

Yahoo, Carl Icahn Settle Before Proxy Fight

Yahoo and Carl Icahn comes to terms on a deal that will give Icahn and two others of his choosing seats on Yahoo's board. Yahoo will nominate 8 of it current directors for re-election as it seeks to placate shareholders put off by its stubborn resistance to Microsoft's advances.

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Yahoo and activist investor Carl Icahn settled their pending proxy contest July 21, with Icahn agreeing to joining Yahoo's board. Icahn, who smelled Yahoo's blood in the water in May after shareholders expressed anger that the Internet company didn't strike a deal with Microsoft, had vowed to replace Yahoo's board with his own slate of directors.

He spent the last few months browbeating people about the fiscal irresponsibility of Yahoo's board and exchanging testy letters with Yahoo Board Chairman Roy Bostock.

Through some small miracle, perhaps the endorsement of the current board by Bill Miller, chief investment officer of Legg Mason, Yahoo's second largest shareholder, Icahn has backtracked.

Icahn, who owns 5 percent of Yahoo common stock, withdrew his nominees for consideration at the annual meeting and vowed to vote his Yahoo shares in support of the board's nominees. Now, about those crucial board nominees, which will help shape Yahoo's fate by negotiating the company's future with shareholders.

Under the terms of the settlement agreement, eight members of Yahoo's current board of directors will stand for re-election at the Aug. 1 shareholders' meeting.

After that meeting, the Yahoo board will be expanded to 11 members. Icahn will be appointed to the board and the two remaining seats will be chosen by Yahoo from among eight members of Icahn's original slate of nominees and Jonathan Miller, former chairman and CEO of AOL.

The certain Yahoo board members are: Bostock, Ronald Burkle, Eric Hippeau, Vyomesh Joshi, Arthur Kern, Mary Agnes Wilderotter, Gary Wilson and Jerry Yang. Yahoo director Robert Kotick has decided not to stand for re-election at the meeting.

The potential Icahn nominees are: Keith Meister, principal executive officer of Icahn Enterprises; Dallas Mavericks owner Mark Cuban; former Viacom CEO Frank J. Biondi Jr.; Adam Dell, venture capitalist; Harvard professor Lucian Bebchuk; former Nextel Partners CEO John Chapple; investment manager Edward Meyer; money manager Brian Posner; and Robert Shaye, founder and co-CEO of New Line Cinema. Bostock, Yahoo CEO Jerry Yang and Icahn all cheered the compromise in unique fashion, though it was Bostock's comment that stuck out.

"We look forward to working productively with Carl and the new members of the Board on continuing to improve the Company's performance and enhancing stockholder value," Bostock said.

A week ago, this would have seemed impossible given the angry exchanges between Bostock and Icahn. Icahn, too, seems satisfied.

"I am very pleased that this settlement will allow me to work in partnership with Yahoo's board and management team to help the Company achieve its full potential," he said.

However, he also reiterated that the sale of the Yahoo or the sale of its search business in the "right transaction must be given full consideration."

Still, there are many questions in the wake of this move.

Will Icahn try to use his sway to get Yahoo to do another deal with Microsoft? And would that be to solely sell Yahoo's search business to Microsoft, or the whole lot?

What does Microsoft CEO Steve Ballmer, who has recently schemed with Icahn to come up with another deal for Yahoo, do?

In short, is Icahn acting as a Trojan horse in Yahoo's board, or is he disenchanted with Ballmer and Co.?

Could Icahn actually be trying to help Yahoo turnaround, or will he, in congress with angry shareholders, subvert the current board?

TechCrunch believes Icahn is doing what he can to keep in the game somehow after failing to help Microsoft do a deal with Yahoo.

That may be so. But I don't see how Icahn can or will win much on Yahoo's board. He and his two teammates won't have the sway Yahoo's current board will have with shareholders, particularly after Legg Mason publicly backed it.

My best guess is Icahn just didn't want to be shut out of a deal wholesale, and with 5 percent of Yahoo's shares, who can blame him?

There are many questions as we speed toward the Aug. 1 meeting, which is shaping up to be one of the most momentous in the history of the Internet.

Yahoo has a lot of assets at stake starting in search, then on down the line in messaging and collaboration, Web services and application development. Yahoo says it still wants to compete with Google, Microsoft, et al., so I believe it was crucial for Yahoo to avoid a messy, drawn out proxy fight.

Kudos to Yahoo and Icahn for meeting in the middle, even if we don't know exactly where Yahoo will ultimately stand with shareholders. Aug. 1 will indeed be a key date in Yahoo's timeline.