

Icahn's Gate Crashers Could Be Asked to Stay

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By George Anders

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Carl Icahn has been stalking vulnerable companies for decades. The 72-year-old activist investor usually comes across as a rough-edged loner, sneering at the cheery alliances that define much of business. As he once put it: "If you want a friend, get a dog."

But in the new era of boardroom governance -- when old-style coziness is out of favor and tough-minded detachment is preferred -- Mr. Icahn's track record as a corporate raider doesn't make him a pariah among corporate leaders anymore.

Suddenly, lots of prominent people are willing to hang out with him.

The proof: Mr. Icahn's entry last week into the Yahoo Inc. takeover battle, with a proposal to unseat the company's 10-member board and replace it with new directors of his choosing. Such dissident slates often are a ragtag collection of co-workers and college buddies, hurriedly pressed into an alliance with a single, rich, combative investor.

Not Mr. Icahn's slate. His nominees are led by former Viacom Inc. Chief Executive Frank Biondi, Internet billionaire Mark Cuban and Harvard law professor Lucian Bebchuk. Other prominent picks include venture capitalists and former heads of sizable telecom and advertising companies. Mr. Icahn does save two spots for himself and an associate at his investment firm.

The Icahn selections amount to "a celebrity, all-star slate," says Scott Fenn, managing director for policy at Proxy Governance Inc., a Vienna, Va., firm that advises institutional investors on how to vote their shares.

Echoing that point, Christopher Young, head of mergers-and-acquisition research at New York-based RiskMetrics Group, says: "We're seeing better dissident slates in general. It's no longer just a hedge-fund manager and three of his fraternity brothers. It's still a challenge to put these slates together, but some of the stigma of being involved as a director candidate in one of these battles has gone away."

Whether Mr. Icahn's slate really could run Yahoo effectively is an open question. Mr. Icahn's stated goal is to get the company sold quickly, most likely to Microsoft Corp., which had bid for Yahoo earlier this year but couldn't reach agreement with the target's directors on price.

In a letter last week to Yahoo Chairman Roy Bostock, Mr. Icahn accused the Yahoo board of having "acted irrationally and lost the faith of shareholders" by turning down Microsoft's proposal to buy the company for \$33 a share. Yahoo's shares closed at \$27.48 Tuesday.

It may be possible to revive Microsoft's takeover plan. But Yahoo's Redmond, Wash., suitor has been coy about its intentions, including the possibility, broached this week, of buying just part of Yahoo's businesses.

If the Microsoft deal can't be revived in full, frustrated Yahoo shareholders will have to decide whether they would rather let the current board, Mr. Icahn's nominees -- or some blend of the two -- chart the company's next moves. Mr. Icahn is promoting his slate as a whole. But there is no reason why shareholders couldn't limit their approval to those they believe are his strongest candidates, thereby combining old and new directors.

Mr. Icahn didn't return repeated phone calls, and Messrs. Biondi, Cuban and Bebchuk declined to comment.

Voting for Yahoo's directors is due to take place at the company's annual meeting July 3.

The mere presence of Mr. Icahn's slate, particularly if it appears to be attracting strong support, could change Yahoo's strategy.

"No one really wants this to come to a vote," says Joseph Grundfest, a Stanford law professor and former commissioner of the Securities and Exchange Commission. Mr. Grundfest speculates that if Yahoo management thinks it might lose a proxy vote, it might opt instead to quickly hammer out the best deal possible with Microsoft.

That is essentially what happened earlier this month at CNET Networks Inc., which operates technology- and entertainment-news Web sites. Activist investors led by Jana Partners LLC were dissatisfied with CNET's financial performance and wanted sizable board representation. With a holders' vote looming, CNET agreed to be sold to CBS Corp. for \$1.8 billion.

Possibilities abound, and Mr. Icahn's nominees may thrive regardless of what happens. Consider Harvard's Prof. Bebchuk. He has written extensively on corporate governance. Having firsthand experience of a proxy contest may add to his academic cachet.

Mr. Cuban, who made much of his fortune selling Broadcast.com to Yahoo for more than \$5 billion in 1999, is most active these days in developing high-definition television programming and running the Dallas Mavericks basketball franchise. But he is clearly enjoying the fresh chance to opine about Internet strategy.

On www.blogmaverick.com, Mr. Cuban last week spelled out ways in which Yahoo or Microsoft could seize control of archrival Google Inc.'s most popular listings. Google might counterattack, he conceded. No matter. As he wrote: "Is there anything more fun than sitting around, growing your hair, drinking a Bud while listening to Jethro Tull and pondering how to change the balance of power in the search world and unseat Google?"