

# Yahoo, Icahn in fierce fight over who knows best

## ACTIVIST INVESTOR PUSHING FOR DEAL WITH MICROSOFT

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Yahoo fired back Thursday at activist investor Carl Icahn, claiming he misunderstood the talks the company had with Microsoft and that Yahoo's board, not Icahn, was looking out for shareholders.

The letter from Yahoo Chairman Roy Bostock came hours after Icahn unveiled his proposed candidates to replace the board and take control of the Sunnyvale company.

While maintaining that the company is open to any deal that would provide shareholders "full and certain value," Bostock wrote, "A fair-minded review of the factual record leads to one conclusion: that Yahoo's 10-member board remains the best and most qualified group to maximize value for all Yahoo stockholders."

Icahn's proposed slate, announced Thursday morning, is made up of former corporate executives, financiers and a law professor who is a respected advocate for shareholder rights.

"It is clear to me that the board of directors of Yahoo has acted irrationally and lost the faith of shareholders and Microsoft," he wrote in a letter to Bostock. "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 said a new board would attempt to negotiate a successful merger with Microsoft. "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."

During the past 10 days, Icahn said, he has purchased the equivalent of 59 million shares, currently worth \$1.6 billion. He said he has asked the Federal Trade Commission to clear the purchase of an additional \$900 million worth of stock, which would give him a 6.7 percent stake in the company.

Votes for the board of directors will be tallied after the annual shareholders meeting July 3.

In addition to Icahn himself, the nominees include Lucian Bebchuk, a professor at Harvard Law School; Frank Biondi Jr., the former chief executive of Viacom; John Chapple, former chief executive of Nextel Partners; Mark Cuban, owner of the Dallas Mavericks; Adam Dell, a venture capitalist; Keith Meister, vice chairman of Icahn Enterprises; Ed Meyer, former chief executive of the Grey Global Group; Brian S.

Posner, a private investor; and Robert Shaye, co-chairman and co-CEO of New Line Cinema.

At least two of the members of the slate - Chapple and Meyer - were also reportedly approached by Microsoft when it was considering launching its own proxy fight.

"It does raise the question: Is this a way to keep a back door open to contact with Microsoft?" said Claudia Allen, a corporate-governance attorney at Neal, Gerber & Eisenberg.

Microsoft ultimately decided not to try to push through a hostile transaction and withdrew its bid for \$47.5 billion May 3. It declined to comment on Icahn's letter.

B. Espen Eckbo, founding director of the Center for Corporate Governance at the Tuck School of Business at Dartmouth College, said by trying to replace the entire board Icahn has chosen a tactic that carries the highest risk, but also the biggest reward.

The election of a new board would give him far more control of Yahoo than simply winning one or two seats. Yet so-called proxy battles, even small ones, are notoriously difficult to win. A veteran of corporate battles ranging over three decades, Icahn has lost his share of boardroom struggles, including a recent attempt to split up Time Warner.

Still, Icahn is one of the most feared adversaries on Wall Street. "He has a number of advantages," Eckbo said. "No. 1, he is Carl Icahn, and he is good at this stuff."

Peter Falvey, managing director of Revolution Partners, a Boston-based investment bank, said there is a chance that Yahoo's board will chose to avoid a nasty proxy fight. "In some ways this could give them a fig leaf to go back to Microsoft," he said.

Investors are currently betting on a deal. Yahoo's stock has climbed about 10 percent on news that Icahn planned to push for new negotiations.

"We believe this deal will likely happen," said Sandeep Aggarwal, an analyst with Colins Stewart. "Microsoft really does not have a plan B without Yahoo." On Monday, Aggarwal upgraded Yahoo to a "hold" rating.

Meanwhile, Yahoo is describing Microsoft as "a formerly interested buyer who has publicly stated that they have moved on."

But in his letter to Icahn, Bostock emphasized Yahoo's willingness to do a deal with Microsoft at the right price, and noted that Yahoo's board met 20 times to consider the proposal and that Yahoo's senior-most management met in person with Microsoft seven times.

"The record of our efforts to engage Microsoft in meaningful discussions is unequivocal," Bostock wrote.

"Please may I remind you that there is currently no acquisition offer on the table from that company or any other party. That said, we have been crystal clear in our stance that we have been and remain willing to consider any proposal from any party including Microsoft if it offers our stockholders full and certain value."