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Untethered Lion scares foreign investors

David Herro, a leading US investor in equities here, takes issue with the way Kirin took control of Lion Nathan in this letter to the BUSINESS HERALD

I represent an investment management company that has been a large shareholder of Lion Nathan over the past five-and-a-half years. We are long-term investors who have stuck with the company through thick and thin. It is against this backdrop that I am responding to Doug Myers' letter to your publication. I must refute a number of the points Mr Myers made regarding the fairness of the deal he has made with Kirin Brewery:

Mr Myers' first remark that small shareholders benefited from this deal really has nothing to do with the principles involved. The fact that the small

holders were literally bribed by reserving them the right to sell their shares at the higher price tells us nothing but that the board of this company was concerned about a popular uprising by the small shareholders.

This represents one of the major problems of this entire deal: all shareholders were not treated equally. The chairman, certain board members and small shareholders were allowed to sell their stock at the higher price, while other shareholders, especially large institutional shareholders, were not.

Can one think of any particular reason why certain board members and select classes of shareholders should be treated differently to others? In fact, I would argue that the chairman and the board, in exercising their fiduciary responsibility to all shareholders, should have taken the same price as everyone else. The fact that they did not represents an ethical breakdown in New Zealand corporate governance laws allowing directors to sell at a more favourable price.

Further, the timing of the sale process itself was done unethically. It was early evening in the United States and in the middle of the night in Europe. Did British fund managers even have a chance at selling any shares? Unlikely.

The ultimate solution would have been for the board to have offered the company for sale to anyone in the world who wanted to buy it and allow all shareholders to sell their shares at the same price as the chairman and board members. Judging by some of the news reports that have come out, it seems that, in fact, other potential bidders had been stifled.

No serious analyst can question the deal's price. We believe that 540c was a fair price for Kirin Brewery to pay. However, contrary to Mr Myers' letter, Kirin was allowed to control Lion by buying just 45 per cent of the company.

He contends that this outcome is better than it would have been had the transaction occurred in the US or Australia. This conclusion is extremely flawed.

If Kirin had just owned 20 per cent of the company, as he implied they would have under Australian law, they would not have been able to control, as they basically do now. If they crept they would have crept, but eventually they would have been making a bid for the entire company.

The same would have been true for the US. The sad fact is that this deal has demonstrated the need for New Zealand to reform its corporate governance and takeover rules.

Mr Myers suggests that the company will be made more valuable with Kirin at the helm. There is one naive and one damning consequence of that statement.

From a naive perspective it is common knowledge that Japanese companies are not exactly attuned to running a business for the benefit of its owners. Generally, Japanese companies have been extremely inattentive to shareholder needs.

From a damning perspective, Mr Myers' statement is an indictment that the company itself was being a substandard manner that partner or suitor to come expertise.

These events, if they continue to happen, will scare foreign investors out of the New Zealand market due to higher risk premium attached to New Zealand shares because of the third world corporate governance standards.

We are very large investors in corporate New Zealand, and to be honest, we are beginning to question our own commitment. If New Zealand wants to attract and retain serious long-term investors, change is needed.

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