



RMB Capital Opposes Tender Offer to FamilyMart by Itochu and Demands Higher Offer Price

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CHICAGO--(BUSINESS WIRE)--RMB Capital (“RMB”), a Chicago-based independent investment advisory firm, invests in Itochu Corporation (8001 JP, “Itochu”), and FamilyMart Co., Ltd. (8028 JP, “FamilyMart”) through multiple strategies it manages. RMB opposes the current tender offer to FamilyMart by Itochu and demands Itochu raise its offer price back to 2600 yen per share.

(1) Application of the New M&A Guideline

RMB participated in the Fair M&A Study Group held at Ministry of Economy, Trade and Industry (METI) in Japan from 2018 to 2019 and asserted that the upgraded Fair M&A Guidelines (“the New M&A Guidelines”) should enhance measures to protect minority shareholders’ interests in tender offer practices. RMB recognizes that FamilyMart, following the New M&A Guidelines, formulated a special committee—which hired its own legal and financial advisors—to evaluate the tender offer conditions from the viewpoint of minority shareholders. However, RMB noted that the disclosure of the tender offer process was not thorough enough for minority shareholders to judge the fairness of the tender offer. For example, valuation reports obtained by FamilyMart’s board and special committee were not provided to shareholders.

(2) FamilyMart board should have rejected the offer

In general, tender offers by controlling shareholders bear a significant risk of conflict of interest, because the boards of target companies are under strong influence from their parent companies. RMB believes it is crucial for the boards of target companies to follow the New M&A Guidelines, take appropriate measures to avoid such conflict of interests, and clearly state its opinion to shareholders. However, the board of FamilyMart failed to do so while supporting the tender offer but not recommending the tender offer price, resulting in serious confusion among its shareholders. RMB believes the board cannot support the tender offer without supporting the tender offer price, as it is a key element of the tender offer. The board of FamilyMart should have rejected the tender offer.

(3) Itochu is responsible for the confusion as well

Itochu, as a controlling shareholder of FamilyMart, should bear responsibility to secure the fairness of the tender offer process, while considering the interest of the minority shareholders of FamilyMart. However, RMB believes the course of action Itochu took during the tender offer process failed to fulfill its duty. Itochu changed its offer prices several times during the negotiation, apparently with the intention to take advantage of the equity market volatility during the COVID-19 pandemic, which RMB believes is temporary. Itochu also did not accept a “majority of minority” threshold and instead set a low hurdle rate of 9.90% tender, while asserting its arbitrary opinion that almost all index ETFs and passive funds would not tender. RMB considers these actions by Itochu to be unfairly threatening to minority shareholders in order to distort their decision-making process.

(4) RMB proposes Itochu raise the tender offer price back to 2600 yen per share and pursue “Sampo-yoshi”

Based on Itochu's corporate mission of "Sampo-yoshi," or "good for three sides," RMB proposes Itochu to raise its tender offer price back to the original 2600 yen per share ("the Original Price").

- This would be good for the seller: Though the Original Price is below the midpoint (2756 yen) of the DCF price range (2472 yen~3040 yen) of the PwC valuation obtained by the special committee, it falls within the lower limit of the range. FamilyMart board can officially support and recommend the Original Price to its shareholders.
- This would be good for the buyer: Though the Original Price is above the midpoint (2225 yen) of the DCF price range (1701 yen ~ 2749 yen) of the Nomura valuation obtained by Itochu, it falls within the upper limit of the range. Itochu can justify the Original Price for its own shareholders.
- This would be good for society: Both Itochu and FamilyMart can demonstrate the best practice of a tender offer under the New M&A Guidelines and fulfill their responsibility as prominent players representing their respective industries in Japan. Furthermore, it would contribute to the sound development of Japan's capital market where they reside.

RMB believes the current tender offer is good only for the buyer but leaves the seller and society unhappy. If this deal is forced through, it will create problems for all parties in the long term. As shareholders of both Itochu and FamilyMart, RMB hopes this tender offer will be executed under fair conditions to satisfy all parties.

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