

EBAY INC  
Form DEFA14A  
March 05, 2014

---

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

SCHEDULE 14A  
Proxy Statement Pursuant to Section 14(a) of the  
Securities Exchange Act of 1934

Filed by the Registrant ☒  
Filed by a Party other than the Registrant ☐

Check the appropriate box:

- ☐ Preliminary proxy statement
- ☐ Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- ☐ Definitive Proxy Statement
- ☐ Definitive Additional Materials
- ☒ Soliciting Material Pursuant to § 240.14a-12

eBay Inc.  
(Name of Registrant as Specified in Its Charter)  
(Name of Person(s) Filing Proxy Statement, if Other Than Registrant)

Payment of Filing Fee (Check the appropriate box):

- ☒ No fee required.
- ☐ Fee computed below per Exchange Act Rules 14a-6(i)(1) and 0-11.
  - (1) Title of each class of securities to which transaction applies:
  - (2) Aggregate number of securities to which transaction applies:
  - (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11. (Set forth the amount on which the filing fee is calculated and state how it was determined):
  - (4) Proposed maximum aggregate value of transaction:
  - (5) Total fee paid:
- ☐ Fee paid previously with preliminary materials.
- ☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration

Edgar Filing: EBAY INC - Form DEFA14A

statement number, or the Form or Schedule and the date of its filing.

- (1) Amount Previously Paid: \_\_\_\_\_
  - (2) Form, Schedule or Registration Statement No.:  
\_\_\_\_\_
  - (3) Filing Party: \_\_\_\_\_
  - (4) Date Filed: \_\_\_\_\_
-

On March 5, 2014, eBay Inc. (the “Company”) issued the following Infographic:

---

\* \* \* \* \*



John Donahoe, President, Chief Executive Officer, and Director of the Company, directed employees of the Company to the following “Frequently Asked Questions” regarding the Company’s 2014 Annual Meeting and certain matters to be discussed therein:

1. Will the company consider Icahn’s proposals?

A: Please see our statement online:

[http://www.ebayinc.com/in\\_the\\_news/story/ebay-incs-statement-carl-icahns-investment-and-related-proposals](http://www.ebayinc.com/in_the_news/story/ebay-incs-statement-carl-icahns-investment-and-related-proposals)

2. What’s the company’s point of view on this proposal?

A: While we welcome the perspective of all investors and customers, we believe that PayPal is able to grow faster and more profitably as a part of eBay, than it would as a standalone company.

The whole greatly enhances the parts – together, there are significant synergies. As payment and commerce blur, PayPal and eBay make sense together. There are three reasons why we believe this:

1. eBay accelerates PayPal’s success;
2. eBay data makes PayPal smarter; and
3. eBay funds PayPal’s growth.

3. Where can I get more information about this proposal?

A: Please check The Hub and eBayinc.com for all the latest information.

4. Why do you think Mr. Icahn is targeting us?

A: We can’t speak for Mr. Icahn or his motivation. We believe we are well positioned to take advantage of the dramatic shifts in commerce. We have tremendous opportunities. Our core businesses are strong. We’re investing in growth with smart moves in mobile, local, global and customer engagement. Stepping up execution in 2014 is critical, and our operating performance is testament to the power of this integrated strategy.

5. How will this affect us as employees?

A: There is no direct impact. No changes are planned as a result of this announcement. John, Devin, David and the rest of the leadership team have reiterated that employees need to be laser-focused on achieving high levels of excellence for our customers. For all of us, it’s business as usual.

6. How does this affect the Marketplaces or PayPal product roadmaps?

A: It does not affect the roadmap. We’re driving customer-focused innovation and we’re committed to leading and creating the future of commerce.

7. How does eBay Marketplaces benefit from PayPal staying a part of the portfolio?

A: Payments are an essential part of commerce. We are focused on taking the friction out of paying. Payments drive engagement and create more value for consumers and merchants. eBay and PayPal together create mutually reinforcing network effects, including mobile.

8. What happens next?

A: The company and Mr. Icahn will manage his proposals through our normal proxy and annual shareholders meeting process. The annual meeting generally occurs in April, which is when shareholders will vote on all proposals being considered at the meeting.

9. Why did the Board even consider a PayPal spinoff?

Edgar Filing: EBAY INC - Form DEFA14A

A: The Board routinely assesses the company's strategic direction. eBay has helped drive PayPal's success for more than a decade, and we continue to believe we are far more valuable together than we are apart. PayPal is successful because it is a part of eBay Inc., not in spite of it.

[Legends Included in Original Are Excerpted at the End of this DEFA14A Filing]

\* \* \* \* \*

---

On March 5, 2014, Marc Andreessen, a member of the Company's board of directors, issued the following statement:

March 5, 2014

Carl Icahn 2014 Explains How Carl Icahn 2011 Has Terrible Business Ethics

#### ON THE TECHNOLOGY INDUSTRY, EXPERIENCED DIRECTORS, AND CONFLICTS:

Carl Icahn 2014: "Marc Andreessen and Scott Cook... are two of the most respected, accomplished and value-driven leaders in Silicon Valley. And I sort of agree. I think they're respected. I think they're accomplished. And I agree mostly they're value-driven leaders. The trouble is they're value-driver leaders for themselves, not for eBay and not for the shareholders they have a fiduciary obligation to." (e)

Carl Icahn 2011: "Potential conflicts of interest are by no means rare, though, and seem to be especially frequent among technology and biotech companies. Each of those fields tends to be intensely technical by nature, and corporations involved in those areas often find that it is useful to have a board of directors with significant experience in those areas, which means that at least minor conflicts of interest often arise. (1)

#### ON VENTURE CAPITALISTS AND CONFLICTS:

Carl Icahn 2014: "eBay states the conflicts regarding Mr. Andreessen's investments are acceptable. Mr. Andreessen has funded... and advises no less than five competitors, four of which directly compete with PayPal – all the while potentially having access to nonpublic information regarding PayPal's operating performance... We do not consider [Andreessen's actions] even close to satisfying the 'world-class' standards that eBay claims to have established for its board." (c)

Carl Icahn 2011: "These [technology] firms are frequently funded by venture capital; the venture capital firms invariably put their own directors on the boards; and those directors or their firms often have direct and material conflicts of interest because they usually fund/control potentially competitive corporations as well." (1)

#### ON CONFLICTS, DISCLOSURE, AND RECUSAL:

Carl Icahn 2014: "However, Mr. Andreessen attempted to defend himself, telling the Wall Street Journal that 'he recuses himself from boardroom discussions that could involve companies his firm is backing.' Seriously? Mr. Andreessen expects eBay stockholders to be comforted by the fact that he self-polices himself? Excuse me if I do not find that nearly sufficient." (a)

Carl Icahn 2011: "The first, and perhaps most important measure is that the existence of the potential conflict needs to be disclosed by the director to the board." (1)

Carl Icahn 2011: "The biopharma industry has standard practices on how to deal with potential director conflicts regarding business development opportunities. Directors simply recuse themselves in the event of a vote or decision that may present a conflict." (2)

ON SERVICE ON MULTIPLE BOARDS AND RECUSAL:

Carl Icahn 2014: “eBay has previously stated that Mr. Cook’s company, Intuit, and PayPal are not competitors. However, to state they are not competitors is absurd.... In our opinion, having Mr. Cook on the board while planning PayPal’s future is akin to having Pete Carroll, coach of the Seattle Seahawks, sitting in when the Denver Broncos were constructing their game plan for the Super Bowl.” (c)

Carl Icahn 2011: “The benefit of drawing upon knowledge and experience from shared, collective service on multiple biopharma boards heavily outweighs the potential conflict in these rare situations which are easily managed through recusal.” (2)

Carl Icahn 2011: “The directors should determine, on a case by case basis, whether they should wall themselves off from conflicted directors when making a decision with respect to a conflicted transaction.” (1)

ON BEST PRACTICES FOR DEALING WITH CONFLICTS:

Carl Icahn 2014: “The point is not whether processes may have been put in place or whether directors may have recused themselves from portions of meetings... The point is that because of the multiple hats they wear and a number of their actions, we believe that eBay directors Andreessen and Cook have clear conflicts which call into question whether they can adequately fulfill the duty of loyalty that every director owes to ALL eBay stockholders.” (b)

Carl Icahn 2011: “A general set of ‘best practices’ has evolved for dealing with [conflicts of interest],” and can “be dealt with by the methods used by thousands of other public and private corporations” and handled “with professionalism and very little fuss and bother...” (1)

ON THE UBIQUITY OF SUCH CONFLICTS:

Carl Icahn 2014: “And – and they say that – and they go and then they – and they say that Mr. Andreessen, Scott Cook, extraordinary insight, expertise, leadership, which is scrupulous in its governance practices. And eBay’s board – eBay’s board – hey, I don’t even blame Andreessen and Cook... Scrupulous in governance practices and fully transparent with regard to its directors. Hey, if they’re fully transparent, I guess these guys are sort of blind. I just don’t understand how – how people – how – how they get away with it.” (e)

Carl Icahn 2011: “Given the ubiquity of such conflicts, as well as similar situations in which directors or senior management might have conflicting interests, a general set of ‘best practices’ has evolved for dealing with them.” (1)

ON THE ROUTINE NATURE OF SUCH CONFLICTS:

Carl Icahn 2014: “During Mr. Andreessen’s time on the eBay Board – a time when he has been privy to nonpublic eBay Board information – he has made investments in and actively advised, no less than five direct competitors of eBay... How can Mr. Donahoe and the eBay Board allow Mr. Andreessen to advise these competitors while he simultaneously possesses not only nonpublic eBay Board information but also intimate proprietary information about PayPal’s operations?” (d)

Carl Icahn 2011: “To the extent these potential conflicts of interest actually exist, they are routine matters with which corporate boards of directors normally deal and pose no significant issues.” (1)



ON THE ROUTINE NATURE OF INFORMATION-SHARING CONCERNS:

Carl Icahn 2014: “Does eBay director Marc Andreessen understand that if he entered into a confidentiality agreement with a third party that prevented him from fully discharging the duties he owed to eBay – that the mere act of entering into such an agreement may have been a breach of duty in and of itself?” (a)

Carl Icahn 2011: “An appropriate conflicts and recusal policy similarly could ameliorate any information-sharing concerns that might theoretically arise from interlocking board members.” (1)

SOURCES:

- (a) [http://www.shareholderssquaretable.com/ebay\\_letter\\_5/](http://www.shareholderssquaretable.com/ebay_letter_5/)
- (b) [http://www.shareholderssquaretable.com/ebay\\_letter\\_4/](http://www.shareholderssquaretable.com/ebay_letter_4/)
- (c) [http://www.shareholderssquaretable.com/ebay\\_letter\\_3/](http://www.shareholderssquaretable.com/ebay_letter_3/)
- (d) <http://www.shareholderssquaretable.com/open-letter-to-ebay-stockholders/>
- (e) Bloomberg Feb 24 television interview with Carl Icahn

(1) Mr. Icahn and his affiliates filed two opinions of legal counsel as supporting proxy materials in his proxy fight for Forest Laboratories:

Letter from Ashby & Geddes, Counsel to Icahn Capital LP, 8/7/2011

<http://www.sec.gov/Archives/edgar/data/38074/000092847511000188/frxdfan14a081111.txt>

Letter from Arnold & Porter LLP, Antitrust Counsel to Icahn Capital LP, 8/7/2011

<http://www.sec.gov/Archives/edgar/data/38074/000092847511000179/frxdfan14a080811ap.txt>

(2) Open Letter from the Icahn Group to Forest Laboratories Shareholders, 4/7/ 2011

<http://www.sec.gov/Archives/edgar/data/38074/000092847511000174/frxdfan14a080811.txt>

[Legends Included in Original Are Excerpted at the End of this DEFA14A Filing]

\* \* \* \* \*

Important Additional Information

eBay Inc., its directors and certain of its executive officers are participants in the solicitation of proxies from stockholders in connection with eBay’s 2014 Annual Meeting of Stockholders. eBay intends to file a proxy statement and WHITE proxy card with the U.S. Securities and Exchange Commission (the “SEC”) in connection with such solicitation. EBAY STOCKHOLDERS ARE STRONGLY ENCOURAGED TO READ ANY SUCH PROXY STATEMENT (INCLUDING ANY AMENDMENTS AND SUPPLEMENTS) AND ACCOMPANYING WHITE PROXY CARD WHEN THEY BECOME AVAILABLE AS THEY WILL CONTAIN IMPORTANT INFORMATION.

Information regarding the names of eBay’s directors and executive officers and their respective interests in eBay by security holdings or otherwise is set forth in eBay’s proxy statement for the 2013 Annual Meeting of Stockholders,

Edgar Filing: EBAY INC - Form DEFA14A

filed with the SEC on March 18, 2013. To the extent holdings of such participants in eBay's securities have changed since the amounts described in the 2013 proxy statement, such changes have been reflected on Initial Statements of Beneficial Ownership on Form 3 or Statements of Change in Ownership on Form 4 filed with the SEC. Additional information can also be found in eBay's Annual Report on Form 10-K for the year ended December 31, 2013, filed with the SEC on January 31, 2014.

These documents, including any proxy statement (and amendments or supplements thereto) and other documents filed by eBay with the SEC, are available for no charge at the SEC's website at <http://www.sec.gov> and at eBay's investor relations website at <http://investor.ebayinc.com>. Copies may also be obtained by contacting eBay Investor Relations by mail at 2065 Hamilton Avenue, San Jose, California 95125 or by telephone at 866-696-3229.

\* \* \* \* \*