

Corporate Finance/M&A - USA

Despite favourable ruling, Sotheby's settles with activist investor

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Background
Decision
Settlement

The Delaware Court of Chancery recently declined to invalidate Sotheby's adoption of a two-tiered stockholder rights plan (poison pill) with a lower trigger for activist investors. The Sotheby's board subsequently settled with the activist investor that the poison pill was meant to deter.

Background

On May 2 2014 Vice Chancellor Parsons declined to overturn a poison pill that would limit activist investors to holding no more than 10% of Sotheby's shares, while permitting passive investors to hold as much as 20%. The Sotheby's board had adopted this plan in October 2013 after learning that activist investor Third Point Capital LLC had accumulated just under 10% of its stock. Third Point subsequently filed suit against Sotheby's seeking to invalidate the poison pill. Third Point also launched a proxy contest to name three of its designees to Sotheby's board and sought a preliminary injunction to delay Sotheby's annual stockholder meeting.

Decision

Applying the heightened standard of review from *Unocal Corp v Mesa Petroleum Co* with respect to defensive tactics, the court declined to enjoin Sotheby's annual meeting and determined that the rationale behind Sotheby's stockholders rights plan was both reasonable and proportionate to the threat posed by activist investors. As part of its analysis, the court accepted the notion that a 'wolfpack' of activist investors, which form together for the purpose of jointly acquiring large blocks of a target's stock, could pose a legally cognisable threat to stockholders.

The court also noted that there was a substantial possibility that Third Point would win its proxy contest, making any preliminary intervention by the court unnecessary. At the time of the court's decision Third Point had already won the support of Sotheby's third-largest stockholder, another activist investor, as well as support for two of its three nominees from Institutional Shareholder Services Inc.

Settlement

Notwithstanding the court's decision, on May 5 2014 Sotheby's announced an agreement to appoint Third Point's three designees to the board and to allow Third Point to increase its equity stake in Sotheby's to 15%. This settlement is one in a growing trend of recent settlements with activist investors.⁽¹⁾

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Endnote

⁽¹⁾*Third Point LLC v Ruprecht*, CA 9469-VCP (Delaware Court of Chancery May 2 2014).

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