

Dow Jones Board Won't Act As Bancrofts Deliberate

Directors Meet, Discuss Offer From News Corp.; A Legal Safe Haven

Wall Street Journal

Sarah Ellison and Robin Sidel

May 17, 2007

Dow Jones & Co.'s board met yesterday to grapple with the company's future as a standalone entity and agreed to stay on the sidelines as the company's controlling Bancroft family continues to ponder **News Corp.**'s \$60-a-share offer.

In a regularly scheduled meeting at company headquarters in lower Manhattan, the board decided to take no action on the latest letter from News Corp. Chairman Rupert Murdoch, which was addressed to the Bancrofts. ([Read the letter.](#)) It also heard presentations about the company's status and discussed a number of other matters raised by the offer. One such topic: the prospect of adopting a change-of-control package for executives in order to attract executives during an uncertain period for the company, according to a person familiar with the matter.

The board's independent directors are in a delicate position. Whatever their personal feelings about the offer, and regardless of their fiduciary duty to all shareholders, both the Bancrofts and others, the majority voting power of the company is still controlled by the family. So far, Bancroft family members initially opposed to the deal comprise 52% of the overall voting power, but the family is divided on whether to rebuff the offer outright or collect more information. The Ottaway family, with an additional 5.2% of voting power, has said it opposes a sale outright.

The board's position is that to assess the offer at this point would be futile if the controlling shareholder would vote it down anyway. That is a safe haven -- legal experts agree that the board has no obligation to act -- but legal precedent indicates that the board could make a recommendation at any time. Its next meeting is set for June, but family members have been in frequent contact with one another.

The company declined to comment.

Michael B. Elefante, a Dow Jones director and partner at Boston-based law firm Hemenway & Barnes who represents much of the Bancrofts' holdings, couldn't be reached for comment.

"The view of corporate law in the U.S. is that directors don't always have to do what shareholders tell them to do," said Lucian Bebchuk, a professor at Harvard Law School who studies corporate boards and governance issues. "It is reasonable to think the Dow Jones directors should explore the offer, investigate it and make a formal recommendation to shareholders."

But the board has no plans to formally consider the offer, unless the family's opposition to the bid falls below 50% of the overall voting power, according to two people familiar with the board's thinking. Assessing the offer, which is at a 67% premium over Dow Jones's stock price

prior to news of the offering becoming public, would serve as an admission that the company is "in play" and could open the board up to a confrontation with the Bancroft family, according to one of those people. The board's independent directors have retained Simpson, Thacher & Bartlett LLP to advise them on their legal obligations. Fried Frank Harris Shriver & Jacobson represents the company.

At yesterday's gathering, directors also considered the company's position in an increasingly consolidating media world. Clare Hart, president of the company's Enterprise Media Group, made a presentation to the board on that division, which includes Dow Jones Newswires, Dow Jones Indexes and Factiva. The company's newswires compete directly with **Thomson Corp.**, **Reuters Group PLC** and Bloomberg LP, and board members have expressed concern that Dow Jones could be at a disadvantage to those larger rivals, especially in light of the Thomson-Reuters merger. Mr. Murdoch is arguing that News Corp. would help Dow Jones's strategic position with its deep pockets and global reach.



Rupert Murdoch

Todd Larsen, the chief operating officer of the company's Consumer Media Group, which includes The Wall Street Journal, Barron's and MarketWatch, also made a presentation to the board.

While the board is officially taking no action on the Murdoch bid, directors are hardly unanimous in their view of the Murdoch offer, according to two people familiar with the board's thinking. Several board members were surprised that the Bancrofts lodged their opposition to such a rich premium, these people said.

The 16-person board has been chaired since last month by M. Peter McPherson, president of the National Association of State Universities and Land-Grant Colleges and former president of Michigan State University. Other board members include Chief Executive Richard F. Zannino, four directors affiliated with the Bancroft family, and 10 other independent directors.

The change-in-control issue was seen as potentially important for recruiting executives. Dow Jones doesn't have a provision in its proxy that provides for benefits to executives if the company is sold, so the board discussed detailing such benefits, particularly if the offer hangs over the company for months.

Although the board is taking no action now, it could be more forceful later on. The roles of corporate boards and controlling shareholders have been addressed a number of times in the Delaware courts. (Many U.S. companies, including Dow Jones, are incorporated in Delaware.)

"Delaware case law says that the controlling shareholder can't dictate the terms of any transaction and the independent directors must have 'real bargaining power'" with potential suitors, says Eric Chiappinelli, a professor at the Seattle University's law school who studies takeover issues and family-run businesses.

Mr. Chiappinelli and others who specialize in corporate governance and takeovers cited a 2004 case in which the Delaware chancery court denied an effort by media baron Conrad Black to block the board of Hollinger International from selling Britain's Telegraph newspaper. Mr. Black was a majority shareholder of Hollinger's holding company and opposed the deal, saying that it required a shareholder vote.

"Controlling stockholders have no inalienable right to usurp the authority of boards of directors that they elect," wrote Delaware Chancery Court Vice Chancellor Leo Strine in a 93-page decision in the case. That situation, however, involved the sale of an asset, not the whole company.