

Icahn Pledges Proxy Fight for Yahoo-Microsoft Merger

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Carl Icahn threatens Yahoo's board with a proxy fight even though Microsoft has walked away from the Internet company.

Carl Icahn is once again coming to wrest control of a public company from its leaders.

The billionaire investor, a hero to investors who feel they've been wronged by breaches of fiduciary duty and a scourge to public companies determined to follow an independent path, said he will wage a proxy fight for Yahoo if the Yahoo and Microsoft don't make a deal.

Icahn claimed in a letter May 15 that the company's board had acted irrationally and lost the faith of shareholders in rejecting Microsoft's \$33-per-share bid for the Internet company.

Microsoft walked away from the deal May 3 after failing to convince Yahoo that it was fair. Shareholders disgruntled with Yahoo's management were angered by this and had until May 15 to nominate a new board of directors for the company, names which will be presented during the shareholders' meeting July 3.

Instead, they turned to Icahn, who helped facilitate the sale of BEA Systems to Oracle and pressured Motorola to spin off its mobile devices unit. Icahn put together a 10-person slate to stand for election against the current board and sought antitrust clearance from the Federal Trade Commission to acquire up to approximately \$2.5 billion worth of Yahoo stock.

Icahn stated May 15 that he had acquired 59 million shares of Yahoo earlier this week to begin the process of gaining leverage for a proxy fight. Icahn blasted Yahoo Board Chairman Roy Bostock in the letter.

"It is irresponsible to hide behind management's more than overly optimistic financial forecasts," Icahn wrote. "It is unconscionable that you have not allowed your shareholders to choose to accept an offer that represented a 72 percent premium over Yahoo's closing price of \$19.18 on the day before the initial Microsoft offer."

Yahoo is preparing a response as of this writing.

Icahn went on to say what Microsoft has claimed repeatedly since making its original \$31-per-share offer Feb. 1: that a merger of Yahoo and Microsoft would form a power strong enough to compete with Web power Google.

He also said he was concerned about Yahoo's promise to pursue strategic alternatives, which could include outsourcing paid key search terms to Google, and asked that shareholders be allowed to "opine on them before embarking on such a transaction."

Finally, he said he hoped Yahoo would work with Microsoft to do a deal to avoid a proxy fight, though Microsoft has not indicated it would continue to pursue Yahoo, which could make it hard for Icahn to work his magic. If Microsoft is not interested in Yahoo, and neither is any other buyer, a proxy fight would seem purposeless.

Icahn's slate is an impressive team of business and financial geniuses: Keith Meister, principal executive officer of Icahn Enterprises G.P.; Dallas Mavericks owner Mark Cuban, who sold his Broadcast.com site to Yahoo in 1999; former Viacom CEO Frank J. Biondi Jr.; Adam Dell, venture capitalist (brother of Dell CEO Michael Dell); 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.