

Dairy Equity's days could be numbered

Major shareholders agitate for the company to be wound up

Sarah McDonald

Dairy Equity shareholders will decide the company's future next week – and there's a loud contingent that wants out.

The agenda for the annual meeting of the underperforming company includes a resolution where shareholders can instruct the board to begin the process of winding up the company. It requires support from 50% of those in attendance and proxies to pass.

Major shareholders are already showing their hands.

Elevation Capital has built up a 5.47% stake in Dairy Equity and individual investor Robert Famularo holds 6.1%. Both are planning to vote for the company to be wound up immediately.

Elevation Capital managing director Chris Swasbrook said Dairy Equity was under-resourced and had failed to provide any outlook on the future value of Fonterra fair value shares or the value-added component of the payout.

"With this much uncertainty, a roughly 3% return on the SWAPs [the beneficial ownership of Fonterra fair

value shares] is just unacceptable, especially given the risk-free rate is over 8%," he said.

Because Dairy Equity's shares are trading at a discount to their net tangible asset value (NTA), if the company is wound up shareholders will receive a higher payout than the current share price.

Elevation estimates put Dairy Equity's current NTA at 49c, an 11% premium on the last sale price of 44c.

In a letter from the Dairy Equity board to Elevation Capital, Dairy Equity chairman Peter Jensen said the company "will not be swayed by individual shareholders like Elevation Capital who invested in DEL in the secondary market with a view to agitating for the company to be wound up."

In response, Mr Swasbrook said: "Welcome to the global capital market.

"When vehicles like this are trading at a significant discount to NTA, they are ripe for shareholder activism.

"Boards also need to understand that shareholders who acquire their interests on market have the same rights as those that applied to the IPO and that shareholders like Elevation Capital have actually provided those initial investors who have clearly lost confidence in the board's plans with the liquidity to exit."

Mr Famularo said Dairy Equity

had never fulfilled its purpose.

"It's basically a nice idea, set up by nice people meaning well, that really hasn't worked ... The best thing for shareholders is to have their money returned to them."

The possible Fonterra float on the horizon would effectively remove the company's main reason for existence: to give non-farmer investors a vehicle through which they could gain exposure to the dairy industry.

But Dairy Equity also has other problems.

The company pays Fonterra farmers to acquire a beneficial ownership of their fair value shares.

This gives Dairy Equity the right to receive any increase in the value of the shares as well as the value-added component of the Fonterra payout.

But since Dairy Equity's inception in September last year, surging commodity prices have affected the margins that Fonterra is able to achieve on branded products and the value-added component has been disappointingly low, most recently 20c per kilogram of milk solids.

The low yield Dairy Equity receives per share has severely tested the validity of the business model.

The company has suspended its purchase of more fair value shares, currently valued at \$6.79, until the value-added payout improves.

It is sitting on a cash kitty of about \$20 million and has a market capitalisation of \$40 million.

Hot air swirls over vested interests in climate change

Fiona Robertson

NZX chief executive Mark Weldon denies he is pushing a trader's agenda in his role on the Climate Change Leadership Forum.

Mr Weldon is part of a working group within the forum that is said to have been "swayed" to the view that a cheap – though controversial – source of "hot air" emission permits should be kept out of the trading scheme unless they are internationally supported. They then asked for more information from the government to assist their final opinion.

Excluding hot air permits could increase market liquidity – a bonus for the NZX – but it could also be a negative for the NZX if pricing volatility sees companies turn more to futures trading.

Hot air permits – assigned amount units or AAUs – were allocated to countries under the Kyoto Protocol. They got their name because countries like Russia and the Ukraine hold large surpluses, allocated before their economies collapsed in the 1990s.

Because those surpluses aren't the result of any effort to cut emissions, the EU scheme doesn't allow trade in them.

So if the New Zealand scheme allowed hot air AAUs to be traded, links to the European market could be very difficult and trading liquidity could suffer.

Papers *NBR* has obtained show the working group also recommended earlier this year that economic costs should not be considered when the hot air decision is taken.

A spokeswoman for Mr Weldon said he was on the forum in a personal capacity and the decision was made by the group based on research.

Forum chairman Stephen Tindall said neither the working group nor the full forum had finalised their views on the issue.

The speculation has raised the issue of transparency in the consultation process.

Greenhouse Policy Coalition executive director Catherine Beard – who's not involved in the forum – said nobody knew which "vested interests are pushing which barrows" on the forum.

"[The debates are] so important to the cost of the scheme – to be having them behind closed doors is just not satisfactory," she said.

But Mr Tindall said officials' reports prepared for the forum would be released for the next meeting, to give members time to debate among themselves "without there being a furious public debate."

The forum will see a lot of fierce debate before the issue is settled. Bills introduced to Parliament this week have not placed any restrictions on tradable units yet.

Lower liquidity could lead to

higher prices, one source said.

But the general view is that including AAUs brings in a potentially cheap source of carbon units.

Motu Economic and Public Policy Research director Suzi Kerr said allowing them would lower prices as it would broaden the range traders could buy from. But it would probably not lower prices too far as Russian traders could hold out for better prices.

"It might halve the price – you don't know," she said.

Ms Beard said excluding the hot air units called into question some of the economic forecasts for the scheme. "It's potentially controversial because the government has made some assumptions this isn't going to cost much – partly based on [including] AAUs."

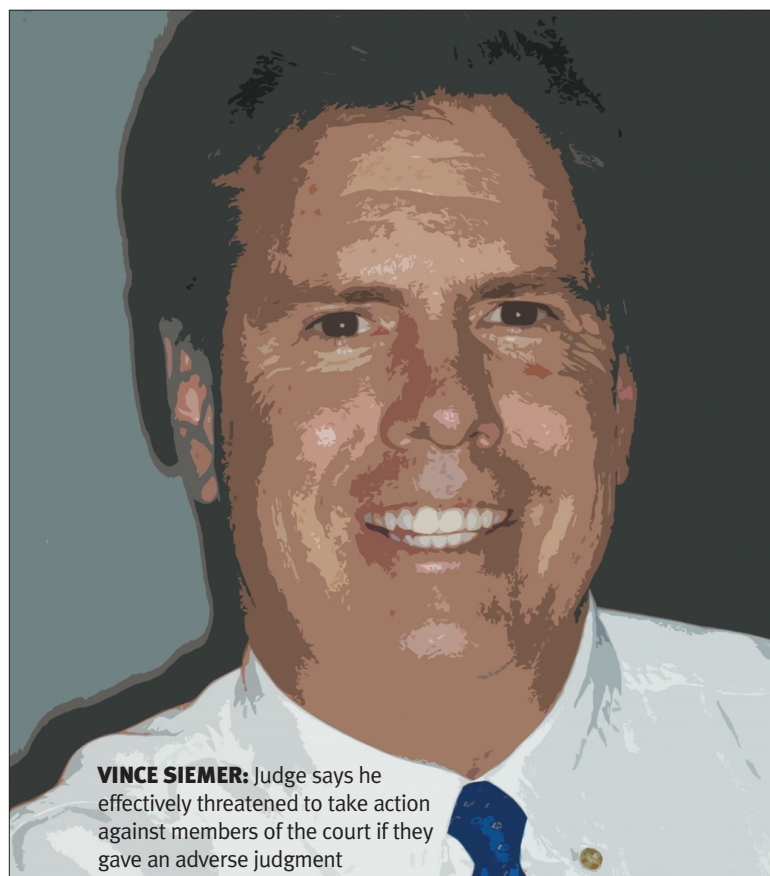
But a Ministry for the Environment briefing to the working group said even without AAUs, there would be plenty of Kyoto units for New Zealand buyers.

Local demand is forecast to be 10-50 million carbon units for 2008-2012. Expected supply of Kyoto units, excluding AAUs, is 1.7 billion.

There's also a flip side to the argument that buying "hot air" won't benefit the environment.

Dr Kerr said failing to honour the assignments given to Russia wouldn't help to build trust in global trading.

"They were given these in good faith," she said.



VINCE SIEMER: Judge says he effectively threatened to take action against members of the court if they gave an adverse judgment

Businessman's actions backfire

Siemer attracts possible contempt of court charges

Businessman Vince Siemer has been reported to the solicitor-general for possible contempt of court following apparent threats against Court of Appeal judges.

This is the second time Mr Siemer – who claims he was cheated by his lawyer, the late Robert Fardell QC – has fallen foul of the law.

In July he was sentenced to six weeks' imprisonment for repeatedly defying a court order to stop spreading defamatory material on his website about Michael Stiassny.

Mr Stiassny acted as receiver for the Siemers' company Paragon Service after Mr Fardell advised them to put it into receivership following a dispute with other shareholders.

The Siemers are currently suing Kate Fardell as executrix of her late husband's estate.

Mr Fardell's body was found on Devonport's Narrowneck Beach in December 2005. He drowned but there were injuries indicating a fall.

Mr Siemer made what the judges considered threatening comments during a recent pre-trial hearing in the Court of Appeal.

The Siemers claim negligence and a breach of fiduciary duty by Mr Fardell.

They say he was negligent in advising them to put Paragon into receivership when other options were available and that he had an undisclosed conflict of interest when he advised them to settle a dispute with Mr Stiassny, as receiver.

The couple wanted the case heard before a jury, claiming that a judge acting alone would act in the interest of the "Queen's club," an apparent reference to Queen's counsel.

In an earlier hearing, Justice John Hansen ruled that the legal and technical issues would be too complex for a jury. He granted Mrs Fardell's application for the case to be heard in front of a judge alone.

The Siemers then appealed but the Court of Appeal upheld the decision.

At the Court of Appeal hearing,

Mr Siemer, who represented himself, continued to voice his views on the lack of impartiality by judges. He also said that there was nothing complicated about a lawyer cheating his client.

Juries, he continued, were able to deal with complex fraud and scientific issues.

Justice Terence Arnold said in his written submissions that Mr Siemer rehearsed, "at some length and in extravagant terms, the Siemers' view that the judges and courts which have dealt with the various sets of proceedings in which they are or have been involved have acted in a biased and corrupt fashion."

The judge said that Mr Siemer then produced what Mr Siemer described as a post-hearing memorandum, to which the judges took exception.

In it Mr Siemer said that they had asked about conflicts of interest by members of the panel but had not sought a formal acknowledgement of such conflicts.

He added: "They are content to await the decision of the court in this matter but wish to record that any move to effectively deny the appellants their right to a fair trial by a judge determined subsequently to have a conflict of interest that should have precluded his involvement will be met with the appellants personally circulating a petition to launch a formal investigation into that judge's action, including removal of the offending judge from the bench by Parliament."

That was a step too far for the court.

Justice Arnold said: "This reads as a threat to take action against members of the court if they give a judgment adverse to the appellants. If so, it amounts to a contempt of court.

"We propose to ignore it for the purposes of this decision. However, we intend to refer the memorandum to the solicitor-general for his information and consideration."

The Siemers were ordered to pay costs of \$3000.