

Icahn launches bid to take Yahoo board

The proxy battle is on as the billionaire investor backs an alternative slate of directors aiming to revive merger talks with Microsoft.

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Billionaire investor Carl Icahn on Thursday launched a bid to take control of Yahoo Inc.'s board of directors, which he called "irresponsible," in an effort to force the Internet pioneer back to the bargaining table with Microsoft Corp.

He nominated 10 candidates who are running on a platform that Yahoo should sell to Microsoft, which withdrew its \$47.5-billion takeover offer this month. They include Icahn and a host of heavy hitters, including former Viacom Inc. Chief Executive Frank Biondi Jr., Dallas Mavericks owner Mark Cuban and former New Line Cinema co-Chairman Robert Shaye.

In a letter to Yahoo Chairman Roy Bostock, Icahn said he had snapped up 59 million Yahoo shares, worth about \$1.5 billion, and was seeking permission from the Federal Trade Commission to amass as much as \$2.5 billion worth. His holdings constitute about 4.3% of the Sunnyvale, Calif., company's stock.

He said he hoped Yahoo would listen to its shareholders and "move expeditiously" to close a deal with Microsoft, which this month withdrew its offer after the two companies failed to agree on a price.

Yahoo, for more than a decade a Silicon Valley darling with its goofy exclamation point and chummy culture, is bracing for a bitter fight with the hardened 1980s corporate-raider-turned-shareholder-activist, who is backed by an army of shrewd deal makers.

In a written response to Icahn, Bostock said Yahoo's directors had "kept an open mind and an open ear" throughout talks with Microsoft and acted on behalf of shareholders by rejecting a bid they believed substantially undervalued Yahoo.

"We do not believe it is in the best interests of Yahoo stockholders to allow you and your handpicked nominees to take control of Yahoo for the express purpose of trying to force a sale of Yahoo to a formerly interested buyer who has publicly stated that they have moved on," Bostock wrote.

Icahn has received no signs of renewed interest from Microsoft, according to people familiar with the matter. The Redmond, Wash.-based company declined to comment.

Yahoo's shares rose 61 cents to \$27.75, while Microsoft's gained 52 cents to \$30.45.

Most proxy contests are settled before they come to a vote, New York University finance professor David Yermack said.

Some observers say Icahn's involvement could increase the likelihood of reaching a deal. But his decision to try to oust the entire board -- including Yahoo's popular co-founder and chief executive, Jerry Yang, is considered bold and risky. It could destabilize the company should it remain independent. And it's unclear whether he can win shareholders' support at Yahoo's July 3 annual meeting.

Icahn's intuition has served him well in previous contests, observers say. He has engaged in 17 proxy fights since 2000, according to research firm FactSet SharkWatch. In six, he won or was granted board seats. In four, the proxy contest resulted in a spinoff or a share buyback. Two proxy contests are continuing: Biogen Idec Inc. and Yahoo. In the remaining contests, he lost or withdrew.

"This is a 12-round prize fight with each side feeling out each other's strengths and weaknesses in the early rounds," said Chris Young, director of mergers and acquisitions research for advisory firm RiskMetrics Group.

Yahoo is on the defensive. It has received a deluge of letters from shareholders angered by the company's tactics during negotiations with Microsoft. Two of its largest institutional shareholders, Capital Research Global Investors and Legg Mason Capital Management Inc., voiced rare public frustration when talks collapsed.

Late Thursday, Legg Mason Chief Investment Officer Bill Miller called Icahn's group of nominees "a solid slate. I know a couple of them quite well and have a high regard for their judgment and integrity." But Miller also called Bostock's letter "complete and candid," suggesting he hadn't made up his mind on how to vote.

Yahoo will have to cast Icahn as a short-term profiteer who cannot be entrusted with shareholders' best interests, NYU's Yermack said.

Investment firm Paulson & Co. said it had bought 50 million Yahoo shares and would support Icahn's boardroom coup but hoped the companies would reach a deal first.

Another major shareholder in both companies said Yahoo would have a tough time remaining independent.

"The shareholders own the company, and Jerry did not give the shareholders a chance to express their opinion. Now he has got to deal with Icahn," said Larry Haverty of Gabelli Funds' Gamco Investors. "If we go to an election, Icahn will win."

Yahoo is vulnerable to a proxy battle because it does not have a "staggered" board. That means all of its 10 directors are up for reelection at the company's annual meeting.

The manager of a New York hedge fund with more than 1 million Yahoo shares said that by trying to unseat the entire board, Icahn was in effect giving the current directors a July 3 deadline to seal a deal with Microsoft or face certain defeat in the board elections.

Charles Elson, director of the University of Delaware's Weinberg Center for Corporate Governance, agreed. "Either they negotiate with Microsoft or they negotiate with Icahn."

Icahn warned Yahoo against pursuing "strategic alternatives" without consulting shareholders. Discussions with Google Inc. for an advertising partnership to boost Yahoo's profit from Web search continue. When it pulled its bid, Microsoft said the potential partnership had emerged as a deal breaker in takeover talks. Yahoo has also talked with Time Warner Inc.'s AOL unit about combining forces.

Microsoft wants to join with Yahoo to better compete with Google, which dominates the burgeoning market for Internet advertising. Microsoft made a public bid of \$31 a share in cash and stock Feb. 1 and said it eventually raised its offer to \$33 a share. But it broke off talks May 3 after Yahoo asked for \$37 a share.

That breakdown left investors plotting how to pressure Yahoo to restart negotiations. Some urged Icahn to jump in.

Other members of the slate are Harvard Law School professor Lucian Bebchuk, Hawkeye Investments President John Chapple, Impact Venture Partners Managing General Partner Adam Dell, Icahn Enterprises Principal Executive Officer Keith Meister, Ocean Road Advisors Chairman Edward Meyer and private investor Brian Posner.