TAKEOVER without CONSENT (UNFRIENDLY TAKEOVER) vs. MBO -Analysis of Roland DG's (Taiyo) response to Brother's takeover offer without consent (with comments on Taisho Pharmaceutical's MBO)

Blakemore & Mitsuki analyzed the issues related to the response by Roland DG (Taiyo) to Brother's takeover offer without consent (with comments on the MBO of Taisho Pharmaceutical HD)[1]

July 25, 2024

I. MAIN ISSUES

1 Is it permissible to exclude Brother from the bidding process?

Since Brother Industries, Ltd. ("Brother") made a takeover offer before the bidding process was even considered, it would seem difficult to find a legitimate basis for intentionally excluding it, but we believe that the exclusion was reasonable for the following reasons. The reasons are discussed below.

2 Timing of Establishment of the Special Committee

At a stage prior to deciding on a bid, a special committee (the **"Special Committee"**) should have been established and the Special Committee should have hired not only its own independent LA but also, in accordance with such LA's advice, its own independent FA (this FA could be Nomura Securities, which is the FA of Roland DG Corporation (**"Roland DG"**), but even in that case, Nomura Securities should have been selected separately from the FA agreement with Roland DG, and an FA agreement should have been concluded with the Special Committee as well), which is capable of issuing an appropriate fairness opinion. Nomura Securities, which was selected as the FA of Roland DG, is approved by a board of directors that includes Mr. Haywood, CEO of Taiyo XYZ Group, L.P. (**"Mr. Haywood"**) and Mr. Kohei Tabe, representative director of Roland DG (**"Kohei Tabe"**), so for purposes of dispelling concerns about interest of conflict or independence, we would need to be cautious about excluding, by reason of there being no need to do so, the idea that a company other than Nomura Securities should

---

[1] A document titled "Roland AG-related MBO and Brother's takeover offer without consent / Timeline" (the "**Timeline**") is attached hereto.

have been selected as the FA of the Special Committee. It should also be confirmed that the LA of the Special Committee advising on the selection of the FA of the Special Committee is independent and free from conflict of interest in relation to the candidates of the FA of the Special Committee.

3 Considerations Based on the Revlon Duty and the Corwin Decision

At the stage of the decision to implement the bidding process, it would appear to become inevitable that control of Roland DG would pass to the winner of the bid or Brother.

At that stage, it would be a problem whether the directors would have a duty to endeavor to obtain the highest price reasonably achievable (the "**Revlon Duty**"[2]). And even if this duty were recognized, the question is whether or not to recognize an exception (the thoughts adopted by the Corwin decision) that would allow directors to be released from the constraints of the Revlon Duty, return to principle, and simply act in accordance with the principles of business judgment, based on the thoughts that the exercise of the voting rights by disinterested shareholders, in a fully informed and unoppressed state, with respect to a transaction with a non-controlling shareholder, is decisive.

In our case, the issue is whether Roland DG had a controlling shareholder.

Since Taiyo Pacific Partners L.P. owned 2,390,800 shares, and its ownership ratio (the ratio to the number of shares (12,319,393 shares) obtained by subtracting the number of treasury shares (518 shares) from the total number of shares issued (12,319,911 shares)) was 19.41%, it would not be appropriate to go so far as to say that Taiyo Pacific Partners, L.P. and its group of companies (collectively, "**Taiyo**") was the controlling shareholder of Roland GP.

If we affirm the existence of the Revlon Duty and the conclusion of the Corwin decision in our case, then the board of directors of Roland DG (1) had to make every effort to obtain the highest price reasonably achievable, but (2) since the exercise of the voting rights by disinterested shareholders (who could be called minority shareholders), in a fully informed and unoppressed state, with respect to a transaction with a non-controlling shareholder, is decisive, directors would be allowed to be released from the constraints of the Revlon Duty, return to principle, and simply act in accordance with the principles of business judgment should such disinterested shareholders approve the transaction with such non-controlling shareholder. Therefore, in our case, it is not enough for the directors of Roland DG to make every effort to obtain the highest price reasonably achievable, but to give the minority shareholders sufficient information to make a

[2] In our case, the consideration to be paid to the shareholders was supposed to be in cash, so this appears to be a situation where the so-called Revlon Duty would apply.

decision, and if the minority shareholders accept the offer (TOB) of not the highest bidder but the bidder who offered the not-so-highest price, then the directors of Roland DG may accept (recommend) the offer (TOB) of the party who offered the not-so-highest purchase price, in accordance with the principle of business judgment, and they will not be held liable as directors because they did not accept (recommend) the offer (TOB) of the party who offered the highest purchase price (however, even if the minority shareholders express such intention, it could be possible for the directors to accept (recommend) the proposal (TOB) of the party who offered the highest purchase price, in accordance with the principle of business judgment).

In our case, the Majority of Minority has also been achieved (see Section II. 3 below), so from the perspective of the Revlon Duty and the Corwin decision, it appears that, in view of the purchase result, the act (the recommendation for accepting Taiyo's offer) of the Roland DG board of directors, consisting of Roland DG directors excluding Mr. Heywood and Kozo Tabe (the "**Unconflicted Company Board**"), would not be deemed problematic.

4 Shareholders' interests vs. business value

The issue is more fundamental. A board of directors that is offered a takeover without consent must now give serious consideration in accordance with the Ministry of Economy, Trade and Industry's "Guidelines for Conduct in Corporate Takeovers" (August 31, 2023)[3]. And when a takeover price is proposed with a premium of about 30%, as an ordinary shareholder you often do not choose not to accept it (even if the board of directors recommends against it). And since METI is moving to dissolve cross shareholdings and general shareholders are becoming increasingly opposed to the introduction of takeover defense measures, it is becoming more difficult for boards of directors to resist takeover bids without their consent if they are made at a high premium. This appears to be exactly what METI was aiming for, and it is also in line with the TSE's policy of not allowing listed companies with a P/B ratio of less than 1 to exist in principle, but when we encounter individual cases, we have to sincerely think about how we should respond.

In our case, one of the major issues was whether or not Brother's acquisition of Roland DG would generate dis-synergies (negative synergies resulting from the acquisition)[4].

---

[3] This does not have legal force, but it would be quite difficult to resist it in Japan, where there is strong peer pressure.

[4] The content of the dis-synergy is that if Roland DG is acquired by Brother, it will

Although the Special Committee examined this point and presented the details of its examination in the disclosure documents, it should have made a decision based on an independent opinion from a third party, such as by contracting with independent industry professionals (whether companies or individuals) with no conflicts of interest who are familiar with the areas where the dis-synergies are expected to occur. Putting this issue aside, there is a theoretical issue as to how the Special Committee/Uninterested Company Board of Roland DG should have responded when Brother raised the TOB price above 5370 yen (and Taiyo did not raise the price further).
If the aforementioned Revlon Duty and the Corwin decision are to be endorsed, (i) if the minority shareholders accept Taiyo's offer, the board of directors could decide to accept (recommend) Taiyo's offer in accordance with the business judgment principle (although it does not have to accept (recommend) it in accordance with the business judgment principle), but (ii) if the minority shareholders do not accept Taiyo's offer, then as directors, they would have to accept (recommend) Brother's offer.

The fundamental issue may be the question of whether it is the interests of the shareholders or the business value of the company that you, as a director, should be protecting. Assuming that ordinary shareholders are willing to sell if a high premium is offered, an acquirer who offers a high premium (with or without the consent of the directors) can acquire any company (if one does not take into account takeover regulations such as the Foreign Exchange and Foreign Trade Act). Ordinary shareholders are only interested in obtaining a high premium, and do not care what happens to the value of the target company's business after they sell their shares (post-acquisition).
But does this really line up to justice? The question arises: Shouldn't the directors be committed to maximizing the value of the company's business (rather than the interests of its shareholders at any particular point in time)?

In our case, after Brother's first offer, Roland DG initiated a bidding process in a manner that excluded Brother. Based on (1) Taiyo's performance in achieving the MBO of Roland (not Roland DG) in its subsequent re-listing (see the Timeline), and (2) the poor results of its collaboration with Brother (2019 ～ 2023) (see the Timeline), it would, in the event of a takeover offer by Brother without the consent of the Board of Directors of

---

have joined the Brother camp and will be less likely or unable to receive the latest technology from Seiko Epson Corporation, Brother's rival and Roland DG's close business partner, as a result of which Roland DG's sales would be decreased.

Roland DG, be natural, for the Unconflicted Company Board of Roland DG to assume, when compared to the business value of Roland DG that would be obtained through Brother-led management and that of Taiyo-led (and, moreover, this is after a bidding procedure involving two PEs; considering Taiyo's track record, it is naturally predicted that such PEs, in the course of performing their business, would collaborate with Taiyo), that the latter would exceed the former.

Based on this assumption, if Brother were to make a proposal that exceeded Taiyo's TOB price of 5,370 yen, the Unconflicted Company Board should endeavor to seek Taiyo raising its price further or use other measures, to cause Roland DG to be managed under Taiyo's leadership (rather than Brother's), for purposes of ensuring that the business value of Roland DG will be maximized (this concept is called the "**Business Value Protection Theory**").

The differences between the Business Value Protection Theory and the aforementioned concept of the Revlon Duty + the Corwin decision (the "**Revlon-Corwin Theory"**) are as follows:

(a) If a majority of minority shareholders (disinterested shareholders) support Taiyo's offer of a lower purchase price, rather than Brother's offer of the highest purchase price, then (i) under the Business Value Protection Theory, the Unconflicted Company Board should accept Taiyo's offer, and (ii) under the Revlon-Corwin Theory, the Unconflicted Company Board may, in accordance with the principles of business judgment, accept either the offer of Brother or that of Taiyo.

(b) If a majority of minority shareholders (disinterested shareholders) support Brother's offer of the highest purchase price in the above hypothetical situation, then (i) under the Business Value Protection Theory, the Unconflicted Company Board should accept Taiyo's offer, and (ii) under the Revlon-Corwin Theory, the Unconflicted Company Board should (must) accept Brother's offer.

The Business Value Protection Theory holds that directors should maximize the business value of the company, which is consistent with the belief that shareholder value should be maximized, unless shareholders exit (sell their shares). This is because shareholder value = business value + non-business assets - interest-bearing debt, and, accordingly, if business value increases, shareholder value also increases.

However, the story changes when shareholders exit (sell their shares). When shareholders exit (sell their shares), they part ways with the company and have nothing to do with it afterwards. Therefore, their only goal is to receive a larger amount of money at the time of parting, and they do not care whether the value of the company's business grows or shrinks afterwards. However, the company will continue to exist after

parting with the shareholder, and in that case, there will be another shareholder (the buyer of the shares owned by the former shareholder) after the TOB. From a national economic perspective, it is clearly more important to maintain and increase the long-term value of a company's business than to benefit shareholders at any particular point in time. The former should be the role of directors. It is unavoidable that the fulfillment of that role may prevent the interests of those who were shareholders at a particular point in time from being maximized (even if they receive less profit). This is because a company does not belong to its shareholders at a particular point in time, but to various shareholders who will appear in the present and in the future.

5 What the Unconflicted Company Board should do under the Business Value Protection Theory

In the context of our case, there are two possible scenarios.

One is that Brother tried to offer a price higher than the purchase price of Taiyo, but the Unconflicted Company Board of Roland DG prevented Brother from doing so (and as a result, Brother decided not to raise the price) (we will not discuss whether this is true in this actual case or not).

In this case, it would appear that since Taiyo's purchase price was the highest, it could be considered that as a minority shareholder it could not make a claim against the Unconflicted Company Board. Even if the degree of interference of the Unconflicted Company Board were to reach such a level that the Unconflicted Company Board conveys to Brother its intention not to be able to cooperate with Brother (i.e., resign as directors) if Brother acquisition is successful, based on the Unconflicted Company Board’s belief that the Taiyo initiative is better for increasing Roland DG's corporate value and that the Brother initiative will not work, it would be permissible (i.e., minority shareholders cannot claim damages against them) should such intention be that of the board of directors excluding Mr. Heywood and Mr. Kohei Tabe.

The other would be if Brother offered a price higher than Taiyo's purchase price and then Taiyo refused to offer a higher price, no matter how much the Unconflicted Company Board of Roland DG tried to persuade them to do so.

In such a case, it would be necessary for Brother (i) to assert that the reasonable financial projections prepared based on the business strategy by the personnel[5] it independently selected as Roland DG's directors would exceed the reasonable financial projections prepared by Roland DG's directors, based on reasonable financial, technical data and the

[5] It is assumed that all directors of Roland DG will resign if the company is acquired by Brother.

like underlying such projections, and (ii) to cause the Unconflicted Company Board to approve such assertion. However, it is doubtful that this can be accomplished by the new directors of Roland DG comprised of those individuals excluding the former directors (including Mr. Haywood and Mr. Kohei Tabe) of Roland DG. In that case, the Unconflicted Company Board (and the Special Committee) of Roland DG would express a negative opinion against Brother's higher offer price[6] and a recommended opinion for Taiyo's lower offer price, but they would have to explain to Roland DG's shareholders why they would oppose the higher offer price and recommend the lower offer price.
In that case, shareholders who believe that it does not matter to them what happens to the value of Roland DG's business after they sell their shares (even if the business value of Roland DG decreases due to Brother-led management) are likely to apply for Brother's TOB, despite the opposition of Unconflicted Company Board.
However, although Brother's offer constitutes a higher price, shareholders who would like to see Roland DG's business value increase under Taiyo's leadership and thereby earn profits in excess of Brother's offer price are not likely to apply for Brother's TOB (or even for Taiyo's TOB; since they would not apply for the TOB of Taiyo, Taiyo would have to withdraw the tender offer registration statement).
In our case, the following is recognized:

Total number of shares issued: 12,319,911
- Number of treasury shares: 518 shares
- Number of shares held by Taiyo Pacific Partners L.P.: 2,390,800 shares
- Number of shares held by Mr. Kohei Tabe: 2,642 shares
- Number of shares held by Mr. Masahiro Tomioka: 326,900 shares
- Number of shares held by Roland: 127,300

Therefore, the number of shares of Taiyo support is 2,848,160 shares, which is approximately 23.12% of the total number of shares issued.
The percentage of disinterested shareholders (i.e., minority shareholders) would be approximately 76.88% (9,471,751 shares (= 12,319,911 shares - 2,848,160 shares)).

In the case of the latter situation above (which is just a hypothetical situation) (i.e., if Brother's TOB price is higher than Taiyo's TOB price), the issue is whether it would be appropriate for the Unconflicted Company Board to finally leave it to the shareholders to decide whether or not to tender their shares to Brother's tender offer, after the Unconflicted Company Board opposes Brother's offer and issues a recommended opinion for Taiyo's offer (ultimately (for the reasons stated above), Taiyo's tender offer registration

[6] That is, if Brother actually files a tender offer registration statement.

statement is withdrawn).

6 Takeover defense measures approved only by the Unconflicted Company Board (and the Special Committee) (without shareholder approval)

If we assume that the role of the board of directors is to defend (maintain and increase) the business value of a company (not the interests of the shareholders of that company at any particular point in time), then it would be appropriate for the Unconflicted Company Board (and the Special Committee), if they are able to prove, based on objective facts and materials, that Brother-led management of Roland DG will not increase the business value of Roland DG than is the case for Taiyo-led management of Roland DG (i.e., Taiyo-led management of Roland DG will increase such business value than is the case for Brother-led management of Roland DG), to implement some takeover defense at that time, instead of leaving the decision on whether to tender shares in Brother's tender offer to the shareholders.

And we believe that it is sufficient for such takeover defenses to be approved by the Unconflicted Company Board (and the Special Committee). This is because, under circumstances where there are many shareholders who wish to profit by selling their shares faster and at a higher price, it is reasonable to leave the decision on whether or not to introduce takeover defense measures to an unconflicted company board (and a related special committee) that have the appropriate knowledge and experience to maintain and expand the business value of a company (if the decision is left to the shareholders, it is obvious that they will oppose the introduction of anti-takeover measures that would discourage shareholders from tendering their shares in a takeover bid at a higher price). Directors owe a duty of loyalty and duty of care to the company, not to shareholders (Article 355 of the Companies Act).

Of course, in order to do so, it is necessary to present a rational reason as an unconflicted company board (and a related special committee) that justifying the introduction of takeover defense measures only with the approval of an unconflicted company board (and a related special committee) without shareholder approval is not for the sake of self-preservation. In our case, for the reasons stated in Section 4, clauses (1) and (2) above, we believe that such rational reason can be said to exist.

There is an argument that the approval of the shareholders meeting is indispensable for the introduction of a takeover defense measure, but this (i) is an excessive respect for the will of shareholders who have contact with the company during a certain limited period, and (ii) is an excessive disrespect for the existence of the board of directors, which is (A) a group of knowledgeable and experienced people who are committed to maintaining and

increasing the value of the company's business, and (B) a formulator of the company's management policy.

7 It is permissible to exclude Brother from the bidding process.

In our case, even if it were alleged that the directors of Roland DG breached their duty of care owed to the company (Roland DG) because Brother was shut out of the bidding process (see the Timeline, September 29, 2023 line), the Unconflicted Company Board of Roland DG would be able to assert that there is no reason for such allegation, on the grounds that it would, in view of the objective facts and materials (see Section 4, clauses (1) and (2) above), be reasonable for the Unconflicted Company Board to judge that Brother as an acquirer is undesirable from the perspective of maintaining and expanding the business of Roland DG (at least, less desirable than the management led by Taiyo).

In addition, in our case, even if Roland DG's shareholders had made claims against Roland DG (or its board of directors) alleging that Brother had given up offering a higher purchase price than Taiyo due to Roland DG's interference or negative words and actions, the Unconflicted Company Board of Roland DG would be able to exclude such claims by asserting and proving such reasons as described above (except in the exceptional case where an event has occurred that would be reasonably difficult to occur in reality, such as Brother succeeding in alleging or proving that Roland DG intentionally or grossly negligently caused false facts concerning Brother to be disseminated to the public).

8 It is permissible to use MBO as a substantive takeover defense against Brother's takeover offer without consent.

This time, it was Brother that initiated the move.

In response, Roland DG responded with an MBO (through a three-party bidding process), and at that point, a takeover defense measure could have been adopted by the Unconflicted Company Board (and the Special Committee).

However, the MBO was used as a takeover defense in effect, as it was adopted in reality this time. If a takeover defense measure is adopted by the Unconflicted Company Board (and the Special Committee), there is a problem whether or not the court will affirm the validity of the takeover defense measure because it has not been approved by the general shareholders meeting when a lawsuit arises. As a result, the Unconflicted Company Board proposed an MBO and adopted having a TOB price therein made higher (and maintaining such higher position) than that of Borther, with the Unconflicted Company Board being successful in causing Btother to have withdrawn the TOB notice by conducting negative campaigns and the like against Brother. Consequently, Roland's

board of directors was comfortable with the results, but this may not mean that shareholders of Roland DG were comfortable with the results. The following is an excerpt from the disclosure documents related to the tender offer.

****

The specific figures in the Company's financial forecasts that Nomura Securities used as premises for its calculations under the DCF method are as follows, and while they do not include fiscal years in which a significant increase or decrease in profit is expected, they do include fiscal years in which a significant change in free cash flow is expected. Specifically, in the fiscal years ending December 31, 2024 and 2025, we expect a significant decrease in free cash flow due to increased investments in R&D related to new product development and expansion of production lines compared to the previous year. In the fiscal year ending December 31, 2026, although the Company will continue to invest in R&D for new product development and expansion of production lines, the amount of investment is expected to decrease compared to the previous year, resulting in a significant increase in free cash flow. The synergy effects expected to be realized from the execution of this transaction have not been taken into account in this financial forecast, as it is difficult to estimate them specifically at this point in time. (Note 10)

(Unit: Millions of Japanese Yen)

	Year ending Dec. 31, 2023 (Note 11)	Year ending Dec. 31, 2024	Year ending Dec. 31, 2025	Year Ending Dec. 31, 2026
Net sales	14,886	56,105	59,622	62,867
Operating income	1,797	5,475	5,878	6,260
EBITDA	2,182	6,757	7,218	7,631
Free cash flow	3,436	1,219	551	1,854

(Note 10): [Intentionally deleted.]

(Note 11): The fiscal year ending December 31, 2023 is from October 1, 2023 to December 31, 2023 (i.e., the fourth quarter of the fiscal year).

****

According to Roland DG's financial projections above, operating income is

approximately 1.2 times higher (≒6,260÷5,217[7]) when compared to the end of December 2023 and the end of December 2026. Accordingly, it is expected that the stock price of Roland DG will increase considerably at the end of December 2026 or the beginning of 2027, and the fruits of this increase will be monopolized by the Taiyo side.

In our case, after Brother announced that it would not raise the TOB price, it appeared to be possible for the Taiyo side to allow those minority shareholders of Roland DG who did not wish to sell their shares to remain shareholders after the TOB by erasing the provisions concerning the two-step acquisition, which was a condition of the tender offer, and implementing it (i.e., publicly announcing the change of the tender offer conditions, etc.). However, since it was also presumed that if Roland DG remained listed, it would be exposed to a new takeover offer from Brother and others without its consent, Taiyo adopting, in order to better ensure the increase in the value of Roland DG's business, the method of managing Roland DG in a manner pursuant to which its sole shareholders are Taiyo XYZ Group, L.P. and Mr. Kozo Tabe (assuming that the second of the two-step acquisition is completed after the completion of the TOB, followed by an absorption-type merger of XYZ by Roland DG), would be deemed to fall under the category of reasonable choices if we take into account the likelihood of a significant decrease in the share price due to a significant decrease in free cash flow (at least temporarily). Conversely, it may be said that the Unconflicted Company Board justified its conducting an MBO against Brother by reason of the probability of a significant decrease in the share price due to a significant decrease in free cash flow, which would be brought about by the Unconflicted Company Borad preparing a business plan that would increase investment in R&D for new product development and expansion of production lines compared to the previous year, but as mentioned above, that would be deemed permissible should the Unconflicted Company Board (and the Special Committee) judge that Taiyo-led (rather than Brother-led) management would more greatly contribute to maintaining and increasing the value of Roland DG's business.

9 Addendum: It is not always permissible to introduce takeover defense measures only with the approval of an unconflicted company board (and a related special committee) without obtaining approval at a general shareholders meeting – In

---

[7] This figure is from the consolidated income statement of Roland DG's annual securities report dated March 29, 2024, but since Roland DG's shareholders knew the amount of operating income from January to September 2023, they could ascertain the amount of operating income for the period from January to December 2023, by looking at the amount of operating income from October to December 2023 in the above disclosure documents.

response to the fact that in connection with the MBO by Taisho Pharmaceutical HD, US investment fund Curi RMB Capital and Hong Kong-based Oasis Management petitioned the Tokyo District Court for a fair price determination

Speaking of this point, it would be difficult for the management of a company with a P/B ratio of less than 1 to provide a rational reason (see 6 above) for justifying the introduction of takeover defense measures only by unconflicted company board (and special committee) approval (without shareholder approval), and not for self-preservation. The reason is that the P/B ratio is below 1 because the management team of such a company managed the company, and there is a good possibility that a management team at least at an average level would be able to increase the given management resources to a level above the maintenance of assets (P/B ratio = 1) given by the original investment. However, the fact that the management team with below-average management skills is trying to continue to run the company can only be interpreted as an act of self-preservation. It has been pointed out that Taisho Pharmaceutical HD's MBO may have taken advantage of the capital market as an inheritance measure for the founding family (the Uehara family).

The TOB price was 8,620 yen per share, a premium of more than 50% over the market value. However, when PBR was calculated at this TOB price, it was 0.85 times, less than 1x. To begin with, it would be difficult for such an inefficient management team to conduct an MBO if they were required to obtain a fairness opinion. This is because there may not be knowledgeable and experienced experts who can give a fairness opinion that the TOB price with a P/B ratio of 0.85 is a fair price.

Taisho Pharmaceutical HD stated in the disclosure document that “Taisho Pharmaceutical HD has not obtained an opinion on the fairness of the Tender Offer Price (fairness opinion) from Daiwa Securities, since the Tender Offeror and the Company have implemented measures to ensure the fairness of the Tender Offer Price and to avoid conflicts of interest.”

However, although Taisho Pharmaceutical HD stated that “the Tender Offeror and the Company have implemented measures to ensure the fairness of the Tender Offer Price and to avoid conflicts of interest”, it would be difficult to make such a statement without obtaining a fairness opinion, in an M&A with a conflict-of-interest structure such as an MBO. Nevertheless, according to the disclosure document, “Considering that the Tender Offer Price is below the net asset value per share, the Special Committee has, nonetheless, determined that the Tender Offer Price is fair.”. Therefore, it is understood that the relevant special committee itself found the TOB price to be fair.

The special committee was established, and its members are (1) Mr. Chushiro Aoi, an

outside auditor of Taisho Pharmaceutical HD (from Marui Co., Ltd.), (2) Mr. Makoto Matsuo, an outside auditor of Taisho Pharmaceutical HD (a partner attorney at Momo-o, Matsuo & Namba), and (3) Mr. Takayuki Tsukuda, a former outside auditor of Taisho Pharmaceutical (a former outside auditor of Taisho Pharmaceutical from 2004 to 2009, and a former officer of Sumitomo Bank). (Mr. Matsuo was selected as the chair of the committee).

Whether or not this special committee is capable of finding the TOB price to be fair without obtaining a fairness opinion is not the subject of this briefing.

According to newspaper reports, the fact that the special committee did not include an outside director as a member of the committee has been called into question. In the case of Taisho Pharmaceutical HD, there were no outside directors (according to the company's annual securities report dated June 29, 2023), making it impossible to have outside directors as members of the special committee. Is the fact that the company did not have an outside director an issue?

Also, according to newspaper reports, the fact that the special committee did not select its own FA has been called into question. If they mean that the special committee should have selected its own LA, followed the advice of that LA, selected its own FA, and that FA should have issued a fairness opinion and made decisions as a special committee based on that fairness opinion, that would appear to be quite so.

In addition, according to newspaper reports, Kaname Capital, a U.S. investment management company, is considering a lawsuit for damages against Taisho Pharmaceutical HD's directors and special committee members, although the timing has not yet been decided. The company is also considering the possibility of filing a joint lawsuit together with individual shareholders. The venue is likely to be Japan, but it could also be the United States. In particular, if the venue is the U.S., when a partner of a law firm is held liable for his/her conduct as a member (head) of a special committee, it is more likely that the partnership (law firm) to which the partner belongs will also be held liable. Kaname Capital believes that “by creating cases in which individual directors are held liable, it will help to publicize the seriousness of the responsibility of special committees and directors.” With the increasing number of foreign investors in Japanese listed companies, it is high time to correct practices that are contrary to global market discipline and only applicable in Japan.

II. INCIDENTAL ISSUES

1 Failure to Obtain a Fairness Opinion

In its opinion report (dated February 13, 2024), Roland DG stated, "Furthermore, given that the Company and the Offeror have implemented measures to ensure the fairness of the Tender Offer Price and to avoid conflicts of interest, the Company has not obtained from Nomura Securities an opinion on the fairness of the Tender Offer Price (fairness opinion)."

However, although Roland DG stated that "the Company and the Tender Offeror have implemented measures to ensure the fairness of the Tender Offer Price and to avoid conflicts of interest", it would be difficult to make such a statement without obtaining a fairness opinion, in an M&A with a conflict-of-interest structure such as an MBO. In the MBO of Roland DG, unlike the MBO of Taisho Pharmaceutical HD, it was not said that the special committee judged that the tender offer price was fair.

Although the valuation report was prepared by FA (Nomura Securities), it only evaluated the value of the shares of the subject company (Roland DG) and did not determine that the purchase price was fair. When issuing a fairness opinion, it should generally have to go through deliberation by the FA's fairness committee (or similar committee), which is mainly composed of non-members of the deal team, regarding the fairness of the purchase price in question. This is a more objective and rigorous review based on the FA's business experience and other factors. In addition, it is our understanding that the financial terms and conditions of a similar transaction, which are not necessarily taken into account in a valuation report, are also taken into account when a fairness opinion is issued.

We believe that, at the very least, M&A transactions with a conflict-of-interest structure should be avoided where the purchase price is determined to be fair based solely on the judgment of an unconflicted company board and a related special committee of the target company (i.e., in our case, Roland DG), without a determination by the FA that the purchase price is fair (even though a valuation report has been obtained).

The Special Committee was granted the right to appoint the FA and LA (the compensation for the FA and LA is borne by Roland DG), and appointed the LA (Nishimura & Asahi), but did not appoint the FA and did not attempt to obtain a fairness opinion. In an M&A with a conflict-of-interest structure like our case, it is questionable why they did not attempt to obtain a fairness opinion.

2 The two key persons were not involved in the preparation of the business plan, which was the premise for the valuation report.

In our case, it appears that the business plan was prepared without the involvement of Mr. Heywood and Mr. Kozo Tabe, who are key persons in the management of Roland DG (it

appears that they did so in consideration of the issue of conflict of interest), but the business plan prepared without the involvement of the two key persons is not the highest level that Roland DG can prepare, so we believe that it is prudent to place importance on the results of Nomura Securities' valuation report, which was prepared based on such a business plan.

As it should be, when a business plan involving two key persons is prepared, a valuation report is prepared based on the plan, and a fairness opinion is prepared based on the valuation report (if such fairness opinion is prepared by that method), the FA should have adopted measures for conducting, for example, a thorough discussion, through interviews with the two keypersons and based on objective materials, as to whether the they are attempting to prepare a more negative business plan by being reluctant to use their wisdom for future growth strategies in order to keep the purchase price arbitrarily low. Without such measures, even if the purchase price is recommended as a reasonable price, it is unlikely to gain the true support of minority shareholders.

In Nomura Securities' valuation report, the range of share value evaluated by the average market price method, the comparable company method, and the DCF method[8] is described in the disclosure documents. In the comparable companies method, Mimaki Engineering Co., Ltd. was selected as a listed company that is similar to Roland DG, but the reason why this company is considered similar to Roland DG should also be disclosed. Regarding the DCF method, the discount rate (weighted average cost of capital), which has a significant impact on the results of the analysis, is disclosed, which is commendable. The company also discloses the calculation method for terminal value, which is also commendable. In order to help investors (minority shareholders) evaluate the analysis in the valuation report, it would be appropriate to consider making a copy of the valuation report an attachment to the disclosure documents. Companies that seek to gain a higher reputation in the capital markets should take the initiative in providing information and materials requested by investors, even if they are not required to do so by law.

---

[8] In the disclosure documents, the word "calculate" is used, but from the perspective of U.S. law, if this is translated as "calculate," it may give the misunderstanding that the FA determined the purchase price (the purchase price is the price that the purchaser (or the purchaser and the target company, if the purchaser and the target company have discussed the purchase price) determined). Since the report is called an evaluation report in English, it would be more appropriate to call it a stock valuation report in Japanese as well, so as not to give the misunderstanding that the FA determined the purchase price. Particularly under the circumstances where English translations of Japanese disclosure documents are required to be disclosed, great care should be taken in the choice of English terminology.

3 Majority of minority conditions

Total number of shares issued: 12,319,911 shares:

(i) Number of treasury stock: 518 shares

(ii) Number of shares held by Taiyo Pacific Partners L.P.: 2,390,800 shares

(iii) Number of shares held by Mr. Kohei Tabe: 2,642 shares

(iv) Number of shares held by Mr. Masahiro Tomioka: 326,900 shares

(v) Number of shares held by Roland: 127,300 shares

The number of shares (the "**Minority Shares**") obtained by subtracting those shares mentioned in items (i) through (v) above from the total number of shares issued is 9,471,751 shares. The majority of the Minority Shares is 4,735,876 shares (rounded up to the nearest whole number).

The number of shares obtained by adding those shares mentioned in items (ii) through (v) above to the Minority Shares is 7,583,518 shares.

Minimum number of shares to be purchased: 8,151,100 shares (shareholding ratio[9]: 66.16%)
This is more than the above 7,583,518 shares.

Number of shares actually purchased: 9,247,711 shares (Percentage thereof to the total number of shares issued is approximately 75.06% (=9,247,711 (shares)/12,319,911 (shares))

Number of shares not purchased: 3,072,200 shares (=12,319,911 shares - 9,247,711 shares)

It is assumed that the number of treasury stock (518 shares) is included in this number.

Deducting these treasury shares, the number of shares is 3,071,682 shares.

That is, of the 9,471,751 minority shares, 3,071,682 shares were not purchased, which means that the ratio is about 33.21%, or approximately one-third of the Minority Shareholders refused to tender their shares. This ratio is not considered to be small.

9 Percentage to the number of shares (12,319,393 shares) obtained by deducting the number of treasury stock (518 shares) from the total number of shares issued (12,319,911 shares)

The responsible partner for this briefing is Akimitsu Kamori (Email: a-kamori@blakemore.gr.jp; Tel. (81-3) 3503-5591).

The contact person at Blakemore & Mitsuki for this briefing is listed on the following page.

BLAKEMORE
& MITSUKI

Akimitsu Kamori
Partner
Blakemore & Mitsuki
Emai: a-kamori@blakemore.gr.jp
(81-3) 3503-5591