

David Surat  
T (416) 367-6195  
dsurat@blg.com

Borden Ladner Gervais LLP  
Scotia Plaza, 40 King Street W  
Toronto, ON, Canada M5H 3Y4  
T 416.367.6000  
F 416.367.6749  
blg.com



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Ontario Securities Commission  
20 Queen Street West  
Toronto, ON  
M5H 3S8

Attention: John Stevenson, *Secretary*  
Shannon O'Hearn, *Manager, Corporate Finance*  
Frédéric Duguay, *Legal Counsel, Mergers & Acquisitions Team*

Dear Sirs/ Mesdames

**Re: Offer of Parrish & Heimbecker, Limited to Purchase All of the Outstanding Common Shares of Thirdcoast Limited (the "Offer")**

We are counsel to Parrish & Heimbecker, Limited ("P&H"). P&H hereby applies for an order pursuant to section 127 of the *Securities Act* (Ontario) (the "Act") in connection with the Offer and the tactical shareholder rights plan of Thirdcoast Limited ("Thirdcoast") dated May 30, 2012 (the "Rights Plan"). Our co-counsel acting for P&H in connection with the Offer is Aikins, MacAulay & Thorvaldson LLP.

In this application, P&H seeks the following relief:

- (a) a permanent order pursuant to section 127 of the Act that all trading cease in respect of any securities issued, or that are proposed to be issued, in connection with the Rights Plan, including, without limitation, in respect of any rights issued or to be issued under the Rights Plan ("Rights") and any common shares of Thirdcoast to be issued upon the exercise of such Rights;
- (b) a permanent order removing prospectus exemptions in respect of the distribution of Rights issued under or in connection with the Rights Plan and in respect of the exercise of such Rights; and
- (c) such further and other relief as the Commission deems appropriate.

P&H respectfully submits that the Rights Plan constitutes an improper defensive tactic implemented by the board of directors of Thirdcoast without due process or the approval of Thirdcoast shareholders. The object and effect of the Rights Plan is to deprive Thirdcoast

shareholders of their fundamental right as shareholders to each decide for themselves whether to tender their shares to the Offer.

The Offer is in no way coercive or otherwise improper, and ought to be put before the Thirdcoast shareholders for them to consider. Accordingly, the continued operation of the Rights Plan is contrary to the public interest.

P&H requests that the Commission convene a hearing in respect of this matter at the earliest available date and in any event prior to July 5, 2012. The Offer expires on July 5, 2012. It is therefore in the public interest that a hearing be held and decision made in advance of this date.

## **SUMMARY OF MATERIAL FACTS & SUBMISSIONS**

### ***Parrish & Heimbecker, Limited***

1. P&H is a privately held corporation that was originally incorporated in April 14, 1909 and exists under the laws of Canada. Its head office is in Winnipeg, Manitoba.
2. P&H is engaged in various aspects of the agri-business industry, including grain procurement and merchandising, milling, animal nutrition programs, poultry farming and food processing.
3. P&H is the largest shareholder of Thirdcoast, holding 86,608 common shares representing approximately 27.99% of the outstanding common shares.

### ***Thirdcoast Limited***

4. Thirdcoast exists under the laws of Ontario and is a reporting issuer in Ontario. Its head office is in Goderich, Ontario.
5. Thirdcoast is primarily engaged in the handling, conditioning and storage of grain.
6. The authorized share capital of Thirdcoast consists of an unlimited number of common shares ("Common Shares"), of which as at April 24, 2012, there were 309,414 Common Shares outstanding.
7. The Common Shares are not listed on any stock exchange and are traded primarily on the over-the-counter market.
8. Pope & Company Limited acts as market maker to facilitate trades among buyers and sellers of Common Shares and provides indicative share price information. As of the close of business on March 5, 2012, being the day before the announcement of P&H's intention to make the Offer, the prices for Common Shares were posted as at January 31, 2012 at a bid price of \$75.00 per Common Share and an ask price of \$79.00 per Common Share.

### ***The Offer***

9. On February 21, 2012, P&H initially approached the independent members of the board of directors of Thirdcoast expressing an intention to acquire the remaining Common Shares that it did not own and requested Thirdcoast to prepare an independent valuation (the “Valuation”) in accordance with Multilateral Instrument 61-101 *Protection of Minority Security Holders In Special Transactions* (“MI 61-101”).
10. On March 6, 2012, Thirdcoast issued a news release announcing that it had received from P&H an unsolicited offer to acquire all of the issued and outstanding common shares of Thirdcoast not then owned by P&H at a price of \$115 per share.
11. Despite repeated requests by P&H that Thirdcoast proceed on a timely basis to obtain the Valuation, it was not until March 29, 2012 that National Bank Financial was engaged by an independent committee of the board of directors of Thirdcoast (the “Independent Committee”) to, among other things, prepare and deliver the Valuation.
12. Completion of the Valuation was further delayed because the information supplied by Thirdcoast to National Bank Financial was insufficient.
13. National Bank Financial determined as of May 25, 2012, subject to the assumptions and qualifications set out in the Valuation, that the fair market value of the Common Shares is in the range of \$130.00 to \$170.00 per Common Share.
14. The Offer consists of an offer to purchase all of the issued and outstanding Common Shares not held by P&H at a price of \$155 per Common Share payable in cash.
15. The Offer represents a premium of approximately 107% over the last posted bid price for Common Shares prior to the announcement of P&H’s intention to make the Offer. The Offer also represents an approximately 107% premium over the last price paid by Thirdcoast to acquire Common Shares for cancellation.
16. The Offer is a fully financed cash offer that is not subject to a minimum tender condition or any regulatory approvals.

### ***The Lock-up Agreements***

17. Fifteen Thirdcoast shareholders holding, directly or indirectly, 73,120 Common Shares have entered into lock-up agreements with P&H (the “Lock-up Agreements”).
18. Pursuant to the Lock-up Agreements, these shareholders have agreed, among other things, to tender their Common Shares to the Offer, and not to withdraw such Common Shares from the Offer unless the Lock-Up Agreements are terminated in accordance with their terms.
19. The Lock-Up Agreements do not contain a right for Shareholders to terminate the Lock-Up Agreements or withdraw Common Shares tendered to the Offer in the event that an offer to acquire Thirdcoast shares is made by a third party, regardless of the consideration that may be offered by any such third party.

***Thirdcoast's Lengthy Search for an Alternative Transaction to the Offer***

20. Thirdcoast was informed of P&H's intention to make the Offer and was requested to obtain the Valuation on February 21, 2012, 135 days prior to the expiry of the Offer.
21. National Bank Financial was not retained to perform the Valuation until March 29, 2012, 98 days prior to the expiry of the Offer and 37 days after P&H's request for the Valuation.
22. Scotia Capital was retained by Thirdcoast to conduct an auction for Thirdcoast and P&H is advised that their initial process was completed on May 24, 2012.
23. As of the July 5, 2012 expiry of the Offer, Thirdcoast will have had 135 days to identify and negotiate with potential alternative bidders.

***The Rights Plan***

24. On May 30, 2012, Thirdcoast issued a press release indicating that its board of directors had adopted the Rights Plan.
25. P&H is advised by 2 of the 4 members of the Thirdcoast board of directors that they received no notice of any meeting of the board of directors to adopt the Rights Plan and that they have no knowledge of any proper process whereby the board of directors could have adopted the Rights Plan.
26. The Rights Plan has not been approved by shareholders of Thirdcoast and Thirdcoast has taken no steps to obtain shareholder approval.
27. The Rights Plan provides for the issuance of a "Right" for each outstanding Common Share. The Rights Plan provides that after the "Separation Time", the Common Shares and Rights separate and the Rights become exercisable at an "Exercise Price" that is a premium to the defined "Market Price". After the occurrence of a "Flip-in Event" (i.e. a transaction that would result in an entity acquiring beneficial ownership of 20% or more of the outstanding Common Shares), the Rights become exercisable at a discounted price and entitle the holder to purchase that number of Common Shares having an aggregate market price (as at the date of the Flip-in Event) equal to twice the Exercise Price, in exchange for an amount in cash equal to that Exercise Price.
28. The object and effect of the Rights Plan is to frustrate any transaction involving the acquisition of 20% or more of the Common Shares by making any such transaction prohibitively expensive.
29. The Rights Plan contains a "Permitted Bid" provision. In order to qualify as a "Permitted Bid", an offer must, among other things, be:
  - (a) made for all Common Shares;
  - (b) open for not less than 60 days;

- (c) conditional on a majority of “Independent Shareholders” tendering to the offer; and
- (d) subject to a provision that, if the minimum tender condition referred to above is satisfied, the offeror will make a public announcement of that fact and extend the offer for an additional 10 days.

30. The Offer does not constitute a “Permitted Bid” within the meaning of the Rights Plan. In particular, the Offer:

- (a) is open for a period of 35 days as permitted by Canadian securities legislation;
- (b) is not subject to any minimum tender condition; and
- (c) does not provide for any mandatory extension other than as required by law.

31. It is a condition of the Offer that any rights plan adopted by Thirdcoast not adversely affect the Offer.

### ***The Protection of Shareholder Rights***

32. The primary objective of the take-over bid provisions in Canadian securities legislation is the protection of the bona fide interest of the shareholders of the target company. Canadian securities regulators have indicated that they will take appropriate action if they become aware of defensive tactics that will likely result in shareholders being deprived of the ability to respond to a take-over bid.<sup>1</sup>

33. Canadian securities regulatory authorities have repeatedly emphasized the fundamental principle that security holders should be allowed to decide for themselves whether to tender to a take-over bid:

“For us, the public interest lies in allowing shareholders of a target company to exercise one of the fundamental rights of share ownership – the ability to dispose of shares as one wishes – without undue hindrance from, among other things, defensive tactics that may have been adopted by the target board with the best of intentions, but that are either misguided from the outset or, as here, have outlived their usefulness.”<sup>2</sup>

34. It is not appropriate for Thirdcoast to seek to use the Rights Plan to try to equalize the position of P&H with any other potential alternative that may arise in the future:

“The Commission has concluded in the past that it will not permit a rights plan to be used for the purpose only of eliminating the timing advantage available to a first bidder. The Commission has stated that:

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<sup>1</sup> National Policy 62-202, sections 1.1(2) and 1.1(5). See, also, *Re Icahn Partners LP, 2010 LNBCSC 398 at para. 37, aff'd Lions Gate Entertainment Corp. v. Icahn Partners LP.*, [2010] B.C.J. NO. 1086 (C.A.); *Re Baffinland Iron Mines Corp.* (2010), 33 O.S.C.B. 11385 (“Baffinland”), paras. 22-25.

<sup>2</sup> Baffinland at para. 27, citing *Re Canadian Jorex Ltd.* (1992) 15 OSCB 257 (“Canadian Jorex”).

The Act sets out minimum time periods during which a bid must remain open. That time period is not related to the existence of any other bid. Both *Lac Minerals Ltd.* and *Tarxien* supra, have considered timing issues and in both cases the pill was ceased traded immediately. It was our opinion the Commission should not interfere with the timing issues as between the bidders. To do so would require the Commission to attempt to equalize the expiry dates for all existing and potential bids. Such an equalization, however, would result in a situation where the last bidder would dictate the timing for all previous bidders. Not only would this have a detrimental effect on the bidding process, but such an approach was not contemplated under the Act.”<sup>3</sup>

35. Since the Commission’s decision in Canadian Jorex, Canadian securities regulatory authorities have consistently held that all rights plans must, at some time, be set aside in order that shareholders may determine whether or not to tender their shares to an outstanding offer. Therefore, the fundamental issue in this application is not whether the Rights Plan should be set aside, but when.

36. In answering the question of whether the time has come for the Rights Plan to go, Canadian securities regulators have applied and considered the factors first enumerated in *Re Royal Host Real Estate Investment Trust*<sup>4</sup>:

- (a) whether shareholder approval of the rights plan was obtained;
- (b) when the plan was adopted;
- (c) whether there is broad shareholder support for the continued operation of the plan;
- (d) the size and complexity of the target company;
- (e) the other defensive tactics, if any, implemented by the target company;
- (f) the number of potential, viable offerors;
- (g) the steps taken by the target company to find an alternative bid or transaction that would be better for the shareholders;
- (h) the likelihood that, if given further time, the target company will be able to find a better bid or transaction;
- (i) the nature of the bid, including whether it is coercive or unfair to the shareholders of the target company;
- (j) the length of time since the bid was announced and made; and
- (k) the likelihood that the bid will not be extended if the rights plan is not terminated.

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<sup>3</sup> Baffinland at para. 34, citing *Re Chapters Inc. and Trilogy Retail Enterprises L.P.* (2001) 24 OSCB 1657 at para 37.

<sup>4</sup> (1999), 22 O.S.C.B. 7819, as affirmed and restated in Baffinland and *Re MOSAID Technologies Incorporated and Wi-LAN Inc.* (Order dated October 12, 2011).

37. P&H submits that the following factors are particularly relevant to the need to cease trade the Rights Plan in this case:

***Shareholder Approval***

38. Shareholder approval of the Rights Plan was not sought or obtained by Thirdcoast, nor is there any announced intention on the part of Thirdcoast to seek shareholder approval.

39. Given the existence of the Lock-up Agreements, combined with the number of Common Shares held by P&H, it is clear that shareholder approval would not be obtained in the event that Thirdcoast elected to put the matter to shareholders.

***Timing of Rights Plan Adoption***

40. The purported adoption of the Rights Plan was announced immediately after P&H announced that the Offer would be mailed to shareholders, in direct response thereto. Therefore, the Rights Plan is purely a tactical plan.

41. Thirdcoast delayed adoption of the Rights Plan until after delivery of the Valuation (which Thirdcoast had unreasonably delayed) and commencement of the Offer (which could not be made until delivery of the Valuation). Thirdcoast could have easily adopted the Rights Plan when first informed of P&H's intention to make a bid on February 21, 2012. Thirdcoast should not benefit from this extraordinary delay of its own making.

42. Thirdcoast purports that the Rights Plan was adopted by the board of directors on May 30, 2012. However, given that this was done without any notice to 2 of the 4 directors of Thirdcoast, it is difficult to see how it could have been properly adopted.

***Lack of Shareholder Support for Continued Operation of the Rights Plan***

43. There is no indication that there is any support among holders of Common Shares for the continued operation of the Rights Plan.

44. The shareholders of Thirdcoast who have entered into the Lock-up Agreements have determined that they wish to tender to the Offer. Combined with the Common Shares held by P&H, at a minimum, holders of 51.62% of the Common Share are in favour of cease trading the Rights Plan.

***Size and Complexity of the Target***

45. Thirdcoast is a relatively simple company that operates in a market with limited participants. To the extent that there are any issues in assessing the value of Thirdcoast, they have been addressed by the preparation of the Valuation by National Bank Financial under the supervision of the Independent Committee.

46. With the benefit of an independent assessment of value prepared by a major financial institution, there is no uncertainty regarding the fair value of Thirdcoast.

47. In addition, given the market in which Thirdcoast operates, there are a limited number of potential acquirers for Thirdcoast.

***Other Defensive Tactics Implemented by the Target***

48. As discussed above, Thirdcoast and the Independent Committee delayed unreasonably in obtaining the Valuation and failed to employ best efforts to deliver the Valuation on a timely basis as required under MI 61-101.

49. P&H has been advised by Thirdcoast that it has been seeking to sell material assets of Thirdcoast. In spite of clear notice that the sale of all, or substantially all, of the assets of Thirdcoast requires shareholder approval, which has not been sought or obtained, and that the sale of a material asset would be an improper defensive tactic, P&H understands that Thirdcoast is continuing its efforts to sell the principal assets of the Company.

50. P&H submits that such actions have the purpose and effect of undermining the statutory protections afforded to shareholders under the Canadian take-over bid regime.

51. Given that there is no active trading market for the Common Shares, such tactics have the potential to deny the shareholders of Thirdcoast their only opportunity to realize liquidity for their Common Shares.

52. Further, if any such asset sales are conducted, Thirdcoast is under no obligation to distribute any proceeds to the shareholders. Thirdcoast already has a substantial cash position and there is no valid business purpose that would justify converting its principal operating assets to cash.

53. P&H submits that the longer the Rights Plan is allowed to continue, the more likely it is that Thirdcoast will be able to implement such inappropriate defensive tactics and deny its shareholders the opportunity to respond to the Offer.

54. P&H has initiated proceedings to prevent Thirdcoast from selling a material asset without complying with applicable corporate law.

***Other Viable Bidders***

55. P&H is a significant shareholder of Thirdcoast and it has no intention of selling its Common Shares in any alternative transaction.

56. Taken together with the Lock-up Agreements, there is little likelihood that the continued operation of the Rights Plan will result in additional viable alternatives that could be considered by the shareholders of Thirdcoast.

57. Thirdcoast was informed of P&H's intention to make a bid for Thirdcoast on February 21, 2012. Thirdcoast announced P&H's intention on March 6, 2012, and engaged Scotia Capital to conduct an auction in late March. The auction was completed on May 24, 2012. Notwithstanding the extended time available to Thirdcoast, no evidence of any viable alternative bidder has emerged.

58. There is no reason to expect that the continued operation of the Rights Plan will have any impact other than denying the shareholders the opportunity to tender to the Offer.

***Steps Taken by Target to Find Alternative Transactions***

59. Despite repeated requests from P&H and an obligation to use best efforts under MI 61-101, the Independent Committee took 36 days to appoint a valuator and 100 days until delivery of the Valuation. Scotia Capital's auction for Thirdcoast was conducted and completed during this period.

60. Given that Thirdcoast has had far longer than the 60 days that would be available to it if a Permitted Bid were made under the Rights Plan, P&H submits that there is no rationale for the Rights Plan to continue in effect, particularly given the lack of liquidity for Common Shares.

***Likelihood of Finding a Better Bid***

61. There is no evidence at this time that suggests that a better bid will be found.

62. There is a limited number of potential buyers for Thirdcoast given the nature of its business and the location of its facilities. Thirdcoast and Scotia Capital have had more than enough time to contact all such potential bidders to ascertain their interest in Thirdcoast.

63. Given that potential bidders for Thirdcoast would desire control, the existence of the Lock-up Agreements and P&H's substantial holdings of Common Shares suggest that the likelihood of an alternative bid being found is very low.

***Nature of the Bid***

64. The Offer is fair and non-coercive.

65. The price under the Offer is near the top of the range of fair market value identified in the Valuation, which was prepared under the supervision of the Independent Committee by a qualified investment dealer.

66. The Lock-up Agreements have been entered into by shareholders of Thirdcoast who have the right to sell their Common Shares and have indicated their willingness to do so.

67. As discussed above, to the extent that the Rights Plan is being used to delay the Offer in order to equalize the position of P&H with a potential bidder that may be identified at some point in the future, that would be an improper purpose for the Rights Plan.

***Length of Time Since Bid Announced***

68. The Offer was announced on March 6, 2012 and was formally made on May 31, 2012 after the Valuation was obtained. As of the expiry of the Offer on July 5, 2012, 122 days will have elapsed since the Offer was first announced and Thirdcoast will have had 135 days to negotiate an alternative transaction.

***Likelihood that the Bid will be Extended***

69. P&H has not made a decision regarding whether the Offer will be extended. Given the time that has elapsed since Thirdcoast was made aware of the Offer, it is clear that the board of directors of Thirdcoast has no intention of allowing the shareholders to respond to the Offer.

70. Given the seasonal nature of Thirdcoast's business, it is critical for P&H to complete the Offer before arrangements are made for the handling and storage of grain to be harvested this year. Continued delay will be detrimental to the business of Thirdcoast and the interests of all its shareholders.

71. Furthermore, failing to cease trade the Rights Plan would deprive Thirdcoast's shareholders of their fundamental right to decide for themselves whether to accept the Offer.

**CONCLUSION**

Having regard to all of the foregoing considerations, P&H respectfully submits that the circumstances of this case provide a compelling basis for the Commission's exercise of its public interest jurisdiction, pursuant to section 127 of the Act, to cease trade the Rights Plan, after a hearing to be held prior to the scheduled expiry of the Offer. Further, P&H submits that the lack of an active trading market for the Common Shares, and accordingly, the absence of the opportunity for shareholders who do not support the entrenchment of the current management of Thirdcoast to sell their Common Shares, increases the urgency of this application.

We respectfully request that the Commission hold a hearing to consider and determine this application at the earliest possible date and in any event prior to July 5, 2012. Should you have any questions or require any additional information with respect to the foregoing, please do not hesitate to contact the undersigned at 416.367.6195, my partner, Chris Bredt, at 416.367.6165 or our co-counsel Todd Thomson at 204.957.4653.

Yours very truly,

*"David Surat"*

Cc: Rick Moscone & Blair W.M. Bowen, *Fogler, Rubinoff LLP*  
Todd W. Thomson, James A. Ferguson & Pamela E. Hilderman, *Aikins, MacAulay & Thorvaldson LLP*