prove that it has alternatives to a boardroom putsch, which it has so far failed to do, he said.

Microsoft, despite playing coy, would still probably want to buy Yahoo, Genkin said. But he added that it is playing smart by leaving the dirty work to someone else.
"The bottom line is that Microsoft is still holding the keys to the car," Genkin said. "What ultimately happens here depends on what Microsoft wants to happen."

Yahoo is still exploring alternatives that are intended to make it more viable as an independent company, including a deal to outsource at least some of its search engine advertising to Mountain View's Google. Such an agreement would probably bolster Yahoo's finances, because Google's ads generate more money than Yahoo's, although a partnership has raised serious antitrust concerns and is under review by the Department of Justice.

Icahn said that he hopes any alternatives pursued by Yahoo would not impede an acquisition with Microsoft, which has complained about the potential Google deal. Bostock replied that none of them would "preclude us from entering into a transaction with Microsoft or any other party."

**Icahn's proposed slate**

Carl Icahn's plan to replace Yahoo's current board:

**Current directors**

Roy Bostock, chairman, former chief executive of ad agency D'Arcy Masius Benton & Bowles and its successor company, the MacManus Group Inc.

Ron Burkle, managing partner of the Yucaipa Cos., a private investment firm.

Eric Hippeau, managing partner of Softbank Capital Partners, a venture capital firm.

Vyomesh Joshi, Hewlett-Packard executive vice president.

Arthur Kern, co-founder of American Media, a group owner of commercial radio stations sold to AMFM and now part of Clear Channel Communications Inc.

Robert Kotick, chief executive of Activision Inc., a publisher of interactive entertainment software.

Edward Kozel, previously chief executive of Skyrider Inc., venture capitalist, and Cisco Systems executive.

Maggie Wilderotter, chief executive of Citizens Communications. Previously a senior vice president at Microsoft and chief executive of Wink Communications.

Gary Wilson, chairman emeritus of Northwest Airlines Corp.

Jerry Yang, chief executive of Yahoo.

Source: Yahoo Inc.
Icahn's proposed slate

Lucian Bebchuk, a Harvard business law professor and research associate with the National Bureau of Economic Research.

Frank Biondi, former CEO of Universal Studios Inc. and Viacom Inc.

John Chapple, president of Hawkeye Investments LLC, a privately owned equity firm, and former CEO of Nextel Partners.

Mark Cuban, owner of the Dallas Mavericks basketball team; co-founder of Broadcast.com, which he sold to Yahoo in 1999.

Adam Dell, managing general partner of Impact Venture Partners, a technology investment firm.

Carl Icahn, chief executive of Icahn Capital.

Keith Meister, principal executive officer of Icahn Enterprises G.P. Inc.


Brian Posner, previously was chief executive of investment firm ClearBridge Advisors LLC.


Source: Icahn Capital