

Corporate Securities Law

July 23, 2012

OSC Cease Trades Thirdcoast Limited Shareholder Rights Plan

On July 4, 2012, the Ontario Securities Commission (the “OSC”) issued a cease-trade order with respect to a shareholder rights plan (the “Shareholder Rights Plan”) put in place by Thirdcoast Limited (“Thirdcoast”) in response to an unsolicited takeover bid by its largest shareholder, Parrish & Heimbecker, Limited (“P&H”).

The battle for Thirdcoast, a reporting issuer in Ontario whose shares are mainly traded over-the-counter, began in response to the passing of a law which will end the effective monopoly of the Canadian Wheat Board on August 1, 2012. The law will allow grain suppliers to set their own prices and quantities of the grain they sell, leaving food producers, such as P&H, scrambling to ensure an adequate supply of grain is in place when the law comes into effect. P&H’s interest in Thirdcoast stems from a highly profitable grain terminal it owns and operates in Goderich, Ontario.

After initially attempting to engage in discussions with Thirdcoast in February, on March 6, 2012, P&H, at that time owning approximately 28% of the outstanding shares of Thirdcoast, announced its intention to make a bid to purchase all of the remaining shares not owned by it at a price of \$115 per share. In addition, it announced that it had entered into lock-up agreements (the “Lock-Up Agreements”) with shareholders holding approximately 24% of the outstanding shares of Thirdcoast.

On May 29, 2012, after the release of an independent valuation valuing the Thirdcoast shares at \$130 to \$170 per share, P&H increased its offer price to \$155 per share. P&H’s bid was formally commenced on May 31, 2012, and was initially scheduled to expire on July 5, 2012.

On May 30, 2012, Thirdcoast announced it had adopted the Shareholder Rights Plan “to allow the Board time to explore and develop strategic alternatives in the context of [P&H’s] Insider Bid.”

P&H applied to the OSC on June 8, 2012 seeking a cease-trade order in respect of the Shareholder Rights Plan. In response, Thirdcoast requested the Shareholder Rights Plan remain in place for a further 30 days.

In reaching its decision to cease-trade the securities relating to the Shareholder Rights Plan (and dismissing an application brought by Thirdcoast seeking to effectively invalidate the Lock-Up Agreements), the OSC cited the following key factors:

- Thirdcoast shareholders had not been afforded the opportunity to approve the Shareholder Rights Plan, no evidence presented of shareholder support for the Shareholder Rights Plan, and it was unlikely that shareholders would approve the Shareholder Rights Plan in light of the Lock-Up Agreements.
- The Shareholder Rights Plan was adopted in response to P&H’s bid.
- At the time of the scheduled expiry of P&H’s bid, 135 days would have elapsed from when P&H’s first notified Thirdcoast of its intention to make its bid, no other viable bidder had emerged, and the OSC was not satisfied that the Shareholders Rights Plan continued to provide an opportunity for further bids.
- The evidence did not support the allegation that P&H’s bid was coercive.
- Sufficient evidence was not presented to conclude that keeping the Shareholder Rights Plan in place for a further 30 days would serve the purpose of enhancing shareholder value.

The OSC’s decision to cease-trade the Shareholder Rights Plan reaffirms the existing Canadian securities jurisprudence that all shareholder rights plans must, at some time, be set aside to allow shareholders themselves to decide whether to tender to an outstanding bid, with the factors first enumerated in Royal Host Real Estate Investment Trust continuing to be relevant to determine when that time has come.

Please contact any member of Goodmans Corporate Securities Group to discuss the Ontario Securities Commission’s cease-trade order with respect to the Shareholder Rights Plan.