Court File No. CV-12-9667-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF SINO-FOREST CORPORATION

Court File No.: CV-11-431153-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA, THE TRUSTEES OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING ENGINEERS IN ONTARIO, SJUNDE AP-FONDEN, DAVID GRANT and ROBERT WONG

Plaintiffs

- and -

SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON MARTIN, KAI KIT POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES P. BOWLAND, JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, GARRY J. WEST, CREDIT SUISSE SECURITIES (CANADA), INC., TD SECURITIES INC., DUNDEE SECURITIES CORPORATION, RBC DOMINION SECURITIES INC., SCOTIA CAPITAL INC., CIBC WORLD MARKETS INC., MERRILL LYNCH CANADA INC., CANACCORD FINANCIAL LTD., MAISON PLACEMENTS CANADA INC., CREDIT SUISSE SECURITIES (USA) LLC and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (successor by merger to Banc of America Securities LLC)

Defendants

Proceeding under the *Class Proceedings Act, 1992*

FACTUM OF THE PLAINTIFFS
DEALERS SETTLEMENT APPROVAL
(Returnable May 11, 2015)

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TO : THE ATTACHED SERVICE LIST

Court File No. CV-12-9667-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. c-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

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Court File No. CV-12-9667-00-CL

ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

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B E T W E E N :

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA, THE TRUSTEES OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING ENGINEERS IN ONTARIO, SJUNDE AP-FONDEN, DAVID GRANT and ROBERT WONG

Plaintiffs

- and -

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Defendants

Proceeding under the *Class Proceedings Act, 1992*

FACTUM OF THE PLAINTIFFS
DEALERS SETTLEMENT APPROVAL
(Returnable May 11, 2015)

FACTUM OF THE PLAINTIFFS
SETTLEMENT APPROVAL
(Returnable May 11, 2015)

TABLE OF CONTENTS

PART I - OVERVIEW

1. This motion is to approve a $32.5 million settlement with Credit Suisse Securities (Canada) Inc., TD Securities Inc., Dundee Securities Corporation, RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Canaccord Financial Ltd., Maison Placements Canada Inc., Credit Suisse Securities (USA) LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated (successor by merger to Banc of America Securities LLC) (the "Dealers" and the "Dealers Settlement"), defendants in a class action concerning Sino-Forest Corporation ("Sino-Forest").

2. The settlement is the product of hard-fought and protracted negotiations which were conducted by counsel having extensive experience in securities class actions and CCAA proceedings. The settlement provides a substantial contribution to Sino-Forest's Plan of Compromise and Reorganization and provides a significant benefit to Sino-Forest's creditors.

3. The Dealers were various financial institutions that served as underwriters and initial purchasers in one or more of Sino-Forest's offerings of shares and notes during the class period. The Ontario Plaintiffs[1] allege that the Dealers failed to conduct a reasonable investigation into Sino-Forest in connection with the offerings of Sino-Forest's securities and that, as a result, Sino-Forest's security holders suffered damages when Sino-Forest collapsed.

4. Under all of the circumstances, the Dealers Settlement is a very good settlement. In particular:

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[1] The Trustees of the Labourers' Pension Fund of Central and Eastern Canada, the Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario, Sjunde Ap-Fonden, David Grant and Robert Wong, Davis New York Venture Fund, Inc. and Davis Selected Advisers L.P.

(a) the Dealers Settlement is the product of hard-fought, arms-length negotiation over the course of three formal mediations before Justices of the Ontario Superior Court (Commercial List) (Justice Newbould) and the Ontario Court of Appeal (Justice Goudge);

(b) the Dealers Settlement represents a very substantial recovery for purchasers of Sino-Forest's shares on the primary market;

(c) although alleged losses to all securities claimants caused by all defendants could run into the billions of dollars, the vast majority of those losses were sustained by secondary market purchasers, and such purchasers have no valid claims against the Dealers;

(d) there are numerous legal impediments to recovery from the Dealers by primary market purchasers, which weigh strongly in favour of the Dealers Settlement;

(e) counsel to the plaintiffs in the Ontario action ("Class Counsel") believes the Dealers Settlement is the largest settlement with a syndicate of underwriters in Canadian history;

(f) the Dealers Settlement is recommended by the mediator, the Honourable Justice Goudge, former Justice of the Ontario Court of Appeal. His Honour has provided an affidavit stating that in his view, the Dealers Settlement is fair and reasonable, and the product of hard fought, arm's-length bargaining; and

(g) Credit Suisse, TD, Dundee, and Merrill have agreed to cooperate to assist the prosecution of the class action claims which still remain against BDO Limited.

5. The Dealers Settlement requires implementation through Sino-Forest's Plan of Compromise and Reorganization (the "Plan"), which in turn requires the Dealers Settlement to be "acceptable" to the Litigation Trustee. However, the Litigation Trustee has withheld its acceptance. In the circumstances, the Court should approve the settlement and the release without the acceptance of the Litigation Trustee:

(a) the Plan extinguished any claims the Litigation Trust may have had against the Dealers;

(b) the Litigation Trustee's performance of its obligations under the Plan are contrary to the principle of good faith and reasonableness and the purpose and spirit of the Plan and the *Companies' Creditors Arrangement Act* (the "CCAA"); and

(c) in withholding its acceptance, the Litigation Trust is acting outside of the boundaries of its discretion which is circumscribed by the heavily negotiated,

> Court-approved Litigation Trust Agreement which requires the Litigation Trustee to act reasonably and efficiently with the sole purpose of the prosecution of the Litigation Trust claims.

6. Without the Litigation Trustee's acceptance of the Dealers Settlement, there can be no distribution of the settlement proceeds to the parties entitled to receive them. By withholding its acceptance, the Litigation Trustee is attempting to improperly extract payment from the parties to the settlement. In effect, the Litigation Trustee is seeking "stick-up value." This Court should not recognize any entitlement to "stick-up value." The Litigation Trustee's acceptance cannot be worth any more than the value of its claim, which is zero. In the circumstances, the Dealers Settlement should be approved.

7. This motion is also for an order: (a) approving the proposed Claims and Distribution Protocol that sets out the process for the allocation and distribution of the net proceeds of the settlement fund; and (b) appointing a settlement administrator.

8. The Ontario Plaintiffs have proposed a Claims and Distribution Protocol to allocate the net settlement fund among different groups of primary market purchasers of Sino-Forest's securities. The proposed Claims and Distribution Protocol is well-designed to be a streamlined, efficient claims process, which uses information already obtained through administration of prior settlements, and provides compensation that is based on the strength of each category of claims as against the Dealers. Finally, the proposed administrator NPT RicePoint Class Action Services Inc. ("NPT") is well-qualified to administer this settlement in a cost-effective manner.

9. In the circumstances, this Court should approve the Dealers Settlement, the proposed Claims and Distribution Protocol, and the appointment of the settlement administrator.

PART II - THE FACTS

A. Background of the Action

10. Sino-Forest was a forestry company with shares that were traded publicly on the Toronto Stock Exchange ("TSX"), on alternative trading venues in Canada, and elsewhere. The Dealers were various financial institutions that served as underwriters or initial note purchasers in one or more of Sino-Forest's offerings of shares and notes during the class period. The Dealers can be divided into two (2) groups:

(a) Credit Suisse Securities (Canada), Inc. ("Credit Suisse"), TD Securities Inc. ("TD"), Dundee Securities Corporation ("Dundee"), RBC Dominion Securities Inc. ("RBC"), Scotia Capital Inc. ("Scotia"), CIBC World Markets Inc. ("CIBC"), Merrill Lynch Canada Inc. ("Merrill"), Canaccord Financial Ltd. ("Cannacord"), and Maison Placements Canada Inc. ("Maison") served as underwriters in one or more of Sino-Forest's public offerings of shares during the class period (collectively, the "**Share Underwriters**"); and

(b) TD, Credit Suisse Securities (USA) LLC ("Credit Suisse USA"), and Merrill Lynch Pierce, Fenner & Smith Incorporated (successor by merger to Banc of America Securities LLC) ("Banc of America") served as initial purchasers in one or more of Sino-Forest's public offerings of notes during the Class Period (collectively, the "**Initial Note Purchasers**").[2]

11. During the class period, Sino-Forest raised money pursuant to three note offerings (the "Note Offerings") and four share offerings (the "Share Offerings" and collectively with the Note Offerings, the "Offerings"). A description of Dealer participation the various offerings is set out in **Schedule "C"**.

12. On June 2, 2011, Muddy Waters Research released a report alleging fraud against Sino-Forest and alleging that it "massively exaggerates its assets." The release of this report was

[2] Affidavit of Charles Wright (Settlement Approval) sworn April 13, 2015 [Wright Affidavit] para. 9, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 21.

immediately followed by a dramatic decline in Sino-Forest's share price. The value of Sino-Forest's notes also fell in value following the release of the report.[3]

13. On August 26, 2011, the Ontario Securities Commission (the "OSC") issued a temporary cease trade order in respect of Sino-Forest's securities. On March 30, 2012, Sino-Forest filed for protection from its creditors under the CCAA and obtained a stay of proceedings against it, its subsidiaries and directors and officers, including the Ontario Action. On May 9, 2012, Sino-Forest's shares were delisted from the TSX.[4]

B. Class Actions against Sino-Forest, the Dealers and Others

14. On July 20, 2011, the a proposed class proceeding was commenced under the *Class Proceedings Act, 1992* (the "CPA") against Sino-Forest, the Dealers, and other defendants on behalf of persons that had purchased Sino-Forest securities in the period from March 19, 2007 to June 2, 2011 (the "Ontario Action"). In this action, the Ontario Plaintiffs allege that Sino-Forest misstated its financial statements, overstated the value of its assets, and concealed material information about its business and operations from investors in its public filings. With respect to the Dealers, the Ontario Plaintiffs allege in summary that the Dealers failed to conduct a reasonable investigation into Sino-Forest in connection with all of the offerings of Sino-Forest's securities. As a result, Sino-Forest's securities allegedly traded at artificially inflated prices for many years.[5]

15. Before commencing the Ontario Action, Class Counsel conducted an investigation into the Muddy Waters allegations with the assistance of the Dacheng law firm, one of China's

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[3] Wright Affidavit, para. 11, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 22.
[4] Wright Affidavit paras. 14, 17, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 23, 24.
[5] Wright Affidavit para. 18, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 24.

largest law firms ("Dacheng"). Dacheng was retained on the day after the Muddy Waters report was issued. Class Counsel's investigation into the Muddy Waters allegations continued since that time, and has been aided not only by Dacheng, but also by: (a) Hong-Kong based investigators specializing in financial fraud; (b) two separate Toronto-based firms that specialize in forensic accounting, generally accepted accounting principles and generally accepted auditing standards; (C) a lawyer qualified to practice in the Republic of Suriname, where Sino-Forest purported to own, through an affiliate, certain timber assets; (d) a financial economist who specializes in the treatment of damages in securities class actions; and (e) a consultant specializing in the regulation of the investment industry.[6]

16. There were also two other proposed class proceedings commenced in Ontario relating to Sino-Forest. One of those actions, *Smith et al. v. Sino-Forest Corporation et al.*, did not make any claims against Credit Suisse Securities (USA) LLC or Merrill Lynch, Pierce, Fenner & Smith Incorporated (successor by merger to Banc of America Securities LLC), the two primary Initial Note Purchasers. By Order dated January 6, 2012, the Honourable Justice Perell granted carriage to the Ontario Plaintiffs, and appointed Siskinds LLP and Koskie Minsky LLP to prosecute the Ontario Action on behalf of the proposed class.[7]

17. On June 9, 2011, Siskinds Desmeules, a Québec City law firm affiliated with Siskinds, commenced a parallel class proceeding in the Province of Québec Superior Court styled as *Guining Liu v Sino-Forest Corporation, et al.* against Sino-Forest, the Dealers, and certain other

[6] Wright Affidavit para. 19, Plaintiffs' Motion Record (Settlement Approval), Tab 2, pp. 24-25.
[7] Wright Affidavit para. 21, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 25.

defendants in the Quebec Superior Court (the "Quebec Action"). The Dealers have since been let out of the Quebec Action.[8]

18. On January 27, 2012, the Washington, DC-based law firm of Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") commenced the an action against Sino-Forest, Banc of America, Credit Suisse (USA) and other non-Dealer defendants in the New York Supreme Court (the "US Action"). The US Action did not name as defendants any Share Underwriters, nor did it name TD Securities Inc. (an Initial Note Purchaser).[9]

C. Steps Taken in the Actions

(i) Motions for Certification and Leave in the Ontario Action

19. In March and April 2012, the Ontario Plaintiffs brought: (a) a motion for certification of the Ontario Action as a class action under the CPA; and (b) a motion for leave to proceed with statutory claims under Part XXIII.1 of the Ontario *Securities Act* (the "OSA").[10] The Ontario Plaintiffs filed voluminous motion records in support of their motions, comprising evidence from their investigations and expert reports. The motion records included:

(a) an affidavit of Steven Chandler, a senior law enforcement official from Hong Kong who was involved in investigating Sino in China;

(b) six (6) affidavits of Alan Mak, an expert in forensic accounting;

(c) an affidavit of Dennis Deng, a lawyer qualified to practice in the People's Republic of China, and a partner in the Dacheng law firm;

(d) an affidavit of Carol-Ann Tjon-Pian-Gi, a lawyer qualified to practice in the Republic of Suriname;

(e) four (4) affidavits of Adam Pritchard, an expert in US securities law; and

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[8] Wright Affidavit para. 20, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 25.
[9] Wright Affidavit paras. 20, 55, Plaintiffs' Motion Record (Settlement Approval), Tab 2, pp. 21, 38.
[10] Wright Affidavit para. 24, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 26.

(f) three (3) affidavits of Patrick Borchers, an expert in New York State law.[11]

20. The non-Dealer defendants resisted the Ontario Plaintiffs' motions for certification and leave until shortly before they were scheduled to be heard on January 15, 2015. Certification was adjourned as against the Dealers. Leave and certification were granted by Justice Perell as against the remaining defendants on consent.[12]

(ii) Sino-Forest's Insolvency

21. On March 30, 2012, Sino-Forest filed an application for protection from its creditors under the CCAA (the "CCAA Proceeding"), and secured an interim stay of proceedings against the company, its subsidiaries, and its directors and officers. Pursuant to an order dated May 8, 2012, the stay of proceedings was extended to all other defendants in the action, including the Dealers.[13]

22. The CCAA Proceeding presented a material risk to investors on whose behalf the class actions were being prosecuted. In particular, the CCAA Proceeding could have resulted in an order approving a plan of arrangement that had the effect of imposing an unfavourable settlement on the Ontario Plaintiffs and the other securities claimants (the "Securities Claimants").[14]

23. In the course of the CCAA Proceeding, counsel to the Ontario Plaintiffs appeared numerous times to protect the interests of purchasers of Sino-Forest's securities. These attendances included motions for orders, among other things: (a) to lift the CCAA stay partially or fully; (b) regarding the claims procedure and obtaining the right to file a representative claim; (c) to permit a motion to approve a litigation funding arrangement for the Ontario Action; (d) for

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[11] Wright Affidavit para. 24, Plaintiffs' Motion Record (Settlement Approval), Tab 2, pp. 26-27.
[12] Wright Affidavit para. 25, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 27.
[13] Wright Affidavit para. 26, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 27
[14] Wright Affidavit para. 27, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 27.

representation of the class members in the CCAA Proceeding; (e) to effect a settlement with one of the defendants to the Ontario Action, Pöyry (Beijing) Consulting Company Ltd. ("Pöyry (Beijing)"); (f) to secure access to non-public documents that were relevant to the claims advanced in the Ontario Action; and (g) to schedule a mediation in the CCAA Proceeding.[15]

(iii) Settlement with Pöyry (Beijing)

24. Following arms-length negotiations, the Ontario Plaintiffs entered into a settlement with Pöyry (Beijing) in March 2012. On September 25, 2012, the Ontario Action was certified as a class proceeding as against Pöyry (Beijing) for settlement purposes and the settlement was approved between the class and Pöyry (Beijing). The opt-out period ran in respect of all claims against all defendants. The opt-out deadline was January 15, 2013.[16]

(iv) Court-Ordered Mediation

25. On September 4 and 5, 2012, the Ontario Plaintiffs attended a court-ordered all-parties mediation, which included the Dealers. The mediation was conducted with the assistance of the Honourable Justice Newbould acting as mediator. Extensive mediation briefs were filed by all parties. The position of each of the parties was set out in the briefs and at the mediation, including the Dealers' position. The mediation did not result in a settlement with any of the parties, including the Dealers, at that time.[17]

(v) Settlement with Ernst & Young

26. In November 2012, the Ontario Plaintiffs engaged in a further mediation with Ernst & Young, which resulted in a settlement with Ernst & Young (the "Ernst & Young Settlement"). The framework of the Ernst & Young Settlement is contained at Article 11.1 of the Plan and was

[15] Wright Affidavit para. 28, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 25.
[16] Wright Affidavit para. 31, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 29
[17] Wright Affidavit para. 32, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 29

the template for a similar framework for Named Third Party Defendants contained at Article 11.2 of the Plan.[18] Pursuant to a motion brought by the Ontario Plaintiffs, the Ernst & Young Settlement was approved by this Court on March 20, 2013. The Ontario Plaintiffs then brought a motion for approval of the method of distribution of the Ernst & Young Settlement funds to securities claimants, which was granted on December 27, 2013. In connection with both of these hearings, extensive notice was given to securities claimants of these proceedings. To date, over 47,000 claims have been filed in connection with the Ernst & Young Settlement.[19]

(vi) Settlement with David Horsley

27. In July 2014, the Ontario Superior Court approved a settlement between David Horsley, Sino-Forest's former CFO, the Ontario Plaintiffs, and the Litigation Trust (the "Horsley Settlement"). As against Mr. Horsley, the Litigation Trust had genuine claims that were not released by the Plan, and such claims were pursued by the Litigation Trust by way of court action.[20] The Horsley Settlement provided for payment of $4.2 million in respect of the claims advanced in the Class Actions and $1.4 million to resolve the claims advanced by the Litigation Trust. The Horsley Settlement also utilized the framework contained in Article 11.2 of the Plan.

D. The Dealers Settlement

(i) Background to and Terms of Settlement

28. The negotiations leading to the Dealers Settlement were conducted on an adversarial, arm's-length basis.[21] Following the failed court-ordered mediation in September 2012, Class

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[18] Wright Affidavit para. 33, Plaintiffs' Motion Record (Settlement Approval), Tab 2, pp. 29-30.
[19] Wright Affidavit, paras. 33, 35-36, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 30.
[20] *Cosimo Borrelli in his capacity as trustee of the SFC Litigation Trust v. David J. Horsley et al.*, Notice of Acton issued May 31, 2013, Plaintiffs' Book of Authorities Tab 33.
[21] Wright Affidavit para. 39, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 31.

Counsel continued settlement discussions with counsel to the Dealers, These negotiations were dormant at times and, at other times, revived as the litigation progresses, as follows:

(a) the Dealers and Class Counsel engaged in settlement discussions and exchanged settlement offers in September 2012 and October 2012;

(b) the parties appeared before the Honourable Justice Stephen Goudge on August 26, 2014 for a full-day mediation, and both sides provided extensive mediation briefs; and

(c) the parties again appeared before Justice Goudge on November 10, 2014 for a second full-day mediation.[22]

29. After extensive negotiation, an agreement in principle was reached on November 10, 2014. The key terms of the Dealers Settlement are as follows:

(a) the Dealers have paid CDN$32.5 million (the "Class Settlement Fund") (less $250,000 allocated to notice costs) into an interest bearing trust account with a Canadian Schedule 1 bank in Ontario to be administered in accordance with orders of the court;

(b) the Dealers Settlement is conditional on, among other things, no part of the $32.5 million settlement fund being allocated to the Litigation Trustee, the issuance of an order approving the settlement (the "Settlement Order") and an order for recognition and enforcement in the United States Bankruptcy Court (the "US Recognition Order");

(c) the Dealers Settlement will become effective ("Effective Date") when:

(i) the Settlement Order has been obtained and either (i) all appeal rights have expired; or (ii) the applicable final appellate court has upheld the Settlement Order; and

(ii) the US Recognition Order has been obtained and either (i) all appeal rights have expired; or (ii) the applicable final appellate court has upheld the US Recognition Order;

(d) the Class Settlement Fund will be paid into a trust account (the "Settlement Trust") within fifteen (15) days following the Effective Date. Upon payment of the Class Settlement Fund, the Ontario Action will be dismissed against the Dealers, and the representative plaintiffs in the US Action shall cause the US Action to be dismissed against the Dealers;

(e) after the close of pleadings in the Ontario Action, Credit Suisse, TD, Dundee, and Merrill[23] will provide the plaintiffs with non-privileged documents and

[22] Wright Affidavit para. 39, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 31.

information relevant to certified common issues relating to BDO Limited and agree to preserve relevant non-privileged documents relating to BDO Limited until the conclusion of the action;

(f) following the Effective Date,

(i) no further proceedings shall be commenced by anyone against the Dealers in respect of any Causes of Action (as defined in the Plan), other than as necessary to complete the Dealers Settlement;

(ii) The plaintiffs in the Ontario Action, Québec Action, and US Action agree not to claim from the non-settling defendants in any of the actions that portion of damages that corresponds to the proportionate share of liability of the Dealers; and

(iii) the plaintiffs in the Ontario Action, Québec Action, and US Action and their counsel agree not to cooperate with any other party in advancing claims against the Dealers. However, such plaintiffs reserve all rights with respect to the prosecution of the claims remaining against the non-settling defendants.[24]

30. The Litigation Trust has not advanced a claim against the Dealers, participated in the settlement discussions, or acted in any way to contribute to a further distribution from the Dealers to its creditors. Furthermore, the Litigation Trust has conceded that it has no valid litigation claims against the Dealers.[25]

(ii) Settlement Framework in Article 11.2 of the Plan

31. The Dealers Settlement requires that the settlement will be effected through Article 11.2 of the Plan. Article 11.2 contains a framework for Named Third Party Defendants (such as the Dealers) to enter into a Named Third Party Defendant Settlement and obtain a Named Third Party Defendant Release, subject to certain conditions further court approval.[26]

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[23] These are the Dealers who were involved in the offerings in which BDO was involved.
[24] Wright Affidavit para. 40, Plaintiffs' Motion Record (Settlement Approval), Tab 2, pp. 31-32.
[25] Letter from Robert Staley to Andrew Gray dated January 16, 2015, Exhibit "B" to the affidavit of Heather Palmer, Plaintiffs' Motion Record (Settlement Approval), Tab 5(B), p. 308.
[26] Wright Affidavit para. 38, Plaintiffs' Motion Record (Settlement Approval), Tab 2, pp. 30-31.

32. Although the Litigation Trust has advised that the Plan extinguished the claims of the Litigation Trust against the Dealers, the Litigation Trust is not prepared to confirm that the Named Third Party Defendant Release is "acceptable" to it.[27] Instead, the Litigation Trustee is attempting to obstruct the Dealers Settlement and any distribution to Sino-Forest's creditors in order to obtain payment from the securities claimants and the Dealers, notwithstanding that it has no valid litigation claim against the Dealers.

iii) Factors Supporting the Settlement

33. Class Counsel has substantial experience in class actions, particularly securities class actions. In the view of Class Counsel, the Dealers Settlement is fair, reasonable and in the best interests of Securities Claimants. [28]

a) Information Relied Upon by Class Counsel

34. Class Counsel's view is informed by its extensive investigations, document review, and the input and opinions of experts, including:

(a) all of Sino-Forest's public disclosure documents and other publicly available information with respect to Sino-Forest, including:

  (i) Sino-Forest's prospectuses;

  (ii) Sino-Forest's offering memoranda;

(b) the available trading data for Sino-Forest's securities, including significant production by the Dealers of the location of primary market purchasers of Sino-Forest's securities;

(c) non-public documents uploaded by Sino-Forest into the data-room established in the CCAA Proceeding for purposes of the global mediation;

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[27] Letter from Robert Staley to Andrew Gray dated January 16, 2015, Exhibit "B" to the affidavit of Heather Palmer, Plaintiffs' Motion Record (Settlement Approval), Tab 5(B), p. 308.
[28] Wright Affidavit para. 50, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 36.

(d) the responsive insurance policies of TD, Dundee, RBC and Merrill Lynch, Pierce, Fenner & Smith Incorporated (successor by merger to Banc of America Securities LLC);

(e) the input and opinions of our insolvency law experts and insurance coverage experts;

(f) the input and opinion of Frank C. Torchio, the President of Forensic Economics, Inc., who has consulted or given independent damage opinions in securities fraud lawsuits for over 20 years.;

(g) the input of an expert in standards of practice for underwriters;

(h) the input of Professor Adam C. Pritchard, an expert in U.S. Federal securities law;

(i) the input of Professor Patrick Borchers, an expert in New York State law;

(j) the mediation briefs provided by the parties, including the Dealers, at the global mediation in September, 2012 and in the mediation in September 2014;

(k) input from experienced U.S. securities counsel, Kessler Topaz Meltzer & Check, LLP;

(l) input from experienced U.S. securities counsel Cohen Milstein, U.S. Plaintiffs' Counsel;

(m) the evidence accumulated by investigators retained by Class Counsel to examine the facts and circumstances out of which this action has arisen.[29]

35. Although the parties entered into the Dealers Settlement prior to formal discovery, Class Counsel had at its disposal an abundance of information available from which to make an appropriate recommendation concerning the resolution of the claims against the Dealers.

b) Challenges in Claims Advanced Against Dealers

36. The Ontario Action asserts the following claims against the Dealers:

Claims against Share Underwriters

(a) s. 130 of the OSA for liability in a prospectus;

(b) negligence; and

(c) unjust enrichment.

[29] Wright Affidavit para. 51, Plaintiffs' Motion Record (Settlement Approval), Tab 2, pp. 36-37.

Claims against Initial Note Purchasers

(d) negligence;

(e) New York State common law negligent misrepresentation;

(f) breach of s. 12(a)(2) of the US Securities Act of 1933; and

(g) unjust enrichment.[30]

37. The US Action only advances claims against Banc of America and Credit Suisse (USA). The US Action does not advance claims against the balance of the Dealers, including any of the Share Underwriters. [31]

38. Class Counsel's assessment of the Dealers Settlement and our recommendation of it rest primarily on the following factors, in addition to the general risks of proceeding with complex litigation:

(a) **Secondary market purchasers do not have any valid claims against the Dealers, and only those primary market purchasers who held their securities until the end of the class period have valid claims against the Dealers**: The only valid claims against the Dealers are for primary market purchasers. In the circumstances of this case, secondary market purchasers have no valid common law or statutory right of action against the Dealers. Moreover, primary market purchasers who sold their securities before the end of the class period did not suffer any damages, and thus no claims are or can be asserted on their behalf.[32]

(b) **Certain primary market claims may not be covered in any class action:** The Dealers argued that the class definition in the Ontario Action should exclude all individuals and entities residing outside of Canada that purchased Sino-Forest's securities on the primary market outside of Canada, and the Dealers have provided information that a large portion of primary market purchasers reside outside of Canada.[33]

(c) **Liability limited by Ernst & Young, Pöyry (Beijing), and Horsley settlements:** Pursuant to the Pöyry (Beijing), Ernst & Young and Horsley settlements, the remaining defendants in the class proceedings might not be liable for any of the proportionate liability of Pöyry (Beijing), Ernst & Young and Horsley, as may be found by a court at trial. It is likely that the Dealers would argue that they relied on Ernst & Young and Horsley, and Sino-Forest's senior

[30] Wright Affidavit para. 54, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 38.
[31] Wright Affidavit para. 55, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 38.
[32] Wright Affidavit paraa. 57, 58, Plaintiffs' Motion Record (Settlement Approval), Tab 2, pp. 39-40.
[33] Wright Affidavit paras. 59-61, Plaintiffs' Motion Record (Settlement Approval), Tab 2, pp. 40-41.

management, who may be assigned a significant proportion of liability, thereby limiting any amount that could be collected from the Dealers at trial.[34]

(d) **Unjust enrichment claims may face significant challenges:** The Plaintiffs' claim for unjust enrichment in respect of fees earned by the Dealers in primary market offerings and when the Dealers sold Sino-Forest securities to their clients on the secondary market. These claims are novel and thus face risks, including risks that: (a) the entities that sold securities to class members on the secondary market may have been separate corporate entities from those that participated in the primary market offerings; and (b) such entities may not be named defendants in the Ontario and US Actions, the securities were purchased from financial institutions pursuant to valid contracts of purchase and sale, which the defendants argued constitute a juristic reason for the payment of fees associated with each purchase.[35]

(e) **Some noteholders may have received consideration pursuant to Sino-Forest's restructuring**: The subset of noteholders who satisfy the criteria identified above for a primary market claim will likely include some who were noteholders when Sino-Forest's CCAA restructuring occurred. Pursuant to that restructuring, they might have received some value for their notes, which could further reduce any damages sustained by noteholders.[36]

(f) **The CCAA Plan caps the value of note claims against the Initial Note Purchasers at $150 million**: Pursuant to the Plan, the maximum liability of all note claims (both secondary and primary) is capped at $150 million. A portion of that capped amount will likely be paid out of the Ernst & Young and Horsley settlement funds. Therefore, the potential recovery in respect of primary market claims may be even further reduced.[37]

(g) **Only common law claims against Initial Note Purchasers**: The *Securities Act* does not afford any statutory right of action against underwriters on behalf of primary market note purchasers in public offerings. Only Canadian common law claims can be asserted against the Initial Note Purchasers. Such claims may pose significant challenges, including: (i) the risk of not establishing a duty of care based on concerns for indeterminate liability; (ii) the Note offering memoranda explicitly state that the Dealers made no representations concerning the quality of Sino-Forest's securities; and (iii) each class member may be required to individually prove reliance or causation.[38]

(h) **Challenges for US law claims:** The Ontario Action also asserts claims against the Initial Note Purchasers pursuant to the common law of New York State and US Federal law. The Dealers filed expert reports stating that such claims were not available in the circumstances of this case.[39]

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[34] Wright Affidavit para. 62, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 41.
[35] Wright Affidavit paras. 63-64, Plaintiffs' Motion Record (Settlement Approval), Tab 2, pp. 41-42.
[36] Wright Affidavit para. 65, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 42.
[37] Wright Affidavit para. 66, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 42.
[38] Wright Affidavit paras. 67-68, Plaintiffs' Motion Record (Settlement Approval), Tab 2, pp. 42-43.
[39] Wright Affidavit paras. 69-71, Plaintiffs' Motion Record (Settlement Approval), Tab 2, pp. 44-45.

(i) **Challenges in establishing Dealers liability:** It is likely that the Dealers would have asserted that they met the standard of care for the Share and Note Offerings, that they relied on experts and Sino-Forest's management, and that they had no due diligence requirement with respect to the Note offerings. These due diligence defences added additional risk, particularly with respect to the Note claims where the Dealers made explicit statements that the Dealers made no representations concerning the quality of Sino-Forest's securities.[40]

(j) **Alternative damages analyses would have been considered:** The Ontario Plaintiffs relied on Frank Torchio who provided his opinion that total estimated damages to primary market claimants, from all defendants, ran into the hundreds of millions of dollars. However, in the course of settlement discussions, certain defendants insisted that more conservative damages figures were appropriate. Without access to the trading particulars of all class members, both the plaintiffs' and the defendants' damages experts are obliged to employ trading models and various assumptions as to the trading behaviour of the class members,, the results of which could vary substantially from the actual trading patterns of securities claimants. Finally, the actual damages to be paid may only be for claims filed. For a variety of reasons, less than 100% of class members invariably file claims. Therefore, actual payable damages could be some portion of Mr. Torchio's figures if the matter proceeded beyond the common issues trial.[41]

39. In light of all the above considerations, it is Class Counsel's opinion that the Dealers Settlement is fair and reasonable to securities claimants. Class Counsel recommends that the Court approve the settlement.[42]

c) Objections to the Settlement

40. Notice of the Dealers Settlement was delivered to over 49,000 class members. To date, Class Counsel has received 27 objections regarding approval of the Dealers Settlement:[43]

(a) Eighteen of the objections provided no reason.

(b) Three persons objected to the quantum of the settlement. Two individuals stated that counsel fees and administration should be paid by the Dealers in addition to the Dealers Settlement. These individuals did not have access to the extensive investigations, document review, and the input and opinions of experts that led Class Counsel to reach this settlement with the Dealers. The Dealers Settlement resulted from an arms-length, hard fought negotiation after extensive investigation. The quantum reflects a very significant recovery for purchasers of

[40] Wright Affidavit para. 72, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 35
[41] Wright Affidavit paras. 73-76, Plaintiffs' Motion Record (Settlement Approval), Tab 2, pp. 45-46.
[42] Wright Affidavit, para. 79, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 47.
[43] Exhibit "A" to the Affidavit of Heather Palmer, Motion Record of Objections, Tab 1(A).

Sino-Forest shares in the primary market, and the very significant legal risks associated with the claims of purchasers of Sino-Forest's notes in the primary market against the Dealers.

(c) One person stated that shares of Sino-Forest purchased 28 years ago should be included. Sino-Forest was not in existence 28 years ago.

(d) One person stated that the allegations against Sino-Forest have no merit. Class Counsel has extensive evidence in support of the allegations against Sino-Forest. In any event, if the allegations have no merit, the Dealers Settlement represents a tremendous success.

(e) One person objected on the basis that the Dealers are negligent. The Dealers Settlement reflects the allegations made against the Dealers, including an allegation of negligence.

(f) BDO objected to the discovery rights of non-settling defendants vis-à-vis the Dealers. The Ontario Plaintiffs take no position on this objection.

41. Class Counsel considered these types of concerns in reaching the settlement with the Dealers.

PART III - ISSUES AND THE LAW

A. Settlement Approval

(i) Settlements in the CCAA Context

42. In assessing a settlement within the CCAA context, the court looks at the following three factors: (a) whether the settlement is fair and reasonable; (b) whether it provides substantial benefit to other stakeholders; and (c) whether it is consistent with the purpose and spirit of the CCAA.[44]

43. Where a settlement also provides for a release, courts assess whether there is "a reasonable connection between the third party claim being compromised in the plan and the

[44] *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, 2013 ONSC 1078 ("E&Y Settlement Approval Decision") at para 49, Plaintiffs' Book of Authorities (Settlement Approval) ["Plaintiffs' Book of Authorities"], Tab 1.

restructuring achieved by the plan to warrant inclusion of the third party release in the plan." Applying this "nexus test" requires consideration of the following factors:

(a) are the claims to be released rationally related to the purpose of the plan?

(b) are the claims to be released necessary for the plan of arrangement?

(c) are the parties who have claims released against them contributing in a tangible and realistic way?

(d) will the plan benefit the debtor and the creditors generally?[45]

44. As set out below, the CCAA tests to approve a settlement and release are met.

(ii) Settlements in the CPA Context

45. The test for whether a class action settlement ought to be approved is substantially similar to the test for approval of a settlement under the CCAA. The class action principles can provide guidance to this Court with respect to the approval of a settlement in both contexts.

46. To approve a class action settlement, the test is whether "in all the circumstances, the settlement is fair, reasonable, and in the best interests of those affected by it."[46] The class action cases establish additional principles relevant on a settlement approval motion:

(a) the resolution of complex litigation through the compromise of claims is encouraged by the courts and favoured by public policy;

(b) there is a strong initial presumption of fairness when a proposed settlement, which was negotiated at arms-length by counsel for the class, is presented for court approval;

(c) to reject the terms of a settlement and require the litigation to continue, a court must conclude that the settlement does not fall within a range of reasonableness;

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[45] *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, 2013 ONSC 1078 at para 50, Plaintiffs' Book of Authorities Tab 1.

[46] *Dabbs v Sun Life Assurance Co. of Canada*, [1998] O.J. No. 1598 (Gen. Div.) at para 9, Plaintiffs' Book of Authorities Tab 2.

(d) a court must be assured that the settlement secures appropriate consideration for the class in return for the surrender of litigation rights against the defendants. However, the court must balance the need to scrutinize the settlement against the recognition that there may be a number of possible outcomes within a range of reasonableness. All settlements are the product of a process of give and take. Settlements rarely give all parties exactly what they want. Fairness is not a standard of perfection; and

(e) it is not the court's function to substitute its judgment for that of the parties or to attempt to renegotiate a proposed settlement. Nor is it the court's function to litigate the merits of the actions or simply rubber-stamp a proposed settlement.[47]

47. The "range of reasonableness" test is flexible. It permits the court to apply an objective standard, allowing for variation between settlements, depending upon the subject matter of the litigation and the nature of the damages for which settlement provides compensation.[48] A "less than perfect settlement may be in the best interests of those affected [...] when compared to the alternative of the risks and costs of litigation."[49]

48. Courts have developed a list of factors that are useful in assessing the reasonableness of a proposed settlement. It is not necessary that all factors be present or equally weighted; some may even be disregarded, depending on the circumstances of the case. They include:

(a) the likelihood of recovery or likelihood of success;

(b) the amount and nature of discovery, evidence, or investigation;

(c) the proposed settlement terms and conditions;

(d) the recommendation and experience of counsel;

(e) the risk, future expense, and likely duration of litigation;

(f) the number of objectors and nature of objections;

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[47] *Nunes v Air Transat AT Inc.,* [2005] O.J. No. 2527 (S.C.J.), para 7, Plaintiffs' Book of Authorities Tab 3; *Osmun v. Cadbury Adams Canada Inc.*, [2010] O.J. No. 1877 (S.C.J.), para 31, Plaintiffs' Book of Authorities Tab 4.
[48] *Parsons v Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.), para 70, Plaintiffs' Book of Authorities Tab 5.
[49] *Robertson v ProQuest Information and Learning Company*, 2011 ONSC 1647 (S.C.J.), para 25 and 33, Plaintiffs' Book of Authorities Tab 6.

(g) the presence of arm's-length bargaining and the absence of collusion; and/or

(h) information conveying to the courts the dynamics of, and the positions taken by the parties during, the negotiations.[50]

49. In the CPA context and in the absence of evidence to the contrary, "the recommendation of experienced counsel is entitled to considerable weight given their ability to weigh the factors bearing on the reasonableness of the settlement."[51]

50. A class actions judge can approve or reject the settlement, but cannot modify its terms.[52] In deciding whether to reject a settlement, the Court should consider if whether doing so would put the settlement in "jeopardy of being unraveled." There is no obligation on parties to resume settlement discussions if a settlement is rejected by the Court, and it could be that the parties have reached their limits in negotiations and will backtrack from their positions or abandon the effort. This result would be contrary to the widely-held view that the resolution of complex litigation through settlement is to be encouraged by the courts and favored by public policy. [53]

51. As set out below, the test under the CPA to approve a settlement and release is met as well.

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[50] *Marcantonio v TVI Pacific Inc.*,[2009] O.J. No. 3409 (S.C.J.), para 12, Plaintiffs' Book of Authorities Tab 7; *Parsons v Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.), paras. 71-73, Plaintiffs' Book of Authorities Tab 5.

[51] *Metzler Investment GmbH v Gildan Activewear Inc.*, 2011 ONSC 1146, para. 31, Plaintiffs' Book of Authorities Tab 8; *Robinson v Rochester Financial Ltd.*, 2012 ONSC 911 at para 20 (Cautioning against the Court "substituting [its] view of the prospects of success for the views of class counsel, who have lived with this action since its outset and who are familiar with the risks and benefits of continuing with the action", Plaintiffs' Book of Authorities Tab 9.

[52] *Dabbs v Sun Life Assurance Company of Canada*, [1998] O.J. No. 1598 (Gen. Div.), paras, 10 and 14, Plaintiffs' Book of Authorities Tab 2.

[53] *Semple v Canada (Attorney General)*, 2006 MBQB 285 (Man. Q.B.), para. 26, Plaintiffs' Book of Authorities Tab 10; *Osmun v. Cadbury Adams Canada Inc.*, [2010] O.J. No. 1877 (S.C.J.), para. 34, Plaintiffs' Book of Authorities Tab 4.

(iii) The Settlement is Fair and Reasonable and Should be Approved

52. As outlined above, the Dealers Settlement provides for payment of $32.5 million in total in settlement of all claims against the Dealers in relation to Sino-Forest. In addition, the Dealers are providing cooperation to the plaintiffs in the continued prosecution of the Ontario Action. In all of the circumstances, the Dealers Settlement is a very good settlement. The Dealers Settlement is fair and reasonable under all of the circumstances. It provides substantial benefit to other stakeholders. It is consistent with both the purpose and spirit of the CPA and the CCAA, both of which encourage settlement after a reasonable investigation and hard look at the merits, costs and risks of continuing litigation.

53. Class Counsel had the benefit of its own extensive investigation aided by professional investigators based in south-east Asia, experts from a variety of relevant disciplines and jurisdiction, the investigation of Sino-Forest's independent committee and its advisers, and Class Counsel's review of non-public relevant documents from the confidential data room. [54]

54. The Honourable Justice Goudge, the mediator of the Dealers Settlement, also recommends the settlement: Justice Goudge has provided an affidavit stating:

> "The discussions I held with counsel for the plaintiffs and counsel for the defendants left me with the conclusion that both parties were very well represented. The negotiations over which I presided as a mediator were arms length, clearly adversarial, and hard fought. [...] I have no doubt that the parties were well informed and fully prepared for the mediation process, which played a real part in its success. While it is obviously up to the supervising court to determine the question, in my view, the settlement reached is, in all the circumstances, fair and reasonable to all parties."[55]

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[54] Wright Affidavit, para. 51, Plaintiffs' Motion Record at Tab 2, pp. 36-37.
[55] Affidavit of the Honourable Justice Stephen Goudge Sworn April 1, 2015, paras. 3-5, Plaintiffs' Motion Record, at Tab 3, p. 261.

55. The Ontario Plaintiffs and the Dealers exchanged lengthy mediation briefs and participated in two separate mediations before Justice Goudge. His Honour was fully apprised of the legal and factual issues between the Ontario Plaintiffs and the Dealers.

56. The Dealers' release is fair and reasonable and should be approved. The release is "justified as part of the compromise or arrangement between the debtors and its creditors [...]. [There is] a reasonable connection between the third party claim being compromised in the plan and the restructuring achieved by the plan."[56] Although the Plan has been sanctioned and implemented, a significant aspect of the Plan is a distribution to Sino-Forest's creditors.[57] In order to effect any distribution, the Dealers' release must be approved as part of the Dealers Settlement.

57. Article 11.2 of the Plan of Arrangement permitted the Dealers (and other defendants) to be named as Third Party Defendants, and provides the framework for the Dealers settlement. It created value for stakeholders by facilitating settlements with the defendants. It is an integral and important part of the Plan. Without the addition of such provision, the Plan would have faced opposition from certain stakeholders, as well as potential appeals. These delays would have been detrimental to the restructuring. In the Monitor's words, Sino-Forest could "not afford to remain in a CCAA process for much longer." As found by this court, timing and delay were specifically identified as elements that would impact on maximization of the value and preservation of Sino-

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[56] *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp,* 2008 ONCA 587, para 70, Plaintiffs' Book of Authorities Tab 11.

[57] *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation,* 2013 ONSC 1078 at para. 60, Plaintiffs' Book of Authorities Tab 1.

Forest's assets.[58] Furthermore, the Named Third Party Defendants (of which the Dealers are one) were required to release cross-claims against Sino-Forest which assisted in the restructuring.

58. Finally, the Dealers Settlement assists in moving towards the final resolution of all claims related to Sino-Forest. The class actions include multiple intertwined claims. Obtaining a contribution from, and eliminating eleven defendants and their counsel allows the plaintiffs and their counsel to focus their efforts and resources on non-settling defendants, such as BDO limited, and will expedite the adjudication of the claims against those defendants.

(iv) The Litigation Trust May Not Unreasonably Withhold its Acknowledgement of the Release as Being "Acceptable"

59. The Dealers Settlement is conditional upon the release of all claims asserted against the Dealers. The Plan allows Named Third Party Defendants, such as the Dealers, to obtain a Named Third Party Release. The Plan provides a mechanism for the Litigation Trust, where it has valid litigation claims, to review a proposed release and confirm that it is "acceptable" to the Litigation Trustee. However, the Plan also provides that any such release shall not affect the plaintiffs in the class actions without their "consent":

> **"Named Third Party Defendant Release"** means a release of any applicable Named Third Party Defendant agreed pursuant to a Named Third Party Settlement and approved pursuant to a Named Third Party Defendant Settlement Order, provided that such release must be acceptable to [...] the Litigation Trustee (if after the Plan Implementation Date), and provided further that such release shall not affect the plaintiffs in the Class Actions without the consent of counsel to the Ontario Class Action Plaintiffs.[59] [emphasis added]

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[58] *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation,* 2013 ONSC 1078 at para. 69, Plaintiffs' Book of Authorities Tab 1.

[59] Plan of Compromise and Reorganization, Article 1.1, Exhibit "C" to the affidavit of Heather Palmer sworn April 9, 2015, Plaintiffs' Motion Record (Settlement Approval), Tab 5(C), p. 351.

60. In interpreting a contract, there is a presumption that when different words are used, a different meaning is intended.[60] By distinguishing between the "consent" of the class action plaintiffs and the "acceptance" of the Litigation Trust, the Plan recognizes that the Litigation Trust's right of acceptance is a more limited right than the plaintiffs' right of consent. In the circumstances, this Court should exercise its discretion to grant the release, notwithstanding the Litigation Trust's unreasonable refusal to provide its acceptance.

b) This Court Has Jurisdiction to Grant the Relief Requested

61. The CCAA is a flexible statute that affords the context in which this Court has the jurisdiction to grant the Named Third Party Release notwithstanding the Litigation Trust's refusal to confirm that it is "acceptable" to the Litigation Trustee. The CCAA gives courts broad jurisdiction to make orders and "fill in the gaps in legislation so as to give effect to the objects of the CCAA."[61] As the Supreme Court has explained in *Century Services Inc. v. Canada (Attorney General)*:

> CCAA decisions are often based on discretionary grants of jurisdiction. The incremental exercise of judicial discretion in commercial courts under conditions one practitioner aptly described as "the hothouse of real time litigation" has been the primary method by which the CCAA has been adapted and has evolved to meet contemporary business and social needs (internal citations omitted). ...When large companies encounter difficulty, reorganizations become increasingly complex. CCAA courts have been called upon to innovate accordingly in exercising their jurisdiction beyond merely staying proceedings against the Debtor to allow breathing room for reorganization. They have been asked to sanction measures for which there is no explicit authority in the CCAA.[62]

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[60] *Healy v. Gregory*, [2009] O.J. No. 2562 (S.C.J.), para. 79, Plaintiffs' Book of Authorities, Tab 12.
[60] *Canadian Red Cross Society (Re)*, [1998] O.J. No. 3306 (Gen. Div.), para. 43, Plaintiffs' Book of Authorities, Tab 13.
[61] *Canadian Red Cross Society (Re)*, [1998] O.J. No. 3306 (Gen. Div.), para. 43, Plaintiffs' Book of Authorities, Tab 13; *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, s. 11, Factum Schedule "B".
[62] *Century Services Inc. v. Canada (Attorney General)*, [2010] S.C.J. No. 60 (S.C.J.), para. 58, Plaintiffs' Book of Authorities, Tab 14.

62. As a result, this Court has the jurisdiction to "deem" that the Litigation Trustee has provided its acceptance or to approve the release in the absence of the Litigation Trustee's confirmation that the release is "acceptable." The CCAA court's discretion was exercised in similar circumstances in *Playdium Entertainment Corp. (Re)* where the debtor Playdium sought an order permitting it to assign an asset but could not do so without the consent of Famous Players, which consent, pursuant to a contract, could not be unreasonably withheld.[63] Although Justice Spence (as he was then) found that it was entirely reasonable for Famous Players to withhold its consent, His Honour concluded that he had jurisdiction to approve the assignment:

> 22 Famous Players objects to the assignment. Famous Players refuses its consent. With regard to s. 35 of the Agreement, and without reference to considerations relating to CCAA (which are dealt with below), I cannot conclude that the withholding of consent is unreasonable. So s. 35 does not provide any right of assignment.
>
> 23 If there were no CCAA order in place and Playdium wished to assign to the proposed assignees, it would not be able to do so, in view of Famous Players' withholding of its consent. The CCAA order affords a context in which the court has the jurisdiction to make the order. For the order to be appropriate, it must be in keeping with the purposes and spirit of the regime created by CCAA: see the *Red Cross* decision.[64]

63. In the circumstances, this Court has ample jurisdiction to grant the Named Third Party Defendant Release.

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[63] *Playdium Entertainment Corp. (Re)*, [2001] O.J. No. 4252 (S.C.J.), para. 16, Plaintiffs' Book of Authorities, Tab 15.

[64] *Playdium Entertainment Corp. (Re)*, [2001] O.J. No. 4252 (S.C.J.), paras. 22-23, Plaintiffs' Book of Authorities, Tab 15. This approach was also adopted in *Hayes Forest Services Ltd. (Re)*, [2009] B.C.J. No. 1725 (S.C.), para. 51, Plaintiffs' Book of Authorities, Tab 16.

b) The Litigation Trustee's Position is Contrary to the Purposes off the CCAA and the Plan

64. When interpreting a Court approved CCAA plan, this Court must keep in mind "the purposes of the CCAA and the principles which guide the court's role in proceedings under that statute [as well as] the overall purpose and intention of the plan in question."[65]

65. The remedial purpose of the CCAA is to facilitate compromises or arrangements between an insolvent debtor and its creditors. Although Sino-Forest's Plan has been implemented, its creditors are nevertheless continuing to pursue compensation, and settlements such as the Dealers Settlement represent the only realistic avenue for Sino-Forest's creditors to receive any further distribution. The Dealers Settlement will provide a substantial benefit to relevant stakeholders, including the Securities Claimants and the Dealers. In advising that the Named Third Party Defendant Release is not "acceptable" to the Litigation Trustee, notwithstanding that it has no valid litigation claim, the Litigation Trustee has taken a position that is inconsistent with both the purposes and spirit of the CCAA and Sino-Forest's Plan.

c) Litigation Trustee May Not Act Contrary to Principle of Good Faith or in an Arbitrary or Unreasonable Manner

66. Since Sino-Forest's Plan of Compromise and Reorganization is in substance a contract, principles of contractual interpretation must be applied and govern the manner in which the parties must fulfill their obligations under the Plan.[66]

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[65] *Ontario v. Canadian Airlines Corp.*, [2001] A.J. No. 1457 (Alta. Q.B.), para. 39, Plaintiffs' Book of Authorities, Tab 17.

[66] *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp,* 2008 ONCA 587 para. 62, Plaintiff's Book of Authorities, Tab 11; *Canadian Red Cross Society (Re)*, [2002] O.J. No. 2567 (S.C.J.), para. 13, Plaintiffs' Book of Authorities, Tab 18.

67. The Supreme Court of Canada recently reaffirmed that a contracting party has a duty to act reasonably and in in good faith in the performance of its contractual obligations.[67] This duty limits a party's discretion, even in circumstances where an agreement's language appears to give unfettered discretion to the contracting party. Moreover, the Supreme Court held that where one party is given absolute discretion to give or withhold consent, that party cannot act in an arbitrary or capricious manner.[68]

68. The duty to act in good faith and to not in an arbitrary or capricious manner applies to the Litigation Trustee in this context. Refusing to confirm that the release is "acceptable" is contrary to its duties given that:

(a) the Litigation Trust has not advanced a claim against the Dealers, not does it have any valid claim against the Dealers; and

(b) the Litigation Trust has acted to inhibit contribution to any further distribution from the Dealers to its creditors.

69. Moreover, in seeking to extract payment, the Litigation Trust is acting in an arbitrary manner. Given that the Litigation Trust has no claim against the Dealers, the value of any payment it is seeking in exchange for its acceptance of the Named Third Party Defendant Release cannot realistically be based on any proper consideration. The Litigation Trust is simply asking, "How much can I extract?" Any payment that would flow from the settling parties to the Litigation Trust would therefore be completely arbitrary, unreflective of any claim value or genuine consideration. As a result, the Litigation Trust offends its duty to not act in an arbitrary manner.

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[67] *Bhasin v. Hrynew*, 2014 SCC 71, para. 63, Plaintiffs' Book of Authorities, Tab 19.
[68] *Bhasin v. Hrynew*, 2014 SCC 71, para. 63, Plaintiffs' Book of Authorities, Tab 19; *1578838 Ontario Inc. v. Bank of Nova Scotia*, 2011 ONSC 3482, para. 39, Plaintiffs' Book of Authorities, Tab 20.

70. The Litigation Trust is seeking to obstruct a hard-fought settlement resulting in substantial benefits to Sino-Forest's creditors in exchange for a payment to which it is not entitled. By withholding its acceptance to the Named Third Party Defendant Release where the Litigation Trust does not even have a claim against the Dealers, the Litigation Trust has acted contrary to the duty of good faith it owes in the performance of its obligations under the Plan. This Court should not permit this in these circumstances.

71. Moreover, the Supreme Court of Canada recently recognized that the duty of good faith requires that parties perform contractual duties reasonably:

> [63] The first step is to recognize that there is an organizing principle of good faith that underlies and manifests itself in various more specific doctrines governing contractual performance. That organizing principle is simply that parties generally must perform their contractual duties honestly and reasonably and not capriciously or arbitrarily.[69]

72. The organizing principle of reasonableness is even more important in the context of the interpretation of a Plan under the CCAA. As stated by Justice Blair, "fairness and reasonableness" considerations which must be implied with respect to the performance of obligations under a Plan:

> 12 When interpreting a Court approved CCAA Plan, the Court must keep in mind "the purposes of the CCAA and the principles which guide the court's role in proceedings under that statute [as well as] the overall purpose and intention of the plan in question": *Ontario v. Canadian Airline Corp.* (2001), 29 C.B.R. (4th) 236 at 243 (Alta. Q.B.), per Romaine J. See also, *Lindsay v. Transtec Canada Ltd.* (1994), 28 C.B.R. (3d) 110 (B.C.S.C.), aff'd (1995), 31 C.B.R. (3d) 157 (B.C.C.A.). This gives rise to the "fairness and reasonableness" considerations, and the general aim of minimizing the prejudice to creditors, that underlie such proceedings: *Olympia & York Developments v. Royal Trust Co.* (1993), 17 C.B.R. (3d) 75 (Ont. Gen. Div.); *Ontario v. Canadian Airlines Corp., supra.*[70]

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[69] *Bhasin v. Hrynew*, 2014 SCC 71, para. 63, Plaintiffs' Book of Authorities, Tab 19.
[70] *Canadian Red Cross Society (Re)*, [2002] O.J. No. 2567 (S.C.J.), para. 12, Plaintiffs' Book of Authorities Tab 18.

73. Paperny J. (as she was then) also identified guidance for the exercise of the CCAA court's discretion in *Olympia & York Developments Ltd. v. Royal Trust Co.*:

> "Fairness" and "reasonableness" are, in my opinion, the two keynote concepts underscoring the philosophy and workings of the *Companies' Creditors Arrangement Act*. Fairness is the quintessential expression of the court's equitable jurisdiction - although the jurisdiction is statutory, the broad discretionary powers given to the judiciary by the legislation which make its exercise an exercise in equity - and "reasonableness" is what lends objectivity to the process.[71]

74. In determining whether the Litigation Trustee has acted reasonably in withholding its acceptance of the Named Third Party Defendant Release, this Court should consider the purpose of the acceptance clause and the meaning and benefit it was intended to confer.[72] The purpose of the acceptance clause in the Plan is to protect the Litigation Trust from the release of any of its valid claims against Named Third Party Defendants without adequate compensation. In such circumstances, the Litigation Trustee may be properly entitled to seek some reasonable payment in exchange for its acceptance to the Named Third Party Defendant Release where it has claims against Named Third Party Defendants. Such was the case against David Horsley, Sino-Forest's former CFO. The Litigation Trustee had filed a claim against Mr. Horsley for breach of contract and negligence.[73] When a settlement of these claims was negotiated, consideration flowed to the Litigation Trust in satisfaction of its claims against Mr. Horsley.

75. In contrast, no such claim has been filed or pursued by the Litigation Trust against the Dealers. In fact, Robert Staley, counsel to the Litigation Trustee, has acknowledged that any claims it could have were released:

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[71] *Olympia & York Developments Ltd. (Re),* [1993] O.J. No. 545 (Gen. Div.), para. 28, Plaintiffs' Book of Authorities Tab 21. See also *Ontario v. Canadian Airlines Corp.*, [2001] A.J. No. 1457 (Alta. Q.B.), para. 38, Plaintiffs' Book of Authorities Tab 17.

[72] *IFP Technologies (Canada) Inc. v. Encanada Midstream and Marketing*, [2014] A.J. No. 883 (Alta. Q.B.), paras. 152-158, Plaintiffs' Book of Authorities Tab 22.

[73] *Cosimo Borrelli in his capacity as trustee of the SFC Litigation Trust v. David J. Horsley et al.*, Notice of Acton issued May 31, 2013, Plaintiffs' Book of Authorities Tab 33.

> As part of the arrangements negotiated between the Underwriters and Sino-Forest leading to the approval of the Plan, Sino-Forest agreed that the Plan would extinguish claims of the Litigation Trustee against the Underwriters.[74]

76. By withholding its confirmation in the circumstances where it does not have a claim against the Dealers, the Litigation Trustee has acted in a manner inconsistent with the intention of the clause and has unjustly and unreasonably denied a distribution to the creditors of Sino-Forest. The confirmation of acceptability clause was plainly not intended to confer on the Litigation Trust the ability to extract "stick up value" with the Named Third Party Defendants where it does not have a valid litigation claim.

77. In the circumstances, the Litigation Trustee has acted outside the scope of the Court-approved Litigation Trust Agreement and in a manner that offends the purposes of the Plan and the CCAA. In the circumstances, this Court should grant the Named Third Party Release.

e) This Court Does Not Recognize Stick-Up Value

78. CCAA courts do not recognize entitlements to "stick-up value". The Litigation Trustee's consent cannot be worth more than the value of its claim. In *Re Indalex*, a majority of the Supreme Court of Canada upheld the Ontario Court of Appeal's decision that the debtor company had breached its duty to retirees. However, the appeal was ultimately allowed by a majority of the court because, on the facts of that case, it followed that if the retirees had insisted on their strict legal rights, they would not have had an improved recovery. Similarly, in this case, the Litigation Trustee has conceded that it has no valid litigation claims against the dealers.[75]

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[74] Letter from Robert Staley to Andrew Gray dated January 16, 2015, Exhibit "B" to the affidavit of Heather Palmer, Plaintiffs' Motion Record (Settlement Approval), Tab 5(B), p. 308.

[75] *Sun Indalex Finance, LLC v. United Steelworkers*, [2013] 1 S.C.R. 271 (S.C.C.), para. 222, Plaintiffs' Book of Authorities Tab 23.

f) The Litigation Trust's Discretion is Circumscribed by the Limits in the Court-Approved Litigation Trust Agreement

79. The Litigation Trust was established pursuant to an order of this Court dated December 10, 2012 approving the Litigation Trust Agreement.[76] The Litigation Trust Agreement was a heavily negotiated, court-approved agreement that was created to hold and pursue the Litigation Trust Claims, being all non-excluded litigation claims formerly belonging to Sino-Forest, and incorporated into the Plan. However, the court-approved Litigation Trust Agreement contained important guidance and limitations on the exercise of the Litigation Trust's discretion. The Litigation Trust Agreement circumscribes both the purpose of the Litigation Trust and the manner in which the Litigation Trustee may act. Articles 1.5 and 3.13 of the Litigation Trust Agreement state:

> **1.5 Nature and Purpose of the Litigation Trust**
>
> (a) Purpose. The Litigation Trust is organized and established as a trust pursuant to which the Litigation Trustee, subject to the terms and conditions contained herein, is to (i) hold the assets of the Litigation Trust and (ii) oversee the efficient prosecution of the Litigation Trust Claims, on the terms and conditions set forth herein.
>
> (b) Actions of the Litigation Trustee. Subject to the terms of this Agreement, the Litigation Trustee shall, in consultation with the Litigation Trust Board and subject to the exercise of their collective reasonable business judgment, and with the consent of the Litigation Trust Board where required under the terms of this Agreement, in an efficient and responsible manner prosecute the Litigation Trust Claims and preserve and endeavour to enhance the value of the Litigation Trust Assets. The efficient and responsible prosecution of the Litigation Trust Claims may be accomplished either through the prosecution, compromise and settlement, abandonment, dismissal or other disposition of any or all claims, rights or causes of action, or otherwise, as determined by the Litigation Trustee and the Litigation Trustee Board in accordance with the terms of this Agreement and the exercise of their collective reasonable best judgement. The Litigation Trustee shall, subject to the terms of this Agreement, have the absolute right to pursue, settle and compromise or not pursue any and all Litigation Trust Claims as it determines is in the best interests of the Litigation Trust Beneficiaries and consistent with the purposes of the Litigation Trust, and the Litigation Trustee shall have no liability for

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[76] Order of Justice Morawetz dated December 10, 2012, para. 22, Exhibit "C" to Affidavit of Heather Palmer, Plaintiffs' Motion Record (Settlement Approval), Tab 5(C), p. 317.

> the outcome of any such decision except for any damages caused by gross negligence, bad faith, wilful misconduct or knowing violation of law.[77]
>
> [...]
>
> **3.13 Limitation of Litigation Trustee's Authority**
>
> (a) Notwithstanding anything herein to the contrary, the Litigation Trustee shall not (i) be authorized to engage in any trade or business or (ii) take any such actions as would be inconsistent with the purposes of this Agreement, the preservation of the assets of the Litigation Trust and the best interests of the Litigation Trust Beneficiaries.

80. First, Article 3.13(a) of the Litigation Trust Agreement states that the Litigation Trustee may not take any action that would be inconsistent with purposes of the Trust Agreement, which is to oversee the efficient prosecution of the Litigation Trust Claims. Given that the Litigation Trust has no claim against the Dealers, withholding its acceptance of the Named Third Party Release does not further the efficient prosecution of the Litigation Trust's claims and is therefore inconsistent with the purpose of the heavily negotiated, court-approved Litigation Trust Agreement.

81. Second, Article 1.5 of the Litigation Trust Agreement states that the Litigation Trustee must act with "reasonable" business judgment in an "efficient and responsible" manner.

82. In the circumstances, given that the Litigation Trust has no claim against the Dealers, withholding the acceptance of the Litigation Trust is manifestly unreasonable. It is not within the scope of the Litigation Trust Agreement. It therefore exceeds the discretion conveyed to the Litigation Trust by the Litigation Trust Agreement.

83. The Litigation Trust Agreement was a heavily negotiated agreement between the parties to the CCAA and was approved by this Court as part of the Plan on the basis that the Litigation Trust would act within the boundaries set out in the Litigation Trust Agreement. Given that the

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[77] Sino-Forest Litigation Trust Agreement, Art. 1.5(a)-(b), Plaintiffs' Book of Authorities, Tab 34.

Litigation Trust is now acting outside of the boundaries of the Litigation Trust Agreement and has exceeded its court-approved discretion, the Litigation Trust's confirmation that the Named Third Party Release is "acceptable" to the Litigation Trustee should be either deemed by the Court, or approved nonetheless.

v) The Dealers Settlement Fairly Compromises the US Claims

84. The Dealer Settlement also meets U.S. standards for approval, because it is fair, reasonable, and adequate. In the jurisdiction where the U.S. Action is pending, "there is a 'strong judicial policy in favor of settlements, particularly in the class action context'" and settlements may be approved so long as they are "'fair, reasonable and adequate.'"[78]

85. Under U.S. law, obtaining a judgment for damages against the Dealers would likely have been more challenging than under Canadian law. To obtain damages against the Dealers, plaintiffs would first have had to overcome the Dealers' claim that no claim existed under U.S. law for their purportedly "public" note. Even if the U.S. law claims were determined to have been pled properly, U.S. law provides this "due diligence" both in U.S. Code and in case law that allows underwriters to avoid liability.[79] If an underwriter successfully demonstrates the due diligence defense, it can avoid payment of any damages – even where a court otherwise finds that defendants have made an actionable misrepresentation under the securities laws entitling plaintiffs to recovery.

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[78] *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 188 (S.D.N.Y. 2012), Plaintiffs' Book of Authorities, Tab 24.

[79] *Federal Housing Fin. Agency v. Nomura Holding Amer. Inc.*, F. Supp. 3d, 2014 WL 7232443 , at *27 (S.D.N.Y. Dec. 18, 2014) (underwriters may "seek[] the protection of the [securities Act]'s due diligence defense" to liability), Plaintiffs' Book of Authorities, Tab 25; *Feyko v. Yuhe Intern., Inc.*, No. CV 11–05511, 2013 WL 816409, at *8 FN.5 (C.D. Cal. Mar. 5, 2013), Plaintiffs' Book of Authorities, Tab 26.

B. Proposed Bar Order

86. As part of the Dealers Settlement, the parties seek an order barring any claims for contribution or indemnity against the Dealers, in accordance with section 11.2 of the Plan of Arrangement. The proposed bar order provides, as is standard, that the class shall restrict its joint and several claims against the non-settling defendants to those damages arising from the conduct of the non-settling defendants. The form of the bar order is fair and properly balances the competing interests of Securities Claimants, the Dealers, and the non-settling defendants:

(a) Securities Claimants are not releasing their claims to a greater extent than necessary;

(b) the Dealers are assured that their obligations in connection with the settlement will conclude his liability in the class proceeding; and

(c) the non-settling defendants will not have to pay more following a judgment than they would be required to pay if the Dealers remained as a defendant in the action (i.e. the plaintiffs have agreed not to look to the non-settling defendants for any loss attributable to the Dealers).

87. These orders are standard where a defendant settles and others remain.[80] The bar order is reasonable and appropriate under the circumstances.

C. Proposed Claims and Distribution Protocol

88. The proposed Claims and Distribution Protocol should be approved. It provides a fair and reasonable process for the allocation and distribution of the net settlement proceeds and is substantially similar to the Claims and Distribution Protocol approved by this Court

89. In the context of Canadian insolvencies and class proceedings, the test for approval of a plan of distribution is in essence the same: the plan must be fair and reasonable.[81]

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[80] *Ontario New Home Warranty Program v Chevron Chemical Co.*, [1999] O.J. No. 2245 (S.C.J.), Plaintiffs' Book of Authorities, Tab 27; *Eidoo v Infineon Technologies AG,* 2012 ONSC 3801, Plaintiffs' Book of Authorities, Tab 28.

90. A similar test applies in the United States; the plan must be "fair and adequate."[82] As with the approval of settlements, "[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel."[83]

91. Finally, a substantially similar Claims and Distribution Protocol was approved in respect of primary market claims against Ernst & Young.[84]

(i) Overview of the Proposed Claims and Distribution Protocol

92. The proposed Claims and Distribution Protocol creates a claims-based process for primary market purchasers of Sino-Forest's securities to seek compensation from the settlement fund. The Claims and Distribution Protocol is designed to provide compensation based on the strength of each category of claims against the Dealers. Therefore, a claim for purchases with fewer litigation challenges would receive more on a per dollar-of-loss basis than a claim for purchases with greater litigation challenges.[85]

93. Ontario courts, in approving plans of distribution, in a securities class action, have found that distinguishing between different types claimants is reasonable and appropriate. For example, in *Gould v BMO Nesbit Burns Inc.*, Justice Cullity approved of a plan of distribution where there

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[81] A plan of compromise under the CCAA is sanctioned where (a) there is compliance with all statutory requirements and previous orders; (b) nothing has been done that is not authorized by CCAA; and (c) the plan is fair and reasonable (*Sino-Forest Corporation (Re),* 2012 ONSC 7050, para. 51, Plaintiffs' Authorities Tab 29.) In class proceedings, a plan of distribution is approved "if in all the circumstances, the plan of distribution is fair, reasonable, and in the best interests of the class." (*Zaniewicz v. Zungui Haixi Corp.*, 2013 ONSC 5490, para 59, Plaintiffs' Authorities, Tab 30.)

[82] "To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized — namely, it must be fair and adequate." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005), Plaintiffs' Authorities, Tab 31.

[83] *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2 d 319, 344 (S.D.N.Y. 2005), Plaintiffs' Authorities, Tab 31.

[84] Order of Justice Morawetz dated December 27, 2013 approving Ernst & Young Settlement Claims and Distribution Protocol, Plaintiffs' Authorities, Tab 40.

[85] Wright Affidavit, para. 80, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 47.

where there were discounts for the claims of secondary market purchasers "to reflect increased certification and substantive litigation risks affecting their claims."[86]

a) Process for Filing Claims

94. Under the proposed Claims and Distribution Protocol, each claimant would file a claim with the details of their trading in Sino-Forest securities. Securities claimants who had previously participated in the Ernst & Young settlement will receive a notice of settlement with a pre-populated data set requiring their consent to participate in the Dealers Settlement. The claims administrator would use this information to first determine the different categories of purchases made and then, for each category, determine the claimant's losses.[87]

b) Calculating Losses

95. In developing this part of the protocol, Canadian Class Counsel received advice from an economist, Frank Torchio of Forensic Economics, relating to the calculation of losses for securities purchasers.[88] To determine the claimant's losses, the adjusted cost base ("ACB") of the claimant's securities must first be determined. This is done by applying the "first-in first-out" methodology ("FIFO") to the securities on a per-security, per account basis.[89] The FIFO methodology is widely accepted and is mandated by International Financial Reporting Standards

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[86] *Gould v BMO Nesbitt Burns Inc.*, [2007] O.J. No. 1095 (S.C.J.), paras 19-23, Plaintiffs' Authorities, Tab 32; *Zaniewicz v. Zungui Haizi Corp.*, 2013 ONSC 5490 at paras. 60-90, Plaintiffs' Authorities, Tab 30.
[87] Wright Affidavit, para. 81, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 47.
[88] Wright Affidavit, para. 84, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 49.
[89] Wright Affidavit, para. 87, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 49.

("IFRS") in the accounting context.[90] The use of FIFO has been approved in plans of allocation in Ontario and the United States.[91]

96. Only claims on behalf of individuals who purchased notes and shares in the following offerings and who held such notes and shares until June 2, 2011 are eligible for compensation pursuant from the Dealers Settlement Fund:

(a) distribution of common shares pursuant to the Final Short-Form Prospectus dated June 5, 2007;

(b) distribution of common shares pursuant to the Final Short-Form Prospectus dated June 1, 2009;

(c) distribution of common shares pursuant to the Final Short-Form Prospectus dated December 10, 2009;

(d) distribution of the 5.00% Convertible Senior Notes due 2013 (the "2013 Notes") pursuant to the Offering Memorandum dated July 17, 2008;

(e) distribution of the 10.25% Guaranteed Senior Notes due 2014 (the "2014 Notes") pursuant to the Exchange Offer Memorandum dated June 24, 2009;

(f) distribution of the 4.25% Convertible Senior Notes due 2016 (the "2016" Notes") pursuant to the Offering Memorandum dated December 10, 2009; and

(g) Distribution of the 6.25% Guaranteed Senior Notes due 2017 (the "2017 Notes") pursuant to the Offering Memorandum dated October 14, 2010.[92]

97. The securities would then be divided into the different categories as set out in the Claims and Distribution Protocol. For each category of securities held by a claimant, the losses for those purchases are calculated as follows:

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90 As set out in International Accounting Standard 2 — Inventories, IFRS, paras 25, 27, Plaintiffs' Authorities, Tab 35.

[91] For example, see plans of allocation approved in *Dobbie v. Arctic Glacier*, Order dated December 4, 2012 (File No. 08-59725), Plaintiffs' Authorities, Tab 36; *McKenna v Gammon Gold*, Order dated December 4, 2012 (File No. 08-36143600CP), Plaintiffs' Authorities, Tab 37; *Zaniewicz v. Zungui Haixi Corp.*, order dated August 26, 2013 (File 36143600CP) Plaintiffs' Authorities, Tab 38; *Metzler Investment GmbH v. Gildan Activewear Inc.*, No. CV-11-436360-OOCP), Plaintiffs' Authorities, Tab 8, and order dated February 18, 2011 (File No. 58574CP), Plaintiffs' Authorities, Tab 39.

[92] Wright Affidavit, para. 82, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 48.

Time of Sale of Securities	Damages
Sold before June 2, 2011	No damages
Sold from June 3 to August 25, 2011	(#of Securities sold) X (ACB - Sale Price)
Sold or held after August 25, 2011	
Shares	(#of shares sold or held) X (ACB per share - CAD$1.40)
2013 Notes	(#of notes sold or held) X (ACB per note - USD$283)
2014 Notes	(#of notes sold or held) X (ACB per note - USD$276.20)
2016 Notes	(#of notes sold or held) X (ACB per note - USD$283)
2017 Notes	(#of notes sold or held) X (ACB per note - USD$289.80)

98. For securities sold or held after August 25, 2011, the loss per security is calculated by subtracting the holding price of the securities as of August 26, 2011 (as estimated by Forensic Economics) from the ACB of the security.[93]

c) Offset Profits

99. If a Claimant sold Sino-Forest securities before June 2, 2011, that claimant may have inadvertently profited from the alleged misconduct at Sino-Forest. In order to remove the impact of these sales, profits attributable to the artificial inflation of such securities (to be determined by Forensic Economics in consultation with Class Counsel) will be offset by subtracting them from the Claimant's losses.[94]

d) Division between Share and Note Claimants

100. As a result of the greater risk associated with the primary market note claims as compared to primary market share claims, Class Counsel believes that it is fair and reasonable to allocate the Dealers Settlement Fund in the manner contemplated in the following proportions:

[93] Wright Affidavit, para. 89, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 50.
[94] Wright Affidavit, para. 90, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 50.

(a) 69.23% of the aggregate amount available for distribution in the Dealers Settlement Fund shall be allocated to claims made in respect of purchases of shares (*i.e.* in prospectus offerings); and

(b) 30.769% of the aggregate amount available for distribution in the Dealers Settlement Fund shall be allocated to claims made in respect of purchases of the notes.[95]

101. Some of the risks considered were the following:

(a) unlike the claims of persons who purchased Sino-Forest shares under a prospectus, there is no statutory right of action in Ontario against an underwriter for purchases of securities by offering memoranda, and these claims are therefore dependent on Ontario common law claims or claims under U.S. law;, meaning, among other things, that reliance upon the alleged misrepresentations is an issue; [96]

(b) there is a risk that a significant proportion of primary market note claims may be found to be excluded from the Ontario Action, the Quebec Action, and the US Action class definitions;

(c) some primary market note claimants likely received a distribution pursuant to Sino-Forest's insolvency;

(d) the Plan capped all Note claims (primary and secondary market) at $150 million whereas there is no such cap for Share claims; and

(e) the Dealers made explicit statements in the offering memoranda that they made no representations concerning the quality of Sino-Forest's securities.[97]

e) Risk Adjusted Damages and Compensable Loss

102. There are 6 categories of securities purchases in the proposed Claims and Distribution Protocol, each with its own risk adjustment factor. The rationale for the different risk adjustment factors are exampled below.

103. The Compensable Damages for each category of securities will be multiplied by the applicable risk adjustment factor in the Claims and Distribution Protocol to arrive at the "Risk Adjusted Damages" for each category of securities. The claims administrator will then sum the

[95] Wright Affidavit, para. 91, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 51.
[96] Section 130.1 of the *Securities Act* provides a statutory claim against Sino-Forest only.
[97] Wright Affidavit, para. 92, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 51.

Risk Adjusted Damages for each category of securities to determine the claimant's "Compensable Loss."[98]

f) Pro Rata Allocation of Funds

104. Upon the determination of all claimants' Compensable Losses, the claims administrator will allocate the net settlement proceeds on a pro rata basis based upon each claimant's Compensable Loss, subject to the following:

(a) Claimant's whose Compensable Loss is less than $5.00 will not be paid out, as it will likely cost more than $5.00 to process the claims.to other eligible claimants. Such amounts shall instead be allocated pro rata to other eligible claimants;

(b) The claims administrator will make payment to claimants by either bank transfer or by cheque. If a claimant does not cash a cheque within 6 months after the date of the cheque, the claimant shall forfeit the right to compensation and the funds shall be treated as set out in paragraph 106 below.[99]

ii. Exceptions to the Claims Process

105. The defendants in the class actions, along with their affiliates or any related persons, are excluded from the claims process. In addition, secondary market purchases of Sino-Forest securities are excluded.[100]

g) Remaining Amounts

106. If any amounts remain after payments to claimants have been made and all other financial commitments have been met, then the remaining amount will be held in the Settlement Trust and paid out for the purposes of future disbursements in the Ontario, Quebec or U.S. class actions.[101]

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[98] Wright Affidavit, para. 93, Plaintiffs' Motion Record (Settlement Approval), Tab 2, pp. 51-52.
[99] Wright Affidavit, para. 104, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 55.
[100] Claims and Distribution Protocol, Exhibit "E" to the Wright Affidavit, Plaintiffs' Motion Record (Settlement Approval), Tab 2(E), p. 235.
[101] Claims and Distribution Protocol, Exhibit "E" to the Wright Affidavit, Plaintiffs' Motion Record (Settlement Approval), Tab 2(E), p. 240.

(ii) Rationale for the Risk Adjustment Factors

107. The Claims and Distribution Protocol sets out six categories of securities. Each category of security is provided a Risk Adjustment Factor:

	Type of Purchase	Risk Adjustment
	A. Share Purchases (Primary Market)	
1.	June 2009 and December 2009 Offerings	1.00
2.	June 2007 Offering	0.30
	B. Note Purchases (Primary Market)	
3.	2013, 2014, 2016, 2017 Notes (Canadian)	1.00
4.	2017 Notes (non-Canadian)	1.00
5.	2013, 2014 and 2016 Notes (non-Canadian)	0.07
6.	If CCAA claim filed	0.50

a) Primary market share purchases (June 2009 and December 2009 offering)

108. Claimants who acquired Sino-Forest shares in the June 2009 and December 2009 prospectus offering have the strongest share claims against the Dealers. Accordingly, those claims are assigned risk adjustment factor of 1.0, which means that no discount is being applied to those claims relative to other primary market share claims. Claimants who purchased in these two offerings have a claim under section 130 of the *Securities Act* and therefore would have succeeded on their claims if they had established that there was a misrepresentation in the relevant part of the prospectus at issue, subject to a statutory defence where the Dealers could establish they acted diligently in connection with the offerings. The right of action under section 130 is not subject to a liability limit or a leave requirement. Further, none of the issues relating to

common law negligent misrepresentation, such as the requirement to establish a duty of care or reliance, are applicable to the section 130 claims.[102]

b) Primary market share purchases (June 2007 offering)

109. Claimants who acquired Sino-Forest shares in the June 2007 prospectus are assigned a risk adjustment factor of 0.30. This discount reflects the absence of a statutory claim for purchasers of shares in the June 2007 offering. Section 138 of the *Securities Act* states that statutory claims for prospectus offerings may not be commenced after the earlier of 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or three years after the date of the transaction giving rise to the cause of action. In this case, the applicable limitation period would be three years after the date of the transaction giving rise to the cause of action, which would have been in 2010, a year before this action was commenced.[103]

110. The only claims asserted on behalf of primary market purchases in June 2007 offering are common law claims for negligence and unjust enrichment. The negligence and unjust enrichment claims against the Share Underwriters would have faced additional challenges as compared to the statutory claims. For example, the common law negligence claims require proof of causation, which could be difficult for each Class Member to prove, and some courts have refused to certify common law claims for securities class actions. With respect to the claim for unjust enrichment, the Share Underwriters may assert that any fees paid to them were paid by Sino-Forest, and not by primary market share purchasers. In addition, the Dealers may assert that such fees were paid

[102] Wright Affidavit, para. 94, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 52.
[103] Wright Affidavit, para. 95, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 53.

pursuant to a contract, which may be found to be a juridical reason for the alleged enrichment. As a result, there is additional risk associated with such claims.[104]

c) Canadian primary market note purchases (2013, 2014, 2016 and 2017 Notes)

111. These are claims for purchases of Sino-Forest notes by way of offering memorandum. Claims for purchases by notes in the 2013, 2014, 2016 and 2017 Note Offerings by Canadians or in a distribution in Canada have a risk factor of 1.0, which means that no discount is being applied to those claims relative to other primary market Note claims. The absence of a discount reflects that these Note claims face the fewest challenges and are the strongest claims against the Dealers among the Note claims. In particular, Canadians or purchasers of these Notes in a distribution in Canada squarely fit within the Ontario and Quebec Actions' class definitions, and a CCAA claim was filed for these claims.[105]

e) Non-Canadian primary market note purchases (2017 Notes)

112. Claims for purchases by notes in the 2017 Note Offering by non-Canadians and individuals or entities who purchased in a distribution outside of Canada have a risk factor of 1.0. These claims are covered in the class definition in the US Action, and a CCAA claim was filed for these claims.[106]

f) Non-Canadian primary market note purchases (2013, 2014, and 2016 Notes) if CCAA claim filed

113. Claims for purchases by notes in the 2013, 2014, 2016 Note Offerings by non-Canadians and individuals or entities who purchased in a distribution outside of Canada have a risk factor of

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[104] Wright Affidavit, para. 96, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 53.
[105] Wright Affidavit, para. 97-98, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 54.
[106] Wright Affidavit, para. 99, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 54.

0.50. This risk factor reflects the risk that these claimants may not be included in the Ontario, Quebec or US Class Actions class definitions.[107]

g) Non-Canadian primary market note purchases (2013, 2014, and 2016 Notes) if no CCAA claim filed

114. Claims for purchases by notes in the 2013, 2014, and 2016 Note Offerings by non-Canadians and individuals or entities who purchased in a distribution outside of Canada have a risk factor of 0.01. These claims may be found to be outside of the Ontario, Quebec or US Class Actions class definitions, and a claimant may face the claims bar unless there was an individual CCAA proof of claim filed. These claims are assigned a risk adjustment factor of 0.01.[108]

(D) Objections Received

115. To date, Canadian Class Counsel has received two objections to the proposed Claims and Distribution Protocol:

(a) One individual objected to the calculation of compensable damages attributable to individuals who did not sell their Sino-Forest shares. In developing this part of the protocol, Canadian Class Counsel relied on the advice Frank Torchio of Forensic Economics relating to the calculation of losses for securities purchasers, and Class Counsel believes that the protocol fairly and adequately balances the rights as between class members.[109]

(b) In addition, the representative plaintiff Robert Wong has indicated that he has the following objection to the proposed Claims and Distribution Protocol: "With respect to claims in the underwriter settlement, the Administrator should not have the discretion to accept late claims. Instead, Court approval should be required."[110] Class Counsel does not agree with this objection. In Class Counsel's view, it would be inequitable to reject a claim that is, for example, a few days late so long as the acceptance of that claim will not delay the claims filing process and ultimate distribution of the settlement amount. In such or similar circumstances, it would be a waste of time and resources to require a person filing a late claims to receive court approval, especially given the cost of such a

[107] Wright Affidavit, para. 100, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 54.
[108] Wright Affidavit, para. 101, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 55.
[109] Wright Affidavit, para. 84, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 49.
[110] Wright Affidavit, para. 103, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 55.

> motion. Accordingly, in Class Counsel's view the most fair and efficient manner of dealing with late claims is to grant the discretion to the Administrator to decide whether to allow them.

116. Class Counsel considered these types of concerns in developing the Claims and Distribution Protocol.

(E) Appointment of an Administrator

117. Class Counsel recommends NPT RicePoint ("NPT") as the Administrator of the Dealers Settlement trust. NPT was appointed the administrator of the Ernst & Young Settlement trust by Court order. NPT has administered or been appointed claims administrator on over 25 class action settlements and distributed over 100 million dollars over the past nine years. NPT has provided Class Counsel with an administration proposal that provides for payment to NPT of:

(a) a setup fee of $32,350;

(b) existing claimants:

(i) payment of $6.50 per claim in respect of non-disputed claims;

(ii) payment of $25 per claim in respect of disputed claims;

(c) new claimants: payment of $23 per claim; and

(d) any additional case specific disbursements, including printing, postage, and bank fees. plus applicable taxes.[111]

118. Class Counsel believes that the proposed fees are

(a) proportionate to the size of the settlement;

(b) competitive with market rates;

(c) reflective of a realistic amount of time to be spent administering this settlement, and using the appropriate level of person at a reasonable hourly rate;

(d) consistent with the fees for the administration of other class action settlements we have been involved in; and

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[111] Wright Affidavit para. 107, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 57.

(e) consistent with the work required in the proposed administration program.[112]

119. Class Counsel believes that NPT has the requisite expertise and capability to effectively execute its duties as Administrator, and that the fees are fair and reasonable in all the circumstances.

PART IV. ORDER REQUESTED

120. In light of all of the above, the Ontario Plaintiffs respectfully request an order approving the Dealers Settlement, the Claims and Distribution Protocol, and the appointment of the administrator.

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[112] Wright Affidavit para. 108, Plaintiffs' Motion Record (Settlement Approval), Tab 2, p. 57.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, 2013 ONSC 1078
2. *Dabbs v. Sun Life Assurance Co. of Canada*, [1998] O.J. No. 1598 (Gen. Div.)
3. *Nunes v. Air Transat AT Inc.*, [2005] O.J. No. 2527 (S.C.J.)
4. *Osmun v. Cadbury Adams Canada Inc.*, [2010] O.J. No. 1877 (S.C.J)
5. *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J)
6. *Robertson v. ProQuest Information and Learning Company*, 2011 ONSC 1647
7. *Marcantonio v. TVI Pacific Inc.*,[2009] O.J. No. 3409 (S.C.J.)
8. *Metzler Investment GmbH v Gildan Activewear Inc.*, 2011 ONSC 1146
9. *Robinson v Rochester Financial Ltd.*, 2012 ONSC 911
10. *Semple v Canada (Attorney General)*, 2006 MBQB 285 (Man. Q.B.)
11. *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp,* 2008 ONCA 587
12. *Healy v. Gregory*, [2009] O.J. No. 2562 (S.C.J.)
13. *Canadian Red Cross Society (Re)*, [1998] O.J. No. 3306 (Gen. Div.)
14. *Century Services Inc. v. Canada (Attorney General)*, [2010] S.C.J. No. 60 (S.C.J.)
15. *Playdium Entertainment Corp. (Re)*, [2001] O.J. No. 4252 (S.C.J.)
16. *Hayes Forest Services Ltd. (Re)*, [2009] B.C.J. No. 1725 (S.C.)
17. *Ontario v. Canadian Airlines Corp.*, [2001] A.J. No. 1457 (Alta. Q.B.)
18. *Canadian Red Cross Society (Re)*, [2002] O.J. No. 2567 (S.C.J.)
19. *Bhasin v. Hrynew*, 2014 SCC 71
20. *1578838 Ontario Inc. v. Bank of Nova Scotia*, 2011 ONSC 3482
21. *Olympia & York Developments Ltd. (Re),* [1993] O.J. No. 545 (Gen. Div.)
22. *IFP Technologies (Canada) Inc. v. Encanada Midstream and Marketing*, [2014] A.J. No. 883 (Alta. Q.B.)

23. *Sun Indalex Finance, LLC v. United Steelworkers*, [2013] 1 S.C.R. 271 (S.C.C.)

24. *In re IMAX Sec. Litig.*, 283 F.R.D. 178 (S.D.N.Y. 2012)

25. *Federal Housing Fin. Agency v. Nomura Holding Amer. Inc.*, F. Supp. 3d, 2014 WL 7232443

26. *Feyko v. Yuhe Intern., Inc.*, No. CV 11–05511, 2013 WL 816409 (C.D. Cal. Mar. 5, 2013)

27. *Ontario New Home Warranty Program v Chevron Chemical Co.*, [1999] O.J. No. 2245 (S.C.J.)

28. *Eidoo v Infineon Technologies AG,* 2012 ONSC 3801

29. *Sino-Forest Corporation (Re),* 2012 ONSC 7050

30. *Zaniewicz v. Zungui Haixi Corp.*, 2013 ONSC 5490

31. *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319 (S.D.N.Y. 2005)

32. *Gould v BMO Nesbitt Burns Inc.*, [2007] O.J. No. 1095 (S.C.J.)

33. *Cosimo Borrelli in his capacity as trustee of the SFC Litigation Trust v. David J. Horsley et al.*, Notice of Acton issued May 31, 2013

34. Sino-Forest Litigation Trust Agreement, Art. 1.5(a)-(b)

35. International Accounting Standard 2 — Inventories, IFRS

36. *Dobbie v. Arctic Glacier*, Order dated December 4, 2012 (File No. 08-59725)

37. *McKenna v Gammon Gold*, Order dated December 4, 2012 (File No. 08-36143600CP)

38. *Zaniewicz v. Zungui Haixi Corp.*, Order dated August 26, 2013 (File 36143600CP)

39. *Metzler Investment GmbH v. Gildan Activewear Inc.,* Order dated February 18, 2011 (File No. 58574CP)

40. *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, Order dated December 27, 2013 (File 12-9667-00CL/11-431153-00CP)

SCHEDULE "B"
RELEVANT STATUTES

Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36

Section 11

General power of court

11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

SCHEDULE "C"
THE OFFERINGS

During the Class Period, Sino-Forest raised money pursuant to seven offerings of securities:

Note Offerings

(1) an offering of notes due 2013 in July 2008 (the "July 2008 Note Offering") pursuant to an Offering Memorandum dated July 17, 2008 (the July 2008 Offering Memorandum"). Banc of America and Credit Suisse USA acted as initial purchasers of the July 2008 Note Offering;

(2) an offer to exchange Sino-Forest's Guaranteed Senior Notes due 2011 for new notes in June 2009 (the "June 2009 Note Offering") offered pursuant to an Exchange Offer Memorandum dated June 24, 2009 (the "July 2009 Offering Memorandum"). Credit Suisse USA acted as initial purchaser for the June 2009 Note Offering;

(3) an offering of notes due 2016 in December 2009 (the "December 2009 Note Offering") pursuant to a Final Offering Memorandum, dated December 10, 2009 (the "December 2009 Offering Memorandum"). Banc of America, Credit Suisse USA, and TD acted as initial purchasers for the December 2009 Note Offering; and

(4) an offering of notes due 2017 in October 2010 (the "October 2010 Note Offering") pursuant to a Final Offering Memorandum dated October 14, 2010 (the "October 2010 Offering Memorandum"). Banc of America and Credit Suisse USA acted as initial purchasers for the October 2010 Note Offering.

Share Offerings

(1) an offering of shares in June 2007 (the "June 2007 Share Offering") pursuant to a Short Form Prospectus, dated June 5, 2007 (the "June 2007 Prospectus"). Dundee, CIBC, Merrill, and Credit Suisse acted as underwriters in the June 2007 Share Offering;

(2) an offering of shares in June 2009 (the "June 2009 Share Offering") pursuant to a Final Short Form Prospectus, dated June 1, 2009 (the "June 2009 Prospectus"). Dundee, Merrill, Credit Suisse, Scotia, and TD acted as underwriters in the June 2009 Share Offering; and

(3) an offering of shares in December 2009 (the December 2009 Share Offering") pursuant to a Final Short Form Prospectus, dated December 10, 2009 (the "December 2009 Prospectus"). Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord, and TD acted as underwriters in the December 2009 Share Offering.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED, AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

Commercial Court File No.: CV-12-9667-00CL

The Trustees of the Labourer's Pension Fund of Central and Eastern Canada, et al.	and	Sino-Forest Corporation, et al.	Superior Court File No: CV-10-414302
Plaintiffs		Defendants	

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

Proceeding under the *Class Proceedings Act, 1992*
Proceeding commenced at Toronto

FACTUM OF THE PLAINTIFFS
Settlement Approval
(Returnable May 11, 2015)

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