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BY EMAIL

Ontario Securities Commission
P.O. Box 55, 19th Floor
20 Queen Street West
Toronto, ON M5H 3S8

Attention: John Stevenson, *Secretary*
Shannon O'Hearn, *Senior Legal Counsel*
Frédéric Duguay, *Legal Counsel*

Dear Sirs/Mesdames:

Re: Parrish & Heimbecker, Limited Take-over Bid for Common Shares of Thirdcoast Limited

We are counsel to Thirdcoast Limited ("Thirdcoast") and its Independent Committee (collectively, the "Applicant"). The Applicant hereby applies for an order pursuant to section 127 of the *Securities Act* (Ontario) (the "Act") in connection with the lock-up agreements (the "Lock-up Agreements") entered into by Parrish & Heimbecker, Limited ("P&H") pursuant to its take-over bid (the "Bid") for common shares of Thirdcoast.

In this application, the Applicant hereby seeks the following relief:

- (a) a permanent order pursuant to section 127 of the Act that all trading in Thirdcoast common shares pursuant to the terms of the Lock-up Agreements cease; and
- (b) such further and other relief as the Commission deems appropriate.

The Applicant respectfully submits that in the context of the Bid, the Lock-up Agreements are improper and contrary to the public interest as they have permitted P&H to acquire Thirdcoast common shares in contravention of certain provisions of the Act, the primary purpose of which are to ensure that Insiders do not take advantage of shareholders who are at an information disadvantage. In addition, the Applicant has also been made aware of at least one Lock-up Agreement which has been entered into in direct contravention of Section 97.1(1) of the Act.

The sum effect of these acts by P&H is a Bid which is coercive and unfair to minority shareholders. The only way to ensure that minority shareholders of Thirdcoast are treated fairly is to cease trading under the Lock-up Agreements to ensure that those shareholders can now

tender their shares to a higher bid given that they are better informed about the true value of the common shares of Thirdcoast.

The Applicant requests that the Commission convene a hearing in respect of this matter at the earliest available date, and in any event prior to or concurrently with the hearing that P&H has requested in respect of Thirdcoast's shareholder rights plan pursuant to an application dated June 8, 2012.

SUMMARY OF MATERIAL FACTS AND 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.
4. Two of P&H's directors, including its Chairman, are directors of Thirdcoast.

Thirdcoast Limited

5. Thirdcoast exists under the laws of Ontario and is a reporting issuer in Ontario. Its head office is in Goderich, Ontario.
6. Thirdcoast is a holding company for operations involved in the handling and processing of food grains and food ingredients shipped around the globe. The goal of the Company is to maximize customer and shareholder value through world class practices and continually strive for the highest levels of quality and customer care in the services and products it provides. Thirdcoast's operations are primarily carried out through its two main wholly-owned operating subsidiaries: Southpier Terminals, which carries out its grain handling operations; and G.S. Dunn, which is a market leader in mustard milling and the production of dry mustard products which are distributed to over 50 countries across 6 continents.
7. 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.
8. The Common Shares are not listed on any stock exchange and are traded primarily on the over-the-counter market.

9. Pope & Company Limited acts as market maker to facilitate trades among buyers and sellers of Common Shares and provides 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 Bid, 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 Bid

10. On February 21, 2012, P&H initially approached three members of the board of directors of Thirdcoast, not including the two members of the board of directors of Thirdcoast who are also directors of P&H, 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"). This initial expression of an intention to make a bid contained no relevant information such as the price being offered or any significant conditions, such as any minimum tender condition.
11. On February 22, 2012, an independent committee of the board of directors of Thirdcoast (the "Independent Committee") was formed to respond to P&H's expression of interest. The Independent Committee at the time was comprised of the three members of Thirdcoast's board of directors that did not include the P&H directors.
12. Through various correspondence between P&H and the Independent Committee and their respective legal counsels and the Commission, P&H and its legal counsel provided by the evening of March 5, 2012 all of the information about the proposed bid requested by the Independent Committee, including that the price being offered was \$115 per Common Share, the proposed bid was not subject to due diligence and there would be no minimum tender conditions.
13. On March 6, 2012, Thirdcoast issued a press release announcing receipt of the proposed bid, the formation of the Independent Committee, and that the Independent Committee was commencing the process of having a formal valuation prepared as required by MI 61-101.
14. On March 9, 2012, Thirdcoast issued a press release announcing that William Howson had resigned as a member of the Thirdcoast board of directors (and the Independent Committee) due to existing business relationships between Howson & Howson Limited (of which William Howson is an officer and director) and P&H. It was later revealed that Mr. Howson entered into a Lock-up Agreement on March 12, 2012.
15. On May 25, 2012, National Bank Financial Inc. ("NBF"), the formal valuator, delivered a draft of its formal valuation to Thirdcoast and P&H, which provided a valuation of between \$130-\$170 per Common Share. The Independent Committee, based on advice received from its financial advisor Scotiabank, believed NBF had been very conservative in its valuation for the reasons later expressed in Thirdcoast's press release of May 30,

2012. In addition, the NBF valuation does not consider any synergies that will accrue to P&H from the purchase of Thirdcoast, which P&H now acknowledges is material.
16. On May 29, 2012, a meeting occurred involving P&H, its financial advisor CIBC, the Independent Committee, its financial advisor Scotiabank, and the respective legal counsels for P&H and the Independent Committee. The purpose of the meeting was to determine whether a negotiated deal could be arrived at which would receive the support of the Independent Committee. Scotiabank advised P&H and CIBC that it believed NBF had been very conservative in its valuation as discussed above under paragraph 15. P&H advised that it would come back to Scotiabank and the Independent Committee after discussing it internally, but no further communication ensued and instead P&H issued a press release on May 30, 2012 announcing its intention to proceed with the Bid.
 17. On May 31, 2012, P&H delivered the Offer and Circular to Thirdcoast shareholders and concurrently filed it on SEDAR along with the Lock-up Agreements.

Collateral Benefits and the Lock-up Agreements

18. The Applicant's understanding is that at least one of the Lock-up Agreements was entered into in exchange for the receipt of a collateral benefit in violation of Section 97.1(1) of the Act. The Applicant's understanding is that on March 27, 2012 P&H agreed to provide Thompsons Limited ("Thompsons") with multi-year fobbing space in Thirdcoast's facilities in exchange for Thompsons entering into a Lock-up Agreement with P&H.
19. Other Lock-up Agreements entered into include Halifax Grain Elevator Ltd., which the Applicant understands has P&H as one of its largest customers, and William Howson, who resigned from the Thirdcoast board of directors and the Independent Committee immediately prior to entering into a Lock-up Agreement due to the business relationships between his family's company and P&H (Mr. Howson made no mention to the Independent Committee of his intention to enter into a Lock-up Agreement at the time of his resignation). Given what the Applicant knows about the Thompsons Lock-up Agreement, it is concerned that similar collateral benefits may have been exchanged for other Lock-up Agreements.

"Hard" Lock-up Agreements

20. P&H does not dispute that all of the Lock-up Agreements are "hard", which effectively means that the beneficial owners of those shares are committed to selling those shares to P&H pursuant to the Bid.
21. P&H has communicated from the beginning of the process that its bid would have no minimum tender conditions.
22. The combination of a "hard" lock-up agreement and no minimum tender conditions effectively means that P&H had purchased those shares when it entered into the lock-up agreements. The only impediment to completing the purchase was the requirement to complete a formal valuation as required pursuant to MI 61-101 given P&H's insider

status arising from its 27.99% ownership position in Thirdcoast and the two mutual directors it shares with Thirdcoast.

23. At the time of entering into the Lock-up Agreements, if P&H wanted to purchase any shares of Thirdcoast it would have had to do so pursuant to an exemption from Part XX of the Act as it already owned more than 20% of the Thirdcoast common shares, and so any purchase of additional common shares would have been considered a "take-over bid". The only exemptions available to it would have been the Normal Course Purchase Exemption (Section 100) and the Private Agreement Exemption (Section 100.1(1)).
24. The entering into of the Lock-up Agreements would have obviously not satisfied the Normal Course Purchase Exemption.
25. The consideration offered under the Lock-up Agreements was \$115 per Common Share, which was significantly more than a 15% premium to the \$75 per Common Share market price. And P&H entered into more than 5 Lock-up Agreements. P&H would not have been able to satisfy the Private Agreement Exemption.
26. By entering into the Lock-up Agreements, P&H was able to achieve indirectly what it would not have been able to achieve directly under Part XX of the Act.
27. The existence of the formal valuation requirements in the context of an "insider bid" under MI 61-101 is to ensure that minority shareholders are not taken advantage of by majority shareholders and other insiders who have the benefit of more information about what a business is really worth. This principal becomes of even greater importance for a company like Thirdcoast that does not have its securities listed on an exchange, which means that there are no analysts that cover the company nor any independent research reports for shareholders to review to get a general sense of what is the value of the Common Shares.
28. By P&H's own admission, the original offer of \$115 per Common Share upon which the Lock-up Agreements were based was a gross undervaluation of Thirdcoast's assets. P&H has estimated that the Goderich Terminal has a replacement cost of approximately \$50-\$60 million, which alone is greater than the consideration under the Bid. This is before accounting for Thirdcoast's other assets which add up to significantly more than half of the consideration under the Bid. Thirdcoast's other assets include G.S. Dunn, a market leader in mustard milling and the production of dry mustard products which are distributed to over 50 countries across 6 continents; the Port Colborne grain-handling facility which is profitable and has been improved in recent years through capital expenditures focused on automation; and a significant amount of cash and other liquid securities. G.S. Dunn and the Port Colborne grain-handling facility generated approximately 40% of Thirdcoast's consolidated EBITDA for its fiscal year ended March 31, 2012.

Coercive Insider Bid

29. The combination of the collateral benefits offered to certain parties and the improper "hard" lock-up agreements has created a situation where minority shareholders are being treated in an unfair manner.
30. By P&H's own admission, it would be satisfied with only acquiring 60% of the Common Shares. P&H is more interested in ensuring it controls secured guaranteed access to the Goderich Terminal for P&H's supply chain business.
31. The Independent Committee is focused on ensuring that all Thirdcoast shareholders, in particular minority shareholders, are treated fairly.
32. The Independent Committee, along with its financial advisor Scotiabank, has been engaged in an auction process for the last couple of weeks that has resulted in offers being received that would have Thirdcoast shareholders receiving greater consideration than available from the Bid. In order to allow the Independent Committee to properly assess all available options, the Thirdcoast shareholders unfairly prejudiced by the Lock-up Agreements should be free to tender their Common Shares to other bids now that they have been provided with the same information P&H had at its disposal when it approached these shareholders with the Lock-up Agreements.

CONCLUSION

Having regard to all of the foregoing considerations, the Applicant 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, that all trading cease pursuant to the terms of the Lock-up Agreements. Should you have any questions or require any additional information with respect to the foregoing, please do not hesitate to contact the undersigned at 416.941.8858, or my partner, Blair Bowen, at 416.864.7615.

Yours very truly,

FOGLER, RUBINOFF LLP

"Rick Moscone"

Rick Moscone
RM/rm