

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
)
AgFeed USA, LLC, et al., ¹) Case No. 13-11761 (BLS)
)
Debtors.) Jointly Administered
)
) Related Docket No. 307

**OBJECTION OF THE OFFICIAL COMMITTEE OF EQUITY
SECURITY HOLDERS TO THE MOTION OF THE UNITED STATES
TRUSTEE FOR AN ORDER DIRECTING THE APPOINTMENT OF AN EXAMINER**

The Official Committee of Equity Security Holders (the “Equity Committee”), by and through its undersigned counsel, submits this objection (the “Objection”) to the proposed appointment of an examiner, pursuant to 11 U.S.C. §1104(c)(1), of the United States Code (the “Bankruptcy Code”). In support of the Objection, the Equity Committee states the follows:

BACKGROUND

1. On July 15, 2013 (the “Petition Date”), AgFeed USA, LLC and its affiliated debtors (the “Debtors”) filed voluntary petitions under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their affairs as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

¹ The Debtors and the last four digits of their federal tax identification number are: AgFeed USA, LLC (8748), AgFeed Industries, Inc. (7168); TS Finishing, LLC (8748); New York Finishing, LLC (8748); Pork Technologies, LC (2076); New Colony Farms, LLC (9246); Heritage Farms, LLC (8141); Heritage Land, LLC (8129); Genetics Operating, LLC (1921); M2P2 Facilities, LLC (8748); MGM, LLC (8748); M2P2 General Operations, LLC (8748); New Colony Land Company, LLC(5834); M2P2 AF JV, LLC (8748); Midwest Finishing, LLC (8748); and Genetic Land, LLC (1921). The location of the corporate headquarters for AgFeed Industries, Inc. is 100 Bluegrass Commons Blvd., Suite 310, Hendersonville, Tennessee 37075. The location of the corporate headquarters for the remaining Debtors is 510 South 17th Street, Suite 104, Ames, Iowa 50010.

2. On July 23, 2013, the Office of the United States Trustee (the "U.S. Trustee") appointed an Official Committee of Unsecured Creditors (the "Creditors' Committee").

3. On August 23, 2013, the U.S. Trustee appointed the Equity Committee.

4. On September 12, 2013, the sale of substantially all of the Debtors' domestic assets to High Plains Pork, LLC, Cohoma Pork, LLC, and Murphy-Brown LLC (the "AgFeed USA Sale") closed. The final purchase price of the AgFeed USA Sale was approximately \$79.45 million with a cash component of approximately \$53.4 million.

5. On September 13, 2013, The U.S. Trustee filed the Motion of the United States Trustee for an Order Directing the Appointment of an Examiner (the "Examiner Motion") seeking the appointment of an examiner pursuant to 11 U.S.C. §1104(c)(1) of the Bankruptcy Code (Docket No. 307).

6. On September 18, 2013, the Debtors filed the Motion for Entry of (A) an Order (I) Scheduling a Hearing on the Approval of the Proposed Stock Purchase Agreement Regarding the Sale and Purchase of the Stock of AgFeed Industries, Inc. (British Virgin Islands), (II) Approving Certain Bidding Procedures with Respect to the Proposed Stock Purchase Agreement, (III) Approving the Break-Up Fee, Expense Reimbursement and the Form and Manner of Notice Thereof, and (IV) Granting Related Relief; and (B) an Order (I) Authorizing and Approving AgFeed Industries, Inc.'s Sale of the Stock of AgFeed Industries, Inc. (British Virgin Islands), (II) Approving a Certain Stock Purchase Agreement, (III) Authorizing and Approving AgFeed Industries, Inc.'s Entry Into and Consummation of the Stock Purchase Agreement, and (IV) Granting Related Relief (Docket No. 331) (the "China Sale Motion"). Pursuant to the China Sale Motion, the Debtors have accepted a stalking horse bid for \$50.5 million cash, subject to

higher and better bids, from a wholly-owned subsidiary of Ningbo Tech-Bank Co., Ltd., to purchase 100% of stock of AgFeed Industries, Inc. (British Virgin Islands), which in turn owns the Debtors' interest in feed and hog production facilities located in China (the "China Sale"). . The closing of the sale contemplated in the China Sale Motion will result in the complete satisfaction of the Debtors' secured and unsecured debt obligations, with a substantial surplus generated for the benefit of shareholders.

OBJECTION

7. Out of an abundance of caution due to material risks to the ongoing China Sale process and the likelihood of a substantial increase in related administrative costs, the Equity Committee objects to the appointment of an examiner at this untimely moment in the Debtors' cases. The Equity Committee understands and is sympathetic to the responsibilities of the U.S. Trustee, a party without an economic stake in these cases, to watch over the integrity of the bankruptcy process. This is especially important in these cases in light of the Debtors' pre-petition reporting deficiencies and the related claims that the estate may have against former management. The Examiner Motion identifies many improprieties by the Debtors and certain directors and officers that warrant further investigation, but the timing of the motion threatens the consummation of the China Sale and fails to credit the progress made thus far by the parties in these cases.

8. Since its appointment, the Equity Committee has been deeply involved in all aspects of these cases and has commenced a review of the pre-petition activities of the Debtors including, but not limited to, the events that led to the class action securities lawsuits filed

against AgFeed Industries, Inc. and certain officers and directors, as well as the allegations contained in the Examiner Motion. Unfortunately, the appointment of an examiner at this time will create substantial economic risks to the recoveries for the constituents of the Equity Committee – the shareholders – that the Equity Committee cannot bear, potentially jeopardizing the China Sale and definitively increasing the administrative costs in these cases.

9. The Debtors, the Creditors' Committee and the Equity Committee have preliminarily agreed that an investigation into the issues identified in the Examiner Motion is premature and will merely serve to complicate the primary objective at this particular juncture—to maximize value to the estate by successfully completing the China Sale. The allegations set forth in the Examiner Motion are far from conclusive concerning the market for the China assets and the current stalking horse bid, especially in light of the fact that issues concerning the Debtors' accounting irregularities were publicized well before the filing of these cases. Nevertheless, the Equity Committee continues to carefully review the China Sale Motion with the Debtors' prepetition improprieties in mind, and will take any and all appropriate action to protect the interests of its constituents and the Debtors' overall estate, including but by no means limited to taking discovery or filing a motion to approve a 2004 examination. To date, the Debtors have cooperated with the Equity Committee by responding to its requests for information regarding the China Sale, and for this reason, the Equity Committee believes that the appointment of an examiner, which would come at a direct cost to the Debtors' estates, is premature.

A. Risks to China Sale

10. The closing of the China Sale on the terms provided in the China Sale Motion will guaranty a recovery for the shareholders in this case. The appointment of an examiner could put the China Sale at risk and, in turn, jeopardize the shareholders' recovery. Specifically, sections 3.5 and 6.1.4 of the stock purchase agreement (the "SPA"), attached as Exhibit A to the China Sale Motion, contain provisions that can be used by potential bidders to manipulate bids and possibly let the stalking horse bidder walk away from the sale transaction if an examiner is appointed.

11. Section 6.1.4 of the SPA provides for a termination event by the Purchaser if "a trustee or examiner with expanded powers is appointed in the Bankruptcy Case." This provision arguably gives the stalking horse bidder the ability to terminate the SPA if an examiner is appointed. Whether or not the stalking horse bidder will terminate the SPA is not the only concern. None of the allegations included in the Examiner Motion or its supporting documents are a surprise to either the market or any interested parties in this case. The appointment of an examiner will not only divert estate resources away from the sale process but allow opportunistic bidders to manipulate the sale process before closing to lower the sale price or otherwise decrease the value of any eventual recovery by the estate.

12. Section 3.5 of the SPA provides, as a condition precedent to the closing of the transaction, that: "[n]o Material Adverse Event shall have occurred after the date of this Agreement²." "Material Adverse Event" is defined, in part, in the SPA to include any event that may have a material adverse effect on the value of the Target Share. While the Equity Committee understands that it would be highly litigated whether the appointment of an examiner is a "Material Adverse Event", it is a risk to the China Sale not closing.

² Capitalized terms not otherwise defined shall have the meanings ascribed to such terms as in the SPA.

13. Accordingly, the appointment of an examiner increases the risk to the estate of the successful completion of a China Sale which in turn will put a guaranteed recovery to the shareholders at risk. The major stakeholders in these cases – the unsecured creditors and the equity security holders – have been aware of the alleged claims against the Debtors and their former management for some time and agree that it is in the best interest of their respective constituencies to delay the investigation until after the China Sale closes.

B. Increased Administrative Costs

14. In executing its duties, which largely parallel those of the existing Committees, the examiner will likely retain multiple professionals to conduct the investigation and prepare a report to be filed in the bankruptcy cases. These added administrative expenses will take away from recoveries to the equity security holders. These costs are unnecessary especially when this work was already undertaken by professionals retained by the Debtors prior to the Petition Date. Adding an Examiner would only create unnecessary expense, delay, and duplication.

15. Prior to the Petition Date, the Debtors' board of directors formed special committee to conduct an internal investigation into the Debtors' Chinese operations. The special committee retained professionals including, but not limited to, Latham & Watkins LLP and FTI Consulting, Inc. to conduct the investigation, for which the estate allegedly owes them in excess of \$8 million.³ With the Committees now exercising their respective due diligence into these matters, the administrative cost of an examiner at this moment is an unnecessary capital burden on equity's prospects of recovery.

16. The Equity Committee has engaged in preliminary discussions with the Debtors and the Creditors' Committee on the outcome of these cases. Currently, and subject to further meetings between parties, the parties intend to work toward a consensual liquidation plan that

³ See List of Creditors Holding 30 Largest Unsecured Claims of AgFeed Industries, Inc.

transfers, among other things, the claims identified in the Examiner Motion and applicable privileges from the Debtors to a trust controlled by the fulcrum security. A liquidating trust has the economic incentive to pursue these claims in the most efficient manner available to maximize recovery for the estate and with the transfer of the privilege will have access to the prior investigations and the Debtors' books and records. The Equity Committee believes that this resolution is in the best interests of all stakeholders and limits the costs associated with the appointment of an examiner.

RESERVATION OF RIGHTS

17. The Equity Committee reserves the right to supplement and amend this Objection and seek discovery with respect to same.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Equity Committee requests that the Examiner Motion be denied without prejudice and grant such other and further relief as it deems just and proper.

Dated: September 25, 2013
Wilmington, DE

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