

Yahoo Settles To Avert Proxy Fight, Gives Icahn 3 Director Slots

“Yahoo has reached a truce in its long-running takeover war with corporate raider Carl Icahn, who will join the Internet Company’s board.”

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By Rahul Chatterjee

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New York -- The prolonged conflict between Yahoo’s board of directors and investor Carl Icahn displayed signs of change on Monday as the two parties reached a settlement: On the eve of releasing its latest earning statistics, Jerry Yang, the chief executive of Yahoo Inc., has managed to defuse a bloody boardroom coup at the internet search engine he founded by offering three board seats to rabble-rousing investor Carl Icahn, the billionaire who had plotted to oust all the directors of the company on August 1.

Icahn has seemingly decided that his 4.98 percent stake in Yahoo common stock is safe in the hands of Yahoo’s current eight-member board, which has fought him for control of the company over the last several months.

Yahoo said Icahn and two allies of his choice will round out the board, keeping current Chairman Roy Bostock and Yang in place in exchange for Icahn withdrawing a slate of nominees he was backing to replace the incumbents.

Icahn had originally vied to replace the company’s entire board, with Lucian A. Bebchuk, Frank J. Biondi Jr., John H. Chapple, Mark Cuban, Adam Dell, Keith A. Meister, Edward H. Meyer, and Brian S. Posner as his candidates.

“The battle may not be over, but it is expected to become less public. Yahoo co-founder and CEO Jerry Yang lives to fight another day!”

The settlement spares Yahoo from more bickering with Icahn, an acerbic billionaire who had spent the past two months leading a rebellion to replace the internet company’s entire board in retaliation for its rejection of Microsoft’s \$47.5 billion takeover bid in May.

However, Icahn's crusade seemed to have failed to win the backing of key shareholders such as Legg Mason fund manager Bill Miller, who said on Friday he would support Yahoo’s board. Legg Mason owned 4.4 percent of Yahoo, according to recent filings.

The duel had been planned to culminate in a shareholder vote at Yahoo’s August 1 annual meeting. Now, the two sides will become one as they work to figure out their financial future.

According to the deal announced Monday morning, Icahn will join the board, which will expand to 11 members, and only one current director Robert Kotick, the CEO of video game maker Activision Blizzard Inc. and a Yahoo director for five years, will step down from his position next month, Yahoo said in a statement. The other two seats will be filled from a list of nine candidates backed by Icahn, which now includes former AOL Chief Executive Officer Jonathan Miller.

“This agreement will not only allow Yahoo to put the distraction of the proxy contest behind us, it will allow the company to continue pursuing its strategy of being the starting point for Internet users and a must buy for advertisers,” Yahoo CEO Jerry Yang said.

The contentious Icahn also openly expressed contentment while emphasizing his vision for the company’s next steps, said in a statement:

“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. While I continue to believe that the sale of the whole company or the sale of its search business in the right transaction must be given full consideration, I share the view that Yahoo’s valuable collection of assets positions it well to continue expanding its online leadership and enhancing returns to stockholders. I believe this is a good outcome and that we will have a strong working relationship going forward. Additionally, I am happy that the board has agreed in the settlement agreement that any meaningful transaction, including the strategy in dealing with that transaction, will be fully discussed with the entire board before any final decision is made.”

If Icahn was so uncompromising about ousting Yang from the CEO spot and doing a deal with Microsoft, what softened his stance?

Following are a few suggestions:

“It seems that he realized he could not win the proxy fight, and took the opportunity to grab a portion of the board,” said Erick Schonfeld, co-editor of the weblog TechCrunch.

Icahn was getting indications that other major shareholders, such as Legg Mason, would support Yahoo’s board in the August 1 shareholder meeting.

Icahn came to the winding up that a continuous beating up on Yang and Yahoo was not a winning strategy for making money on his shares.

However, three seats still gives him a strong position from which to agitate for change.

“This is an enhanced path than the one they were on,” analyst Rob Enderle of Enderle Group, said in a statement.

“In fact there is a common goal for both groups -- to make Yahoo stronger and more profitable. The disagreement was on the path.”

The deal places Icahn a step closer to forcing Yahoo CEO Jerry Yang to accept a merger. While the pact leaves Yang in his job, even after Icahn had pressed for his removal, it places a voice for change on the board. That makes it tougher for Yang, 39, to put off a deal if he cannot quickly turn around Yahoo, which has repeatedly snubbed advances from Microsoft Corp.

“Icahn clearly is pushing for change at Yahoo -- this guy is a deal person,” Michael Shinnick, a portfolio manager at First Source Bank in South Bend, Indiana, quoted as saying to Bloomberg

Television. “With him on the board they are going to be much more receptive and reasoned in terms of considering a Microsoft offer.”

Investors were not that impressed by Yahoo officials as they were concerned about the alternative, Sanford C. Bernstein & Co. analyst Jeff Lindsay said in an interview.

Shareholders were simply not willing to sell the search business to Microsoft and leave an “unknown” slate of directors run the rest of the company, as Icahn had proposed, he said. Legg Mason Capital Management Chairman Bill Miller threw his support behind Yang three days ago; undercutting Icahn’s bid for control.

Icahn did not have the vote,” said New York-based Lindsay, who expects Yahoo shares to perform in line with the market. “The large institutional shareholders were more in favor of retaining the current management structure” at the August 1 meeting.

Kotick, 45, joined Yahoo’s board in March 2003. He is leaving to focus on his role as CEO at video-game software publisher Activision Blizzard Inc., Yahoo said today. He did not immediately return a call seeking comment.

Meanwhile, Icahn failed to persuade many investors that if he had won control of Yahoo at the upcoming annual meeting, that he had any alternative for turning the business around, other than to sell it in part or in whole to Microsoft.

“It may be possible it does generate some positive change. Perhaps Icahn can drive some more staff reductions, convince it to divest its Asia investments,” Lindsay, said of the settlement.

“Overall it seems much less likely that there will be a transaction with Microsoft. The market is already reading it that way,” he added. “This looks like a compromise and in general most of these compromises, certainly with ones with Icahn in the past, have reinforced the status quo.”

Microsoft did not respond to requests for comment Monday on its next move, but has previously indicated it remains interested in exploring a deal with Yahoo, especially if the negotiations were handled by a new board.

“Besides, the company will undoubtedly face questions about its Internet strategy at its annual analyst meeting on Thursday.”

Having been repeatedly rejected by Yahoo so far, Microsoft has been reported to be discussing a possible acquisition of Time Warner Inc.’s AOL. Microsoft wants to strengthen its internet business to challenge Google Inc.’s dominance of the online search and advertising market.

Yahoo has said Microsoft’s various deal proposals have undervalued its business and instead reached a search advertising partnership with arch rival Google Inc. to boost its performance.

The settlement agreement requires Yahoo to expand its board shortly after the August 1 annual meeting to 11 seats from nine and appoint Icahn as a new director to serve until at least the 2009 annual meeting, according to a U.S. regulatory filing.

If Icahn's holdings fall below 30 million shares, he would lose his board seat, the settlement agreement states.

Once Icahn nominees join Yahoo's board, Icahn and his affiliates surrender the opportunity to wage a new battle to dislodge Yahoo's board, the filing states.

With these statutes, it now seems there will be fewer fireworks at that gathering, although some Yahoo shareholders are still expected to vent about the board's inability to get a deal done with Microsoft after six months of wrangling.

Yahoo shares fell 78 cents, or 3.5 percent, to \$21.67, far below Microsoft's last offer price of \$33 per share, which was withdrawn in May. Microsoft shares lost 22 cents to \$25.64.