THIS IS EXHIBIT "F" TO

THE AFFIDAVIT OF W. JUDSON MARTIN

SWORN NOVEMBER 29, 2012

Before me,

Chan Ching Yee
Solicitor
Reed Smith Richards Butler
20/F Alexandra House
Hong Kong SAR

A Commissioner for Oaths

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID LEAPARD and IMF FINANCE SA; on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

ALLEN T.Y. CHAN, DAVID J. HORSLEY, KAI KIT POON, W. JUDSON MARTIN, WILLIAM E. ARDELL, JAMES P. BOWLAND, JAMES M.E. HYDE, EDMUND MAK, GARRY J. WEST, ALBERT IP, ALFRED C.T. HUNG, GEORGE HO, SIMON YEUNG, POYRY (BEIJING) CONSULTING COMPANY LIMITED, BANC OF AMERICA SECURITIES LLC, CREDIT SUISSE SECURITIES (USA) LLC, SINO-FOREST CORPORATION, and ERNST & YOUNG LLP,

Defendants.

1:12-cv-01726-VM

U.S. District Judge Victor Marrero

AMENDED CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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Plaintiffs, David Leapard and IMF Finance SA, on behalf of themselves and all others similarly situated (the "Class" or "Class Members"), allege the following upon personal knowledge as to themselves and their own acts and upon information and belief as to all other matters. Plaintiffs' information and belief is based on the investigation of counsel including, *inter alia*, review and analysis of (i) government and regulatory documents relating to Defendant Sino-Forest Corporation ("Sino-Forest" or the "Company"); (ii) press releases, Company filings and other public statements by Sino-Forest; (iii) investigation related documents released by the Company and the Ontario Securities Commission ("OSC"); (iv) reports of securities analysts; and (v) court records and other publicly available materials. Many of the facts related to Plaintiffs' allegations are known only to Defendants or are exclusively within their custody or control. Plaintiffs believe that substantial additional evidentiary support for the allegations set forth below will be developed after reasonable opportunity for discovery.

I. INTRODUCTION

1. Plaintiffs bring this class action on behalf of (i) all persons or entities who, from March 19, 2007 through August 26, 2011 (the "Class Period") purchased the common stock of Sino-Forest on the Over-the-Counter ("OTC") market and who were damaged thereby; and (ii) all persons or entities who, during the Class Period, purchased debt securities issued by Sino-Forest other than in Canada and who were damaged thereby (the "Class").

2. The Class Period begins on March 19,. 2007 – the date the Company's 2006 Consolidated Financial Statement was filed.

3. Sino-Forest is a Canadian company engaged in the commercial forest plantation business whose principal operations are in the People's Republic of China ("PRC" or "China"). Among Sino-Forest's businesses are the ownership and management of forest plantation trees,

sales of standing timber and wood logs, and the manufacture of related wood products. Substantially all of the Company's sales during the Class Period were supposedly generated in the PRC. The Company maintains offices in Toronto, Hong Kong and the PRC. Its common stock is registered in Canada and traded on the Toronto Stock Exchange and in the United States on the OTC market. Sino-Forest's debt securities are also traded in the open market. As a result of the fraudulent conduct described herein, trading in Sino-Forest common stock was halted on August 26, 2011 and, to date, has not resumed trading.

4. In stark contrast to the investing public's perception of an enormously successful forestry business in the fast growing PRC market, during the Class Period Sino-Forest was, in fact, materially misleading both investors and regulators. Sino-Forest's assets, revenues, and income were all materially overstated in the Company's financial statements, and other disclosures were materially misleading because they failed to disclose that many of Sino-Forest's significant business transactions were with unknown or related parties. Further, Sino-Forest misrepresented and failed to disclose the true terms of certain agreements it entered into in the PRC for the acquisition of plantation acreage, vastly overstating the amount of timber it acquired during the Class Period. In many instances, no documentation or inadequate documentation existed to support Sino-Forest's timber holdings and related assets and the valuations attributed to those properties on Sino-Forest's financial statements. Among other things, Sino-Forest failed to disclose (1) that it engaged in multiple fraudulent transactions which resulted in the overstatement of assets, revenues and income; (2) that the Company lacked adequate internal controls to substantiate its financial performance or verify its assets and contractual relationships; (3) that its operations were permeated by unsubstantiated and undisclosed related party

transactions; and (4) that its financial statements were materially misleading and not prepared in accordance with the applicable accounting standards.

5. The massive fraud perpetrated on investors by Sino-Forest and the Individual Defendants could not have been accomplished without the abject failure of the gatekeepers (Sino-Forest's auditors and underwriters) to perform their duties to investors. Notwithstanding the fact that the fraud permeated virtually every aspect of Sino-Forest's business, and that these gatekeepers were fully aware of both the lack of transparency and lack of internal controls over financial reporting, they ignored or recklessly disregarded numerous "red flags" indicating the existence of fraudulent transactions including the simple fact that the Company did not have sufficient proof of ownership of **"a majority of its standing timber assets"** as described herein. As a result, during the Class Period, Sino-Forest issued years of materially false and misleading financial statements that, among other things, overstated its assets, revenues, and income. These financial statements were purportedly audited by Defendant E&Y and repeatedly published in offering documents used for billions of dollars of securities sold to investors by the Underwriter Defendants and others.

6. Certain information regarding Sino-Forest's questionable financial practices first came to light on June 2, 2011 when Muddy Waters, a firm specializing in the analysis of Chinese companies whose stock trades in the U.S. and Canada, published a detailed report alleging improper and illegal conduct at the Company. Over the ensuing weeks, there was a flurry of articles, investigations, and news reports about the Company's misconduct, as well as the Company's denials of the Muddy Waters allegations. On June 18, 2011, *The Globe and Mail* reported on its own investigation regarding some of the allegations against Sino-Forest, finding that there were "doubts about the company's public statements regarding the value of [its]

assets" and "broader questions about its business practices." The Company denied the allegations in statements issued over the next two months.

7. Ultimately, in late August 2011, the Ontario Stock Commission ("OSC") confirmed that there was evidence of fraud at Sino-Forest and ordered a halt in trading of Sino-Forest's common stock on the Toronto Stock Exchange, effective August 26, 2011. Reportedly, the OSC accused Sino-Forest of "fraudulently inflating its revenues and exaggerating the extent of its timber holdings." The OSC also noted that the Company "engaged in significant non-arms-length transactions." Similarly, trading of Sino-Forest common stock was halted in the U.S. on the OTC Bulletin Board. Two days later it was reported that the Company's CEO, Defendant Chan, resigned; that three of the Company's vice-presidents were placed on leave; and that another senior vice-president was relieved of most of his duties. On November 15, 2011, Sino-Forest announced that it was deferring the release of its interim financial report for the third quarter of 2011.[1] To date, Sino-Forest has not filed any required periodic reports or issued financial statements for the third quarter of 2011 or later.

8. On November 11, 2011, the Company announced that it was also the subject of a criminal investigation by the Royal Canadian Mounted Police ("RCMP") regarding the allegations surrounding its business and finances. Sino-Forest has failed to make payments due on its outstanding debt and belatedly advised the investing public that its historical financial statements and audit reports should not be relied upon.

9. On March 30, 2012, Sino-Forest filed for protection under the Ontario Companies Creditors Arrangement Act ("CCAA"), which is similar to a bankruptcy filing in the United States. Numerous entities have or are conducting investigations regarding Sino-Forest's

[1] The financial year-end of Sino-Forest is December 31.

financial reporting. In addition to the OSC and RCMP, the Company appointed an Independent Committee of the Board of Directors (the "IC") to investigate, and the Hong Kong Securities and Futures Commission ("HKSFC") commenced an investigation. The IC issued three reports (the "IC Reports") describing its investigation (principally into the Muddy Waters allegations) and the OSC issued a Statement of Allegations ("OSC Allegations") setting forth claims of fraud against Sino-Forest and Defendants Chan and Horsley. On April 30, 2012, Defendant Ernst & Young resigned as the Company's independent auditor.

10. The OSC Allegations describe a fraudulent scheme that inflated the assets and revenues of Sino-Forest and resulted in the issuance of materially misleading financial statements and other misleading statements to investors. As described by the OSC, Sino-Forest and the Individual Defendants engaged in fraudulent conduct with respect to (i) the assets and revenues derived from the purchase and sale of standing timber; (ii) the acquisition of Greenheart Limited Group ("Greenheart Acquisition"); (iii) false evidence of ownership of a vast majority of the Company's timber holdings; and (iv) failure to disclose that the Company's internal controls were insufficient to protect against the significant fraudulent transactions and misconduct alleged.

11. Notwithstanding Sino-Forest's and the Individual Defendants' fraudulent conduct, E&Y and the Underwriter Defendants were forewarned about the Company's lack of transparency and internal control weaknesses, yet allowed such misconduct to continue for years, while ignoring the inadequate processes and lack of competent evidentiary material supporting the Company's financial results. Among some of the "red flags" ignored by E&Y and the Underwriter Defendants were the following:

a. Sino-Forest's admitted lack of segregation of duties, which created risk in terms of measurement and completeness of transactions as well as the possibility of non-compliance with existing internal controls, either of which may lead to the possibility of inaccurate financial reporting;

b. The lack of transparency into Sino-Forest's complex corporate structure and opaque business practices and relationships with its Suppliers, AIs, and other nominee companies in the BVI Network. Sino-Forest established a collection of "nominee"/"peripheral" companies that were controlled, on its behalf, by various "caretakers."[2] Sino-Forest conducted a significant level of its business with these companies, the true economic substance of which was misstated in Sino-Forest's financial disclosures;

c. Sino-Forest's lack of proof of ownership for the vast majority of its timber holdings which included backdated Purchase Contracts and Sales Contracts, and missing supporting documentation. Sino-Forest then relied upon these documents to evidence the purported purchase, ownership, and sale of Standing Timber in the BVI Model;

d. The missing documentation from Sino-Forest's BVI timber purchase contracts, in particular failure to have as attachments either (i) Plantation Rights Certificates from either the Counterparty or original owner or (ii) villager resolutions, both of which are contemplated as attachments by the standard form of BVI timber purchase contract employed by Sino-Forest;

[2] These "nominee"/"peripheral" companies and "caretakers" are described in greater detail in paragraphs 93-95.

e. Sino-Forest's BVI Subs failure to obtain certificates of ownership of Standing Timber from the PRC and the fact that purported confirmations from forestry officials were not recognized as evidence of ownership of timber assets in PRC;

f. Sino-Forest's 2010 sale of Standing Timber, despite the fact that these same Standing Timber assets were offered as collateral for a bank loan by Sino-Forest in 2011; so the sale of those assets in 2010 could not have taken place and been recorded as revenue in that year;

g. Circular cash flows and unusual offsetting arrangements by which money flowed between various Sino-Forest controlled companies;

h. The lack of bank records or other adequate documentation confirming cash flows from complex and unusual transactions involving Suppliers and Authorized Intermediaries; and

i. The recognition of revenues from sales of standing timber where sales contracts were not created until the quarter after the date of the alleged sale.

12. Thus, the entities who were in the best position to protect investors from the massive fraud that occurred here (E&Y and the Underwriter Defendants) missed every potential warning sign in their audits and due diligence of Sino-Forest, despite being armed with the knowledge that hundreds of millions of dollars in transactions were ultimately controlled by a handful of individuals, through a murky structure of corporate entities from around the world, while relying on a deeply flawed process for verifying transactions and business relationships. E&Y's and the Underwriter Defendants' reckless disregard for these red flags in the face of the Company's inadequate internal controls and processes constitutes gross recklessness which resulted in the publication of misleading financial statements and audit reports, and the issuance

of inflated securities to investors. Strikingly, it was only after an investigation by an **outside** securities analyst who, unlike Defendant E&Y and the Underwriter Defendants, had no access to internal Company documents or personnel that these fraudulent activities came to light. Indeed, many of the fraudulent activities were unsophisticated and simply disregarded by E&Y and the Underwriter Defendants – *e.g.* the creation of purchase or sales documents after the end of a quarter and backdating of documents to support transactions; missing attachments from significant transaction documents; lack of bank statements or confirmations of off-book financial transactions, and the use of multiple related parties to facilitate fraudulent transactions.

13. The disclosures relating to Defendants' misconduct and the ultimate halt in trading occasioned by the OSC charges of fraud caused the trading prices of the Company's stock and its debt securities to decline dramatically, thereby damaging Class Members. Sino-Forest's common stock, which traded as high as $26.64, last traded at $1.38 before trading was halted in the U.S and is now virtually worthless. Moreover, Sino-Forest's debt securities are now priced at a fraction of their original value.

A. Jurisdiction and Venue

14. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder by the SEC, and Sections 12 and 15 of the Securities Act.

15. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, Section 27 of the Exchange Act, and Section 22 of the Securities Act. This Court also has supplemental jurisdiction under 28 U.S.C. § 1367(a) over all state law claims asserted by Plaintiffs and Class Members because they arise from the same nucleus of operative facts

alleged in this Complaint, and are so related to the Exchange Act claims over which this Court has original jurisdiction that they form part of the same case or controversy.

16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), Section 27 of the Exchange Act, and Section 22 of the Securities Act. Many of the acts alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in the District.

17. This Court also has jurisdiction, and venue is proper, because, in connection with the sale of $600 million in notes which occurred in October 2010 (the "Note Offering" or "Offering") that will come due in 2017 (the "2017 Notes"), Sino-Forest "... irrevocably and unconditionally submits to the non-exclusive jurisdiction of any New York State or United States Federal court sitting in the Borough of Manhattan, New York City over any suit, action or proceeding arising out of or relating to this Indenture, any Note or any Subsidiary Guarantee." In addition, the Indenture provides that "[a]s long as any of the Notes remain Outstanding, the Company and each of the Subsidiary Guarantors will at all times have an authorized agent in New York City, upon whom process may be served in any legal action or proceeding arising out of or relating to this Indenture, any Note or any Subsidiary Guarantee." Finally, as contemplated by the Indenture, "[e]ach of the Notes, the Subsidiary Guarantees and the Indenture shall be governed by, and construed in accordance with, the laws of the State of New York."

18. In addition, the Underwriter Defendants are located in New York and all Defendants do substantial business in New York. Also, purchases and sales of Sino-Forest common stock occurred on the OTC market in the United States, including New York. Moreover, the trustee for the 2017 Notes is the Law Debenture Trust Company of New York which is located at 400 Madison Avenue, Suite 4D, New York, New York 10017.

19. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone and Internet communications, and the facilities of the national securities markets.

II. PARTIES

A. Plaintiffs

20. Plaintiff **David Leapard** is a resident of South Carolina and purchased the common stock of Sino-Forest during the Class Period in the OTC market in the United States as set forth in the attached Certification and suffered damages when the price of those shares declined as a result of Defendants' misconduct.

21. Plaintiff **IMF Finance SA ("IMF")** is an entity with offices in the British Virgin Islands ("BVI") and purchased 2017 Notes from Defendant Credit Suisse pursuant to the October 2010 Note Offering as set forth in the attached Certification and suffered damages when the price of the 2017 Notes declined as a result of Defendants' misconduct. Plaintiff IMF asserts claims on behalf of purchasers of Sino-Forest debt securities, including purchasers of the 2017 Notes.

B. Defendants

22. Defendant **Sino-Forest** purports to be a commercial forest plantation operator, principally based in the PRC but with additional operations in other locations. At all material times, Sino-Forest's registered office was located in Mississauga, Ontario and its common stock traded on the OTC market in the United States using the symbol "SNOFF." As a reporting issuer in Ontario, Canada, Sino-Forest was required to file certain periodic reports (described below) regarding its business and operations, including audited financial statements, which were made

available to investors. Sino-Forest's common stock and various debt instruments were traded in Canada, the United States and elsewhere. Sino-Forest derives substantial revenue from interstate or international commerce.

23. Sino-Forest was required to file Management Discussion and Analysis Reports ("MD&As"), which are a narrative explanations of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss important trends and risks that are reasonably likely to affect the company's business in the future. MD&As are filed quarterly and at fiscal year end.

24. Another required filing, Annual Information Forms ("AIFs"), are annual disclosure documents intended to provide material information about the company and its business at a point in time in the context of its historical and future development. The AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically.

25. The Company also filed its audited financial statements, which were included in Annual Reports disseminated to investors.

26. As directors, board members, and executives in Sino-Forest during the Class Period, the Individual Defendants controlled the contents of its MD&As, financial statements, AIFs, Annual Reports, and other documents particularized herein and the misrepresentations and omissions made therein were made by the Individual Defendants as well as the Company itself.

27. Defendant **Allen T. Y. Chan** is a co-founder of Sino-Forest and was the Chairman, Chief Executive Officer, and a director of the Company from 1994 until August 28, 2011, when he resigned in the wake of the disclosure of the misconduct described in this Complaint. As Sino-Forest's CEO, Chan certified the accuracy of the Company's securities

filings, including its financial statements, during the Class Period. Chan signed each of the Company's Annual Consolidated Financial Statements issued from 2006 through 2010. Chan is a resident of Hong Kong and, on information and belief, is a citizen of the PRC.

28. Chan certified each of materially false and misleading annual and quarterly MD&As and financial statements issued by Sino-Forest during the Class Period. During the Class Period, Chan signed each of Sino-Forest's materially false and misleading annual financial statements. Chan reviewed and approved the financial statements, public filings, and other statements issued by the Company and caused Sino-Forest to make the misrepresentations particularized below.

29. During the Class Period, Chan received substantial compensation from the Company. For example, for 2008 to 2010, Chan's total compensation was, respectively, $5.0 million, $7.6 million, and $9.3 million. In addition, during the Class Period, while in possession of material adverse information regarding the business and finances of Sino-Forest, Chan sold nearly $3 million worth of Sino-Forest common stock to unsuspecting investors. Chan also received millions in undisclosed compensation through certain hidden related party transactions, including the acquisition of Greenheart, as described below.

30. As of May 1, 1995, shortly after Sino-Forest became a reporting issuer, Chan held 18.3% of Sino-Forest's outstanding common shares and 37.5% of its preference shares. As of April 29, 2011, he held 2.7% of Sino-Forest's common shares.

31. Defendant **Albert Ip** is a former senior executive for Sino-Forest who engaged in a fraudulent scheme to inflate the assets and revenue of Sino-Forest and made materially misleading statements in Sino-Forest's public filings and other statements related to its business and financial results.

32. Defendant **Alfred C.T. Hung** is a former senior executive for Sino-Forest who engaged in a fraudulent scheme to inflate the assets and revenue of Sino-Forest and made materially misleading statements in Sino-Forest's public filings and other statements related to its business and financial results.

33. Defendant **George Ho** is a former senior executive for Sino-Forest who engaged in a fraudulent scheme to inflate the assets and revenue of Sino-Forest and made materially misleading statements in Sino-Forest's public filings and other statements related to its business and financial results .

34. Defendant **Simon Yeung** is a former senior executive for Sino-Forest who engaged in a fraudulent scheme to inflate the assets and revenue of Sino-Forest and made materially misleading statements in Sino-Forest's public filings and other statements related to its business and financial results.

35. Defendant **David J. Horsley,** former Senior Vice President and Chief Financial Officer ("CFO") of Sino-Forest, was responsible for the Company's accounting, internal controls, and financial reporting, including the preparation of the Company's financial statements. Horsley signed and certified the Company's disclosure documents during the Class Period. Horsley resides in Ontario.

36. Horsley certified each of Sino-Forest's Class Period materially false and misleading annual and quarterly MD&As and financial statements. Horsley signed each of Sino-Forest's Class Period materially false and misleading annual financial statements. As an officer, he caused Sino-Forest to make the misrepresentations particularized below.

37. During the Class Period, Horsley received substantial compensation from Sino-Forest. For 2008 to 2010, Horsley's total compensation was, respectively, $1.7 million, $2.5

million, and $3.1 million. During the Class Period, while in possession of material adverse information concerning the business and finances of Sino-Forest, Horsley sold almost $11 million worth of shares of Sino-Forest common stock.

38. Defendant **Kai Kit Poon** is a co-founder of Sino-Forest, a member of its Board of Directors and has been President of the Company since 1994. Poon resides in Hong Kong and, on information and belief, is a citizen of the PRC. During the Class Period, while in possession of material adverse information concerning the business and finances of Sino-Forest, Poon sold over $30 million worth of shares of Sino-Forest common stock.

39. While Poon was a board member, he caused Sino-Forest to make the misrepresentations or omit material facts particularized below.

40. Poon rarely attended board meetings while he was on Sino's board. From the beginning of 2006 until his resignation from the Board in 2009, he attended 5 of the 39 board meeting, or less than 13% of all board meetings held during that period.

41. Defendant **W. Judson Martin** has been a director of Sino-Forest since 2006, and was appointed vice-chairman in 2010. On or about August 25, 2011, Martin replaced Chan as Chief Executive Officer of Sino-Forest. Martin was a member of Sino-Forest's audit committee prior to early 2011 and, as a member of the audit committee, was responsible for reviewing and approving the Company's audited and unaudited financial statements. Martin has made in excess of $474,000 through the sale of Sino-Forest shares. He resides in Hong Kong. As a board member, he reviewed and approved the financial statements, public filings and other statements issued by the Company and caused Sino-Forest to make the misrepresentations or omit material facts particularized herein.

42. Defendant **Edmund Mak** is a director of Sino-Forest and has held this position since 1994. Mak was a member of Sino-Forest's audit committee prior to early 2011 and, as a member of the audit committee, was responsible for reviewing and approving the Company's audited and unaudited financial statements. Mak and persons connected with Mak have made in excess of $6.4 million through sales of Sino-Forest shares. Mak resides in British Columbia. As a board member, he reviewed and approved the financial statements, public filings and other statements issued by the Company and caused Sino-Forest to make the misrepresentations or omit material facts particularized below.

43. Defendant **James M. E. Hyde** is a director of Sino-Forest, and has held this position since 2004. Hyde was previously a partner of E&Y. Hyde is the chairman of Sino-Forest's Audit Committee and, as a member of the Audit Committee, was responsible for reviewing and approving the Company's audited and unaudited financial statements. Hyde is also a member of the Compensation and Nominating Committee. Hyde has made in excess of $2.4 million through the sale of Sino-Forest's shares. Hyde resides in Ontario. As a board member, he reviewed and approved the financial statements, public filings and other statements issued by the Company and caused Sino-Forest to make the misrepresentations or omit material facts particularized below.

44. Defendant **William E. Ardell** is a director of Sino-Forest, and has held this position since January 2010. Ardell is a member of Sino-Forest's audit committee and, as a member of the Audit Committee, was responsible for reviewing and approving the Company's audited and unaudited financial statements. Ardell resides in Ontario. As a board member, he reviewed and approved the financial statements, public filings and other statements issued by the

Company and caused Sino-Forest to make the misrepresentations or omit material facts particularized below.

45. Defendant **James P. Bowland** was a director of Sino-Forest from February 2011 until his resignation from the Board of Sino-Forest in November 2011. While on Sino-Forest's board, Bowland was a member of Sino-Forest's Audit Committee and, as a member of the Audit Committee, was responsible for reviewing and approving the Company's audited and unaudited financial statements. Bowland resides in Ontario. As a board member, he reviewed and approved the financial statements, public filings and other statements issued by the Company and caused Sino-Forest to make the misrepresentations or omit material facts particularized below.

46. Defendant **Garry J. West** is a director of Sino-Forest, and has held this position since February 2011. West was previously a partner at E&Y. West is a member of Sino-Forest's Audit Committee 2011 and, as a member of the Audit Committee, was responsible for reviewing and approving the Company's audited and unaudited financial statements. West resides in Ontario. As a board member, he reviewed and approved the financial statements, public filings and other statements issued by the Company and caused Sino-Forest to make the misrepresentations or omit material facts particularized below.

47. Defendants Martin, Mak, Hyde, Ardell, Bowland, and West are referred to herein as the **Audit Committee Defendants**. Defendants Chan, Ip, Hung, Ho, and Yeung are referred to herein as **Overseas Management Defendants.** The Overseas Management Defendants together with Defendant Horsley are referred to herein as the **Officer Defendants**. The Officer Defendants and Sino-Forest are collectively referred to as **the Sino-Forest Defendants.** Defendants Martin, Mak, Hyde, Ardell, Bowland, West, Chan, Ip, Hung, Ho, Yeung, and Horsley are herein referred to as the **Individual Defendants.**

48. As officer and/or directors of Sino-Forest, the Individual Defendants were fiduciaries of Sino-Forest, and they made the misrepresentations or omitted material facts alleged herein, and/or caused Sino-Forest to make such misrepresentations and omissions. In addition, Defendants Chan, Poon, Horsley, Martin, Mak, and Murray were unjustly enriched in the manner and to the extent particularized below.

49. Defendant **Poyry (Beijing) Consulting Company Limited ("Poyry")** is an international forestry consulting firm which purported to provide certain forestry consultation services to Sino-Forest.

50. Poyry, in providing what it purported to be "forestry consulting" services to Sino-Forest, made statements that it knowingly intended to be, and which were, disseminated to Sino-Forest's current and prospective security holders. At all material times, Poyry was aware of that class of persons, intended to and did communicate with them, and intended that prospective investors and the market, among others, would rely on Poyry's statements relating to Sino-Forest, which they did to their detriment.

51. Poyry consented to the inclusion in the June 2007, June 2009, and December 2009 Prospectuses, as well as the July 2008, June 2009, December 2009, and October 2010 Offering Memoranda, of its various reports, as detailed below in paragraph 207.

52. Defendant **Banc of America Securities LLC ("BOA")** is a financial services company which, using the name "BofA Merrill Lynch" or "Merrill Lynch Canada", acted as one of two "Joint Global Coordinators and Lead Bookrunning Managers" for the October 2010 Offering. BOA's affiliate, Merrill Lynch, Canada, acted as an underwriter for the June 2007, July 2008, June 2009, and December 2009 Offerings. In this capacity, BOA acted as an underwriter in one or more of the Offerings. BOA operates in and has its principal place of

business in New York County, New York. This Complaint seeks damages on behalf of the purchasers of the 2017 Notes against any and all Bank of America entities that may be liable for the misconduct described herein.

53. Defendant **Credit Suisse Securities (USA) LLC ("Credit Suisse")** is a financial services company which acted as one of two "Joint Global Coordinators and Lead Bookrunning Managers" for the following Note Offerings: July 2008 and October 2010. Credit Suisse's affiliate, Credit Suisse, Canada, acted as an underwriter for the June 2007, June 2009, and December 2009 Offerings. In this capacity, Credit Suisse acted as an underwriter for this and additional Offerings. Credit Suisse operates in and has offices in New York County, New York. This Complaint seeks damages on behalf of the purchasers of the 2017 Notes against any and all Credit Suisse entities that may be liable for the misconduct described herein.

54. BOA and Credit Suisse are collectively referred to as the **Underwriter Defendants**. The Underwriter Defendants who are located in New York, NY, offered and sold the 2017 Notes pursuant to a materially false and misleading Offering Memorandum dated October 14, 2010 (the "Offering Memorandum") to certain Class Members in the United States who purportedly satisfied the requirements to be considered a "qualified institutional buyer" pursuant to Rule 144 of the U.S. Securities and Exchange Commission ("SEC"). The Underwriter Defendants also sold certain notes in the Offering to foreign investors relying on the exemption set forth in SEC Regulation S.

55. In connection with the Offerings made pursuant to the June 2007, June 2009, and December 2009 Prospectuses, the Underwriters who underwrote these Offerings were paid, respectively, an aggregate of approximately $7.5 million, $14.0 million, and $14.4 million in underwriting commissions. In connection with the offerings of Sino-Forest's notes in July 2008,

December 2009, and October 2010, BOA and Credit Suisse were paid, respectively, an aggregate of approximately $2.2 million, $8.5 million, and $6 million. Those commissions were paid in substantial part as consideration for the Underwriters' purported due diligence examination of Sino-Forest's business and financial condition.

56. None of the Underwriters conducted a reasonable due diligence into Sino-Forest in connection with any of the Offerings. None of the Underwriters had reasonable grounds to believe that there was no material misrepresentation or material omissions in any of the representations made to investors. The Underwriter Defendants ignored the existence of multiple warning signs regarding the misconduct described herein, and permitted Sino-Forest to go forward with the sale of securities inflated to investors based on materially false and misleading offering documents which the Underwriter Defendants assisted in preparing and provided to investors.

57. In the circumstances of this case, including the facts that Sino-Forest operated in an emerging economy, Sino-Forest entered Canada's capital markets by means of a reverse merger, and Sino-Forest reported extraordinary results over an extended period of time that far surpassed those reported by Sino-Forest's peers, the Underwriter Defendants all ought to have exercised heightened vigilance and caution in the course of discharging their duties to investors, which they did not do. Had they done so, they would have uncovered Sino-Forest's true financial results and performance, and the Class Members to whom they owed their duties would not have sustained the losses that they sustained on their Sino-Forest investments.

58. Defendant **Ernst & Young LLP,** a part of Ernst & Young Global Limited, has offices in Toronto, Canada. Ernst & Young LLP has been Sino-Forest's auditor since August 13, 2007 and was also Sino-Forest's auditor from 2000 to 2004. Sino-Forest's shareholders,

including numerous Class Members, appointed E&Y as auditors of Sino-Forest by shareholder resolutions passed on various dates, including on June 21, 2004, May 26, 2008, May 25, 2009, May 31, 2010, and May 30, 2011. This Complaint seeks damages against any and all Ernst & Young entities that may be liable for the misconduct described herein.

59. Ernst & Young LLP Chartered Accountants is referred to as "**E&Y**". For Sino-Forest's 2007 through 2010 fiscal years, E&Y provided an "Auditor's Report" addressed directly to Sino-Forest's shareholders, which gave the Company a "clean" audit report on its financial statements. At all material times, E&Y knew that its audit report was directed to Sino-Forest's shareholders, prospective shareholders and prospective purchasers of Sino-Forest's securities, and that investors would and did rely on E&Y's statements relating to Sino-Forest in making their investment decisions. Each of E&Y's audit reports informed the Company's investors and the purchasers of its securities that, based on its audits, Sino-Forest's financial statements were presented in accordance with Canadian GAAP and that it had performed its audits in accordance with applicable Canadian auditing standards. E&Y's audit report was materially false and misleading and omitted material facts as described herein.

60. The Individual Defendants earned millions of dollars in compensation because of Sino-Forest's artificially inflated stock price. Moreover, their misleading portrayal of the Company's finances allowed Sino-Forest to raise billions of dollars by issuing debt and equity securities to investors. This was critical to the Company's survival since the Company had a negative cash flow -- it was spending more money than it was taking in -- yet was spending enormous sums purportedly to purchase new assets. Sino-Forest's inflated stock price also allowed it to use its shares as currency to acquire other companies and assets.

61. It was only because of Defendants' concealment of Sino-Forest's true financial condition that the Company was able to complete the $600 million Note Offering in October 2010. Investors would not have purchased these Notes or would not have purchased them at the prices they did, if the truth about Sino-Forest had been known.

62. Thus, during the Class Period, Defendants, acting in concert with others, made materially false statements and misleading statements and omitted material facts about the true financial condition and business operations of Sino-Forest, causing the prices of Sino-Forest's common stock and Debt Securities to be artificially inflated during the Class Period. Despite the obviously false and misleading nature of these statements, E&Y and the Underwriter Defendants facilitated the improper conduct of Sino-Forest and the Individual Defendants – E&Y by repeatedly ignoring red flags which would have led to the discovery of the Sino Forest Defendants' misconduct, and repeatedly certifying that the Company's financial statements were prepared in compliance with applicable accounting standards; and the Underwriter Defendants by failing to perform adequate due diligence on multiple occasions and disseminating the misleading Offering Memorandum to investors.

II. BACKGROUND

63. During the Class Period, Sino-Forest conducted its business through a network of approximately 137 related entities: 67 PRC incorporated entities (with 12 branch companies), 58 BVI incorporated entities, 7 Hong Kong incorporated entities, 2 Canadian entities, and 3 entities incorporated in other jurisdictions.

64. Sino-Forest portrayed itself as one of the world's largest and most successful forestry companies. According to the Company's Annual Information Form for the year ended December 31, 2010 (the "2010 Annual Form") Sino-Forest "had approximately 788,700 hectares

of forest plantations under management which are located primarily in southern and eastern China." Between 2006 and 2010, Sino-Forest's assets (primarily plantation acreage) purportedly grew nearly five-fold from approximately $1.2 billion to over $5.7 billion, while revenues grew from $555 million to $1.9 billion and net income more than tripled from $113 million to $395 million, as reflected in the Company's financial statements[3]

65. In addition, from June 30, 2006 to March 31, 2011, Sino-Forest's share price rose from $5.04 (US) to $26.08 (US). By March 31, 2011 Sino-Forest's market capitalization was well over $6 billion dollars.[4]

66. From 2007 through 2010, the Company's annual financial statements were audited by Defendant E&Y which certified that they had been prepared in accordance with Canadian Generally Accepted Accounting Principles ("Canadian GAAP") and that the audit had been conducted in conformance with Canadian Generally Accepted Auditing Standards ("Canadian GAAS").

67. Sino-Forest's tremendous growth was ostensibly fueled by increasingly large acquisitions of valuable tree plantations and revenues generated from operations relating to that business. In addition, the Company's escalating growth allowed it to raise enormous sums of capital from investors around the world through the sale of debt securities and common stock, including the sale of $600 million in notes which occurred in October 2010 (the "Offering") that will come due in 2017 (the "2017 Notes"). The Note Offering was underwritten by Defendants Banc of America Securities LLC and Credit Suisse Securities (USA) LLC. In total, the Company issued ***over $1.8 billion*** in debt instruments during the Class Period.

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[3] Except where otherwise indicated, all amounts in this Complaint are in U.S. dollars.
[4] This figure is an extrapolation from 12/31/10 number.

68. Moreover, Defendant E&Y annually audited Sino-Forest's financial statements and reviewed its interim financial information for compliance with Canadian GAAP. For fiscal years 2007 through 2010 E&Y gave Sino-Forest a "clean" audit opinion.

A. SINO-FOREST'S OPAQUE BUSINESS MODEL

69. Although ostensibly a forestry company, Sino-Forest's purported business was, in many respects, more that of a trader or financial intermediary than of a traditional forestry company. The Company seldom sold wood products directly to end-user customers. Instead, it claimed that most of its earnings came from buying logs and the right to harvest trees and then reselling these logs and harvesting rights at higher prices.

70. Sino-Forest's corporate structure is a complex web of dozens of interconnected Canadian, Chinese, Hong Kong, Cayman Islands and British Virgin Islands subsidiaries, most of which are wholly-owned or in which the Company has a majority interest. A total of 137 entities make up the Sino-Forest Companies: 67 PRC incorporated entities (with 12 branch companies), 58 BVI incorporated entities, 7 Hong Kong incorporated entities, 2 Canadian entities, and 3 entities incorporated in other jurisdictions.[5] .

71. Sino-Forest is the sole shareholder of Sino-Panel Holdings Limited (incorporated in the BVI), Sino-Global Holdings, Inc. (incorporated in the BVI), Sino-Panel Corporation (incorporated in Canada), Sino-Wood Partners Limited (incorporated in Hong Kong), Sino-Capital Global Inc. (incorporated in the BVI), and Sino-Forest International (Barbados) Corporation (incorporated in Barbados). Sino-Forest also holds all of the preference shares of

[5] Sino-Forest's recently released corporate organizational chart, attached as Exhibit A, illustrates in part, the complexity

Sino-Forest Resources, Inc. (incorporated in the BVI). Some of these subsidiaries have further direct and indirect subsidiaries.

72. Sino-Forest's business model is further complicated by the fact that much of its business is done through "Authorized Intermediaries" ("AIs"), supposedly independent companies that are largely responsible for the actual sale of forestry products to the users of these products. Despite the critical role that these Authorized Intermediaries play in its business, little is known of the financial relationships with these AIs and Sino-Forest has, with one exception, refused to disclose the identity of these companies. As Defendant Martin acknowledged in Sino-Forest's creditors proceedings, "there has always been very little insight into the business of the AIs including their books and records, cash collections and disbursements." Martin further noted that there continue to be "on-going issues with respect to many of the business transactions between Sino-Forest and the AIs, including the nature of many of these relationships."

73. Because Sino-Forest principally operates in China, Sino-Forest's convoluted structure and business practices did not initially arouse investor suspicions. Because of the unusual aspects of doing business in China, where foreign investments are tightly regulated, a number of legitimate foreign companies operating in that country have unusually complex structures. But, unbeknownst to investors, there was little or no business justification for the way Sino-Forest structured itself and its operations. Sino-Forest's structure was not meant to facilitate compliance with Chinese law, but rather to make it easier for Defendants to materially mislead investors about the Company's operations, revenue, earnings, and assets.

74. One specific example of this complex organization is Sino-Forest's relationship with one of its most important subsidiaries, Greenheart Group Ltd. ("Greenheart"), a public company listed on the Hong Kong Stock Exchange. In 2010, following a complex series of

transactions, Sino-Forest completed the purchase of a controlling interest in Greenheart. Sino-Forest's 64% interest in Greenheart was acquired using cash and shares of Company stock. Greenheart holds natural forest concessions, mostly in Suriname.

75. Greenheart controls most of Sino-Forest's supposedly substantial forestry assets outside of China. But, Sino-Forest also holds a 39.6% stake in Greenheart Resources Holdings Ltd. ("GRH"), a subsidiary of Greenheart. GRH, in turn, indirectly owns 100% of Greenheart's forest assets and operations in the western part of Suriname, supposedly one of Sino-Forest's principal timber holdings.

76. In its Annual Information Form ("AIF") for 2010, Sino-Forest stated that its operations were comprised of two core business segments which it titled "Wood Fibre Operations" and "Manufacturing and Other Operations." Wood Fibre Operations had two subcomponents entitled "Plantation Fibre" and "Trading of Wood Logs."

77. According to Sino-Forest, the Plantation Fibre subcomponent of its business was derived from the purported acquisition, cultivation, and sale of either "standing timber" or "logs" in the PRC. For the purpose of this Amended Complaint, the Plantation Fibre subcomponent of Sino-Forest's business will be referred to as "Standing Timber" as most, if not all, of the revenue from the sale of Plantation Fibre was derived from the sale of "standing timber."

78. From 2007 to 2010, Sino-Forest reported Standing Timber revenue totaling approximately $3.56 billion, representing about 75% of its total revenue of $4.77 billion. The following table provides a summary of Sino-Forest's stated revenue growth for the period from 2007 to 2010 and illustrate the importance of the revenue derived from the sale of Standing Timber:

	2007	2008	2009	2010	TOTAL

Plantation Fibre (defined as Standing Timber herein)	$521.5m	$685.4m	$954.2m	$1,401.2m	$3,562.3m
Trading of Wood Logs	$154.0 m	$153.5m	$237.9m	$454.0m	$999.4m
TOTAL Wood Fibre Operations	$675.5m	$838.9m	$1,192.1m	$1,855.2m	$4,561.7m
***	***	***	***	***	***
Manufacturing and Other Operations	$38.4m	$57.1m	$46.1m	$68.3m	$209.9 m
TOTAL REVENUE	$713.9m	$896.0m	$1,238.2m	$1,923.5m	$4,771.6m

79. Standing Timber was purchased, held, and sold by Sino-Forest in two distinct legal structures or models: the "BVI Model" and the "WFOE Model."

80. In the BVI Model, Sino-Forest's purchases and sales of Standing Timber in the PRC were conducted using wholly owned subsidiaries of Sino-Forest incorporated in the British Virgin Islands (the "BVI Subs"). The BVI Subs purported to enter into written purchase contracts ("Purchase Contracts") with suppliers in the PRC ("Suppliers") and then purported to enter into written sales contracts ("Sales Contracts") with its AIs.

81. In the WFOE Model, Sino-Forest used subsidiaries incorporated in the PRC called Wholly Foreign Owned Enterprises ("WFOEs") to acquire, cultivate, and sell the Standing Timber. The Sino-Forest WFOEs also entered into Purchase Contracts and Sales Contracts with other parties in the PRC.

B. SINO-FOREST'S UNDISCLOSED FRAUDULENT TRANSACTIONS

1. The Standing Timber Fraud

82. During the Class Period, Sino-Forest and the Individual Defendants engaged in numerous deceitful and dishonest courses of conduct (the "Standing Timber Fraud") that ultimately caused the assets and revenue derived from the purchase and sale of Standing Timber (which constituted the majority of Sino-Forest's business) to be fraudulently overstated, thereby misleading Plaintiffs and Class Members.

83. The Standing Timber Fraud was primarily comprised of three elements:

a. Sino-Forest concealed its control over Suppliers, AIs, and other nominee companies and misstated the true economic substance of the relationships in Sino-Forest's financial disclosures;

b. Sino-Forest falsified the evidence of ownership for the vast majority of its timber holdings by engaging in a deceitful documentation process; and

c. Sino-Forest concealed internal control weaknesses/failures that obscured the true nature of transactions conducted within the BVI Network.

84. Placed on notice of Sino-Forest's internal control weaknesses/failures and its inadequate processes E&Y (which had access to both company personnel and documents, *inter alia*) should have scrutinized the related parties or the transactions at issue during the course of its audit – particularly the incomplete documentation process by which the purchase, sale, and ownership of Standing Timber were supposedly evidenced. Had E&Y fulfilled its obligations as an auditor in certifying the accuracy of Sino-Forest's purchase, sale, and ownership records and in determining the nature of the related parties involved in the transactions, this fraudulent scheme would likely have been detected sooner. Similarly, the Underwriter Defendants, having known of Sino Forest's internal control weaknesses, should have examined the related party transactions during the course of their due diligence.

85. As set out in paragraph 93, the vast majority of Sino-Forest's Standing Timber assets were held in the BVI Model. However, the available underlying documentation for these Standing Timber assets does not provide sufficient evidence of legal ownership of those assets. As of this date, the OSC has found that Sino-Forest has not been able to confirm full legal ownership of the Standing Timber assets that it claims to hold in the BVI.

86. The following examples detail the fraudulent course of conduct that Sino-Forest and the Individual Defendants perpetrated with respect to financial transactions involving its timber assets, resulting in the issuance of materially false and misleading financial statements to investors.

a. "off-book" transactions and undocumented set-offs;

b. the Dacheng Fraud;

c. the 450,000 Fraud;

d. Gengma Fraud #1; and

e. Gengma Fraud #2.

87. On December 31, 2010, Sino-Forest reported total timber holdings of $3.1 billion, comprising 799,700 hectares. About $2.5 billion or approximately 80% of the total timber holdings (by value) were held in the BVI Model, comprising approximately 467,000 hectares of Standing Timber. The WFOE Model purportedly held approximately 97,000 hectares of Standing Timber valued at $295.6 million, or approximately 10% of the total timber holdings (by value). The timber holdings in the BVI Model and the WFOE Model comprised approximately 90% of the total timber holdings (by value) of Sino-Forest as of December 31, 2010.

2. Off-Book Transactions and Undocumented Set-Offs

88. The cash-flows associated with the purchase and sale of Standing Timber executed in the BVI Model took place "off-book" pursuant to a payables/receivables arrangement (the "Offsetting Arrangement"), whereby the BVI Subs would not directly receive the proceeds on the sale of Standing Timber from the purchasing AI. Rather, Sino-Forest would direct the AI that purchased the timber to pay the sales proceeds to a new Supplier in order to buy additional Standing Timber. Consequently, Sino-Forest also did not make payment directly to Suppliers for purchases of Standing Timber.

89. According to the OSC, Sino-Forest did not possess the appropriate records to confirm that these "off-book" cash-flows in the Offsetting Arrangement actually took place. Set-off documentation was inadequate as it did not relate to a particular sales transaction and was not a record of a BVI sales transaction. Nor did Sino-Forest have any other documentation besides the set-off to evidencing payment and sale of the earlier timber sales This lack of transparency within the BVI Model meant that independent confirmation of these "off-book" cash-flows was reliant on the good faith and independence of Suppliers and AIs.

90. Further, pursuant to the terms of Sales Contracts entered into between a BVI Sub and an AI, the AI assumed responsibility for paying any PRC taxes associated with the sale that were owed by the BVI Sub. This obligation purportedly included paying the income tax and valued added tax on behalf of Sino-Forest.

91. Sino-Forest dealt with relatively few Suppliers and AIs in the BVI Model. For example, in 2010, six Suppliers accounted for 100% of the Standing Timber purchased in the BVI Model and five AIs accounted for 100% of Sino-Forest's revenue generated in the BVI Model.

92. From 2007 to 2010, revenue from the BVI Model totaled $3.35 billion, representing 94% of Sino-Forest's reported Standing Timber revenue and 70% of Sino-Forest's total revenue. The importance of the revenue from the BVI Model is demonstrated in the following table:

	2007	**2008**	**2009**	**2010**	**TOTAL**
BVI Model Revenue	$501.4m	$644.9m	$882.1m	$1,326m	$3,354.4m
WFOE Model Revenue	$20.1m	$40.5m	$72.1m	$75.2m	$207.9m
Standing Timber Revenue	$521.5m	$685.4m	$954.2m	$1,401.2m	$3,562.3m
TOTAL REVENUE	$713.9m	$896m	$1,238.2m	$1,923.5m	$4,771.6m
BVI Model as % of Total Revenue	70%	72%	71%	69%	70%

3. Undisclosed Control Over Parties within the BVI Network

93. Almost all of the buying and selling of Standing Timber in the BVI Model was generated through transaction between BVI Subs and a small number of Suppliers and AIs. Sino-Forest also conducted a significant level of this buying and selling with companies that are described in various Sino-Forest documents and correspondence as "peripheral" companies. Sino-Forest established and used a network of "nominee" companies that were controlled, on its behalf, by various so-called "caretakers."

94. For the purpose of this Amended Complaint, the BVI Subs, Suppliers, AIs, "nominee" companies, and "peripheral" companies involved in the buying and selling of Standing Timber in the BVI Model are collectively referred to as the "BVI Network." Some of

the companies within the BVI Network were also involved in the buying and selling of Standing Timber within the WFOE Model.

95. One Sino-Forest document (the "Caretaker Company List") lists more than 120 "peripheral" (nominee) companies that are controlled by 10 "caretakers" on behalf of Sino-Forest. The "caretakers" include Huang Ran (legal representative of Huaihua City Yuda Wood Ltd. ("Yuda Wood"), described in greater detail in paragraphs 99 to 108 below), a relative of Chan, a former Sino-Forest employee, the sole director/shareholder of Montsford Ltd. (an acquaintance of Chan and Chan's nominee in the Greenheart Transaction as outlined in paragraphs 169 to 173 below), a former shareholder of Greenheart Resources Holdings Limited ("GRHL") and a shareholder of Greenheart, and an individual associated with some of Sino-Forest's Suppliers.

96. The control and influence that Sino-Forest exerted over certain Suppliers, AIs, and peripheral companies within the BVI Network bring the bona fides of numerous contracts entered into in the BVI Model into question. Sino-Forest wielded this control and influence through the Overseas Management Defendants and these caretakers. Sino-Forest's control of, or influence over, certain parties within the BVI Network was not disclosed to Plaintiffs and Class Members.

97. Some of the counterparties to the transactions described below (Dacheng Fund, the 450,000 Fraud, Gengma Fraud #1, and Gengma Fraud #2) are companies that are included in the Caretaker Company List, as outlined in more detail in paragraphs 135 to 166 below.

98. Among other undisclosed relationships, Sino-Forest did not disclose the true nature of its relationship with the following two key companies in the BVI Network: Yuda Wood and Dongkou Shuanglian Wood Company Limited ("Dongkou").

i. Sino-Forest Controlled Yuda Wood, a Major Supplier

99. Huaihua City Yuda Wood Co. Ltd., based in Huaihua City, Hunan Province ("Yuda Wood"), was a major supplier of Sino during the Class Period. Yuda Wood was founded in April 2006 and, from 2007 until 2010, its business with Sino totaled approximately 152,164 Ha.

100. Yuda Wood was a Supplier that was controlled by Sino-Forest during the Class Period. In the Second Interim Report, the Independent Committee of the Board of Directors of Sino-Forest Corporation ("IC") acknowledged that ***"there is evidence suggesting close cooperation [between Sino and Yuda Wood] (including administrative assistance, possible payment of capital at the time of establishment, joint control of certain of Yuda Wood's RMB bank accounts and the numerous emails indicating coordination of funding and other business activities)"*** [emphasis added].

101. The fact that Yuda Wood was a related party of Sino-Forest during the Class Period was a material fact and was required to be disclosed under Canadian GAAP, but, during the Class Period, that fact was not disclosed by Sino-Forest in any of the Financial Statements, MD&As, Prospectuses, Offering Memoranda, or otherwise.

102. From 2007 to 2010, Yuda Wood was purportedly Sino-Forest's largest Supplier, accounting for 18% of all purchases in the BVI Model. Sino-Forest claimed to have paid Yuda Wood approximately $650 million during that time. Because Yuda Wood was Sino-Forest's largest Supplier, both E&Y (during the course of its audits) and the Underwriter Defendants (as part of their due diligence) should have closely scrutinized the relationship between the Yuda Wood and Sino-Forest and the transactions between the companies.

103. Yuda Wood was registered and capitalized by certain Individual Defendants, including Defendants Yeung, Ip, Ho, Hung, who also controlled bank accounts of Yuda Wood and key elements of its business.

104. The legal representative of Yuda Wood is Huang Ran, a former employee of Sino-Forest and also a shareholder and director of Hong Kong Sonic Jita Engineering Co., Ltd. ("Sonic Jita"), the sole shareholder of Yuda Wood. In addition, Huang Ran had significant interests in other Suppliers of Sino-Forest and was identified as the "caretaker" of several nominee/peripheral companies.

105. Yuda Wood and other companies controlled by Sino-Forest through Huang Ran were used to perpetrate portions of the Standing Timber Fraud including the Dacheng Fraud, the 450,000 Fraud, Gengma Fraud #1 and Gengma Fraud #2.

106. During the Class Period, Sino-Forest had at least thirteen (13) Suppliers for which former Sino-Forest employees, consultants, or others are or were directors, officers and/or shareholders. Due to these and other connections between these Suppliers and Sino-Forest, some or all of these Suppliers were, in fact, undisclosed related parties of Sino-Forest. These facts suggest that these relationships resulted in improper control over these related parties.

107. Including Yuda Wood, the thirteen (13) Suppliers referenced above accounted for 43% of Sino-Forest's purported plantation purchases during the Class Period.

108. Sino-Forest failed to disclose, in Financial Statements, Offering Memoranda, MD&As, AIFs, or other documents, that any of these Suppliers were related parties, nor did it disclose sufficient information regarding its relationship with such Suppliers as would have enabled investors to ascertain that those Suppliers were related parties and that the transactions

with these entities should have been identified in Sino Forest's financial statements and other disclosures as related party transactions.

ii. Sino-Forest Controlled Dongkou, a Major AI

109. Dongkou was an AI that was controlled by Sino-Forest during the Class Period.

110. In 2008, Dongkou was Sino-Forest's most significant AI, purportedly purchasing approximately $125 million in Standing Timber from Sino-Forest, constituting about 18% of Sino-Forest's Standing Timber revenue for that year. Because Dongkou was a significant AI, both E&Y and the Underwriter Defendants should have closely scrutinized the relationship between Dongkou and Sino-Forest and the transactions between the companies.

111. Sino-Forest controlled Dongkou through one of its WFOE subsidiaries, Shaoyang Jiading Wood Products Co. Ltd. ("Shaoyang Jiading"). Correspondence indicates that, according to an agreement dated November 18, 2006, Shaoyang Jiading purchased Dongkou for approximately $200,000.

112. By November 2006, the six original shareholders of Dongkou had been replaced with two Sino-Forest employees. These two people became the sole Dongkou shareholders with Shareholder #1 holding 47.5% and Shareholder #2 holding 52.5%.

113. Also, in 2007, at the direction of Defendant Ip and others, employees of Sino-Forest drafted purchase contracts to be entered into by Dongkou and its suppliers (other than Sino-Forest). Essentially, Sino-Forest, through Individual Defendants, controlled Dongkou's business with certain counterparties and these transactions should have been identified in Sino Forest's financial statements and other disclosures as related party transactions.

D. Creation and Backdating of Sales Contracts and Other Documents

i. Purchase Contracts in the BVI Model

114. As set out in paragraph 87, approximately 80% (by value) of Sino-Forest's timber assets were held in the BVI Model as of December 31, 2010.

115. Sino-Forest used the Purchase Contracts to acquire and evidence ownership of Standing Timber in the BVI Model. The Purchase Contracts purported to have three attachments:

a. Plantation Rights Certificates ("Certificates") or other ownership documents;

b. Farmers' Authorization Letters ("Farmers' Authorizations"); and

c. Timber Survey Reports ("Survey Reports").

116. The Purchase Contracts and their attachments were fundamentally flawed in at least four respects, thereby making those transactions suspect and unverifiable.

117. First, Sino-Forest did not hold Certificates evidencing ownership of the Standing Timber allegedly purchased by the BVI Subs. Instead, Sino-Forest claimed that, since the BVI Subs could not obtain Certificates from the PRC government to evidence ownership, it purported to rely on confirmations issued by the forestry bureaus in the PRC as such evidence ("Confirmations"). However, Confirmations are not legally recognized documents evidencing ownership of timber assets in the PRC. These Confirmations were purportedly granted to Sino-Forest as favors by the PRC forestry business. According to Sino-Forest, the PRC forestry bureaus did not intend that these Confirmations would be disclosed to third parties. Also, certain PRC forestry bureau employees obtained gifts and cash payments from Suppliers of Sino-Forest, further undermining the value of the Confirmations as evidence of ownership.

118. If E&Y had conducted a proper audit of Sino-Forest, the inadequacy of the Confirmations as proof of ownership and the questionable circumstances by which these Confirmations were issued likely would have been discovered sooner.

119. Second, during the Class Period, Sino-Forest employed a systematic quarterly documentation process in the BVI Model whereby the purported Purchase Contracts were not drafted and executed until the quarter **after** the date in which the purchase allegedly occurred, although the transaction was accounted for in the preceding fiscal quarter. This was in violation of both the Company's accounting policies and relevant accounting principles.

120. Like the Purchase Contracts, the Confirmations were also created by Sino-Forest and backdated to the **previous** quarter. These Confirmations were created contemporaneously with the creation of the corresponding Purchase Contracts. These Confirmations were then allegedly provided to the relevant PRC forestry bureau for verification and execution.

121. Third, the Purchase Contracts referred to Farmers' Authorizations as additional proof of Sino Forest's ownership of the assets. However, none were attached. In the absence of Farmers' Authorizations, there is no evidence that ownership to the Standing Timber was properly transferred to Sino-Forest or to the Supplier prior to the purported transfer of ownership to Sino-Forest. Ownership of the Standing Timber would have remained with the original Certificate holder and the related transaction should not have been booked.

122. Fourth, the Survey Reports, which purported to identify the general location of the purchased timber, were all prepared by a single firm during the Class Period. A 10% shareholder of this survey firm was also an employee of Sino-Forest. Drafts of certain Survey Reports purportedly prepared by this independent survey company were located on the computer of

another employee of Sino-Forest. Like the Purchase Contracts and Confirmations, these drafts of the Survey Reports were backdated to the quarter **prior** to their creation.

123. In the absence of both Certificates and Farmers' Authorizations, Sino-Forest relied on the validity of the Purchase Contracts and the Confirmations as proof of ownership of the Standing Timber it held in the BVI Model. However, the Purchase Contracts and available attachments, including Confirmations, were prepared after the close of the quarter as outlined above, and do not constitute proof of ownership of the trees purported to have been bought by Sino-Forest in the BVI Model.

124. Moreover, the Purchase Contracts and readily available attachments, including the Confirmations, did not identify the precise location of the Standing Timber being purchased such that the existence of this Standing Timber could not be readily verified and valued independently.

ii. Sales Contracts in the BVI Model

125. Like the Purchase Contracts, many of the Sales Contracts purportedly entered into by the BVI Subs in the BVI Model were not actually created and executed until the quarter **after** the date of the alleged transaction.

126. In fact, in its 2010 Annual Report, the Company expressed the following revenue recognition policy: "The timing of recognition of revenue from plantation fibre sales is dependent on the terms and conditions of the Company's contractual arrangements with its customers. To date, substantially all of the Company's plantation fibre revenue has been recognized when the Company and the buyer enter into a binding sales agreement. In situations where the Company is harvesting the plantation fibre and is responsible for all such related harvesting costs, revenue is recognized at the point in time when the logs are delivered to the

buyer." This revenue recognition policy is consistent with those reported in other Annual Reports.[6]

127. Accordingly, the revenue from the Sales Contracts in the BVI Model was improperly recognized in the quarter prior to the creation of the Sales Contracts. Therefore, the Financial Statements and public statements of Sino-Forest regarding its revenue from Standing Timber were materially false and misleading as revenue was improperly recognized in violation of applicable Company policies and accounting principles.

E. Undisclosed Internal Control Weaknesses/Failures

128. In its MD&A for 2010 dated March 15, 2011, Sino-Forest stated the following on page 27 regarding its "Disclosure Control and Procedures and Internal Controls Over Financial Reporting":

> The success of the Company's vision and strategy of acquiring and selling forestry plantations and access to a long-term supply of wood fibre in the PRC is dependent on senior management. **As such, senior management plays a significant role in maintaining customer relationships, negotiating and finalizing the purchase and sale of plantation fibre contracts and the settlement of accounts receivable and accounts payable associated with plantation fibre contracts.** This concentration of authority, or lack of segregation of duties, creates risk in terms of measurement and completeness of transactions as well as the possibility of non-compliance with existing controls, either of which may lead to the possibility of inaccurate financial reporting. By taking additional steps in 2011 to address this deficiency, management will continue to monitor and work on mitigating this weakness. **[Emphasis added]**

129. Sino-Forest made similar disclosure in its annual MD&A from 2006 to 2009 regarding this concentration of authority or lack of segregation and the risk resulting from these

[6] See Sino-Forest Corporation Condensed Interim Consolidated Financial Statements For the Six Months Ended June 30, 2011; 2007 MD&A; 2008 Annual Report; 2009 Annual Report.

weaknesses. These material weaknesses were not remedied during the Class Period by Sino-Forest, Overseas Management, the Audit Committee Defendants or Defendant Horsley.

130. Sino-Forest failed to disclose the extent of the concentration of duties in Overseas Management. It did not disclose that Overseas Management and their nominees had complete control over the operation of the BVI Model, including control over related parties, described in paragraphs 93 to 113, the creation and execution of the Purchase Contracts and Sales Contracts, described in paragraphs 114 to 127 and the extent of the "off-book" cash flow, set out in paragraphs 88 to 92. This concentration of control in the hands of Overseas Management facilitated the fraudulent course of conduct perpetrated in the BVI Model.

131. Although Sino-Forest did state that the concentration of authority in Overseas Management, their improper control over significant transactions and related entities, and lack of segregation of duties created a risk in terms of "measurement and completeness of transactions," and of "non-compliance with existing controls," Defendants omitted the fact that these were not simply risks but were, in fact, actually causing the issuance of materially false and misleading financial statements in violation of Canadian GAAP.

F. Four Examples of Fraudulent Transactions within the Standing Timber Fraud

132. During the Class Period, the Sino-Forest Defendants engaged in significant fraudulent transactions related to their purchase and sale of Standing Timber. These fraudulent transactions overstated Sino-Forest's assets, revenue, and income during the Class Period.

133. By way of example, four series of fraudulent transactions are detailed below: (i) the Dacheng Fraud; (ii) the 450,000 Fraud; (iii) Gengma Fraud #1; and (iv) Gengma Fraud #2.

134. In these transactions, Sino-Forest used certain Suppliers, AIs, and other nominee companies that it controlled to falsify the financial disclosure of Sino-Forest, including the value of its Standing Timber assets, revenue, and income.[7]

i. The Dacheng Fraud

135. Sino-Forest and the Individual Defendants committed fraud (the "Dacheng Fraud") in a series of purported transactions commencing in 2008, related to purchases of timber plantations (the "Dacheng Plantations") from a Supplier called Guangxi Dacheng Timber Co. Ltd. ("Dacheng"). Companies controlled by Sino-Forest through Huang Ran were used in the Dacheng Fraud.

136. The Dacheng Fraud involved duplicating the same Standing Timber assets within the Dacheng Plantations in the records of two Sino-Forest subsidiaries. Sino-Forest recorded the same assets once in the WFOE Model and again in the BVI Model.

137. In 2008, these Standing Timber assets were recorded at a value of RMB 47 million (approximately $6.3 million) in the WFOE Model and this amount was paid to Dacheng. These funds were then funneled through Dacheng back to other subsidiaries of Sino-Forest, as the purported collection of receivables.

138. At the same time, Sino-Forest recorded these Standing Timber assets in the BVI Model at a value of approximately $30 million. In 2009, Sino-Forest purported to sell the Standing Timber assets from the Dacheng Plantations held in the BVI Model for approximately $48 million. This revenue was recorded in Q3 of 2009.

139. As a result of the Dacheng Fraud, in 2008, Sino-Forest overstated the value of certain Standing Timber assets by approximately $30 million and, in 2009, Sino-Forest

[7] These fraudulent transactions have been identified by the OSC.

overstated its revenue by approximately $48 million. The effect of this revenue overstatement in Q3 of 2009 is set out in the table below:

Approximately Effect of the Dacheng Fraud on Q3 of 2009 ($ millions)

Quarterly Reported Revenue	367.0
Overstated Revenue	47.7
Overstated Revenue as a % of Quarterly Reported Revenue	13.0%

140. Sino-Forest improperly reported this revenue for Q3 of 2009 on page 20 of its annual MD&A for 2009 (dated March 16, 2010) and page 87 of its 2009 Annual Report, summarizing the "2009 Quarterly Highlights." Accordingly, Sino-Forest's Financial Statements for 2009 were also materially false and misleading.

ii. The 450,000 Fraud

141. Sino-Forest and Individual Defendants committed fraud (the "450,000 Fraud") in a complex series of transactions involving the purchase and sale of 450,000 cubic meters of timber in Q4 of 2009, again utilizing companies controlled by Sino-Forest through Huang Ran. In an email, Defendant Yeung described this purchase and sale of timber as "a pure accounting arrangement."

142. Three subsidiaries of Sino-Panel (the "Sino-Panel Companies") purported to purchase 450,000 cubic meters of Standing Timber at a cost of approximately $26 million from Guangxi Hezhou Yuangao Forestry Development Co. Ltd. ("Yuangao") during October 2009.

143. In Q4 of 2009, the Sino-Panel Companies purportedly sold this Standing Timber to the following three customers:

a. Gaoyao City Xinqi Forestry Development Co., Ltd. ("Xinqi");

b. Guangxi Rongshui Meishan Wood Products Factory ("Meishan"); and

c. Guangxi Pingle Haosen Forestry Development Co., Ltd. ("Haosen").

144. The sales price for this Standing Timber was approximately $33 million for an apparent profit of approximately $7.1 million.

145. The purported supplier (Yuangao) and the purported customers (Xinqi, Meishan, and Haosen) are all so-called "peripheral" companies of Sino-Forest, *i.e.*, they are nominee companies controlled by Huang Ran on behalf of Sino-Forest. Xinqi, Meishan, and Haosen are also companies included in the Caretaker Company List, and Haung Ran is identified as the "caretaker" of each company. *See* ¶ 93 herein.

146. This $33 million sale of Standing Timber was recorded in Sino-Forest's WFOE Model, as opposed to its BVI Model. As noted in paragraph 88, the BVI Model employs the Offsetting Arrangement whereby payables and receivables are made and collected "off-book." However, in the WFOE Model, Sino-Forest takes receipt of the sales proceeds directly or "on-book."

147. By July 2010, none of the sales proceeds had been collected and the receivable was long overdue. In order to evidence the "collection" of the $33 million in sales proceeds, Sino-Forest devised two separate "on-book" payables/receivables offsetting arrangements, one in 2010 and one in 2011, whereby Sino-Forest made payments to various companies, including Yuangao and at least two other Sino-Forest nominee companies.[8]

148. To account for the purported profit of $7.1 million, Sino-Forest had to "collect" more than just the purchase price ($26 million). Consequently, Sino-Forest created additional "payables" to complete the circular flow of funds needed to collect the sales proceeds of $33

[8] Dao County Juncheng Forestry Development Co., Ltd. And Guangxi Rongshui Taiyuan Wood Co., Ltd.

million. These "on-book" offsetting arrangements, therefore, included the purported settlement of various accounts payable, not just the Yuangao payable arising from the 450,000 Fraud.

149. The companies funneled the money to Xinqi, Meishan and Haosen who, in turn, repaid the money to the Sino-Panel Companies to achieve the purported collection of the $33 million in revenue.

150. The "on-book" offsetting arrangements required that Suppliers and customers have bank accounts through which the funds could flow. In July and August 2010, Sino-Forest set up bank accounts for the suppliers and customers associated with the 450,000 Fraud to facilitate the circular cash flows. These bank accounts were overseen by Defendants Ip and Ho, as well as a former Sino-Forest employee and his associate.

151. Had the E&Y properly conducted its audit properly, utilizing procedures designed to obtain competent evidence of these transactions, the true substance of these transactions would have been revealed.

152. These circular cash-flows commenced in July 2010 and continued until February 2011. The circular flow of funds underlying the 450,000 Fraud demonstrates that the sales contracts purportedly entered into between the Sino-Panel Companies and Xinqi, Meishan, and Haosen are fraudulent and have no true economic substance. As a result of the 450,000 Fraud, Sino-Forest overstated the value of its revenue by approximately $30 million for Q4 of 2009. The effect of this revenue overstatement on the financial statements of Sino-Forest for Q4 of 2009 is set out in this table:

Approximately Effect of the 450,000 Fraud on Q4 of 2009 ($ millions)

Quarterly Reported Revenue	469.6
Fraudulently Overstated Revenue	30.1
Fraudulently Overstated Revenue as a % of	6.4%

Quarterly Reported Revenue	

153. Sino-Forest reported its revenue for Q4 of 2009 at page 20 of its annual MD&A for 2009 (dated March 16, 2010) and page 87 of its 2009 Annual Report, summarizing the "2009 Quarterly Highlights." Accordingly, Sino-Forest's Financial Statements for 2009 were also materially false and misleading as they overstated revenue, income and assets.

iii. Gengma Fraud #1

154. Sino-Forest entered into a fraudulent transaction in 2007 related to Standing Timber assets purchased from Gengma Dai and Wa Tribe Autonomous Region Forestry Co., Ltd. ("Gengma Forestry") by Sino-Panel (Gengma) Co., Ltd. ("Sino-Panel Gengma"), a Sino-Forest subsidiary ("Gengma Fraud #1").

155. In 2007, Sino-Panel Gengma purchased certain land use rights and Standing Timber for approximately $14 million from Gengma Forestry. These contracts were signed by Chan. However, this transaction between Sino-Panel Gengma and Gengma Forestry was not recorded. Instead, Sino-Forest purported to purchase the same assets from Yuda Wood, allegedly paying approximately $68 million for the Standing Timber in 2007 and approximately $15 million for certain land use rights during the period from June 2007 to March 2009. This purchase was recorded and these Standing Timber assets remained on the books of Sino-Forest until 2010.

156. These fraudulent transactions resulted in an overstatement of Sino-Forest's timber holdings for 2007, 2008, and 2009.

157. In 2010, this Standing Timber was purportedly sold for approximately $231 million. However, these same Standing Timber assets were offered as collateral for a bank loan

by Sino-Forest in 2011, so the sale of those assets in 2010 could not have taken place and been recorded as revenue in that year.

158. Sino-Forest included these revenues in its reports for Q1 and Q2 at page 20 of its annual MD&A for 2010 (dated March 15, 2011) and page 88 of its 2010 Annual Report, summarizing the "2010 Quarterly Highlights."

The Gengma Fraud #1's Effect on the Reported Revenue of Sino-Forest

159. Gengma Fraud #1 resulted in Sino-Forest fraudulently overstating its revenue for Q1 and Q2 of 2010 as set out in the table below:

	Q1 2010	Q2 2010
Quarterly Reported Revenue	251.0	305.8
Amount Overstated Revenue	73.5	157.8
Fraudulently Overstated Revenue as a % of Quarterly Reported Revenue	29.3%	51.6%

160. This income fraudulently inflated Sino-Forest's revenue, income, and assets for Q1 and Q2 of 2010, misleading Class Members.

iv. Gengma Fraud #2

161. In 2007, Sino-Forest and the Individual Defendants committed fraud in another series of transactions to artificially inflate its assets and revenue from the purchase and sale of Standing Timber.

162. In September 2007, Sino-Forest recorded the acquisition of Standing Timber from Yuda Wood at a cost of approximately $21.5 million related to Standing Timber in Yunnan

Province (the "Yunnan Plantation"). However, Yuda Wood did not actually acquire these assets in the Yunnan Plantation until in September 2008 – one year later. ("Gengma Fraud #2")

163. In 2007, Sino-Forest also purportedly purchased the land use rights to the Yunnan Plantation from Yuda Wood at a cost of approximately $7 million, about 99% of which was paid to Yuda Wood during the period from January 2009 to April 2009. Sino-Forest then fabricated the sale of the land use rights to Guangxi Hezhou City Kun'an Forestry Co., Ltd. ("Kun'an") pursuant to a contract dated November 23, 2009. Kun'an was controlled by Sino-Forest through Person #1 and is a company included in the Caretaker Company list referred to in paragraph 93 above.

164. Sino-Forest then purported to sell the Standing Timber in the Yunnan Plantation in a series of transactions between March 2008 and November 2009 for approximately $49 million. As Yuda Wood did not own this Standing Timber asset until September 2008, Sino-Forest could not have recorded sales of this Standing Timber prior to that time. Accordingly, Sino-Forest's Financial Statements for 2007 through 2009 were materially false and misleading as they overstated revenues, income, and assets.

The Gengma Fraud #2's Effect on the Reported Revenue of Sino-Forest

165. The purported transactions underlying Gengma Fraud #2 resulted in Sino-Forest fraudulently overstating its revenue for Q1, Q2, Q3 of 2008, and Q4 of 2009 as set out in this table:

Approximate Effect of Gengma Fraud #2 on Q1, Q2, and Q3 of 2008 and Q4 of 2009 ($ millions)

	Q1 2008	Q2 2008	Q3 2008	Q4 2009
Quarterly Reported Revenue	136.1	187.1	295.5	469.6
Fraudulently	5.7	4.9	5..9	32.6

Overstated Revenue				
Fraudulently Overstated Revenue as a % of Quarterly Reported Revenue	4.2%	2.6%	2.0%	6.9%

166. Sino-Forest reported its revenue for Q1, Q2, and Q3 of 2008 at page 19 of its annual MD&A for 2008 (dated March 16, 2009) and page 73 of its 2008 Annual Report summarizing the "2008 Quarterly Highlights." Revenue for Q4 of 2009 was reported as set out above in paragraph 141. Accordingly, Sino-Forest's Financial Statements for 2008 and 2009 were also materially false and misleading as they overstated revenues, income, and assets.

G. The Greenheart Transaction

167. In 2010, following a complex series of transactions, Sino-Forest completed the purchase of a controlling interest in Greenheart Group Ltd. ("Greenheart"), a public company listed on the Hong Kong Stock Exchange. Sino-Forest's 64% interest in Greenheart was acquired for approximately $120 million in cash and Company stock. Greenheart holds natural forest concessions, mostly in Suriname. Greenheart controls most of Sino-Forest's supposedly substantial forestry assets outside of China. Sino-Forest also holds a 39.6% stake in Greenheart Resources Holdings Ltd. ("GRH"), a subsidiary of Greenheart. GRH, in turn, indirectly owns 100%of Greenheart's forest assets and operations in the western part of Suriname, supposedly one of Sino-Forest's principal timber holdings.

168. The Sino-Forest Defendants made materially misleading statements in Sino-Forest's AIFs for 2008, 2009, and 2010 by not disclosing Chan's interest in the Greenheart Transaction. These misleading statements were also contained in Sino-Forest's short form

prospectuses filed in 2009 (which incorporated by reference the relevant AIFs and MD&A as required by Ontario securities law).[9]

169. Two of the companies holding shares of GRHL, thus benefitting from the Greenheart Transaction, were Fortune Universe Ltd. ("Fortune Universe") and Montsford Ltd. ("Montsford"). Both Fortune and Montsford were BVI shelf companies incorporated in 2004 and subsequently acquired by, or for the benefit of, Chan in 2005.

170. As a result of the Greenheart Transaction, Fortune Universe and Montsford received over $22.1 million, comprised of approximately $3.7 million in cash and approximately $18.4 million in securities of Sino-Forest. The Sino-Forest securities received by Fortune Universe and Montsford appreciated in value and were subsequently sold for a total of approximately $35 million. With the help of Chan's assistant, these securities were sold through brokerage accounts of Fortune Universe and Montsford, which were opened at her direction on the instructions of Chan. However, Chan arranged for the sole director/shareholder of Fortune Universe and the sole director/shareholder of Montsford to act as Chan's nominees. Chan was the true beneficial owner of Fortune Universe and Montsford.

171. The sole director/shareholder of Fortune Universe was the legal representative and director of one of Sino-Forest's largest Suppliers during the Class Period. The sole director/shareholder of Montsford was an acquaintance of Chan based in the PRC.

172. While Sino-Forest disclosed that another director of Sino-Forest had an interest in the Greenheart Transaction in its AIFs for 2008, 2009, and 2010, it did not disclose that Chan benefitted directly or indirectly from the Greenheart Transaction through Fortune Universe and Montsford.

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[9] *See also* the Company's short form prospectuses filed in 2008 and 2010.

173. Chan failed to disclose his substantial personal interest in the Greenheart Transaction and the over $22 million received by entities under his control. Chan and Sino-Forest misled the investing public in Sino-Forest's filings and public statements. Chan falsely certified the accuracy of Sino-Forest's AIFs for 2008, 2009, and 2010, as these documents failed to disclose his interest in the Greenheart Transaction. Accordingly, Sino-Forest's Financial Statements for these years were also materially false and misleading for improperly reporting related party transactions.

IV. SINO-FOREST'S MATERIALLY FALSE AND MISLEADING STATEMENTS

174. During the Class Period, Sino-Forest made numerous statements that were materially false and misleading and which had the effect of artificially inflating the value of Sino-Forest's securities. These false statements were contained in the Company's public filings, press releases, reports and other statements to the investing public. As described above, during the Class Period, the Company reported steadily increasing holdings of timber assets (mostly in the PRC) achieved through acquisitions and purchases, and increasing revenues and earnings, all of which contributed to the Company's rising stock price and its ability to issue additional debt and equity securities to investors.

175. By omitting material facts and failing to disclose the improper recognition of revenues, overstatement of assets, and other misconduct described above, the Sino-Forest Defendants made materially misleading statements or omitted material facts in its filings to the Ontario Securities Commission during the Class Period. The materially false and misleading statements or omitted facts related to Sino-Forest's business and financial results were contained in (or absent from) the Company's public filings, including its audited annual financial

statements, AIFs, prospectuses, and MD&As filed with the Ontario Securities Commission during the Class Period as required by Canadian securities law.

176. Besides the issuance of false and misleading financial statements, examples of other materially false and misleading statements include:

a. Sino-Forest's statement in its 2010 AIF that the Company applied for Plantation Rights Certificates and obtained confirmation of ownership from the forestry bureaus: "For our purchased plantations, we have applied for the corresponding Plantation Rights Certificates with the relevant local forestry bureaus. As the relevant locations where we purchased our purchased plantations have not fully implemented the new form of Plantation Rights Certificate, we are not able to obtain all the corresponding Plantation Rights Certificates for our purchased plantations. Instead, we obtained confirmation of our ownership of our purchased plantations from the relevant forestry bureaus. Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased plantations."

b. Sino-Forest's statement in its 2010 AIF that "The PRC government is in the process of gradually implementing the issuance of the new form of certificates on a nationwide scale. However, the registration and issuance of the new form plantation rights certificates by the PRC State Forestry Administration have not been fully implemented in a timely manner in certain parts of the PRC. We have obtained the plantation rights certificates or requisite approvals for acquiring the relevant plantation rights for most of the purchased plantations and planted plantations currently under our management, and we are in the process of applying for

the plantation rights certificates for those plantations for which we have not obtained such certificates."[10]

177. Thus, beginning at least as early as March 19, 2007, the Company's MD&A and annual filings were materially false and misleading with respect to the Company's operations and financial performance because they described the Company as a fast-growing, legitimate business that followed good corporate governance practices, while failing to disclose: (1) that the Company engaged in multiple fraudulent transactions which resulted in the overstatement of assets, revenues and income; (2) that the Company lacked adequate internal controls to substantiate its financial performance or verify its assets and contractual relationships; (3) that its operations were permeated by unsubstantiated and undisclosed related party transactions; and (4) that its financial statements were materially misleading and not prepared in accordance with the applicable accounting standards These material facts were omitted from the Company's filings and reports listed in Paragraphs 190 and 192 herein.

178. These misleading statements and omissions, including the assets, revenue, and income recorded as a result of the Standing Timber Fraud, among other things, were material as they related to Sino-Forest's primary business in the BVI Model and the WFOE Model, representing approximately 90% of Sino-Forest's stated timber assets as of December 31, 2010 and 75% of its stated revenue from 2007 to 2010.

179. In addition, Sino-Forest's statements in its public disclosures, including its AIFs and its MD&As filed with the Ontario Securities Commission during the Class Period, regarding the extent of its internal control weaknesses and deficiencies were wholly inadequate and

[10] *See also* the Company's 2007, 2008, and 2009 AIFs wherein the Company gives conflicting responses as to the issuance of plantation rights certificates.

misleading in light of the pervasive control management had over the transactions and entities Sino-Forest conducted business with and their ability to circumvent the Company's accounting practices and policies.

C. Misrepresentations and Omissions With Respect to Sino-Forest's Financial Statements

180. Sino-Forest's financial statements, which were disseminated on a quarterly and annual basis via press releases and public filings, consistently portrayed Sino-Forest as a profitable and rapidly expanding company. As set forth in Sino-Forest's 2006 Annual Consolidated Financial Statements, dated March 19, 2007; its 2007 Annual Consolidated Financial Statements, dated March 18, 2008; its 2008 Annual Consolidated Financial Statements, dated March 16, 2009; its 2009 Annual Consolidated Financial Statements, dated March 16, 2010; and its 2010 Annual Consolidated Financial Statements, dated March 15, 2011, the Company's revenue, earnings, and assets supposedly grew during the Class Period as follows:

	2006	2007	2008	2009	2010
Assets	$1,207,255,000	$1,837,497,000	$2,603,924,000	$3,963,899,000	$5,729,033,000
Revenue	$555,480,000	$713,866,000	$896,045,000	$1,238,185,000	$1,923,536,000
Net Income	$113,480,000	$152,273,000	$228,593,000	$286,370,000	$395,426,000

181. Each of the annual financial statements, except for the 2006 statements, were accompanied by an audit opinion from E&Y stating that E&Y had conducted annual audits in accordance with Canadian GAAS and that these financial statements were presented in accordance with Canadian GAAP. Defendant Chan signed each annual financial statement.

182. E&Y consented to the inclusion in the June 2009 and December 2009 Prospectuses, as well as the July 2008, June 2009, December 2009, and October 2010 Offering

Memoranda, of its audit reports on Sino's Annual Financial Statements issued during the Class Period.

183. Defendants Hyde and West are former E&Y partners and employees. They served on Sino-Forest's Audit Committee but purported to exercise oversight of their former E&Y colleagues. In addition, Sino-Forest's Vice-President, Finance (Corporate), Thomas M. Maradin, is a former E&Y employee. Also, during the Class Period, at least 3 other former E&Y staff members were employed by Sino-Forest.

184. The charter of Sino-Forest's Audit Committee required that Ardell, Bowland, Hyde, and West review and take action to eliminate all factors that might impair, or be perceived to impair, the independence of the Auditor. Sino-Forest's practice of hiring numerous former E&Y staff and appointing former E&Y partners to its board and the audit committee – and paying them handsomely (for example, Hyde was paid $163,623 by Sino-Forest in 2010, $115,962 in 2009, $57,000 in 2008, and $55,875 in 2007, plus stock options and other compensation) – undermined the Audit Committee's oversight of E&Y.

185. E&Y's independence was further impaired by the significant non-audit fees it was paid during 2008-2010, which total $712,000 in 2008, $1,225,000 in 2009, and $992,000 in 2010.

186. As described above, the Sino-Forest Defendants created and executed the Purchase Contracts in the BVI Model in the quarters after the assets acquired in those transactions were recognized. This made Sino-Forest's audited annual financial statements, AIFs, and MD&A for the years 2006, 2007, 2008, 2009, and 2010 materially false and misleading as revenues, income, and assets were all overstated. *See* paragraphs 114 to 124 above.

187. Further, given that Sino-Forest did not have sufficient proof of ownership of the majority of its Standing Timber assets due to the conduct described above, the information regarding Sino-Forest's timber holdings in its audited annual financial statements, AIFs, and MD&As for the years 2006, 2007, 2008, 2009, and 2010 were materially false and misleading. For the same reasons, the information regarding Sino-Forest's timber holdings in its short form prospectuses filed in 2007 and 2009 (which incorporated by reference the relevant audited annual financial statements, AIFs, and MD&As as required by Ontario securities law) was materially false and misleading as revenues, income, and assets were all overstated.

188. In addition, the creation and execution of sales contracts in the BVI model following the close of a quarter where the revenue related to those transactions was recognized, was contrary to the revenue recognition process set out in Sino-Forest's public filings including its MD&A and the notes to its audited annual financial statements – making those representations therefore, materially false and misleading as revenues, income, and assets were all overstated. *See* paragraphs 126 to 127 above.

189. The Company also issued materially false and misleading unaudited "Interim Financial Statements" during the Class Period, which incorporated prior period audited financial statements and similarly overstated the Company's revenue, earnings, and assets. The Company's materially false and misleading quarterly financial statements (through 2010) which, like the annual financial statements, showed increasing revenue, earnings, and assets, were released on the following dates:

Document	**Date of Filing**
2007 Q-1 Interim Financial Statements	5/14/2007
2007 Q-2 Interim Financial Statements	8/13/2007
2007 Q-3 Interim Financial Statements	11/12/2007

Document	Date of Filing
2008 Q-1 Interim Financial Statements	5/13/2008
2008 Q-2 Interim Financial Statements	8/12/2008
2008 Q-3 Interim Financial Statements	11/13/2008
2009 Q-1 Interim Financial Statements	5/11/2009
2009 Q-2 Interim Financial Statements	8/10/2009
2009 Q-3 Interim Financial Statements	11/12/2009
2010 Q-1 Interim Financial Statements	5/12/2010
2010 Q-2 Interim Financial Statements	8/10/2010
2010 Q-3 Interim Financial Statements	11/10/2010

Each of the financial statements listed above, as well as the reports listed in Paragraph 192, contained materially false and misleading financial statements and statements regarding the Company's financial results that omitted material facts described in Paragraph 191.

190. Sino-Forest's quarterly and annual financial statements (through December 31, 2010) were materially false and misleading because they failed to comply with Canadian GAAP. Specifically, at the time each of these financial statements was issued, it overstated the Company's assets, inflated the reported revenue and earnings, and misled investors regarding the Company's then-current financial situation and future prospects. Defendants failed to disclose to investors that: (1) the Company engaged in multiple fraudulent transactions which resulted in the overstatement of assets, revenues, and income; (2) the Company lacked adequate internal controls to substantiate its financial performance or verify its assets and contractual relationships; (3) the Company's operations were permeated by unsubstantiated and undisclosed related party transactions; and (4) the Company's financial statements were materially misleading and not prepared in accordance with the applicable accounting standards. Sino-Forest's quarterly financial statements for the first two quarters of fiscal year 2011 also overstated the Company's

assets, revenues, and net earnings at the time they were issued and were not presented in accordance with the applicable Canadian accounting standards.

D. Other Misrepresentations and Omissions In Annual And Quarterly Filings

191. In addition to filing false and misleading financial statements, the Company made numerous other false and misleading statements to investors in other periodic securities filings made pursuant to Canadian disclosure regulations. During the Class Period, the Sino-Forest Defendants repeatedly made statements in Sino-Forest's periodic filings that falsely and misleadingly described the Company as a fast-growing, legitimate business that followed good corporate governance practices.

192. The Company's periodic reports to investors included (in addition to the separately filed financial statements) a "Management Discussion and Analysis" ("MD&A") that Sino-Forest filed each quarter during the Class Period, "Annual Information Forms" ("AIFs") and annual reports. These documents provided to investors and others gave narrative explanations of the Company's business, operations and financial performance for the specific period, and of the Company's financial condition and future prospects. Canadian law specifically requires that the MD&A discuss important trends and risks that have affected the Company and that are reasonably likely to affect it in future. The dates of these false and misleading statements are set out in the table below:

Document	Date of Filing
2006 MD&A	3/19/2007
2006 AIF	3/30/2007
2006 Annual Report	5/4/2007
2007 Q-1 MD&A	5/14/2007
2007 Q-2 MD&A	8/13/2007

Document	Date of Filing
2007 Q-3 MD&A	11/12/2007
2007 MD&A	3/18/2008
2007 AIF	3/28/2008
2007 Annual Report	5/6/2008
2008 Q-1 MD&A	5/13/2008
2008 Q-2 MD&A	8/12/2008
2008 Q-3 MD&A	11/13/2008
2008 MD&A	3/16/2009
2008 AIF	3/31/2009
2008 Annual Report	5/4/2009
2009 Q-1 MD&A	5/11/2009
2009 Q-2 MD&A	8/10/2009
2009 Q-3 MD&A	11/12/2009
2009 MD&A	3/16/2010
2009 AIF	3/31/2010
2009 Annual Report	5/11/2010
2010 Q-1 MD&A	5/12/2010
2010 Q-2 MD&A	8/10/2010
2010 Q-3 MD&A	11/10/2010
2010 MD&A	3/15/2011
2010 AIF	3/31/2011
2010 Annual Report	5/10/2011

Each of the reports listed above contained materially false and misleading financial statements and contained statements regarding the Company's financial results that omitted material facts described in Paragraph 176.

E. False Certifications

193. Each annual financial statement, AIF, and MD&A filing was accompanied by separate certifications signed by Defendants Chan and Horsley, which asserted the following:

> 1. Review: I have reviewed the AIF, if any, annual financial statements and annual MD&A, including, for greater certainty, all documents and information that are incorporated by reference in the AIF (together, the "annual filings") of Sino-Forest Corporation (the "issuer") for the financial year ended December 31…
>
> 2. No misrepresentations: Based on my knowledge, having exercised reasonable diligence, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, for the period covered by the annual filings.
>
> 3. Fair presentation: Based on my knowledge, having exercised reasonable diligence, the annual financial statements together with the other financial information included in the annual filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, as of the date of and for the periods presented in the annual filings.

194. Similarly, each of the quarterly interim financial statements and quarterly MD&As were accompanied by separate certifications signed by Defendants Chan and Horsley, which also asserted the following:

> 1. Review: I have reviewed the interim financial report and interim MD&A (together, the "interim filings") of Sino-Forest Corporation (the "issuer") for the interim period ended….
>
> 2. No misrepresentations: Based on my knowledge, having exercised reasonable diligence, the interim filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings.
>
> 3. Fair presentation: Based on my knowledge, having exercised reasonable diligence, the interim financial report together with the other financial information included in the interim filings fairly present in all material respects the financial condition, financial performance and cash flows of the issuer, as of the date of and for the periods presented in the interim filings.

195. However, these publicly filed certifications were materially false and misleading because the Company's quarterly and annual financial statements overstated its assets, revenues and earnings, and the narrative statements were materially false and misleading. These statements failed to disclose (1) that the Company engaged in multiple fraudulent transactions which resulted in the overstatement of assets, revenues and income; (2) that the Company lacked adequate internal controls to substantiate its financial performance or verify its assets and contractual relationships; (3) that its operations were permeated by unsubstantiated and undisclosed related party transactions; and (4) that its financial statements were materially misleading and not prepared in accordance with the applicable accounting standards.

F. Misrepresentations and Omissions Relating To Yunnan Forestry Assets

196. On March 23, 2007, Sino-Forest issued a press release announcing that it had entered into an agreement to sell 26 million shares to several institutional investors for gross proceeds of $200 million and that the proceeds would be used for the acquisition of standing timber including, pursuant to a new agreement, the purchase of standing timber in China's Yunnan Province. The press release further stated that Sino-Forest-Panel (Asia) Inc. ("Sino-Forest-Panel"), a wholly-owned subsidiary of Sino-Forest, entered into (on that same day) an agreement with Gengma Dai and Wa Tribes Autonomous Region Forestry Company Ltd., ("Gengma Forestry") in Lincang City, Yunnan Province in the PRC. Under that Agreement, Sino-Forest-Panel would acquire approximately 200,000 hectares of non-state owned commercial standing timber in Lincang City and surrounding cities in Yunnan for $700 million to $1.4 billion over a 10-year period.

197. Similar representations regarding the acquisition of these assets were also made in Sino-Forest's Q1 2007 MD&A. Moreover, throughout the Class Period, Sino-Forest discussed

its purported Yunnan acquisitions in other filings and public statements. In the Company's 2010 AIF, filed on March 31, 2010, the Company asserted that "[a]s of December 31, 2010, we have acquired approximately 190,300 hectares of plantation trees for US $925.9 million under the terms of the master agreement" which was entered into in March 2007. It made a similar statement in its 2010 annual report, which was filed on May 10, 2011.

198. However, as discussed above in paragraphs above 196 to 198 , Sino-Forest's and Defendants' statements concerning the acquisition of assets in Yunnan Province were materially false and misleading because, among other reasons, Sino-Forest acquired the rights to far less timber than the Company claimed and/or the value attributed to the timber assets purportedly owned by Sino-Forest was materially overstated. As a result, the Company's representations relating to its financial results and business were materially misleading as Defendants failed to disclose the true amount of timber acquired from Gengma Forestry, thereby overstating the assets carried on the balance sheet.

G. Misrepresentations and Omissions Relating to the Offering of 2017 Notes

199. On October 14, 2010, Sino-Forest, through the Underwriter Defendants, offered and sold the 2017 Notes. The Underwriter Defendants served as Joint Global Coordinators and Lead Bookrunning Managers. The 2017 Notes were purportedly exempt from registration requirements under the U.S. Securities Act because they were offered, pursuant to SEC Rule 144A, to qualified institutional buyers (including those in the U.S.), and in offshore transactions to investors other than U.S. persons under SEC Regulation S.

200. The 2017 Notes were sold pursuant to the Offering Memorandum, which was materially false and misleading as described below, and which was prepared by the Sino-Forest Defendants and the Underwriter Defendants. The Offering Memorandum specifically

incorporates by reference Sino-Forest's misleading 2007, 2008, and 2009 annual financial statements, its misleading unaudited interim financial statements for the six months ended June 30, 2009 and June 30, 2010, and Defendant E&Y's audit reports dated March 13, 2009 and March 16, 2010 (with E&Y's consent). The Offering Memorandum states that the documents incorporated by reference "form [an] integral part of [the] Offering Memorandum."

201. As underwriters of the Note Offering, the Underwriter Defendants had a duty to investors to conduct an adequate due diligence with respect to the representations in the Offering Memorandum. The Underwriter Defendants were reckless or negligent in performing due diligence on the Note Offering by failing, among other things, to determine the legitimacy of the Company's revenues, earnings and income, its lack of internal controls, the existence of multiple related party transactions or to ascertain the true value of the assets, properties and business of Sino-Forest, resulting in the issuance of a materially false and misleading Offering Memorandum.

202. The Offering Document was signed by the Underwriter Defendants and contained both Sino-Forest's misleading financial statements and the misleading narrative description of the Company' results and its future prospects, including the portrayal of the Company as a fast-growing, legitimate business which followed good corporate governance practices with positive future prospects for growth. In particular, the Offering Memorandum cited the Company's competitive strengths including, among others, the following: (i) "Leading commercial forest plantation operator in the PRC with established track record;" (ii) "First mover advantage with strong track record of obtaining and developing commercial tree plantations and ability to leverage our industry foresight;" (iii) "Future growth supported by long-term master agreements

at agreed capped prices;" (iv) "Strong research and development capability, with extensive forestry management expertise in the PRC;" and (v) "Diversified revenue and asset base."

203. As described above, each of these additional statements in the Offering Document were materially false and misleading because, contrary to the financial results reported in its financial statements, and contrary to the description of Company with major strengths as a forest plantation operator, the Company was engaged in fraudulent practices, resulting in the overstatement of assets, revenues and earnings, and misleading statements about its contractual relationships with certain parties in the PRC related to the purchase of timber acreage. Thus, at the time of the Note Offering, investors were misled because the Company's actual financial condition, results of operation, and future business prospects were much worse than these public statements indicated.

H. Misrepresentations and Omissions Relating to Code of Business Conduct

204. At all material times, Sino-Forest maintained it had in place a Code of Business Conduct (the "Code"), which governed its employees, officers and directors. The full text of the code was posted on the Company's Internet site and available to investors. It stated that the members of senior management "are expected to lead according to high standards of ethical conduct, in both words and actions." The Code further required that Sino-Forest representatives act in the best interests of shareholders, that corporate opportunities not be used for personal gain, that insiders not trade in Sino-Forest securities based on undisclosed knowledge stemming from their position or employment with Sino-Forest, that the Company's books and records be honest and accurate, that conflicts of interest be avoided, and that any violations or suspected violations of the Code, and any concerns regarding accounting, financial statement disclosure, internal accounting or disclosure controls or auditing matters, be reported.

205. Nonetheless, as explained in this Complaint, the publicly disclosed Code contained materially false and misleading statements because, as described herein in paragraphs 204-205 Sino-Forest's top executives placed their own interests ahead of the Company's and did not actually follow the provisions of the Code in that they sold Sino-Forest stock while in possession of material, non-public information and profited from transactions entered into with related parties.

G. Misrepresentations and Omissions Relating to Poyry's Valuation of Sino-Forest's Forestry Assets

206. As particularized above, Sino-Forest overstated its forestry assets in Yunnan and Jiangxi Provinces in the PRC and in Suriname. Accordingly, Sino-Forest's total assets are overstated to a material degree in all of the Financial Statements, Annual Reports, MD&As, AIFs, and other investor documents, in violation of Canadian GAAP, and each such statement of Sino's total assets constitutes a misrepresentation or omission of material fact.

207. In addition, during the Class Period, Poyry and entities affiliated with it made statements that are misrepresented Sino-Forest's Yunnan Province "assets," namely:

a. In a report dated March 14, 2008, filed on SEDAR (the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators) on March 31, 2008, (the "2008 Valuations"), Poyry: (a) stated that it determined the valuation of the Sino-Forest assets to be $3.2 billion as of December 31, 2007; (b) provided tables and figures regarding Yunnan; (c) stated that "Stands in Yunnan range from 20 ha to 1000 ha," that "In 2007 Sino-Forest purchased an area of mixed broadleaf forest in Yunnan Province," that "Broadleaf forests already acquired in Yunnan are

all mature," and that "Sino-Forest is embarking on a series of forest acquisitions/expansion efforts in Hunan, Yunnan, and Guangxi;" and (d) provided a detailed discussion of Sino-Forest's Yunnan "holdings" at Appendices 3 and 5. Poyry's 2008 Valuations were incorporated in Sino-Forest's 2007 Annual MD&A, amended 2007 annual MD&A, 2007 AIF, each of the Q1, QW2, and Q3 2008 MD&As, Annual 2008 MD&A, amended Annual 2008 MD&A, each of the Q1, Q2, and Q3 2009, annual 2009 MD&A, and July 2008 and December 2009 Offering Memoranda;

b. In a report dated April 1, 2009 and filed on SEDAR on April 2, 2009 (the "2009 Valuations"), Poyry stated that "[t]he area of forest owned in Yunnan has quadrupled from around 10,000 ha to almost 40,000 ha over the past year," provided figures and tables regarding Yunnan, and stated that "Sino-Forest has increased its holding of broadleaf crops in Yunnan during 2008, with this province containing nearly 99% of its broadleaf resource." Poyry's 2009 Valuations were incorporated in Sino-Forest's 2008 AIF, each of the Q1, Q2, and Q3 2009 MD&As, Annual 2009 MD&A, June 2009 Offering Memorandum, and June 2009 and December 2009 Prospectuses;

c. In a "Final Report" dated April 23, 2010, filed on SEDAR on April 30, 2010 (the "2010 Valuations"), Poyry stated that "Guangxi, Hunan, and Yunnan are the three largest provinces in terms of Sino-Forest's holdings. The largest change in area by province, both in absolute and relative terms [sic] has been Yunnan, where the area of forest owned has almost tripled,

from around 39,000 ha to almost 106,000 ha over the past year," provided figures and tables regarding Yunnan, stated that "Yunnan contains 106,000 ha, including 85,000 ha or 99% of the total broadleaf forest," stated that "the three provinces of Guangxi, Hunan, and Yunnan together contain 391,000 ha or about 80% of the total forest area of 491,000 ha" and that "[a]lmost 97% of the broadleaf forest is in Yunnan," and provided a detailed discussion of Sino-Forest's Yunnan "holdings" at Appendices 3 and 4. Poyry's 2010 Valuations were incorporated in Sino-Forest's 2009 AIF, the annual 2009 MD&A, each of the Q1, Q2, and Q3 2010 MD&As, and the October 2010 Offering Memorandum;

d. In a "Summary Valuation Report" regarding "Valuation of Purchased Forest Crops as at 31 December 2010" and dated May 27, 2011, Poyry provided tables and figures regarding Yunnan, stated that "[t]he major changes in area by species from December 2009 to 2010 has been in Yunnan pine, with acquisitions in Yunnan and Sichuan provinces" and that "[a]nalysis of [Sino's] inventory data for broadleaf forest in Yunnan, and comparisons with an inventory that Poyry undertook there in 2008 supported the upwards revision of prices applied to the Yunnan broadleaf large size log," and stated that "[t]he yield table for Yunnan pine in Yunnan and Sichuan provinces was derived from data collected in this species in these provinces by Poyry during other work;" and

e. In a press release titled "Summary of Sino-Forest's China Forest Asset 2010 Valuation Reports" and which was "jointly prepared by Sino-Forest

> and Poyry to highlight key findings and outcomes from the 2010 valuation reports," Poyry reported on Sino's "holdings" and estimated the market value of Sino's forest assets on the 754,816 ha to be approximately $3.1 billion as of December 31, 2010.

208. These Poyry reports were materially false and misleading based on the lack of evidence that Sino-Forest owned the assets described therein..

V. INITIAL DISCLOSURE OF FRAUD AT SINO-FOREST

209. A report published on June 2, 2011 by Muddy Waters (the "Report"), a research firm that specializes in analyzing Chinese companies traded in the United States and Canada, reported that Sino-Forest and its financial statements were permeated by fraud.

210. The Report detailed the extensive investigative effort and resources that Muddy Waters had undertaken to discover the truth about the Company:

> In order to conduct our research, we utilized a team of 10 persons who dedicated most to all of their time over two months to analyzing [Sino-Forest]. The team included professionals who focus on China from the disciplines of accounting, law, finance, and manufacturing. Our team read over 10,000 pages of documents in Chinese pertaining to the company. We deployed professional investigators to five cities. We retained four law firms as outside counsel to assist with our analysis.

211. The Muddy Waters report concluded that the Company was extensively involved in business practices that were "blatantly illegal" and that the Company's financial statements and other reports to investors were permeated by fraud. According to the Report, Sino-Forest's remarkably consistent growth during the Class Period was illusory – simply the result of "a Ponzi scheme," rather than a real expansion in Sino-Forest's business. According to Muddy Waters, the Company used its supposed growth and profitability to raise money from private

lenders and the financial markets. This money, in turn, was used to bolster an appearance of further growth and increased profitability, which in turn opened the door to additional funding from private lenders and the capital markets. According to the Report, however, the capital raised by Sino-Forest was not used to expand the Company's business, but was instead largely siphoned off by insiders in undisclosed related party transactions.

212. At the heart of the misconduct at Sino-Forest, according to Muddy Waters, is the Company's use of AIs. The Report noted that AIs apparently act as both buyers and sellers in Sino-Forest transactions. For example, in one case uncovered by Muddy Waters, an AI purchased logs from Sino-Forest and delivered them to a chipping facility. Once the logs reached the facility they were sold back to Sino-Forest. Sino-Forest then turned around and sold the logs back to the AI who then proceeded to turn the logs into wood chips. The purpose of these transactions, which were pointless from a business perspective, was to create the appearance of additional revenue for Sino-Forest. This type of "circular" transaction was also found by the Ontario Securities Commission during its investigation of the Company.

213. The Report also disclosed that Sino-Forest vastly overstated its forestry assets. In China's Yunnan Province alone, the overstatement is potentially hundreds of millions of dollars. As noted above, in March 2007 Sino-Forest publicly announced that it had entered into an agreement to purchase up to 200,000 hectares of trees in Lincang City in Yunnan for $700 million to $1.4 billion, but a review of relevant government documents by Muddy Waters indicated that the actual size of this purchase was about 40,000 hectares.

214. Furthermore, although Sino-Forest generally does not identify the companies from which it purchases forestry assets, Muddy Waters was able to identify many of these companies by means that included careful review of government records. Muddy Waters visited

many of these entities, finding that they "generally operated out of apartments while purportedly each doing annual revenue in the hundreds of millions from TRE [Sino-Forest] alone." This discovery supports Muddy Waters' conclusion that a substantial portion of the Company's reported purchases of forestry assets were greatly exaggerated or never occurred at all.

215. The Report also noted that Sino-Forest had engaged in substantial transactions with undisclosed related parties, transactions which are in violation of the applicable accounting rules and which require disclosure of related party transactions. An example is Jiangxi Zhonggan Industrial Development Company Ltd., which was incorporated just months before it entered into an approximately $700 million contract with Sino-Forest in June 2009. The legal representative and President of this company is Sino-Forest Executive Vice President, Lam Hong Chiu. According to Muddy Waters, Zhonggan's 2008 and 2009 audit report shows "numerous large transactions between the Company, TRE, and other parties." Separately, Muddy Waters identified Huaihua Yuda Wood Company Ltd., as "an undisclosed TRE subsidiary that has been receiving massive amounts of money from TRE's subsidiaries."

216. On publication of the Muddy Waters Report, the price of Sino-Forest's securities dropped dramatically. On June 2, 2011, the Company's shares, which ended trading at $18.64 on June 1, ended trading on the OTC market at $7.33 and then fell further, to $5.41 on June 3, a price drop of 71% over two days on substantially larger volume than normal. The prices of the Company's debt securities also declined significantly.

VI. SINO-FOREST'S DENIALS AND FURTHER MISLEADING STATEMENTS

217. Soon after publication of the Muddy Waters Report, Defendants began an organized campaign to further mislead investors by falsely claiming that there was no

misconduct at the Company. These denials and misleading statements (¶¶ 174-179) continued to prop up the prices of Sino-Forest securities until trading was halted on August 26, 2011.

218. In a June 3, 2011 press release, the Company asserted that "[t]he Board of Directors and management of Sino-Forest wish to state clearly that there is no material change in its business or inaccuracy contained in its corporate reports and filings that needs to be brought to the attention of the market. Further we recommend shareholders take extreme caution in responding to the Muddy Waters report." The release also quoted Defendant Chan as saying the following: "let me say clearly that the allegations contained in this report [by Muddy Waters] are inaccurate and unfounded." The release quoted Defendant Horsley as saying "I am confident that the [Sino-Forest Board of Directors'] independent committee's examination will find these allegations to be demonstrably wrong."

219. In a June 6, 2011 press release, Sino-Forest further stated that "The Company believes Muddy Waters' report to be inaccurate, spurious and defamatory." The press release quoted Defendant Chan as saying the following: "I stand by our audited financial statements, including the revenue and assets shown therein. All material related party transactions are appropriately disclosed in our financial statements. We do business with the parties identified in the report at arm's length. Those parties are not related or connected to the Company or any of its management."

220. During a June 14 conference call with investors, Defendant Chan suggested that the Muddy Waters allegations were entirely inaccurate, accusing Muddy Waters of a "pattern of sloppy diligence and gross inaccuracy."

221. Moreover, even after the release of the Muddy Waters Report, the Sino-Forest Defendants continued their practice of making false and misleading statements about Sino-

Forest's financial condition and future prospects. On both June 14, 2011 and August 15, 2011, Sino-Forest filed, respectively, its Interim Financial Statements and its MD&A covering the first quarter which were materially false and misleading.

222. The August 15, 2011 MD&A also made the following false statement: "[u]nder the master agreement entered in March 2007 to acquire 200,000 hectares of plantation trees over a 10-year period in Yunnan, the Company has actually acquired 230,200 hectares of plantation trees for $1,193,459,000 as at March 31, 2011." In fact, as the Muddy Waters Report disclosed, the Company vastly overstated the value of its holdings in Yunnan under the March 2007 agreement. The statements set forth in paragraphs 196 to 198 and the financial statements and results in the June 14th and August 15th filings (which investors were later told they should not rely upon) contained material misrepresentations and omissions similar to those made in filings earlier in the Class Period: they falsely portrayed the Company as a fast-growing, legitimate business that followed good corporate governance practices with positive future prospects for growth and they materially overstated the Company's revenue, earnings, and assets.

VII. CONFIRMATION OF THE FRAUD

223. After publication of the Muddy Waters Report, additional investigations and disclosures evidence that numerous statements by Sino-Forest during the Class Period were materially false and misleading or omitted material information.

A. *The Globe and Mail* Investigation

224. A June 18, 2011 article in the highly respected *Globe and Mail*, Canada's largest-circulation national newspaper, confirmed that Sino-Forest provided materially inaccurate information about the Company's holdings in Yunnan, which comprised a substantial portion of the Company's supposed forestry assets. The article stated, in part:

> The Globe's investigation raises particularly hard questions about a key agreement in March, 2007, that Sino-Forest says gave it the right to buy timber rights for up to 200,000 hectares of forest in Yunnan over a 10-year period for between $700-million (U.S.) and $1.4-billion. The trees were to be bought through a series of agreements with an entity called Gengma Dai and Wa Tribes Autonomous Region Forestry Co. Ltd., also known as Gengma Forestry.
>
> The company says it has fulfilled virtually all of the agreement with Gengma and now owns more than 200,000 hectares in Yunnan.
>
> But officials with Gengma Forestry, including the chairman, dispute the company's account of the deal, telling *The Globe and Mail* that the actual numbers are much smaller.

225. *The Globe and Mail* article reported that an interview with officials involved in the Sino-Forest transactions indicated that the Company acquired less than 14,000 hectares. The article went on to say:

> Mr. Xie's account corroborates the assertions of senior forestry officials in the province. Speaking on condition of anonymity, these officials challenged the company's statements that it controls more than 200,000 hectares of Yunnan trees, and said they are now investigating.

226. *The Globe and Mail* further reported:

> In a written response to questions from The Globe, Sino-Forest said it stands by its public statements regarding its Yunnan holdings. The company said it has purchased about 13,300 hectares of 'forestry assets and leased land' directly from Gengma Forestry, and another 180,000 hectares of 'forestry assets only' from other sellers, using Gengma as a purchasing agent.
>
> **'The agreement has not been yet fulfilled as we have not completed the purchase of 200,000 hectares,' the company said.**[11]
>
> **That statement from Sino-Forest appears to contradict its own publicly filed financial reports. In its first quarter 2011 report,**

[11] Unless otherwise indicated, all emphasis in quotations is added.

the company said that 'under the master agreement entered in March 2007 to acquire 200,000 hectares of plantation trees over a 10-year period in Yunnan, the Company has actually acquired 230,200 hectares of plantation trees for $1,193,459,000 as at March 31, 2011.'

The company's 2010 annual information form filed with regulators earlier this year said that as of December 31, 2010, Sino-Forest had 'acquired approximately 190,300 hectares of plantation trees for $925.9-million (U.S.) under the terms of the master agreement.'

The Globe's investigation of the company's dealings and holdings in Yunnan points to inconsistencies in the company's accounting of its timber rights and raises broader questions about its business practices.

227. In addition, it was reported that:

As of the end of 2010, the company claimed control of about 800,000 hectares of trees in nine Chinese provinces plus New Zealand. Its operation in Yunnan province, in addition to being its largest, is also the one for which it has made additional disclosures recently in an attempt to defuse the allegations made in the Muddy Waters report.

So far, however, it has disclosed purchase agreements as well as forest and woodland rights certificates for about 7,000 hectares of forest in Yunnan. **The company has not disclosed significant documentation regarding its forestry holdings in other provinces.**

To find Gengma Forestry, Sino-Forest's local partner in the so-called 'Yunnan master agreement' – the 2007 deal said to be worth as much as $1.4-billion – you have to duck down an alleyway behind the drugstore on the main street of this nondescript trading city, then up a dusty cement staircase.

On the landing is the litter-strewn office with an open door and a window protected by metal bars. Despite signing a deal with Sino-Forest that should guarantee a windfall, the company has clearly fallen on hard times. 'Our relations with [Sino-Forest] were not totally good. They talked about a lot of things, but in the end it was hard to get money from them,' said Zhang Ling, Gengma Forestry's office manager.

228. Statements of local officials in Yunnan province also contradict the reported size of Sino-Forest's holdings:

> Senior forestry officials in the province challenged the company's assertion that it controls about 200,000 hectares of forest in the region. Speaking on condition they not be identified, they said their records showed Sino-Forest manages far less than that and said the Yunnan Forestry Bureau would begin an investigation aimed at determining the company's true holdings.

229. Not only have the size of the holdings been questioned, but so has the value as reported in *The Globe and Mail*:

> In addition to the questions about Sino-Forest's disclosures on the size of its holdings, forestry officials, as well as local timber brokers who spoke to The Globe raised questions regarding the value Sino-Forest attributes to its Yunnan assets.
>
> 'It's very hard for anyone to say what the value of their property is,' said one forestry official, adding that forested land in Yunnan needed to be evaluated by a special body jointly appointed by the Forestry Bureau and the Ministry of Finance. Sino-Forest has not requested such an official valuation of its land, he said. '(The valuation) must have two chops (official seals) and two forestry resource evaluation experts and two licensed evaluators.... Even I can't just go there and give it a value.'

230. Subsequently, in early September 2011, *The Globe and Mail* reported that "A Globe investigation, based on interviews with people associated with Sino-Forest and an examination of legal and regulatory documents in Hong Kong and mainland China, has uncovered a pattern of questionable deals and disclosures from the company that date back to its earliest days."

B. Investigations and Regulatory Actions

231. On August 26, 2011 the Ontario Stock Commission issued a "Temporary Order" stating: "Sino-Forest and certain of its officers and directors including Chan appear to be engaging or participating in acts, practices or a course of conduct related to its securities which it

and/or they know or reasonably ought to know perpetuate a fraud on any person or company contrary to section 126.1 of the [Ontario Securities] Act and contrary to the public interest."

232. The Commission halted trading in Sino-Forest's stock on the Toronto Stock Exchange effective August 26, 2011 and demanded that several of Sino-Forest's executives resign. Trading was halted in the U.S. on the OTC Bulletin Board at 5:30 p.m. on August 26, 2011.

233. On August 28, 2011, *The Globe and Mail* reported that CEO Chan had resigned. The newspaper also reported that "[t]hree Sino-Forest-Forest vice-presidents – Alfred Hung, George Ho and Simon Yeung – have been placed on administrative leave. Senior vice-president Albert Ip has been relieved of most of his duties but remains with the Company to assist the internal probe." The newspaper also explained why Chan's departure occurred: "According to people familiar with the case, Mr. Chan was confronted by company officials in Hong Kong last week after a review of e-mail accounts outside the company's network revealed questionable transactions and money transfers." Despite this evidence of misconduct, Chan remains with the Company, having been granted the title "Founding Chairman Emeritus."

234. In late August 2011, Standard & Poor's Ratings Services announced that it was withdrawing its ratings on the Company's debt because "[r]ecent developments point towards a higher likelihood that allegations of fraud at the company will be substantiated."

235. As a result of the suspension in the trading of Sino-Forest's common stock and disclosure of the suspected fraud by the OSC, the shares are now virtually worthless and the value of its securities, notes, bonds, etc. that were issued by the Company and outstanding during the Class Period ("Debt Securities"), including the 2017 Notes, have declined substantially. On

November 11, 2011, it was announced that the Royal Canadian Mounted Police had commenced a criminal investigation.

236. Subsequently, on January 10, 2012, Sino-Forest announced that investors should no longer rely upon its historical financial statements and related audit reports. The Company stated that there was "no assurance" that it would be able to release third quarter financial results or audited financial statements for its 2011 fiscal year. The Company further disclosed in the January 10, 2012 announcement that it was still unable to explain or resolve outstanding issues, relating to its financial results and business relationships, including matters raised by documents identified by its auditor E&Y and the OSC.

237. Sino-Forest was required to file its 2011 audited annual financial statements with the Ontario Securities Commission by March 30, 2012. That same day, Sino-Forest initiated proceedings in front of the Superior Court of Justice (Ontario) requesting protection from its creditors. Sino-Forest has never filed its 2011 audited annual financial statements with the Commission.

238. On April 4, 2012, the auditors of Sino-Forest, Defendant E&Y, resigned.

239. On May 9, 2012, the Toronto Stock Exchange delisted the shares of Sino-Forest.

240. On May 22, 2012, the Ontario Securities Commission filed its Statement of Allegations in the Matter of Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho, Simon Yeung, and David Horsley.

VIII. ADDITIONAL SCIENTER ALLEGATIONS

241. As alleged herein, the Sino-Forest Defendants and E&Y acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company or in their own names were materially false and misleading or were extremely

reckless in not so knowing; knew that such statements or documents would be issued or disseminated to the investing public or were extremely reckless in not so knowing; and knowingly, or acting with extreme recklessness, substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, the Sino-Forest Defendants and E&Y knew or were deliberately reckless in not knowing the true facts regarding Sino-Forest that were concealed as a result of the fraud alleged herein.

242. Given the scale of the fraud alleged herein, and the degree to which it affected Sino-Forest's central business operations, there is a strong inference that the Sino-Forest Defendants and E&Y knew of the misconduct alleged herein, or, at a minimum, were deliberately reckless in not so knowing.

A. Individual Defendants Scienter Allegations

243. As alleged herein, each of the Individual Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company or in their own names were materially false and misleading or were extremely reckless in not so knowing; knew that such statements or documents would be issued or disseminated to the investing public or were extremely reckless in not so knowing; and knowingly, or acting with extreme recklessness, substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws.

244. Based on the facts specified above, the Sino-Forest Defendants participated directly in the scheme to falsify the Company's financial statements and financial results, and orchestrated the use of related parties to accomplish that scheme, which resulted in overstatement of revenues, earnings, and assets. Among other things:

a. The Sino-Forest Defendants established a collection of "nominee"/"peripheral" companies that were controlled, on its behalf, by various "caretakers" which they utilized to engage in improper transactions. Sino-Forest conducted a significant level of its business with these companies, the true economic substance of which was misstated in Sino-Forest's financial disclosures;

b. The Sino-Forest Defendants falsified purchase, sale, and ownership documents related to the vast majority of Sino-Forest's timber holdings, which included the creation of backdated Purchase Contracts and Sales Contracts and related documentation. The Sino-Forest Defendants then relied upon these documents to evidence the purported purchase, ownership, and sale of Standing Timber in the BVI Model;

c. The Sino-Forest Defendants bypassed or ignored internal controls and accounting processes in order to complete improper transactions;

d. The Sino-Forest Defendants failed to properly document the BVI timber purchases, in particular by failing to obtain required proof of ownership documents including (i) Plantation Rights Certificates from either the Counterparty or original owner or (ii) villager resolutions;

e. In 2010, Sino-Forest improperly recognized revenues from the purported sale of Standing Timber, despite the fact that these same Standing Timber assets were offered as collateral for a bank loan by Sino-Forest in 2011; so the sale of those assets in 2010 could not have taken place and been recorded as revenue in that year; and

f. The Sino-Forest Defendants engaged in and structured "circular" cash flows and unusual offsetting arrangements by which money flowed between various Sino-Forest controlled companies.

245. In addition, the Audit Committee Defendants knew or were extremely reckless in not knowing of the financial misconduct occurring at the highest levels of Company management. Among other duties, members of the Audit Committee are required to oversee (i) "the accounting and financial reporting processes of the Corporation.....and their appropriateness in view of the Corporation's operations and current GAAP"; (ii) "the adequacy and effectiveness of management's system of internal controls and procedures"; (iii) "the quality and integrity of the Corporation's...financial reporting and disclosure"; (iv) "the relationship with the external auditor..."; and (v) "compliance with laws, regulations and guidelines affecting the Corporation which relate to the duties and functions of the Audit Committee." In addition, the Audit Committee is "primarily responsible for satisfying itself and on behalf of the Board, that the Corporation (including its subsidiaries) fulfill all of its audit and financial reporting obligations...."

246. As reflected in Paragraphs 183 to 184, above, each of the Audit Committee Defendants knew of the multitude of red flags, questionable transactions, and murky corporate relationships, all of which indicated the potential for management to commit fraud and issue misleading financial statements. As directors of the Company, they had direct access to senior management and as members of the Audit Committee they had the ability and duty to investigate the "quality and integrity" of the Company's financial reporting and disclosure which, in the face of obvious red flags, they failed to do.

B. E&Y Scienter Allegations

247. In April 2012, E&Y resigned as Sino-Forest's independent auditor and took the highly unusual step of disassociating itself from Sino-Forest's financial statements, which E&Y had previously audited and given a clean opinion.

248. As articulated by the staff of the OSC in a report issued on March 12, 2012 related to a review of public companies in Ontario, the "[i]ntegrity of public disclosure is the bedrock of investor protection." In that regard, the "external auditor has a unique role in the reporting process for annual financial statements which are relied upon by the board, audit committee and **most importantly, investors to provide an independent assessment of whether the information presented in the issuer's annual financial statements has been fairly presented."** [Emphasis added].

249. In February 2012, the Canadian Public Accountability Board ("CPAB") issued a "Special Report" regarding auditing in foreign jurisdictions, which consisted of a "review of audit files for Canadian public companies with their primary operations in China." Audits of twenty-four higher risk issuers were reviewed. The Special Report noted that it viewed its results as "a wake-up call for Canada's auditing profession." The Special Report stated: "CPAB is disappointed by the results of its review. In too many instances, auditors did not properly apply procedures that would be considered fundamental in Canada, such as maintaining control over the confirmation process. CPAB's findings indicate that auditors often did not appropriately identify and assess the risks of material misstatement in the financial statements, through a sufficient understanding of the entity and its environment. CPAB also found a lack of professional skepticism when auditors were confronted with evidence that should have raised red flags regarding potential fraud risk."

250. Among the significant findings, which reads like a textbook of the audit deficiencies in this case, the CPAB found the following: (i) failure to control the confirmation process; (ii) reliance on confirmations with questionable reliability; (iii) insufficient evidence to support the ownership or existence of significant assets; (iv) inadequate procedures to identify

related party transactions; (v) insufficient evidence to support the recognition of revenue; and (vi) insufficient evidence to support the appropriateness of the income tax rate used. The Special Report outlines specific audit procedures that should be used in foreign jurisdictions like China to combat fraud.[12]

251. As set forth above, the fraudulent practices at Sino-Forest were so widespread and material that numerous red flags should have alerted E&Y to the materially misleading financial statements issued by Sino-Forest. That E&Y certified Sino-Forest's Financial Statements year after year and never once alerted investors or regulators to these fraudulent transactions shows that their audits were extremely reckless.

252. Although financial reporting requirements may vary from country to country, basic audit principles remain constant. These fundamental auditing principles require that:

(a) financial statements reflect the true financial condition of the company;

(b) financial statements are informative and complete;

(c) financial statements do not mischaracterize an item or omit any information if that would result in a misleading statement;

(d) related-party transactions are disclosed and subjected to scrutiny because the terms cannot be assumed to be the result of arms-length dealings; and

(e) in performing an audit, the auditor must obtain sufficient information to support a reasonable basis for an opinion regarding the truth, accuracy, and integrity of the financial statements.

[12] On February 21, 2012, *The Globe and Mail* reported that when asked, CPAB's Chief Executive Officer, Brian Hunt, would not comment on whether Sino-Forest was one of the audits scrutinized and E&Y would not comment on the Special Report.

253. E&Y ignored and/or violated applicable auditing and accounting standards including the basic auditing principles enumerated above in the face of warning signs and numerous red flags described herein. If E&Y had complied with these standards and principles, the auditors would certainly have detected and reported the multitude of improper and fraudulent and related party transactions (which involved both large transactions and important business partners). Such transactions should have received extraordinary scrutiny particularly in light of the well-known deficiencies in the Company's internal controls. A proper audit of either Sino-Forest related party transactions or its most significant transactions, would have revealed this fraud.

254. Despite these serious audit deficiencies, E&Y misrepresented to the investing public and regulators that it had audited Sino-Forest's Financial Statements in compliance with applicable auditing standards and that the Company's financial statements were presented in accordance with Canadian GAAP.

E&Y's Materially Misleading Auditors' Reports

255. On March 11, 2011 E&Y issued an Auditor's Report for Sino-Forest's 2010 fiscal year, addressed "To The Shareholders of Sino-Forest Corporation (the "2010 Auditors Report"). In the 2010 Auditors Report, E&Y stated:

> Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.
>
> An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to

> fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness on the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.
>
> We believe that the audit evidence we have obtained in our audits is sufficient and appropriate to provide a basis for our audit opinion.
>
> In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of Sino-Forest Corporation as at December 31, 2010 and 2009 and the results of its operations and cash flows for the years then ended in accordance with Canadian generally accepted accounting principles.

256. On March 15, 2010, E&Y issued an Auditor's Report for Sino-Forest's 2009 fiscal year, addressed "To the Shareholders of Sino-Forest Corporation" (the "2009 Auditors Report"). In the 2009 Audit Report, E&Y stated:

> We conducted our audits in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.
>
> In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2009 and 2008 and the results of its operations and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles.

257. On March 13, 2009, E&Y issued an Auditor's Report for Sino-Forest's 2008 fiscal year, addressed "To the Shareholders of Sino-Forest Corporation" (the "2008 Auditors Report"). In the 2008 Audit Report, E&Y stated:

> We conducted our audits in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material

> misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.
>
> In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2008 and 2007 and the results of its operations and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles.

258. On March 12, 2008, E&Y issued an Auditor's Report for Sino-Forest's 2007 fiscal year, addressed "To the Shareholders of Sino-Forest Corporation" (the "2007 Auditors Report"). In the 2007 Audit Report, E&Y stated:

> We conducted our audits in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.
>
> In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2007 and the results of its operations and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles.

259. These statements were materially false and misleading when made because E&Y knew, or recklessly disregarded the facts that: a) it failed to conduct its audit in compliance with Canadian GAAS; and b) Sino-Forest's financial statements were not presented in accordance with Canadian GAAP as they were materially false and misleading with respect to revenues, assets, earnings, and related party transactions.

260. The fact that the Company alerted its auditors to the material weaknesses in its internal controls (*i.e.* "This concentration of authority, or lack of segregation of duties, creates risk in terms of measurement and completeness of transactions as well as the possibility of non-

compliance with existing controls, either of which may lead to the possibility of inaccurate financial reporting.") was a clear red flag to E&Y, which had a duty to expand its audit procedures to inquire further into the nature of transactions and compliance with existing controls. Similarly, Sino-Forest's declaration that these risks "may lead to the possibility of inaccurate financial reporting" should have served as an additional red flag requiring E&Y to scrutinize Sino-Forest's financial statements. All of these facts, including the red flags described in Paragraph 10, required E&Y to conduct an even more rigorous audit to confirm the accuracy Sino-Forest's financial statements and the evidentiary material supporting the Company's presentation. Defendant E&Y was extremely reckless in either failing to modify its audit procedures in light of the Company's known internal control problems and lack of transparency or recklessly disregarded the red flags existing at the time of the audit.

261. Given the nature of Sino-Forest's business and lack of transparency, E&Y was required to exercise due professional care in performing its audit; to adequately plan its audit; to obtain a sufficient understanding of Sino-Forest's internal controls; and to obtain sufficient, competent evidence in auditing Sino-Forest's revenues, assets, and related party transactions. E&Y failed to conduct its audits in compliance with these fundamental Canadian GAAS provisions. Had E&Y performed its audits in compliance with Canadian GAAS, it would have uncovered Sino-Forest's overstatements of revenues, assets, income, and improper related party transactions.

IX. MOTIVATION FOR FRAUD

262. The Sino-Forest Defendants had ample motive to commit fraud: the exaggerated revenue, earnings, and assets allowed the Company to continue to raise substantial funds from

lenders and investors, inflated the Company's stock price and provided a personal financial windfall to the Individual Defendants who sold highly inflated stock to unsuspecting investors.

263. The purported steady and impressive growth of Sino-Forest helped fuel a series of capital raising activities by the Company. By making the Company appear to be on a much more economically sound footing than was actually the case, Sino-Forest was able to raise the funds it needed to finance its rapid expansion. Because the Company's cash flow did not cover its operating expenses, the Company would not have been able to continue to operate absent cash infusions from debt and equity investors.

264. During the Class Period, Sino-Forest conducted numerous debt and equity offerings, issuing over $1.8 billion in debt securities to investors and also selling investors hundreds of millions of dollars of common stock. Specifically, the following securities were issued to investors:

- On July 17, 2008, the Company closed an offering of convertible guaranteed senior notes (the "2013 Convertible Notes") for gross proceeds of $300,000,000. On August 6, 2008, the Company issued an additional $45,000,000 of 2013 Convertible Notes pursuant to the exercise of an over-allotment option granted to the underwriters in connection with the offering, increasing the gross proceeds to $345,000,000.
- On June 24, 2009, the Company offered to eligible holders of outstanding Senior Notes due in 2011 (the "2011 Senior Notes") to exchange these notes for up to $300,000,000 of new guaranteed senior notes due 2014 (the "2014 Senior Notes"). On July 27, 2009, the Company completed this exchange offer, issuing an aggregate principal amount of $212,330,000 of 2014 Senior Notes,

representing approximately 70.8% of the aggregate principal amount of the 2011 Senior Notes.

- In June 2009, the Company completed a public offering and international private placement of 34,500,000 common shares (including 4,500,000 common shares issued upon the exercise of the underwriters' over-allotment option) for gross proceeds of approximately $339,810,000.
- On December 17, 2009, the Company closed an offering of convertible guaranteed senior notes (the "2016 Convertible Notes") for gross proceeds of $460,000,000.
- In December 2009, the Company completed a public offering of 21,850,000 common shares (including an overallotment exercise) for gross proceeds of approximately $345,318,000.
- In May 2010, Sino-Forest issued 1,990,566 shares of common stock as a $33.3 million payment to acquire 34% of Greenheart Resources.
- In August 2010, the Company issued $2.3 million shares of common stock in partial payment of its acquisition of Mandra Forestry Holdings Limited, a company which supposedly owned the rights to technology relevant to the Company's business. In connection with this acquisition of Mandra, the Company also exchanged nearly $195 million of Mandra notes for Sino-Forest notes—the Sino-Forest notes had a longer duration and lower interest rate than the Mandra notes for which they were exchanged.
- On October 21, 2010, the Company completed the $600,000,000 Note Offering of the 2017 Notes.

265. Thus, during the Class Period, while Defendants were issuing materially false and misleading financial statements and other reports to investors, Sino-Forest was taking advantage of the illusory growth portrayed to investors through these large debt and equity offerings, which in less than three years, cumulatively totaled over $2.5 billion.

266. In addition to the billions of dollars raised by Sino-Forest during the Class Period (described above), Company insiders also benefited directly by the inflated value of Sino-Forest's stock because of their substantial stock holdings and because part of their compensation was in the form of stock options. Documents filed by the Company revealed that the Individual Defendants have sold over $44 million of Company stock since 2006.

Defendants' Sales Of Shares During Class Period

Defendant	Net Shares Sold	Value $Can	Value $U.S. (on 11/15/11 $Can 1 =$US 0.98494)
Chan	182,000.00	$3,003,200.20	$2,957,970
Horsley	531,431.00	$11,157,962.93	$10,989,900
Poon	3,037,900	$30,054,387.32	$29,601,800
TOTAL	**3,751,331**	**$44,215,550.45**	**$43,549,670**

X. CLASS ALLEGATIONS

267. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons or entities who purchased (i) Sino-Forest's common stock during the Class Period on the OTC market who were damaged thereby; and (ii) all persons or entities who, during the Class Period, purchased Debt Securities issued by Sino-Forest other than in Canada and who were damaged thereby. Excluded from the Class are Defendants, the officers and directors of Sino-Forest during any portion of the Class Period, members of the immediate families of the foregoing persons and the legal representatives, heirs, successors or assigns of such persons and any entity in which any

Defendant has or had a controlling interest. The Class specifically excludes any investor who purchased Sino-Forest securities on the Toronto Stock Exchange or in Canada.

268. The claims of Plaintiffs and the members of the Class have a common origin and share a common basis. The claims of all Class Members originate from the same improper conduct and arise from securities purchases entered into on the basis of the same materially misleading statements and omissions by Defendants during the Class Period. If brought and prosecuted individually, each Class Member would necessarily be required to prove his respective claims upon the same facts, upon the same legal theories and would be seeking the same or similar relief, resulting in duplication and waste of judicial resources.

269. The members of the Class are so numerous that joinder of all members is impracticable. Although all Class Members cannot be identified without discovery, Plaintiffs believe that there are many thousands of class members. Sino-Forest has over 246 million shares outstanding which actively traded on the OTC market (as well as in Canada on the Toronto Stock Exchange) and there are approximately $1.8 billion in Debt Securities outstanding including, approximately, $600 million in 2017 Notes.

270. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

a. Whether Defendants made materially false and misleading statements or omissions regarding Sino-Forest's financial statements and operations;

b. Whether Defendants engaged in any acts that operated as a fraud or deceit, or negligently misrepresented the Company's financial condition to the Class;

c. Whether the Company issued materially false and misleading financial statements and Defendant E&Y issued materially false audit opinions regarding Sino-Forest's financial statements;

d. Whether Defendants' acts proximately caused injury to the Class or irreparably harmed the Class, and if so, the appropriate relief to which the Class is entitled; and,

e. Whether Defendants' acts constitute violations of law for which the Class is entitled to recover damages or other relief.

271. The prosecution of separate actions by individual members of the Class would also create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible rights and standards of conduct for the parties involved in this case. The prosecution of separate actions by individual members of the Class would also create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members of the Class or substantially impair or impede their ability to protect their interests.

272. Plaintiffs have engaged counsel experienced in complex class litigation and will fairly and adequately represent the interests of the Class. Plaintiffs' interests are co-extensive with and not antagonistic to those of the absent members of the Class.

273. The members of the Class cannot reasonably be expected to litigate this matter individually. Whether litigated individually or as a class, the causes of action asserted in this Complaint involve complex issues of law and will likely require extensive and costly factual discovery, especially if this case proceeds to trial. The costs of successfully prosecuting such litigation will likely be beyond the resources of most members of the Class.

XI. APPLICATION OF THE FRAUD ON THE MARKET PRESUMPTION

274. During the Class Period, Sino-Forest was a high profile Company which regularly provided purportedly accurate information to investors about the Company's operations. The Company was followed by numerous securities analysts including Dundee Capital Markets,

RBC, and JP Morgan. The securities at issue, Sino-Forest common stock and debt securities, were actively traded on efficient markets and publicly disclosed information about the Company was incorporated in the price of these securities within a reasonable amount of time.

A. Common Stock

275. During the Class Period, Sino-Forest common stock was traded on the OTC market in the United States, which is an open, well-developed and efficient market. Sino-Forest common stock was simultaneously traded on the Toronto Stock Exchange, an open, well developed and efficient market. There was a substantial volume of trading in both the United States and Canada and the price of the shares traded in the United States was affected in the same way as the price of shares traded in Canada. During the Class Period over 146 million shares of Sino-Forest common stock traded in the OTC market.

276. The OTC market has no fixed location, but investors throughout the United States, including in New York County, New York, can purchase OTC securities through registered brokers. The principal regulator of the OTC market is the Financial Industry Regulatory Authority, which has its principal offices in New York, NY and Washington, DC.

B. 2017 Notes and Other Debt Securities

277. According to the Company, the 2017 Notes "offering was made on a private placement basis in Canada, the United States and internationally pursuant to available exemptions, through a syndicate of initial purchasers." The indenture agreement, which governs the 2017 Notes, provided that the notes are governed by New York law.

278. The 2017 Notes were initially purchased by the Underwriter Defendants and then sold to Plaintiff and other investors on the initial Offering. In the purchase agreement between the Underwriter Defendants and Sino-Forest, Banc of America Securities LLC listed its address

as One Bryant Park, New York, NY 10036 and Credit Suisse Securities (USA) LLC listed its address as Eleven Madison Avenue New York, NY 10010. During the Class Period and after their issuance, there was an efficient market for the 2017 Notes.

279. The 2017 Notes could only be legally sold to non-U.S. persons and to U.S. persons who were qualified institutional buyers. There is an open and well developed market for such securities, which are issued by large and well known issuers such as Sino-Forest and, specifically, there was an active and well-developed market for the 2017 Notes and Sino-Forest's other Debt Securities during the Class Period. Class Members were able to purchase 2017 Notes and other Debt Securities in the OTC market.

280. Accordingly, Class Members who purchased Sino-Forest common stock or 2017 Notes, and other Debt Securities in the secondary market are entitled to a presumption of reliance on the accuracy of the prices paid.

XII. LOSS CAUSATION

281. During the Class Period, as detailed herein, Sino-Forest and the Individual Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated the prices of Sino-Forest stock by failing to disclose and misrepresenting the adverse facts detailed herein. When their misrepresentations and fraudulent conduct were disclosed and became apparent to the market, the price that purchasers were willing to pay for Sino-Forest stock fell precipitously as the prior artificial inflation came out of the stock's price. Moreover, as a direct and foreseeable result of their fraud, trading in Sino-Forest stock was halted and eventually de-listed, making the stock virtually worthless and impossible to sell. Consequently, Plaintiffs and the other Class Members suffered economic loss as a result of their conduct.

282. By failing to disclose to investors the adverse facts detailed herein, Sino-Forest, the Individual Defendants, E&Y, Poyry, and the Underwriter Defendants presented a misleading picture of Sino-Forest's business and prospects. Their false and misleading statements had the intended effect and caused Sino-Forest common stock to trade at artificially inflated levels throughout the Class Period, reaching as high as $26.08 per share on March 31, 2011.

283. The decline in the price of Sino-Forest shares, and the suspension in trading of these shares, was a direct result of the nature and extent of Sino-Forest and the Individual Defendants' fraud. The timing and magnitude of the price decline in Sino-Forest stock negates any inference that the loss suffered by Plaintiffs and the other Class Members was caused by changed market conditions, macroeconomic or industry features or Company-specific facts unrelated to Sino-Forest and the Individual Defendants' fraudulent conduct. The economic loss suffered by Plaintiffs and the other Class Members was a direct result of Sino-Forest and the Individual Defendants' scheme to artificially inflate the prices of Sino-Forest stock and the subsequent significant decline in the value of Sino-Forest stock when Sino-Forest and the Individual Defendants' prior misrepresentations and other fraudulent conduct were revealed and when regulators de-listed Sino-Forest stock as a result of the fraud.

XIII. CAUSES OF ACTION

COUNT ONE
AGAINST SINO-FOREST, THE INDIVIDUAL DEFENDANTS, AND E&Y FOR VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5

284. Plaintiffs repeat and reallege each of the allegations set forth above. This claim is asserted against Sino-Forest, the Individual Defendants, and E&Y for violation of Section 10(b) of the Exchange Act and Rule 10b-5.

285. Sino-Forest, the Individual Defendants, and E&Y:

a. Knew or recklessly disregarded the material, adverse non-public information about Sino-Forest's financial results and then-existing business conditions, which was not disclosed; and

b. Participated in drafting, reviewing, and/or approving the misleading financial statements, releases, reports and other public representations of and about Sino-Forest.

286. During the Class Period, with knowledge of or reckless disregard for the truth, Sino-Forest, the Individual Defendants, and/or E&Y disseminated or approved the false statements specified above, which were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

287. As described herein, Sino-Forest, the Individual Defendants, and/or E&Y made or caused to be made a series of false statements and failed to disclose various material information concerning Sino-Forest. Those material misrepresentations and omissions created a false assessment of Sino-Forest, its business, and its prospects in the market, and caused the Company's securities to be overvalued and artificially inflated at all relevant times.

288. Sino-Forest's, the Individual Defendants', and/or E&Y's false portrayal of Sino-Forest's financial results, business operations, and prospects during the Class Period resulted in Plaintiffs and other members of the Class purchasing Sino-Forest securities at market prices in excess of the actual value of those securities.

289. Plaintiffs and other members of the Class would not have purchased Sino-Forest common stock and other securities at the prices they paid, if at all, had they been aware of the true facts concerning the Company's financial statements, business operations, and prospects, as well as the true facts concerning Sino-Forest's misleading audit reports.

290. When the market determined that Sino-Forest's financial results reported during the Class Period were falsely reported by the Company and/or Individual Defendants, and that E&Y issued materially false and misleading audit reports, the Company's stock price decreased substantially in value and thereby caused injury to Plaintiffs and members of the Class.

291. Sino-Forest, the Individual Defendants, and E&Y have violated § 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they:

a. Employed devices, schemes and artifices to defraud;

b. Made untrue statements of material facts or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or

c. Engaged in acts, practices and a course of business that operated as a fraud or deceit upon the purchasers of Sino-Forest stock during the Class Period.

292. At all relevant times, the material financial statement misstatements, misrepresentations, and omissions particularized herein, directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiffs and other members of the Class.

293. Plaintiffs and the Class have suffered damage because, in reliance on the integrity of the market, they paid artificially inflated prices for Sino-Forest stock.

COUNT TWO
AGAINST SINO-FOREST AND THE INDIVIDUAL DEFENDANTS FOR FRAUD

294. Plaintiffs repeat and reallege each of the allegations set forth in above. This claim is asserted against Sino-Forest and the Individual Defendants for common law fraud.

295. As set forth herein, Sino-Forest and the Individual Defendants knowingly or recklessly engaged and participated in a continuous course and scheme of fraudulent conduct to disseminate materially false information about Sino-Forest's financial condition or failed to

disclose material information with the purpose of inflating the prices of Sino-Forest's common stock, the 2017 Notes and Sino-Forest's other debt securities. As intended by the Sino-Forest Defendants, Plaintiffs and Class Members reasonably relied on these false and misleading statements and failures to disclose and suffered substantial damages as a result.

296. As a direct and proximate result of Sino-Forest's and the Individual Defendants' fraud, Plaintiffs and the Class have suffered economic losses in an amount to be determined at trial. Sino-Forest and the Individual Defendants are jointly and severally liable to the Class for common law fraud.

COUNT THREE
AGAINST SINO-FOREST AND THE INDIVIDUAL DEFENDANTS FOR CIVIL CONSPIRACY TO DEFRAUD

297. Plaintiffs repeat and reallege each of the allegations set above. This claim is asserted against Sino-Forest and the Individual Defendants for civil conspiracy to commit fraud.

298. In furtherance of a scheme to defraud investors, the Sino-Forest Defendants corruptly agreed to combine their respective skills, expertise, resources, and reputations, thereby causing injury to Plaintiffs and the Class.

299. As set forth in detail above, one or more of the conspirators made false representations of material facts, with scienter, and Plaintiffs and Class Members justifiably relied upon these misrepresentations and were injured as a result.

300. As a direct and proximate consequence of the foregoing, Plaintiffs and the Class have suffered economic losses in an amount to be determined at trial. Because Sino-Forest and the Individual Defendants conspired amongst themselves and with others to carry out this fraudulent scheme, the Sino-Forest Defendants are jointly and severally liable both for their own

knowledge and conduct and for the knowledge and conduct of their co-conspirators in furtherance of the fraud.

COUNT FOUR
AGAINST E&Y AND POYRY FOR AIDING AND ABETTING FRAUD

301. Plaintiffs repeat and reallege each of the allegations set forth above. This claim is asserted against E&Y and Poyry for aiding and abetting common law fraud committed by Sino-Forest and the Individual Defendants. E&Y and Poyry were aware of the fraudulent scheme that is the subject of this Complaint and each of these Defendants provided substantial assistance to the perpetrators of this scheme.

302. As a direct and proximate result of E&Y's and Poyry's aiding and abetting of the fraud, Plaintiffs and the Class have suffered economic losses in an amount to be determined at trial. E&Y and Poyry are jointly and severally liable to the Class for aiding and abetting common law fraud.

COUNT FIVE
AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATION OF SECTION 20(a) OF THE EXCHANGE ACT

303. Plaintiffs repeat and reallege each of the allegations set forth above. This claim is asserted against the Individual Defendants for violation of Section 20(a) of the Exchange Act.

304. The Individual Defendants acted as controlling persons of Sino-Forest within the meaning of Section 20(a) of the Exchange Act, as alleged herein. By reason of their positions as officers or directors of Sino-Forest, and their ownership of Sino-Forest stock, the Individual Defendants had the power and authority to cause Sino-Forest to engage in the wrongful conduct complained of herein.

305. At the time they obtained their shares, Plaintiffs and members of the Class did so without knowledge of the facts concerning the materially false and misleading statements alleged herein.

306. By reason of the foregoing, the Individual Defendants are jointly and severally liable pursuant to Section 20(a) of the Exchange Act.

COUNT SIX
AGAINST SINO-FOREST FOR UNJUST ENRICHMENT

307. Plaintiffs repeat and reallege each of the allegations set forth above. This claim is asserted against Sino-Forest for unjust enrichment.

308. In connection with the fraudulent scheme set out in this Complaint, Defendant Sino-Forest received payment for the sale of the 2017 Notes. Defendant Sino-Forest would not have been able to sell the 2017 Notes or would only have been able to sell these notes at a lower price had the true facts about Sino-Forest's business and financial condition been known. Consequently, Sino-Forest unjustly received money from the Offering of its securities and it would be unjust to allow Sino-Forest to keep this improperly earned money and should be required to repay it.

COUNT SEVEN
AGAINST THE UNDERWRITER DEFENDANTS FOR VIOLATION OF SECTION 12(a)(2) OF THE SECURITIES ACT

309. Plaintiff IMF repeats and realleges each and every allegation contained in this Complaint as if fully set forth herein only to the extent, however, that such allegations do not allege fraud, scienter, or the intent of the Underwriter Defendants to defraud Plaintiffs or members of the Class with respect to this claim.

310. This Claim is brought against the Underwriter Defendants and is based on the Offering of 2017 Notes.

311. This Claim is brought pursuant to Section 12(a)(2) of the Securities Act and is predicated upon Underwriter Defendants' liability for material misstatements and omissions in the Offering Documents.

312. This Count is not based on and does not sound in fraud. Any allegations of fraud or fraudulent conduct and/or motive are specifically excluded from this Count. For purposes of asserting this claim under the Securities Act, Plaintiffs do not allege that Underwriter Defendants acted with scienter or fraudulent intent. Plaintiffs expressly exclude and disclaim any allegation that could be construed as alleging fraud or intentional or reckless misconduct, as this Count is based solely on claims of strict liability under the Securities Act.

313. As provided for in Section 12(a)(2) of the Securities Act, the Underwriter Defendants named in this claim are responsible for the materially false and misleading statements in the Offering Documents and failed to make a reasonable and diligent investigation of the statements contained in the Offering Documents to ensure that such statements were true and correct and that there was no omission of material facts required to be stated in order to make the statements contained therein not misleading.

314. Plaintiffs and Class Members suffered significant losses and are entitled to rescission or rescissionary damages under Section 12. Plaintiff and Class Members who continue to hold the 2017 notes hereby tender their shares to the Underwriter Defendants.

315. At the time they obtained their shares, Plaintiffs and members of the Class did so without knowledge of the facts concerning the misstatements or omissions alleged herein.

316. By reason of the foregoing, each of the Defendants named in this claim are jointly and severally liable for violation of Section 12(a)(2) of the Securities Act.

COUNT EIGHT
AGAINST SINO FOREST AND THE INDIVIDUAL DEFENDANTS FOR VIOLATION OF SECTION 15(a) OF THE SECURITIES ACT

317. Plaintiff IMF repeats and realleges each and every allegation contained in this Complaint as if fully set forth herein.

318. This Count is asserted against Sino-Forest and the Individual Defendants and is based upon Section 15 of the Securities Act.

319. Sino-Forest and the Individual Defendants acted as controlling persons of the Underwriter Defendants with respect to the Offering and within the meaning of Section 15 of the Securities Act, as alleged herein. By reason of their positions as directors and members of the board, Sino-Forest and those Individual Defendants had the power and authority to cause the Underwriter Defendants to engage in the wrongful conduct complained of herein.

320. The Individual Defendants at all relevant times participated directly and indirectly in the conduct of Sino-Forest's business affairs. As directors and board members of a publicly owned company, the Individuals Defendants had a duty to disseminate accurate and truthful information with respect to Sino-Forest's financial condition and results of operations. Because of their positions of control and authority as directors and board members of Sino-Forest, the Individual Defendants were able to, and did, control the contents of the Offering Documents, which contained materially false and misleading statements and omissions of material facts. The Individual Defendants' control and positions made them privy to and provided them with knowledge of the material facts concealed from Plaintiffs and members of the Class.

321. Plaintiff and members of the Class suffered significant losses as a result of these Defendants' materially false and misleading statements and omissions of material fact in the Offering Documents.

322. By reason of the foregoing, Sino-Forest and each of the Individual Defendant is jointly and severally liable pursuant to Section 15 of the Securities Act.

XIV. PRAYER FOR RELIEF AND JURY DEMAND

WHEREFORE, Plaintiffs and the Class hereby demands a trial by jury, and seek a judgment:

A. Awarding Plaintiffs and the Class all compensatory damages they suffered, including lost profits and consequential and incidental damages, as a result of the wrongful conduct of the Defendants, in an amount to be determined at trial;

B. Awarding Plaintiffs and the Class damages arising from Defendants' unjust enrichment;

C. Awarding Plaintiffs and the Class punitive damages in an amount to be determined at trial;

D. Awarding Plaintiffs and the Class pre-judgment and post-judgment interest;

E. Awarding Plaintiffs and the Class their costs, expert fees, expenses and attorneys' fees incurred in connection with this action to the maximum extent permitted by law;

F. Awarding Plaintiffs and the Class such other and further relief as the Court finds just and proper.

Dated: September 28, 2012

Respectfully submitted,

COHEN MILSTEIN SELLERS & TOLL PLLC

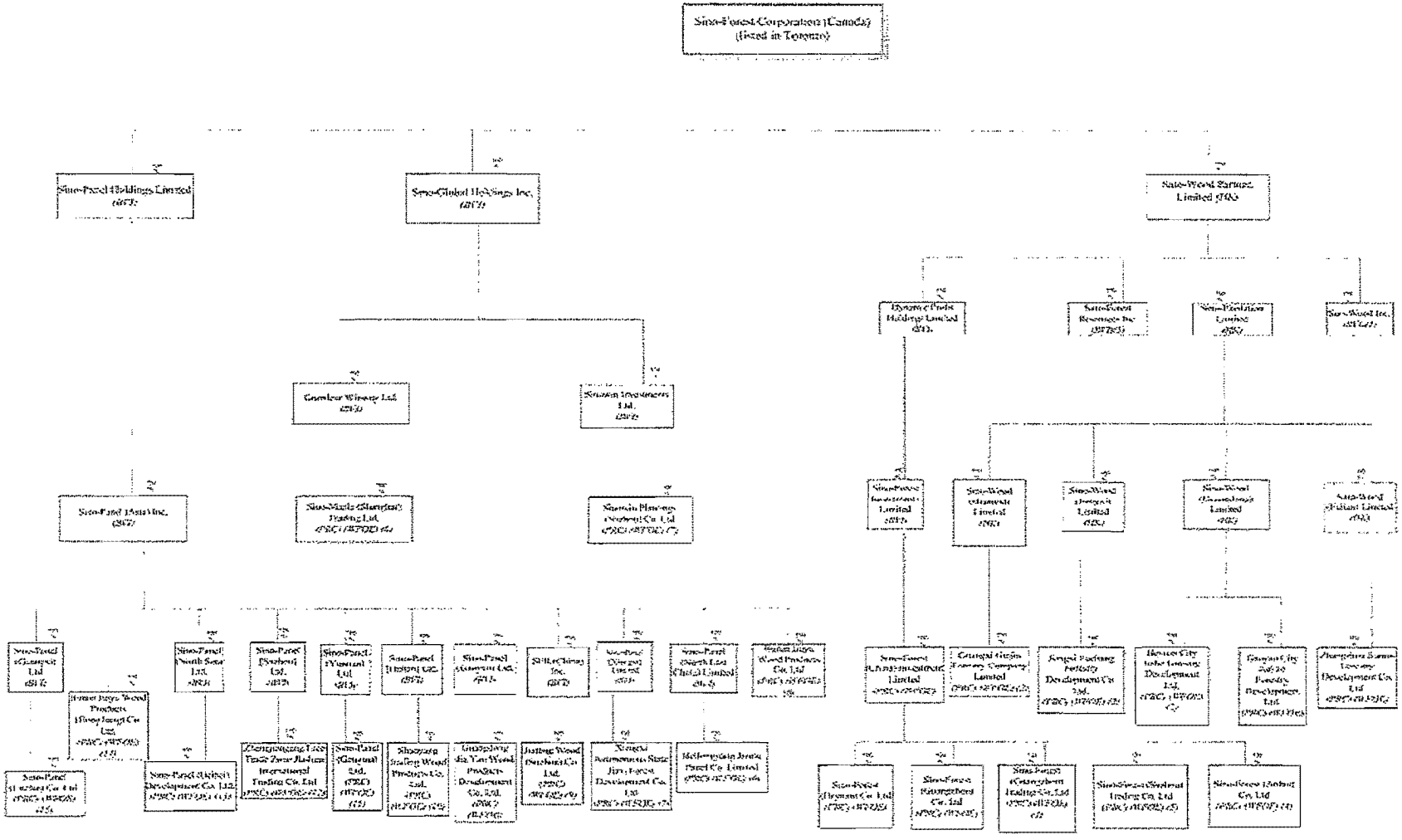
Richard A. Speirs
Kenneth M. Rehns
88 Pine Street 14th Floor
New York, NY 10005
Phone: (212) 838-7797
Facsimile: (212) 838-7745

-and-

Steven J. Toll
1100 New York, Ave., N.W.
West Tower, Suite 500
Washington, D.C. 20005
Phone: (202) 408-4600
Facsimile: (202) 408-4699

Attorneys for Plaintiff and the Proposed Class

Exhibit A (Sino-Forest Organizational Chart)



CERTIFICATION OF PLAINTIFF
PURSUANT TO FEDERAL SECURITIES LAWS

I, DAVID W. LEAPARD, ("Plaintiff") declare, as to the claims asserted under the federal securities laws, that:

1. I have reviewed a class action complaint asserting securities claims against Sino-Forest Corp. ("Sino-Forest" or the "Company") (OTC: SNOFF), and wish to join as a plaintiff retaining Cohen Milstein Sellers & Toll PLLC as my counsel.

2. Plaintiff did not purchase the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in this private action.

3. Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.

4. My transactions in against Sino-Forest Corp. ("Sino-Forest" or the "Company") (OTC: SNOFF) during the Class Period of March 31, 2009 through August 26, 2011 were as follows:

DATE	TRANSACTION (buy/sell)	NO. OF SHARES	PRICE PER SHARE
8-5-2011	BUY	200	5.87

5. During the three years prior to the date of this Certificate, Plaintiff has not sought to serve or served as a representative party for a class in any action under the federal securities laws except as follows:

6. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing true and correct.

Executed this 26Th Day of SEPT, 2011.

David W. Leapard

CERTIFICATION OF PLAINTIFF
PURSUANT TO FEDERAL SECURITIES LAWS

I, IMAD M FATHALLAH, on behalf of IMF FINANCE SA, ("Plaintiff") declares, as to the claims asserted under the federal securities laws, that:

1. I have reviewed a class action complaint asserting securities claims against Sino Forest Corp. ("Sino-Forest" or the "Company") OTC: SNOFF, and wish to join as a plaintiff retaining Cohen Milstein Sellers & Toll PLLC as my counsel.

2. Plaintiff did not purchase the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in this private action.

3. Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.

4. My transactions in Sino Forest Corp. securities during the Class Period of March 19, 2007 through August 26, 2011.

DATE	TRANSACTION (buy/~~sell~~)	NO. OF SHARES	PRICE PER SHARE
15 Oct 2010	Purchase	500,000 6.25% Notes due Oct 2017	G101.45 = $ 507,251

5. During the three years prior to the date of this Certificate, Plaintiff has not sought to serve or served as a representative party for a class in any action under the federal securities laws except as follows:

6. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing true and correct.

Executed this 24th Day of September, 2012.

IMAD M FATHALLAH,
on behalf of IMF FINANCE SA

THIS IS EXHIBIT "G" TO

THE AFFIDAVIT OF W. JUDSON MARTIN

SWORN NOVEMBER 29, 2012

Nathan

A Commissioner, etc.

Chan Ching Yee
Solicitor
Reed Smith
Richards Butler
20/F Alexandra House
Hong Kong SAR

CITATION: Sino-Forest Corporation (Re), 2012 ONSC 4377
COURT FILE NO.: CV-12-9667-00CL
DATE: 20120727

SUPERIOR COURT OF JUSTICE – ONTARIO

(COMMERCIAL LIST)

RE: 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, Applicant

BEFORE: MORAWETZ J.

COUNSEL: Robert W. Staley and Jonathan Bell, for the Applicant

Jennifer Stam, for the Monitor

Kenneth Dekker, for BDO Limited

Peter Griffin and Peter Osborne, for Ernst & Young LLP

Benjamin Zarnett, Robert Chadwick and Brendan O'Neill, for the Ad Hoc Committee of Noteholders

James Grout, for the Ontario Securities Commission

Emily Cole and Joseph Marin, for Allen Chan

Simon Bieber, for David Horsley

David Bish, John Fabello and Adam Slavens, for the Underwriters Named in the Class Action

Max Starnino and Kirk Baert, for the Ontario Plaintiffs

Larry Lowenstein, for the Board of Directors

HEARD: June 26, 2012

ENDORSEMENT

Overview

[1] Sino-Forest Corporation ("SFC" or the "Applicant") seeks an order directing that claims against SFC, which result from the ownership, purchase or sale of an equity interest in SFC, are "equity claims" as defined in section 2 of the *Companies' Creditors Arrangement Act* ("CCAA") including, without limitation: (i) the claims by or on behalf of current or former shareholders asserted in the proceedings listed in Schedule "A" (collectively, the "Shareholder Claims"); and (ii) any indemnification claims against SFC related to or arising from the Shareholder Claims, including, without limitation, those by or on behalf of any of the other defendants to the proceedings listed in Schedule "A" (the "Related Indemnity Claims").

[2] SFC takes the position that the Shareholder Claims are "equity claims" as defined in the CCAA as they are claims in respect of a monetary loss resulting from the ownership, purchase or sale of an equity interest in SFC and, therefore, come within the definition. SFC also takes the position that the Related Indemnity Claims are "equity claims" as defined in the CCAA as they are claims for contribution or indemnity in respect of a claim that is an equity claim and, therefore, also come within the definition.

[3] On March 30, 2012, the court granted the Initial Order providing for the CCAA stay against SFC and certain of its subsidiaries. FTI Consulting Canada Inc. was appointed as Monitor.

[4] On the same day, the Sales Process Order was granted, approving Sales Process procedures and authorizing and directing SFC, the Monitor and Houlihan Lokey to carry out the Sales Process.

[5] On May 14, 2012, the court issued a Claims Procedure Order, which established June 20, 2012 as the Claims Bar Date.

[6] The stay of proceedings has since been extended to September 28, 2012.

[7] Since the outset of the proceedings, SFC has taken the position that it is important for these proceedings to be completed as soon as possible in order to, among other things, (i) enable the business operated in the Peoples Republic of China ("PRC") to be separated from SFC and put under new ownership; (ii) enable the restructured business to participate in the Q4 sales season in the PRC market; and (iii) maintain the confidence of stakeholders in the PRC (including local and national governmental bodies, PRC lenders and other stakeholders) that the business in the PRC can be successfully separated from SFC and operate in the ordinary course in the near future.

[8] SFC has negotiated a Support Agreement with the Ad Hoc Committee of Noteholders and intends to file a plan of compromise or arrangement (the "Plan") under the CCAA by no later than August 27, 2012, based on the deadline set out in the Support Agreement and what they submit is the commercial reality that SFC must complete its restructuring as soon as possible.

[9] Noteholders holding in excess of $1.296 billion, or approximately 72% of the approximately $1.8 billion of SFC's noteholders' debt, have executed written support agreements to support the SFC CCAA Plan as of March 30, 2012.

Shareholder Claims Asserted Against SFC

(i) Ontario

[10] By Fresh as Amended Statement of Claim dated April 26, 2012 (the "Ontario Statement of Claim"), the Trustees of the Labourers' Pension Fund of Central and Eastern Canada and other plaintiffs asserted various claims in a class proceeding (the "Ontario Class Proceedings") against SFC, certain of its current and former officers and directors, Ernst & Young LLP ("E&Y"), BDO Limited ("BDO"), Poyry (Beijing) Consulting Company Limited ("Poyry") and SFC's underwriters (collectively, the "Underwriters").

[11] Section 1(m) of the Ontario Statement of Claim defines "class" and "class members" as:

> All persons and entities, wherever they may reside who acquired Sino's Securities during the Class Period by distribution in Canada or on the Toronto Stock Exchange or other secondary market in Canada, which securities include those acquired over the counter, and all persons and entities who acquired Sino's Securities during the Class Period who are resident of Canada or were resident of Canada at the time of acquisition and who acquired Sino's Securities outside of Canada, except the Excluded Persons.

[12] The term "Securities" is defined as "Sino's common shares, notes and other securities, as defined in the OSA". The term "Class Period" is defined as the period from and including March 19, 2007 up to and including June 2, 2011.

[13] The Ontario Class Proceedings seek damages in the amount of approximately $9.2 billion against SFC and the other defendants.

[14] The thrust of the complaint in the Ontario Class Proceedings is that the class members are alleged to have purchased securities at "inflated prices during the Class Period" and that absent the alleged misconduct, sales of such securities "would have occurred at prices that reflected the true value" of the securities. It is further alleged that "the price of Sino's Securities was directly affected during the Class Period by the issuance of the Impugned Documents".

(ii) Quebec

[15] By action filed in Quebec on June 9, 2011, Guining Liu commenced an action (the "Quebec Class Proceedings") against SFC, certain of its current and former officers and directors, E&Y and Poyry. The Quebec Class Proceedings do not name BDO or the Underwriters as defendants. The Quebec Class Proceedings also do not specify the quantum of damages sought, but rather reference "damages in an amount equal to the losses that it and the other members of the group suffered as a result of purchasing or acquiring securities of Sino at inflated prices during the Class Period".

[16] The complaints in the Quebec Class Proceedings centre on the effect of alleged misrepresentations on the share price. The duty allegedly owed to the class members is said to be based in "law and other provisions of the *Securities Act*", to ensure the prompt dissemination of truthful, complete and accurate statements regarding SFC's business and affairs and to correct any previously-issued materially inaccurate statements.

(iii) Saskatchewan

[17] By Statement of Claim dated December 1, 2011 (the "Saskatchewan Statement of Claim"), Mr. Allan Haigh commenced an action (the "Saskatchewan Class Proceedings") against SFC, Allen Chan and David Horsley.

[18] The Saskatchewan Statement of Claim does not specify the quantum of damages sought, but instead states in more general terms that the plaintiff seeks "aggravated and compensatory damages against the defendants in an amount to be determined at trial".

[19] The Saskatchewan Class Proceedings focus on the effect of the alleged wrongful acts upon the trading price of SFC's securities:

> The price of Sino's securities was directly affected during the Class Period by the issuance of the Impugned Documents. The defendants were aware at all material times that the effect of Sino's disclosure documents upon the price of its Sino's [sic] securities.

(iv) New York

[20] By Verified Class Action Complaint dated January 27, 2012, (the "New York Complaint"), Mr. David Leapard and IMF Finance SA commenced a class proceeding against SFC, Mr. Allen Chan, Mr. David Horsley, Mr. Kai Kit Poon, a subset of the Underwriters, E&Y, and Ernst & Young Global Limited (the "New York Class Proceedings").

[21] SFC contends that the New York Class Proceedings focus on the effect of the alleged wrongful acts upon the trading price of SFC's securities.

[22] The plaintiffs in the various class actions have named parties other than SFC as defendants, notably, the Underwriters and the auditors, E&Y, and BDO, as summarized in the table below. The positions of those parties are detailed later in these reasons.

	Ontario	Quebec	Saskatchewan	New York
E&Y LLP	X	X	-	X
E&Y Global	-	-	-	X
BDO	X	-	-	-

Poyry	X	X	-	-
Underwriters	11	-	-	2

Legal Framework

[23] Even before the 2009 amendments to the CCAA dealing with equity claims, courts recognized that there is a fundamental difference between shareholder equity claims as they relate to an insolvent entity versus creditor claims. Essentially, shareholders cannot reasonably expect to maintain a financial interest in an insolvent company where creditor claims are not being paid in full. Simply put, shareholders have no economic interest in an insolvent enterprise: *Blue Range Resource Corp. (Re)*, (2004) 4 W.W.R. 738 (Alta. Q.B.) [*Blue Range Resources*]; *Stelco Inc. (Re)*, (2006) CanLII 1773 (Ont. S.C.J.) [*Stelco*]; *Royal Bank of Canada v. Central Capital Corp.* (1996), 27 O.R. (3d) 494 (C.A.).

[24] The basis for the differentiation flows from the fundamentally different nature of debt and equity investments. Shareholders have unlimited upside potential when purchasing shares. Creditors have no corresponding upside potential: *Nelson Financial Group Limited (Re)*, 2010 ONSC 6229 [*Nelson Financial*].

[25] As a result, courts subordinated equity claims and denied such claims a vote in plans of arrangement: *Blue Range Resource*, *supra*; *Stelco*, *supra*; *EarthFirst Canada Inc. (Re)* (2009), 56 C.B.R. (5th) 102 (Alta. Q.B.) [*EarthFirst Canada*]; and *Nelson Financial*, *supra*.

[26] In 2009, significant amendments were made to the CCAA. Specific amendments were made with the intention of clarifying that equity claims are subordinated to other claims.

[27] The 2009 amendments define an "equity claim" and an "equity interest". Section 2 of the CCAA includes the following definitions:

> "Equity Claim" means a claim that is in respect of an equity interest, including a claim for, among others, (...)
>
> > (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
> >
> > (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d);
>
> "Equity Interest" means
>
> > (a) in the case of a company other than an income trust, a share in the company – or a warrant or option or another right to acquire a share in the company – other than one that is derived from a convertible debt,

[28] Section 6(8) of the CCAA prohibits a distribution to equity claimants prior to payment in full of all non-equity claims.

[29] Section 22(1) of the CCAA provides that equity claimants are prohibited from voting on a plan unless the court orders otherwise.

Position of Ernst & Young

[30] E&Y opposes the relief sought, at least as against E&Y, since the E&Y proof of claim evidence demonstrates in its view that E&Y's claim:

(a) is not an equity claim;

(b) does not derive from or depend upon an equity claim (in whole or in part);

(c) represents discreet and independent causes of action as against SFC and its directors and officers arising from E&Y's direct contractual relationship with such parties (or certain of such parties) and/or the tortious conduct of SFC and/or its directors and officers for which they are in law responsible to E&Y; and

(d) can succeed independently of whether or not the claims of the plaintiffs in the class actions succeed.

[31] In its factum, counsel to E&Y acknowledges that during the periods relevant to the Class Action Proceedings, E&Y was retained as SFC's auditor and acted as such from 2007 until it resigned on April 5, 2012.

[32] On June 2, 2011, Muddy Waters LLC ("Muddy Waters") issued a report which purported to reveal fraud at SFC. In the wake of that report, SFC's share price plummeted and Muddy Waters profited from its short position.

[33] E&Y was served with a multitude of class action claims in numerous jurisdictions.

[34] The plaintiffs in the Ontario Class Proceedings claim damages in the aggregate, as against all defendants, of $9.2 billion on behalf of resident and non-resident shareholders and noteholders. The causes of action alleged are both statutory, under the *Securities Act (Ontario)* and at common law, in negligence and negligent misrepresentation.

[35] In its factum, counsel to E&Y acknowledges that the central claim in the class actions is that SFC made a series of misrepresentations in respect of its timber assets. The claims against E&Y and the other third party defendants are that they failed to detect these misrepresentations and note in particular that E&Y's audit did not comply with Canadian generally accepted accounting standards. Similar claims are advanced in Quebec and the U.S.

[36] Counsel to E&Y notes that on May 14, 2012 the court granted a Claims Procedure Order which, among other things, requires proofs of claim to be filed no later than June 20, 2012. E&Y takes issue with the fact that this motion was then brought notwithstanding that proofs of claim and D&O proofs of claim had not yet been filed.

[37] E&Y has filed with the Monitor, in accordance with the Claims Procedure Order, a proof of claim against SFC and a proof of claim against the directors and officers of SFC.

[38] E&Y takes the position that it has contractual claims of indemnification against SFC and its subsidiaries and has statutory and common law claims of contribution and/or indemnity against SFC and its subsidiaries for all relevant years. E&Y contends that it has stand-alone claims for breach of contract and negligent and/or fraudulent misrepresentation against the company and its directors and officers.

[39] Counsel submits that E&Y's claims against Sino-Forest and the SFC subsidiaries are:

(a) creditor claims;

(b) derived from E&Y retainers by and/or on behalf of Sino-Forest and the SFC subsidiaries and E&Y's relationship with such parties, all of which are wholly independent and conceptually different from the claims advanced by the class action plaintiffs;

(c) claims that include the cost of defending and responding to various proceedings, both pre- and post-filing; and

(d) not equity claims in the sense contemplated by the CCAA. E&Y's submission is that equity holders of Sino-Forest have not advanced, and could not advance, any claims against SFC's subsidiaries.

[40] Counsel further contends that E&Y's claim is distinct from any and all potential and actual claims by the plaintiffs in the class actions against Sino-Forest and that E&Y's claim for contribution and/or indemnity is not based on the claims against Sino-Forest advanced in the class actions but rather only in part on those claims, as any success of the plaintiffs in the class actions against E&Y would not necessarily lead to success against Sino-Forest, and vice versa. Counsel contends that E&Y has a distinct claim against Sino-Forest independent of that of the plaintiffs in the class actions. The success of E&Y's claims against Sino-Forest and the SFC subsidiaries, and the success of the claims advanced by the class action plaintiffs, are not co-dependent. Consequently, counsel contends that E&Y's claim is that of an unsecured creditor.

[41] From a policy standpoint, counsel to E&Y contends that the nature of the relationship between a shareholder, who may be in a position to assert an equity claim (in addition to other claims) is fundamentally different from the relationship existing between a corporation and its auditors.

Position of BDO Limited

[42] BDO was auditor of Sino-Forest Corporation between 2005 and 2007, when it was replaced by E&Y.

[43] BDO has a filed a proof of claim against Sino-Forest pursuant to the Claims Procedure Order.

[44] BDO's claim against Sino-Forest is primarily for breach of contract.

[45] BDO takes the position that its indemnity claims, similar to those advanced by E&Y and the Underwriters, are not equity claims within the meaning of s. 2 of the CCAA.

[46] BDO adopts the submissions of E&Y which, for the purposes of this endorsement, are not repeated.

Position of the Underwriters

[47] The Underwriters take the position that the court should not decide the equity claims motion at this time because it is premature or, alternatively, if the court decides the equity claims motion, the equity claims order should not be granted because the Related Indemnity Claims are not "equity claims" as defined in s. 2 of the CCAA.

[48] The Underwriters are among the defendants named in some of the class actions. In connection with the offerings, certain Underwriters entered into agreements with Sino-Forest and certain of its subsidiaries providing that Sino-Forest and, with respect to certain offerings, the Sino-Forest subsidiary companies, agree to indemnify and hold harmless the Underwriters in connection with an array of matters that could arise from the offerings.

[49] The Underwriters raise the following issues:

(i) Should this court decide the equity claims motion at this time?

(ii) If this court decides the equity claims motion at this time, should the equity claims order be granted?

[50] On the first issue, counsel to the Underwriters takes the position that the issue is not yet ripe for determination.

[51] Counsel submits that, by seeking the equity claims order at this time, Sino-Forest is attempting to pre-empt the Claims Procedure Order, which already provides a process for the determination of claims. Until such time as the claims procedure in respect of the Related Indemnity Claims is completed, and those claims are determined pursuant to that process, counsel contends the subject of the equity claims motion raises a merely hypothetical question as the court is being asked to determine the proper interpretation of s. 2 of the CCAA before it has the benefit of an actual claim in dispute before it.

[52] Counsel further contends that by asking the court to render judgment on the proper interpretation of s. 2 of the CCAA in the hypothetical, Sino-Forest has put the court in a position where its judgment will not be made in the context of particular facts or with a full and complete evidentiary record.

[53] Even if the court determines that it can decide this motion at this time, the Underwriters submit that the relief requested should not be granted.

Position of the Applicant

[54] The Applicant submits that the amendments to the CCAA relating to equity claims closely parallel existing U.S. law on the subject and that Canadian courts have looked to U.S. courts for guidance on the issue of equity claims as the subordination of equity claims has long been codified there: see e.g. *Blue Range Resources, supra*, and *Nelson Financial, supra*.

[55] The Applicant takes the position that based on the plain language of the CCAA, the Shareholder Claims are "equity claims" as defined in s. 2 as they are claims in respect of a "monetary loss resulting from the ownership, purchase or sale of an equity interest".

[56] The Applicant also submits the following:

(a) the Ontario, Quebec, Saskatchewan and New York Class Actions (collectively, the "Class Actions") all advance claims on behalf of shareholders.

(b) the Class Actions also allege wrongful conduct that affected the trading price of the shares, in that the alleged misrepresentation "artificially inflated" the share price; and

(c) the Class Actions seek damages relating to the trading price of SFC shares and, as such, allege a "monetary loss" that resulted from the ownership, purchase or sale of shares, as defined in s. 2 of the CCAA.

[57] Counsel further submits that, as the Shareholder Claims are "equity claims", they are expressly subordinated to creditor claims and are prohibited from voting on the plan of arrangement.

[58] Counsel to the Applicant also submits that the definition of "equity claims" in s. 2 of the CCAA expressly includes indemnity claims that relate to other equity claims. As such, the Related Indemnity Claims are equity claims within the meaning of s. 2.

[59] Counsel further submits that there is no distinction in the CCAA between the source of any claim for contribution or indemnity; whether by statute, common law, contractual or otherwise. Further, and to the contrary, counsel submits that the legal characterization of a contribution or indemnity claim depends solely on the characterization of the primary claim upon which contribution or indemnity is sought.

[60] Counsel points out that in *Return on Innovation Capital v. Gandi Innovations Limited*, 2011 ONSC 5018, leave to appeal denied, 2012 ONCA 10 [*Return on Innovation*] this court characterized the contractual indemnification claims of directors and officers in respect of an equity claim as "equity claims".

[61] Counsel also submits that guidance on the treatment of underwriter and auditor indemnification claims can be obtained from the U.S. experience. In the U.S., courts have held that the indemnification claims of underwriters for liability or defence costs constitute equity claims that are subordinated to the claims of general creditors. Counsel submits that insofar as

the primary source of liability is characterized as an equity claim, so too is any claim for contribution and indemnity based on that equity claim.

[62] In this case, counsel contends, the Related Indemnity Claims are clearly claims for "contribution and indemnity" based on the Shareholder Claims.

Position of the Ad Hoc Noteholders

[63] Counsel to the Ad Hoc Noteholders submits that the Shareholder Claims are "equity claims" as they are claims in respect of an equity interest and are claims for "a monetary loss resulting from the ownership, purchase or sale of an equity interest" per subsection (d) of the definition of "equity claims" in the CCAA.

[64] Counsel further submits that the Related Indemnity Claims are also "equity claims" as they fall within the "clear and unambiguous" language used in the definition of "equity claim" in the CCAA. Subsection (e) of the definition refers expressly and without qualification to claims for "contribution or indemnity" in respect of claims such as the Shareholder Claims.

[65] Counsel further submits that had the legislature intended to qualify the reference to "contribution or indemnity" in order to exempt the claims of certain parties, it could have done so, but it did not.

[66] Counsel also submits that, if the plain language of subsection (e) is not upheld, shareholders of SFC could potentially create claims to receive indirectly what they could not receive directly (*i.e.*, payment in respect of equity claims through the Related Indemnity Claims) – a result that could not have been intended by the legislature as it would be inconsistent with the purposes of the CCAA.

[67] Counsel to the Ad Hoc Noteholders also submits that, before the CCAA amendments in 2009 (the "CCAA Amendments"), courts subordinated claims on the basis of:

(a) the general expectations of creditors and shareholders with respect to priority and assumption of risks; and

(b) the equitable principles and considerations set out in certain U.S. cases: see e.g. *Blue Range Resources, supra.*

[68] Counsel further submits that, before the CCAA Amendments took effect, courts had expanded the types of claims characterized as equity claims; first to claims for damages of defrauded shareholders and then to contractual indemnity claims of shareholders: see *Blue Range Resources, supra* and *EarthFirst Canada, supra.*

[69] Counsel for the Ad Hoc Noteholders also submits that indemnity claims of underwriters have been treated as equity claims in the United States, pursuant to section 510(b) of the U.S. Bankruptcy Code. This submission is detailed at paragraphs 20-25 of their factum which reads as follows:

20. The desire to more closely align the Canadian approach to equity claims with the U.S. approach was among the considerations that gave rise to the codification of the treatment of equity claims. Canadian courts have also looked to the U.S. law for guidance on the issue of equity claims where codification of the subordination of equity claims has been long-standing.

Janis Sarra at p. 209, Ad Hoc Committee's Book of Authorities, Tab 10.

Report of the Standing Senate Committee on Banking, Trade and Commerce, "Debtors and Creditors Sharing the Burden: A Review of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement act*" (2003) at 158, [...]

Blue Range [*Resources*] at paras. 41-57 [...]

21. Pursuant to § 510(b) of the *U.S. Bankruptcy Code*, all creditors must be paid in full before shareholders are entitled to receive any distribution. § 510(b) of the *U.S. Bankruptcy Code* and the relevant portion of § 502, which is referenced in § 510(b), provide as follows:

§ 510. Subordination

(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

§ 502. Allowance of claims or interests

(e) (1) Notwithstanding subsections (a), (b) and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that

...

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or

...

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined,

> and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

22. U.S. appellate courts have interpreted the statutory language in § 510(b) broadly to subordinate the claims of shareholders that have a nexus or causal relationship to the purchase or sale of securities, including damages arising from alleged illegality in the sale or purchase of securities or from corporate misconduct whether predicated on pre or post-issuance conduct.

> *Re Telegroup Inc.* (2002), 281 F. 3d 133 (3rd Cir. U.S. Court of Appeals) [...]
>
> *American Broadcasting Systems Inc. v. Nugent*, U.S. Court of Appeals for the Ninth Circuit, Case Number 98-17133 (24 January 2001) [...]

23. Further, U.S. courts have held that indemnification claims of underwriters against the corporation for liability or defence costs when shareholders or former shareholders have sued underwriters constitute equity claims in the insolvency of the corporation that are subordinated to the claims of general creditors based on: (a) the plain language of § 510(b), which references claims for "reimbursement or contribution" and (b) risk allocation as between general creditors and those parties that play a role in the purchase and sale of securities that give rise to the shareholder claims (i.e., directors, officers and underwriters).

> *In re Mid-American Waste Sys.*, 228 B.R. 816, 1999 Bankr. LEXIS 27 (Bankr. D. Del. 1999) [*Mid-American*] [...]
>
> *In re Jacom Computer Servs.*, 280 B.R. 570, 2002 Bankr. LEXIS 758 (Bankr. S.D.N.Y. 2002) [...]

24. In *Mid-American*, the Court stated the following with respect to the "plain language" of § 510(b), its origins and the inclusion of "reimbursement or contribution" claims in that section:

> *... I find that the plain language of § 510(b), its legislative history, and applicable case law clearly show that § 510(b) intends to subordinate the indemnification claims of officers, directors, and underwriters for both liability and expenses incurred in connection with the pursuit of claims for rescission or damages by purchasers or sellers of the debtor's securities.* The meaning of amended § 510(b), specifically the language "for reimbursement or contribution . . . on account of [a claim arising from rescission or damages arising from the purchase or sale of a security]," can be discerned by a plain reading of its language.
>
> ... it is readily apparent that the rationale for section 510(b) is not limited to preventing shareholder claimants from improving their position vis-a-

> vis general creditors; *Congress also made the decision to subordinate based on risk allocation. Consequently, when Congress amended § 510(b) to add reimbursement and contribution claims, it was not radically departing from an equityholder claimant treatment provision, as NatWest suggests; it simply added to the subordination treatment new classes of persons and entities involved with the securities transactions giving rise to the rescission and damage claims.* The 1984 amendment to § 510(b) is a logical extension of one of the rationales for the original section — *because Congress intended the holders of securities law claims to be subordinated, why not also subordinate claims of other parties (e.g., officers and directors and underwriters) who play a role in the purchase and sale transactions which give rise to the securities law claims?* As I view it, in 1984 Congress made a legislative judgment that claims emanating from tainted securities law transactions should not have the same priority as the claims of general creditors of the estate. [emphasis added]
>
> [...]
>
> 25. Further, the U.S. courts have held that the degree of culpability of the respective parties is a non-issue in the disallowance of claims for indemnification of underwriters; the equities are meant to benefit the debtor's direct creditors, not secondarily liable creditors with contingent claims.
>
> *In re Drexel Burnham Lambert Group*, 148 B.R. 982, 1992 Bankr. LEXIS 2023 (Bankr. S.D.N.Y. 1992) [...]

[70] Counsel submits that there is no principled basis for treating indemnification claims of auditors differently than those of underwriters.

Analysis

Is it Premature to Determine the Issue?

[71] The class action litigation was commenced prior to the CCAA Proceedings. It is clear that the claims of shareholders as set out in the class action claims against SFC are "equity claims" within the meaning of the CCAA.

[72] In my view, this issue is not premature for determination, as is submitted by the Underwriters.

[73] The Class Action Proceedings preceded the CCAA Proceedings. It has been clear since the outset of the CCAA Proceedings that this issue – namely, whether the claims of E&Y, BDO and the Underwriters as against SFC, would be considered "equity claims" – would have to be determined.

[74] It has also been clear from the outset of the CCAA Proceedings, that a Sales Process would be undertaken and the expected proceeds arising from the Sales Process would generate proceeds insufficient to satisfy the claims of creditors.

[75] The Claims Procedure is in place but, it seems to me that the issue that has been placed before the court on this motion can be determined independently of the Claims Procedure. I do not accept that any party can be said to be prejudiced if this threshold issue is determined at this time. The threshold issue does not depend upon a determination of quantification of any claim. Rather, its effect will be to establish whether the claims of E&Y, BDO and the Underwriters will be subordinated pursuant to the provisions of the CCAA. This is independent from a determination as to the validity of any claim and the quantification thereof.

Should the Equity Claims Order be Granted?

[76] I am in agreement with the submission of counsel for the Ad Hoc Noteholders to the effect that the characterization of claims for indemnity turns on the characterization of the underlying primary claims.

[77] In my view, the claims advanced in the Shareholder Claims are clearly equity claims. The Shareholder Claims underlie the Related Indemnity Claims.

[78] In my view, the CCAA Amendments have codified the treatment of claims addressed in pre-amendment cases and have further broadened the scope of equity claims.

[79] The plain language in the definition of "equity claim" does not focus on the identity of the claimant. Rather, it focuses on the nature of the claim. In this case, it seems clear that the Shareholder Claims led to the Related Indemnity Claims. Put another way, the inescapable conclusion is that the Related Indemnity Claims are being used to recover an equity investment.

[80] The plain language of the CCAA dictates the outcome, namely, that the Shareholder Claims and the Related Indemnity Claims constitute "equity claims" within the meaning of the CCAA. This conclusion is consistent with the trend towards an expansive interpretation of the definition of "equity claims" to achieve the purpose of the CCAA.

[81] In *Return on Innovation*, Newbould J. characterized the contractual indemnification claims of directors and officers as "equity claims". The Court of Appeal denied leave to appeal. The analysis in *Return on Innovation* leads to the conclusion that the Related Indemnity Claims are also equity claims under the CCAA.

[82] It would be totally inconsistent to arrive at a conclusion that would enable either the auditors or the Underwriters, through a claim for indemnification, to be treated as creditors when the underlying actions of the shareholders cannot achieve the same status. To hold otherwise would indeed provide an indirect remedy where a direct remedy is not available.

[83] Further, on the issue of whether the claims of E&Y, BDO and the Underwriters fall within the definition of equity claims, there are, in my view, two aspects of these claims and it is necessary to keep them conceptually separate.

[84] The first and most significant aspect of the claims of E&Y, BDO and the Underwriters constitutes an "equity claim" within the meaning of the CCAA. Simply put, but for the Class Action Proceedings, it is inconceivable that claims of this magnitude would have been launched by E&Y, BDO and the Underwriters as against SFC. The class action plaintiffs have launched their actions against SFC, the auditors and the Underwriters. In turn, E&Y, BDO and the Underwriters have launched actions against SFC and its subsidiaries. The claims of the shareholders are clearly "equity claims" and a plain reading of s. 2(1)(e) of the CCAA leads to the same conclusion with respect to the claims of E&Y, BDO and the Underwriters. To hold otherwise, would, as stated above, lead to a result that is inconsistent with the principles of the CCAA. It would potentially put the shareholders in a position to achieve creditor status through their claim against E&Y, BDO and the Underwriters even though a direct claim against SFC would rank as an "equity claim".

[85] I also recognize that the legal construction of the claims of the auditors and the Underwriters as against SFC is different than the claims of the shareholders against SFC. However, that distinction is not, in my view, reflected in the language of the CCAA which makes no distinction based on the status of the party but rather focuses on the substance of the claim.

[86] Critical to my analysis of this issue is the statutory language and the fact that the CCAA Amendments came into force after the cases relied upon by the Underwriters and the auditors.

[87] It has been argued that the amendments did nothing more than codify pre-existing common law. In many respects, I accept this submission. However, I am unable to accept this submission when considering s. 2(1) of the CCAA, which provides clear and specific language directing that "equity claim" means a claim that is in respect of an equity interest, including a claim for, among other things, "(e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d)".

[88] Given that a shareholder claim falls within s. 2(1)(d), the plain words of subsections (d) and (e) lead to the conclusions that I have set out above.

[89] I fail to see how the very clear words of subsection (e) can be seen to be a codification of existing law. To arrive at the conclusion put forth by E&Y, BDO and the Underwriters would require me to ignore the specific words that Parliament has recently enacted.

[90] I cannot agree with the position put forth by the Underwriters or by the auditors on this point. The plain wording of the statute has persuaded me that it does not matter whether an indemnity claim is seeking no more than allocation of fault and contribution at common law, or whether there is a free-standing contribution and indemnity claim based on contracts.

[91] However, that is not to say that the full amount of the claim by the auditors and Underwriters can be characterized, at this time, as an "equity claim".

[92] The second aspect to the claims of the auditors and underwriters can be illustrated by the following hypothetical: if the claim of the shareholders does not succeed against the class action defendants, E&Y, BDO and the Underwriters will not be liable to the class action plaintiffs. However, these parties may be in a position to demonstrate that they do have a claim against

SFC for the costs of defending those actions, which claim does not arise as a result of "contribution or indemnity in respect of an equity claim".

[93] It could very well be that each of E&Y, BDO and the Underwriters have expended significant amounts in defending the claims brought by the class action plaintiffs which, in turn, could give rise to contractual claims as against SFC. If there is no successful equity claim brought by the class action plaintiffs, it is arguable that any claim of E&Y, BDO and the Underwriters may legitimately be characterized as a claim for contribution or indemnity but not necessarily in respect of an equity claim. If so, there is no principled basis for subordinating this portion of the claim. At this point in time, the quantification of such a claim cannot be determined. This must be determined in accordance with the Claims Procedure.

[94] However, it must be recognized that, by far the most significant part of the claim, is an "equity claim".

[95] In arriving at this determination, I have taken into account the arguments set forth by E&Y, BDO and the Underwriters. My conclusions recognize the separate aspects of the Related Indemnity Claims as submitted by counsel to the Underwriters at paragraph 40 of their factum which reads:

> ...it must be recognized that there are, in fact, at least two different kinds of Related Indemnity Claims:
>
> (a) indemnity claims against SFC in respect of Shareholder Claims against the auditors and the Underwriters; and
>
> (b) indemnity claims against SFC in respect of the defence costs of the auditors and the Underwriters in connection with defending themselves against Shareholder Claims.

Disposition

[96] In the result, an order shall issue that the claims against SFC resulting from the ownership, purchase or sale of equity interests in SFC, including, without limitation, the claims by or on behalf of current or former shareholders asserted in the proceedings listed in Schedule "A" are "equity claims" as defined in s. 2 of the CCAA, being claims in respect of monetary losses resulting from the ownership, purchase or sale of an equity interest. It is noted that counsel for the class action plaintiffs did not contest this issue.

[97] In addition, an order shall also issue that any indemnification claim against SFC related to or arising from the Shareholders Claims, including, without limitation, by or on behalf of any of the other defendants to the proceedings listed in Schedule "A" are "equity claims" under the CCAA, being claims for contribution or indemnity in respect of a claim that is an equity claim. However, I feel it is premature to determine whether this order extends to the aspect of the Related Indemnity Claims that corresponds to the defence costs of the Underwriters and the auditors in connection with defending themselves against the Shareholder Claims.

[98] A direction shall also issue that these orders are made without prejudice to SFC's rights to apply for a similar order with respect to (i) any claims in the statement of claim that are in respect of securities other than shares and (ii) any indemnification claims against SFC related thereto.

MORAWETZ J.

Date: July 27, 2012

SCHEDULE "A" – SHAREHOLDER CLAIMS

1. *Trustees of the Labourers' Pension Fund of Central and Eastern Canada et al. v. Sino-Forest Corporation et al.* (Ontario Superior Court of Justice, Court File No. CV-11-431153-00CP)

2. *Guining Liu v. Sino-Forest Corporation et al.* (Quebec Superior Court, Court File No.: 200-06-000132-111)

3. *Allan Haigh v. Sino-Forest Corporation et al.* (Saskatchewan Court of Queen's Bench, Court File No. 2288 of 2011)

4. *David Leapard et al. v. Allen T.Y. Chan et al.* (District court of the Southern District of New York, Court File No. 650258/2012)

THIS IS EXHIBIT "H" TO

THE AFFIDAVIT OF W. JUDSON MARTIN

SWORN NOVEMBER 29, 2012

A Commissioner, etc.

Chan Ching Yee
Solicitor
Reed Smith
Richards Butler
20/F Alexandra House
Hong Kong SAR

PROOF OF CLAIM AGAINST SINO-FOREST CORPORATION

1. Original Claimant Identification (the "Claimant")

Legal Name of Claimant: Ernst & Young LLP

Name of Contact: Doris Stamml

Address:

Ernst & Young LLP
222 Bay Street, P.O. Box 251
Ernst & Young Tower, 21st Floor

Title: Chief Legal Counsel

Phone #: 416-943-3039

City: Toronto Prov / State: ON

e-mail: doris.stamml@ca.ey.com

Postal/Zip code: M5K 1J7

2. Assignee, if claim has been assigned

Full Legal Name of Assignee _____ Name of Contact _____

Address _____ Phone # _____

_____ Fax # _____

City _____ Prov / State _____ e-mail _____

Postal/Zip code _____

3a. Amount of Claim

The Applicant was and still is indebted to the Claimant as follows:

Currency	Original Currency Amount	Unsecured Prefiling Claim	Restructuring Claim	Secured Claim
CDN	$7,154,200,000.00 plus all not yet quantified/unknown amounts as set out in Schedule "A1"	☒	☒	☐
USD	$1,805,000,000.00 plus all not yet quantified/unknown amounts as set out in Schedule "A1"	☒	☒	☐
_____	_____	☐	☐	☐
_____	_____	☐	☐	☐

3b. Claim against Subsidiaries

If you have or intend to make a claim against one or more Subsidiaries which is based in whole or in part on facts, underlying transactions, causes of action or events relating to a claim made against the Applicant above, check the box below, list the Subsidiaries against whom you assert your claim, and provide particulars of your claim against such Subsidiaries.

☒ I/we have a claim against one or more Subsidiary

Name(s) of Subsidiaries:	Currency	Original Currency Amount	Amount of Claim
See Schedule B for a list of all subsidiaries claimed against	CDN and USD	All amounts claimed in Schedule "A1" are also claimed against the entities listed in Schedule B.	All amounts claimed in Schedule "A1" are also claimed against the entities listed in Schedule B

Ernst & Young LLP reserves all rights as against those entities listed on Schedule "B", including for greater certainty all direct and indirect subsidiaries of Sino-Forest Corporation. Ernst & Young LLP has described its current claims against subsidiaries without prejudice to the fact that such claims may be asserted or amended at a later time.

4. Documentation

Provide all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim.

See Schedule "A2" plus all documents appended thereto.

5. Certification

I hereby certify that:

1. I am the Claimant, or authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. Complete documentation in support of this claim is attached.

Name: Doris Stamm

Title: Chief Legal Counsel

Dated at Toronto
this 20th day of June, 2012

Signature _____

Witness _____

6. Filing of Claim

This Proof of Claim **must be received by the Monitor by no later than 5:00 p.m. (prevailing Eastern Time) on June 20, 2012**, by registered mail, courier, personal delivery or electronic or digital transmission at the following address:

FTI Consulting Canada Inc.
Court-appointed Monitor of Sino-Forest Corporation
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Jodi Porepa
Telephone: (416) 649-8094
E-mail: sfc@fticonsulting.com

An electronic version of this form is available at http://cfcanada.fticonsulting.com/sfc.

SCHEDULE "A1"
CLAIM OF ERNST & YOUNG LLP AGAINST SFC AND SUBSIDIARIES

1. Breach of contract:

    (a) damages in an amount yet to be quantified as more particularly set out in Schedule "A2"; and

    (b) costs and interest.

2. Negligent misrepresentation:

    (a) damages in an amount yet to be quantified as more particularly set out in Schedule "A2"; and

    (b) costs and interest.

3. Fraudulent misrepresentation:

    (a) damages in an amount yet to be quantified as more particularly set out in Schedule "A2"; and

    (b) costs and interest.

4. Inducing Breach of Contract:

    (c) damages in an amount yet to be quantified as more particularly set out in Schedule "A2"; and

    (d) costs and interest.

5. Reputational Loss:

   (a) damages in an amount yet to be quantified as more particularly set out in Schedule "A2"; and

   (b) costs and interest.

6. Contractual indemnification in respect of any amounts paid or payable by Ernst & Young LLP in respect of:

   (a) The action in Ontario Superior Court of Justice Court File No. CV-11-43115300CP (only as the Court permits):

      (i) damages claimed in the amount of up to CDN $7,149,200,000.00;

      (ii) damages claimed in the amount of up to USD $1,805,000,000.00;

      (iii) any unknown amounts not yet pleaded or quantified (including interest and costs) against Ernst & Young LLP in this proceeding; and

      (iv) any amounts incurred or to be incurred by Ernst & Young LLP with respect to its defence of the above-mentioned proceeding.

   (b) The action in *Quebec Superior Court* File No. 200-06-000132-111 (only as authorized and given representative status):

      (i) unknown and unquantified damages in Canadian dollars;

      (ii) unknown and unquantified damages in U.S. dollars;

      (iii) any unknown amounts not yet pleaded or quantified (including interest and costs) against Ernst & Young LLP in the above-mentioned proceeding; and

(iv) any amounts incurred or to be incurred by Ernst & Young LLP with respect to its defence of the above-mentioned proceeding.

(c) The verified complaint in *Supreme Court of the State of New York*, County of New York – Index No. 650258/2012:

(i) unknown and unquantified damages in Canadian dollars;

(ii) unknown and unquantified damages in U.S. dollars;

(iii) any unknown amounts not yet pleaded or quantified (including interest and costs) against Ernst & Young LLP in the above-mentioned proceeding; and

(iv) any amounts incurred or to be incurred by Ernst & Young LLP with respect to its defence of the above-mentioned proceeding.

(d) Other Proceedings (as defined in Schedule "A2" to this Proof of Claim):

(i) unknown and unquantified damages in Canadian dollars;

(ii) unknown and unquantified damages in U.S. dollars;

(iii) any unknown amounts not yet pleaded or quantified (including interest and costs) against Ernst & Young LLP in the Other Proceedings; and

(iv) any amounts incurred or to be incurred by Ernst & Young LLP with respect to the Other Proceedings.

(e) In respect of claims (a)-(d) above, to the date of this proof of claim, Ernst & Young LLP has incurred legal and related costs of approximately $5,000,000 and continues to incur costs.

7. Contribution and indemnity under the *Negligence Act*, R.S.O 1990, c. N-1 and any other applicable legislation outside of Ontario in respect of the actions and other proceedings listed in 6 (a)-(d) above and for the costs set out in 6 (e) above.

THIS IS EXHIBIT "I" TO

THE AFFIDAVIT OF W. JUDSON MARTIN

SWORN NOVEMBER 29, 2012

A Commissioner, etc.

Chan Ching Yee
Solicitor
Reed Smith
Richards Butler
20/F Alexandra House
Hong Kong SAR

SCHEDULE "D"

PROOF OF CLAIM AGAINST SINO-FOREST CORPORATION

1. Original Claimant Identification (the "Claimant")

Legal Name of Claimant: BDO Limited

Address: 25th Floor, Wing On Centre
111 Connaught Road Central

City: Hong Kong Prov / State: ______

Postal/Zip code: ______

Name of Contact: Stephen Chan

Title: Director, Head of Risk

Phone #: +852 2218 8288

Fax #: +852 2815 2239

e-mail: StephenChan@bdo.com.hk

2. Assignee, if claim has been assigned

Full Legal Name of Assignee: ______

Address: ______

City: ______ Prov / State: ______

Postal/Zip code: ______

Name of Contact: ______

Phone #: ______

Fax #: ______

e-mail: ______

3a. Amount of Claim

The Applicant or Director or Officer was and still is indebted to the Claimant as follows:

Currency	Original Currency Amount	Unsecured Prefiling Claim	Restructuring Claim	Secured Claim
$8,204,375,000.00		☒	☐	☐
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐

3b. Claim against Subsidiaries

If you have or intend to make a claim against one or more Subsidiaries which is based in whole or in part on facts, underlying transactions, causes of action or events relating to a claim made against the Applicant above, check the box below, list the Subsidiaries against whom you assert your claim, and provide particulars of your claim against such Subsidiaries.

☐ I/we have a claim against one or more Subsidiary

Name(s) of Subsidiaries	Currency	Original Currency Amount	Amount of Claim

BDO LIMITED 香港立信德豪會計師事務所有限公司

4. Documentation

Provide all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim. See attached

5. Certification

I hereby certify that:

1. I am the Claimant, or authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. Complete documentation in support of this claim is attached.

Name: Stephen Chan (authorized representative of BDO Limited)

Title: Director, Head of Risk of BDO Limited

Dated at HONG KONG

this 19th day of June 2012

Signature: Stephen Chan

Witness: Simon Cheung

CHEUNG SAI KWONG, SIMON
Solicitor, Hong Kong SAR
(Simon Cheung & Co.)
5B, Two Chinachem Plaza,
135 Des Voeux Road Central,
Hong Kong.

6. Filing of Claim

This Proof of Claim must be received by the Monitor by no later than 5:00 p.m. (prevailing Eastern Time) on June 20, 2012, by registered mail, courier, personal delivery or electronic or digital transmission at the following address:

FTI Consulting Canada Inc.
Court-appointed Monitor of Sino-Forest Corporation
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Jodi Porepa
Telephone: (416) 649-8094
E-mail: sfc@fticonsulting.com

Proof of Claim

BDO Limited

1. BDO Limited ("BDO"), is a Hong Kong-based accounting firm formerly known as BDO McCabe Lo Limited that, among other things, conducts audits of the annual financial statements of publicly traded companies. BDO audited the annual financial statements for the Applicant, Sino-Forest Corporation ("Sino") for the years ended December 31, 2005 and December 31, 2006. BDO was the auditor for Sino until on or about August 12, 2007, when BDO was replaced as auditor by Ernst & Young LLP ("E&Y").

The Ontario Class Action:

2. On July 20, 2011, a Notice of Action was issued commencing a proposed class action brought by The Trustees of the Labourers' Pension Fund of Central and Eastern Canada and others against Sino-Forest Corporation and others in Ontario Superior Court of Justice Court File No. CV-11-431153-00CP (the "Ontario Class Action"). This was followed by the delivery of the initial version of the Statement of Claim in the Ontario Class Action on August 30, 2011.

3. The Ontario Class Action seeks to certify an action on behalf of all persons who purchased Sino securities in Canada during the Class Period (which is defined as March 19, 2007 to June 2, 2011), as well as all Canadian residents who purchased Sino's securities outside of Canada.

4. The original claim in the Ontario Class Action named Sino; several current and former officers and directors of Sino; Sino's auditor from August 2007 until April 2012, E&Y; several investment dealers that acted as underwriters for a series of public offerings of securities by Sino; and Pöyry (Beijing) Consulting Company Limited ("Pöyry Beijing"), which conducted valuations of Sino's timber assets during a portion of the Class Period.

5. On or about January 25, 2012, the Statement of Claim in the Ontario Class Action was amended to add BDO as a defendant, and it was further amended on April 18, 2012. A copy of the most recent April 18, 2012 version of the Statement of Claim (the "April 18th Claim") is attached at **TAB A** hereto.

6. The April 18th Claim seeks to certify the Ontario Class Action as a class action and makes the following damages claims against BDO, along with other defendants to the Ontario Class Action:

(a) On behalf of all of the Class Members who purchased Sino's securities in the secondary market during the Class Period (which is defined as the period from March 19, 2007 through June 2, 2011), and as against all of the Defendants other than the Underwriters, a claim for general damages in the sum of **$6.5 billion** (the "Secondary Market Claim");

(b) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which a June 2007 Prospectus issued by Sino (the "June 2007 Prospectus") related, a claim for general damages in the sum of **$175,835,000**;

(c) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which a December 2009 Prospectus issued by Sino (the "December 2009 Prospectus") related, a claim for general damages in the sum of **$319,200,000**;

(d) On behalf of all the Class Members who purchased Sino's 5% Convertible Senior Notes due 2013 pursuant to a July 2008 Offering Memorandum issued by Sino (the "July 2008 Offering Memorandum"), a claim for general damages in the sum of **US$345 million**;

(e) On behalf of all the Class Members who purchased Sino's 10.25% Guaranteed Senior Notes due 2014 pursuant to the June 2009 Offering Memorandum issued by Sino (the "June 2009 Offering Memorandum"), a claim for general damages in the sum of **US$400 million**; and

(f) On behalf of all the Class Members who purchased Sino's 4.25% Convertible Senior Notes due 2016 pursuant to the December 2009 Offering Memorandum issued by Sino (the "December 2009 Offering Memorandum"), a claim for general damages in the sum of **US$460 million**.

7. The claims pleaded against BDO in the April 18th Claim stem entirely from allegations relating to the Audit Reports produced by BDO in relation to its audits of Sino's 2005 and 2006 annual audited financial statements (respectively, the "2005 Audit Report" and the "2006 Audit Report" and, collectively, the "BDO Audit Reports"). The 2005 Audit Report was filed in March 2006 and the 2006 Audit Report was filed in March 2007.

8. It is alleged in the April 18th Claim that the 2005 Audit Report and the 2006 Audit Report each contain the same statement by BDO, a statement that is alleged to have misrepresented that, in the opinion of BDO, Sino's 2005 and 2006 annual financial statements "...present fairly, in all material respects, the financial position of Sino as at December 31, 2005 and December 31, 2006 and the results of its operations and cash flows for the years then ended in accordance with Canadian generally accepted accounting principles."

9. The claim against BDO for **$6.5 Billion** in damages on behalf of purchasers of Sino securities in the secondary market is based upon the initial issuance of the BDO Audit Reports in March 2006 and March 2007, respectively.

10. The claim against BDO for **$495,035,000.00** in total damages on behalf of purchasers of Sino shares pursuant to the June 2007 Prospectus and the December 2009 Prospectus is based upon BDO's consent to the incorporation by reference of the BDO Audit Reports in those Prospectuses and on the actual incorporation by reference of the 2006 Audit Report in the June 2007 Prospectus.

11. The claim against BDO for **US$1,205,000,000.00** in total damages on behalf of purchasers of Notes pursuant to the July 2008, June 2009, and December 2009 Offering Memoranda is based upon the incorporation by reference of the BDO Audit Reports in those Offering Memoranda.

12. The claim as against BDO further alleges that BDO as Sino's auditor owed and breached a duty to maintain or ensure that Sino maintained appropriate internal controls to ensure that Sino's disclosure documents adequately and fairly presented the business and affairs of Sino on a timely basis.

BDO's claims for indemnity against Sino and its officers and directors:

13. BDO denies any liability for the aforementioned claims advanced against it and if required to do so will vigorously defend the claims asserted against it.

14. However, if a Court finds BDO liable for any of the said claims, BDO claims against Sino for indemnity primarily under the terms of its engagement agreements with Sino in respect of the 2005 and 2006 audit years, as well as the subsequent use of the BDO Audit Reports in the above-noted Prospectuses and Offering Memoranda.

15. BDO says that Sino and its management bore the primary responsibility for ensuring the accuracy of Sino's 2005 and 2006 Annual Financial Statements, as well as the accuracy of the statements regarding the financial status of Sino in the Prospectuses and Offering Memoranda referenced herein. This was a contractual obligation owed by Sino to BDO under the terms of the engagement agreements between Sino and BDO.

16. In particular, BDO's engagement letters with Sino for the 2005 and 2006 audit years expressly provided that BDO relied upon Sino and its management to bear the primary responsibility for preparing its annual financial statements in accordance with Generally Accepted Accounting Principles ("GAAP"). **Copies of the Engagement letters for the 2005 and 2006 audit years, dated August 1, 2005 and December 29, 2006 are attached at TABS B and C hereto.**

17. Under the terms of BDO's engagement letters with Sino for the 2005 and 2006 audit years (**Tabs B and C**), Sino also agreed that its management bore primary responsibility to implement appropriate internal controls to detect fraud and error in relation to its financial reporting.

18. In addition to having claims arising from its reliance on these parties to bear primary responsibility for the accuracy of Sino's financial statements, BDO also has contractual rights of indemnity against Sino in each of the engagement letters signed in relation to the use of BDO's audit reports in Sino's Prospectuses and Offering Memoranda – **Copies attached at TABS D, E, F, G, H, and I hereto.**

BDO LIMITED

19. Further and in the alternative, BDO is entitled to contribution and indemnity from Sino and its officers and directors pursuant to the provisions of the *Negligence Act*, **R.S.O. 1990 Chapter N.1.**

Costs of defending the Ontario Class Action:

20. In addition to the amounts claimed above, BDO also seeks its costs both to date and its future costs relating to the defence of the Ontario Class Action and the protection of BDO's rights during the course of the within proceeding – all of which stem from the same contractual breaches by Sino and its officers and directors.

21. BDO's costs to date are approximately **$340,000.00** and its future costs of defending the Ontario Class Action are estimated to be a further **$4 million. A billing statement showing the total legal expenses incurred by BDO to date, as redacted for privilege, is attached at TAB J hereto.**

Summary:

22. In summary, BDO's claim against Sino and its officers and directors is quantified as follows:

(a) In respect of the secondary market claim against BDO - **$6.5 billion;**

(b) In respect of the claims against BDO by purchasers of Sino securities on the primary market pursuant to the Prospectuses and Offering Memoranda referenced herein - **$1,700,035,000**[1]; and

(c) In respect of BDO's current and future legal costs - **$4,340,000.00.**

TOTAL: $8,204,375,000.00

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[1] This portion of the claim includes damages claims advanced in the Ontario Class Action that are claimed in both U.S. and Canadian dollars. As noted above, **$1,205,000,000.00** of this portion has been claimed in U.S. dollars. Under s. 121 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, foreign money obligations are to be calculated based upon the applicable exchange rate at the date of judgment. It is assumed, for the purposes of this Proof of Claim that at the applicable conversion date, the U.S.-Canadian dollar exchange rate will be approximately 1:1, however this portion of the claim may need to be adjusted depending upon the exchange rate applicable at the relevant date.

THIS IS EXHIBIT "J" TO

THE AFFIDAVIT OF W. JUDSON MARTIN

SWORN NOVEMBER 29, 2012

Nathan

A Commissioner, etc.

Chan Ching Yee
Solicitor
Reed Smith
Richards Butler
20/F Alexandra House
Hong Kong SAR

COURT OF APPEAL FOR ONTARIO

CITATION: Sino-Forest Corporation (Re), 2012 ONCA 816
DATE: 20121123
DOCKET: C56115, C56118 & C56125

Goudge, Hoy and Pepall JJ.A.

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

Peter H. Griffin, Peter J. Osborne and Shara Roy, for the appellant Ernst & Young LLP

Sheila Block and David Bish, for the appellants Credit Suisse Securities (Canada) Inc., TD Securities Inc., Dundee Securities Corporation (now known as DWM Securities Inc.), RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Canaccord Financial Ltd. (now known as Canaccord Genuity Corp.), 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

Kenneth Dekker, for the appellant BDO Limited

Robert W. Staley, Derek J. Bell and Jonathan Bell, for the respondent Sino-Forest Corporation

Benjamin Zarnett, Robert Chadwick and Julie Rosenthal, for the respondent the Ad Hoc Committee of Noteholders

Clifton Prophet, for the Monitor FTI Consulting Canada Inc.

Kirk M. Baert, A. Dimitri Lascaris and Massimo Starnino, for the respondent the Ad Hoc Committee of Purchasers

Emily Cole, for the respondent Allen Chan

Erin Pleet, for the respondent David Horsley

David Gadsden, for the respondent Pöyry (Beijing)

Larry Lowenstein and Edward A. Sellers, for the respondent the Board of Directors

Heard: November 13, 2012

On appeal from the order of Justice Geoffrey B. Morawetz of the Superior Court of Justice, dated July 27, 2012, with reasons reported at 2012 ONSC 4377, 92 C.B.R. (5th) 99.

By the Court:

I OVERVIEW

[1] In 2009, the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA"), was amended to expressly provide that general creditors are to be paid in full before an equity claim is paid.

[2] This appeal considers the definition of "equity claim" in s. 2(1) of the CCAA. More particularly, the central issue is whether claims by auditors and underwriters against the respondent debtor, Sino-Forest Corporation ("Sino-Forest"), for contribution and indemnity fall within that definition. The claims arise out of proposed shareholder class actions for misrepresentation.

[3] The appellants argue that the supervising judge erred in concluding that the claims at issue are equity claims within the meaning of the CCAA and in

determining the issue before the claims procedure established in Sino-Forest's CCAA proceeding had been completed.

[4] For the reasons that follow, we conclude that the supervising judge did not err and accordingly dismiss this appeal.

II THE BACKGROUND

(a) The Parties

[5] Sino-Forest is a Canadian public holding company that holds the shares of numerous subsidiaries, which in turn own, directly or indirectly, forestry assets located principally in the People's Republic of China. Its common shares are listed on the Toronto Stock Exchange. Sino-Forest also issued approximately $1.8 billion of unsecured notes, in four series. Trading in Sino-Forest shares ceased on August 26, 2011, as a result of a cease-trade order made by the Ontario Securities Commission.

[6] The appellant underwriters[1] provided underwriting services in connection with three separate Sino-Forest equity offerings in June 2007, June 2009 and December 2009, and four separate Sino-Forest note offerings in July 2008, June 2009, December 2009 and October 2010. Certain underwriters entered into agreements with Sino-Forest in which Sino-Forest agreed to indemnify the

[1] Credit Suisse Securities (Canada) Inc., TD Securities Inc., Dundee Securities Corporation (now known as DWM Securities Inc.), RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Canaccord Financial Ltd. (now known as Canaccord Genuity Corp.), 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.

underwriters in connection with an array of matters that could arise from their participation in these offerings.

[7] The appellant BDO Limited ("BDO") is a Hong Kong-based accounting firm that served as Sino-Forest's auditor between 2005 and August 2007 and audited its annual financial statements for the years ended December 31, 2005 and December 31, 2006.

[8] The engagement agreements governing BDO's audits of Sino-Forest provided that the company's management bore the primary responsibility for preparing its financial statements in accordance with Generally Accepted Accounting Principles ("GAAP") and implementing internal controls to prevent and detect fraud and error in relation to its financial reporting.

[9] BDO's Audit Report for 2006 was incorporated by reference into a June 2007 prospectus issued by Sino-Forest regarding the offering of its shares to the public. This use by Sino-Forest was governed by an engagement agreement dated May 23, 2007, in which Sino-Forest agreed to indemnify BDO in respect of any claims by the underwriters or any third party that arose as a result of the further steps taken by BDO in relation to the issuance of the June 2007 prospectus.

[10] The appellant Ernst & Young LLP ("E&Y") served as Sino-Forest's auditor for the years 2007 to 2012 and delivered Auditors' Reports with respect to the

consolidated financial statements of Sino-Forest for fiscal years ended December 31, 2007 to 2010, inclusive. In each year for which it prepared a report, E&Y entered into an audit engagement letter with Sino-Forest in which Sino-Forest undertook to prepare its financial statements in accordance with GAAP, design and implement internal controls to prevent and detect fraud and error, and provide E&Y with its complete financial records and related information. Some of these letters contained an indemnity in favour of E&Y.

[11] The respondent Ad Hoc Committee of Noteholders consists of noteholders owning approximately one-half of Sino-Forest's total noteholder debt.[2] They are creditors who have debt claims against Sino-Forest; they are not equity claimants.

[12] Sino-Forest has insufficient assets to satisfy all the claims against it. To the extent that the appellants' claims are accepted and are treated as debt claims rather than equity claims, the noteholders' recovery will be diminished.

(b) The Class Actions

[13] In 2011 and January of 2012, proposed class actions were commenced in Ontario, Quebec, Saskatchewan and New York State against, amongst others,

[2] Noteholders holding in excess of $1.296 billion, or 72%, of Sino-Forest's approximately $1.8 billion in noteholders' debt have executed written support agreements in favour of the Sino-Forest CCAA plan as of March 30, 2012. These include noteholders represented by the Ad Hoc Committee of Noteholders.

Sino-Forest, certain of its officers, directors and employees, BDO, E&Y and the underwriters. Sino-Forest is sued in all actions.[3]

[14] The proposed representative plaintiffs in the class actions are shareholders of Sino-Forest. They allege that: Sino-Forest repeatedly misrepresented its assets and financial situation and its compliance with GAAP in its public disclosure; the appellant auditors and underwriters failed to detect these misrepresentations; and the appellant auditors misrepresented that their audit reports were prepared in accordance with generally accepted auditing standards ("GAAS"). The representative plaintiffs claim that these misrepresentations artificially inflated the price of Sino-Forest's shares and that proposed class members suffered damages when the shares fell after the truth was revealed in 2011.

[15] The representative plaintiffs in the Ontario class action seek approximately $9.2 billion in damages. The Quebec, Saskatchewan and New York class actions do not specify the quantum of damages sought.

[16] To date, none of the proposed class actions has been certified.

(c) CCAA Protection and Proofs of Claim

[17] On March 30, 2012, Sino-Forest sought protection pursuant to the provisions of the CCAA. Morawetz J. granted the initial order which, among other

[3] None of the appellants are sued in Saskatchewan and all are sued in Ontario. E&Y is also sued in Quebec and New York and the appellant underwriters are also sued in New York.

things, appointed FTI Consulting Canada Inc. as the Monitor and stayed the class actions as against Sino-Forest. Since that time, Morawetz J. has been the supervising judge of the CCAA proceedings. The initial stay of the class actions was extended and broadened by order dated May 8, 2012.

[18] On May 14, 2012, the supervising judge granted an unopposed claims procedure order which established a procedure to file and determine claims against Sino-Forest.

[19] Thereafter, all of the appellants filed individual proofs of claim against Sino-Forest seeking contribution and indemnity for, among other things, any amounts that they are ordered to pay as damages to the plaintiffs in the class actions. Their proofs of claim advance several different legal bases for Sino-Forest's alleged obligation of contribution and indemnity, including breach of contract, contractual terms of indemnity, negligent and fraudulent misrepresentation in tort, and the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1.

(d) Order under Appeal

[20] Sino-Forest then applied for an order that the following claims are equity claims under the CCAA: claims against Sino-Forest arising from the ownership, purchase or sale of an equity interest in the company, including shareholder claims ("Shareholder Claims"); and any indemnification claims against Sino-

Forest related to or arising from the Shareholder Claims, including the appellants' claims for contribution or indemnity ("Related Indemnity Claims").

[21] The motion was supported by the Ad Hoc Committee of Noteholders.

[22] On July 27, 2012, the supervising judge granted the order sought by Sino-Forest and released a comprehensive endorsement.

[23] He concluded that it was not premature to determine the equity claims issue. It had been clear from the outset of Sino-Forest's CCAA proceedings that this issue would have to be decided and that the expected proceeds arising from any sales process would be insufficient to satisfy the claims of creditors. Furthermore, the issue could be determined independently of the claims procedure and without prejudice being suffered by any party.

[24] He also concluded that both the Shareholder Claims and the Related Indemnity Claims should be characterized as equity claims. In summary, he reasoned that:

- The characterization of claims for indemnity turns on the characterization of the underlying primary claims. The Shareholder Claims are clearly equity claims and they led to and underlie the Related Indemnity Claims;
- The plain language of the CCAA, which focuses on the nature of the claim rather than the identity of the claimant, dictates that both Shareholder Claims and Related Indemnity Claims constitute equity claims;

- The definition of "equity claim" added to the CCAA in 2009 broadened the scope of equity claims established by pre-amendment jurisprudence;

- This holding is consistent with the analysis in *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.*, 2011 ONSC 5018, 83 C.B.R. (5th) 123, which dealt with contractual indemnification claims of officers and directors. Leave to appeal was denied by this court, 2012 ONCA 10, 90 C.B.R. (5th) 141; and

- "It would be totally inconsistent to arrive at a conclusion that would enable either the auditors or the underwriters, through a claim for indemnification, to be treated as creditors when the underlying actions of shareholders cannot achieve the same status" (para. 82). To hold otherwise would run counter to the scheme established by the CCAA and would permit an indirect remedy to the shareholders when a direct remedy is unavailable.

[25] The supervising judge did not characterize the full amount of the claims of the auditors and underwriters as equity claims. He excluded the claims for defence costs on the basis that while it was arguable that they constituted claims for indemnity, they were not necessarily in respect of an equity claim. That determination is not appealed.

III INTERPRETATION OF "EQUITY CLAIM"

(a) Relevant Statutory Provisions

[26] As part of a broad reform of Canadian insolvency legislation, various amendments to the CCAA were proclaimed in force as of September 18, 2009.

[27] They included the addition of s. 6(8):

> No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

Section 22.1, which provides that creditors with equity claims may not vote at any meeting unless the court orders otherwise, was also added.

[28] Related definitions of "claim", "equity claim", and "equity interest" were added to s. 2(1) of the CCAA:

> In this Act,
>
> ...
>
> "claim" means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*;
>
> ...
>
> "equity claim" means a claim that is in respect of an equity interest, including a claim for, among others,
>
> (a) a dividend or similar payment,
>
> (b) a return of capital,
>
> (c) a redemption or retraction obligation,
>
> (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
>
> (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); [Emphasis added.]
>
> "equity interest" means
>
> (a) in the case of a company other than an income trust, a share in the company — or a warrant or option or another right

> to acquire a share in the company — other than one that is derived from a convertible debt, and
>
> (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt;

[29] Section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA") defines a "claim provable in bankruptcy". Section 121 of the BIA in turn specifies that claims provable in bankruptcy are those to which the bankrupt is subject.

> 2. "claim provable in bankruptcy", "provable claim" or "claim provable" includes any claim or liability provable in proceedings under this Act by a creditor;
>
> 121. (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act. [Emphasis added.]

(b) The Legal Framework Before the 2009 Amendments

[30] Even before the 2009 amendments to the CCAA codified the treatment of equity claims, the courts subordinated shareholder equity claims to general creditors' claims in an insolvency. As the supervising judge described:

> [23] Essentially, shareholders cannot reasonably expect to maintain a financial interest in an insolvent company where creditor claims are not being paid in full. Simply put, shareholders have no economic interest in an insolvent enterprise.

> [24] The basis for the differentiation flows from the fundamentally different nature of debt and equity investments. Shareholders have unlimited upside potential when purchasing shares. Creditors have no corresponding upside potential.
>
> [25] As a result, courts subordinated equity claims and denied such claims a vote in plans of arrangement. [Citations omitted.][4]

(c) The Appellants' Submissions

[31] The appellants essentially advance three arguments.

[32] First, they argue that on a plain reading of s. 2(1), their claims are excluded. They focus on the opening words of the definition of "equity claim" and argue that their claims against Sino-Forest are not claims that are "in respect of an equity interest" because they do not have an equity interest in Sino-Forest. Their relationships with Sino-Forest were purely contractual and they were arm's-length creditors, not shareholders with the risks and rewards attendant to that position. The policy rationale behind ranking shareholders below creditors is not furthered by characterizing the appellants' claims as equity claims. They were service providers with a contractual right to an indemnity from Sino-Forest.

[33] Second, the appellants focus on the term "claim" in paragraph (e) of the definition of "equity claim", and argue that the claims in respect of which they seek contribution and indemnity are the shareholders' claims against them in

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[4] The supervising judge cited the following cases as authority for these propositions: *Blue Range Resource Corp., Re*, 2000 ABQB 4, 259 A.R. 30; *Stelco Inc., Re* (2006), 17 C.B.R. (5th) 78 (Ont. S.C.); *Central Capital Corp. (Re)* (1996), 27 O.R. (3d) 494 (C.A.); *Nelson Financial Group Ltd., Re*, 2010 ONSC 6229, 71 C.B.R. (5th) 153; *EarthFirst Canada Inc., Re*, 2009 ABQB 316, 56 C.B.R. (5th) 102.

court proceedings for damages, which are not "claims" against Sino-Forest provable within the meaning of the BIA, and, therefore, not "claims" within s. 2(1). They submit that the supervising judge erred in focusing on the characterization of the underlying primary claims.

[34] Third, the appellants submit that the definition of "equity claim" is not sufficiently clear to have changed the existing law. It is assumed that the legislature does not intend to change the common law without "expressing its intentions to do so with irresistible clearness": *District of Parry Sound Social Services Administration Board v. Ontario Public Service Employees Union, Local 324*, 2003 SCC 42, [2003] 2 S.C.R. 157, at para. 39, citing *Goodyear Tire & Rubber Co. of Canada Ltd. v. T. Eaton Co. Ltd.*, [1956] S.C.R. 610, at p. 614. The appellants argue that the supervising judge's interpretation of "equity claim" dramatically alters the common law as reflected in *National Bank of Canada v. Merit Energy Ltd.*, 2001 ABQB 583, 294 A.R. 15, aff'd 2002 ABCA 5, 299 A.R. 200. There the court determined that in an insolvency, claims of auditors and underwriters for indemnification are not to be treated in the same manner as claims by shareholders. Furthermore, the Senate debates that preceded the enactment of the amendments did not specifically comment on the effect of the amendments on claims by auditors and underwriters. The amendments should be interpreted as codifying the pre-existing common law as reflected in *National Bank of Canada v. Merit Energy Ltd.*

[35] The appellants argue that the decision of *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.* is distinguishable because it dealt with the characterization of claims for damages by an equity investor against officers and directors, and it predated the 2009 amendments. In any event, this court confirmed that its decision denying leave to appeal should not be read as a judicial precedent for the interpretation of the meaning of "equity claim" in s. 2(1) of the CCAA.

(d) Analysis

(i) Introduction

[36] The exercise before this court is one of statutory interpretation. We are therefore guided by the following oft-cited principle from Elmer A. Driedger, *Construction of Statutes*, 2d ed. (Toronto: Butterworths, 1983), at p. 87:

> [T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[37] We agree with the supervising judge that the definition of equity claim focuses on the nature of the claim, and not the identity of the claimant. In our view, the appellants' claims for contribution and indemnity are clearly equity claims.

[38] The appellants' arguments do not give effect to the expansive language adopted by Parliament in defining "equity claim" and read in language not

incorporated by Parliament. Their interpretation would render paragraph (e) of the definition meaningless and defies the logic of the section.

(ii) The expansive language used

[39] The definition incorporates two expansive terms.

[40] First, Parliament employed the phrase "*in respect of*" twice in defining equity claim: in the opening portion of the definition, it refers to an equity claim as a "claim that is *in respect of* an equity interest", and in paragraph (e) it refers to "contribution or indemnity *in respect of* a claim referred to in any of paragraphs (a) to (d)" (emphasis added).

[41] The Supreme Court of Canada has repeatedly held that the words "in respect of" are "of the widest possible scope", conveying some link or connection between two related subjects. In *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743, at para. 16, citing *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 39, the Supreme Court held as follows:

> The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters. [Emphasis added in *CanadianOxy*.]

That court also stated as follows in *Markevich v. Canada*, 2003 SCC 9, [2003] 1 S.C.R. 94, at para. 26:

> The words "in respect of" have been held by this Court to be words of the broadest scope that convey some link between two subject matters. [Citations omitted.]

[42] It is conceded that the Shareholder Claims against Sino-Forest are claims for "a monetary loss resulting from the ownership, purchase or sale of an equity interest", within the meaning of paragraph (d) of the definition of "equity claim". There is an obvious link between the appellants' claims against Sino-Forest for contribution and indemnity and the shareholders' claims against Sino-Forest. The legal proceedings brought by the shareholders asserted their claims against Sino-Forest together with their claims against the appellants, which gave rise to these claims for contribution and indemnity. The causes of action asserted depend largely on common facts and seek recovery of the same loss.

[43] The appellants' claims for contribution or indemnity against Sino-Forest are therefore clearly connected to or "in respect of" a claim referred to in paragraph (d), namely the shareholders' claims against Sino-Forest. They are claims in respect of equity claims by shareholders provable in bankruptcy against Sino-Forest.

[44] Second, Parliament also defined equity claim as "including a claim for, among others", the claims described in paragraphs (a) to (e). The Supreme Court has held that this phrase "including" indicates that the preceding words – "a claim that is in respect of an equity interest" – should be given an expansive interpretation, and include matters which might not otherwise be within the

meaning of the term, as stated in *National Bank of Greece (Canada) v. Katsikonouris*, [1990] 2 S.C.R. 1029, at p. 1041:

> [T]hese words are terms of extension, designed to enlarge the meaning of preceding words, and not to limit them.
>
> ... [T]he natural inference is that the drafter will provide a specific illustration of a subset of a given category of things in order to make it clear that that category extends to things that might otherwise be expected to fall outside it.

[45] Accordingly, the appellants' claims, which clearly fall within paragraph (e), are included within the meaning of the phrase a "claim that is in respect of an equity interest".

(iii) What Parliament did not say

[46] "Equity claim" is not confined by its definition, or by the definition of "claim", to a claim advanced by the holder of an equity interest. Parliament could have, but did not, include language in paragraph (e) restricting claims for contribution or indemnity to those made by shareholders.

(iv) An interpretation that avoids surplusage

[47] A claim for contribution arises when the claimant for contribution has been sued. Section 2 of the *Negligence Act* provides that a tortfeasor may recover contribution or indemnity from any other tortfeasor who is, or would if sued have been, liable in respect of the damage to any person suffering damage as a result

of a tort. The securities legislation of the various provinces provides that an issuer, its underwriters, and, if they consented to the disclosure of information in the prospectus, its auditors, among others, are jointly and severally liable for a misrepresentation in the prospectus, and provides for rights of contribution.[5]

[48] Counsel for the appellants were unable to provide a satisfactory example of when a holder of an equity interest in a debtor company would seek contribution under paragraph (e) against the debtor in respect of a claim referred to in any of paragraphs (a) to (d). In our view, this indicates that paragraph (e) was drafted with claims for contribution or indemnity by non-shareholders rather than shareholders in mind.

[49] If the appellants' interpretation prevailed, and only a person with an equity interest could assert such a claim, paragraph (e) would be rendered meaningless, and as Lamer C.J. wrote in *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at para. 28:

> It is a well accepted principle of statutory interpretation that no legislative provision should be interpreted so as to render it mere surplusage.

(v) The scheme and logic of the section

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[5] *Securities Act*, R.S.O. 1990, c. S.5, s. 130(1), (8); *Securities Act*, R.S.A. 2000, c. S-4, s. 203(1), (10); *Securities Act*, R.S.B.C. 1996, c. 418, s. 131(1), (11); *The Securities Act*, C.C.S.M. c. S50, s. 141(1), (11); *Securities Act*, S.N.B. 2004, c. S-5.5, s. 149(1), (9); *Securities Act*, R.S.N.L. 1990, c. S-13, s. 130(1), (8); *Securities Act*, R.S.N.S. 1989, c. 418, s. 137(1), (8); *Securities Act*, S.Nu. 2009, c. 12, s. 111(1), (12); *Securities Act*, S.N.W.T. 2008, c. 10, s. 111(1), (12); *Securities Act*, R.S.P.E.I. 1988, c. S-3.1, s. 111(1), (12); *Securities Act*, R.S.Q. c. V-1.1, ss. 218, 219, 221; *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2, s. 137(1), (9); *Securities Act*, S.Y. 2007, c. 16, s. 111(1), (13).

[50] Moreover, looking at s. 2(1) as a whole, it would appear that the remedies available to shareholders are all addressed by ss. 2(1)(a) to (d). The logic of ss. 2(1)(a) to (e) therefore also supports the notion that paragraph (e) refers to claims for contribution or indemnity not by shareholders, but by others.

(vi) The legislative history of the 2009 amendments

[51] The appellants and the respondents each argue that the legislative history of the amendments supports their respective interpretation of the term "equity claim". We have carefully considered the legislative history. The limited commentary is brief and imprecise. The clause by clause analysis of Bill C-12 comments that "[a]n equity claim is defined to include any claim that is related to an equity interest".[6] While, as the appellants submit, there was no specific reference to the position of auditors and underwriters, the desirability of greater conformity with United States insolvency law to avoid forum shopping by debtors was highlighted in 2003, some four years before the definition of "equity claim" was included in Bill C-12.

[52] In this instance the legislative history ultimately provided very little insight into the intended meaning of the amendments. We have been guided by the plain words used by Parliament in reaching our conclusion.

(vii) Intent to change the common law

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[6] We understand that this analysis was before the Standing Senate Committee on Banking, Trade and Commerce in 2007.

[53] In our view the definition of "equity claim" is sufficiently clear to alter the pre-existing common law. *National Bank of Canada v. Merit Energy Ltd.*, an Alberta decision, was the single case referred to by the appellants that addressed the treatment of auditors' and underwriters' claims for contribution and indemnity in an insolvency before the definition was enacted. As the supervising judge noted, in a more recent decision, *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.*, the courts of this province adopted a more expansive approach, holding that contractual indemnification claims of directors and officers were equity claims.

[54] We are not persuaded that the practical effect of the change to the law implemented by the enactment of the definition of "equity claim" is as dramatic as the appellants suggest. The operations of many auditors and underwriters extend to the United States, where contingent claims for reimbursement or contribution by auditors and underwriters "liable with the debtor" are disallowed pursuant to § 502(e)(1)(B) of the U.S. Bankruptcy Code, 11 U.S.C.S.[7]

(viii) The purpose of the legislation

[55] The supervising judge indicated that if the claims of auditors and underwriters for contribution and indemnity were not included within the meaning

[7] The United States Bankruptcy Court for the District of Delaware in *In Re: Mid-American Waste Systems, Inc.*, 228 B.R. 816 (1999), indicated that this provision reflects the policy rationale that these stakeholders are in a better position to evaluate the risks associated with the issuance of stock than are general creditors.

of "equity claim", the CCAA would permit an indirect remedy to the shareholders when a direct remedy is not available. We would express this concept differently.

[56] In our view, in enacting s. 6(8) of the CCAA, Parliament intended that a monetary loss suffered by a shareholder (or other holder of an equity interest) in respect of his or her equity interest *not* diminish the assets of the debtor available to general creditors in a restructuring. If a shareholder sues auditors and underwriters in respect of his or her loss, in addition to the debtor, and the auditors or underwriters assert claims of contribution or indemnity against the debtor, the assets of the debtor available to general creditors would be diminished by the amount of the claims for contribution and indemnity.

IV PREMATURITY

[57] We are not persuaded that the supervising judge erred by determining that the appellants' claims were equity claims before the claims procedure established in Sino-Forest's CCAA proceeding had been completed.

[58] The supervising judge noted at para. 7 of his endorsement that from the outset, Sino-Forest, supported by the Monitor, had taken the position that it was important that these proceedings be completed as soon as possible. The need to address the characterization of the appellants' claims had also been clear from the outset. The appellants have not identified any prejudice that arises from the

determination of the issue at this stage. There was no additional information that the appellants have identified that was not before the supervising judge. The Monitor, a court-appointed officer, supported the motion procedure. The supervising judge was well positioned to determine whether the procedure proposed was premature and, in our view, there is no basis on which to interfere with the exercise of his discretion.

V SUMMARY

[59] In conclusion, we agree with the supervising judge that the appellants' claims for contribution or indemnity are equity claims within s. 2(1)(e) of the CCAA.

[60] We reach this conclusion because of what we have said about the expansive language used by Parliament, the language Parliament did not use, the avoidance of surplusage, the logic of the section, and what, from the foregoing, we conclude is the purpose of the 2009 amendments as they relate to these proceedings.

[61] We see no basis to interfere with the supervising judge's decision to consider whether the appellants' claims were equity claims before the completion of the claims procedure.

VI DISPOSITION

[62] This appeal is accordingly dismissed. As agreed, there will be no costs.

Released: November 23, 2012 ("S.T.G.")

"S.T. Goudge J.A."
"Alexandra Hoy J.A."
"S.E. Pepall J.A."

THIS IS EXHIBIT "K" TO

THE AFFIDAVIT OF W. JUDSON MARTIN

SWORN NOVEMBER 29, 2012

Chan Ching Yee
A Commissioner for Oaths
Solicitor
Reed Smith
Richards Butler
20/F Alexandra House
Hong Kong SAR

SCHEDULE "D"

PROOF OF CLAIM AGAINST
SINO-FOREST CORPORATION

1. Original Claimant Identification (the "Claimant")

Legal Name of Claimant: Credit Suisse Securities (Canada) Inc.
Address: 1 First Canadian Place
Suite 5900
City: Toronto Prov / State: ON
Postal/Zip code: M5X 1C9

Name of Contact: Douglas Walker
Title: Head of Legal + Compliance
Phone #: 416-352-4682
Fax #: 416-352-4685
e-mail: douglas.walker@credit-suisse.com

With a copy to:

Name of Contact: Andrew Gray / Adam Slavens
Phone #: 416-865-0040
Fax #: 416-865-7380
e-mail: agray@torys.com
aslavens@torys.com

2. Assignee, if claim has been assigned

Full Legal Name of Assignee:
Address:
City: Prov / State:
Postal/Zip code:

3a. Amount of Claim

The Applicant or Director or Officer was and still is indebted to the Claimant as follows:

Currency	Original Currency Amount	Unsecured Prefiling Claim	Restructuring Claim	Secured Claim
see schedule "A"		☐	☐	☐
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐

3b. Claim against Subsidiaries

If you have or intend to make a claim against one or more Subsidiaries which is based in whole or in part on facts, underlying transactions, causes of action or events relating to a claim made against the Applicant above, check the box below, list the Subsidiaries against whom you assert your claim, and provide particulars of your claim against such Subsidiaries.

☒ I/we have a claim against one or more Subsidiary

Name(s) of Subsidiaries	Currency	Original Currency Amount	Amount of Claim
see schedule "A"			

2. I have knowledge of all the circumstances connected with this D&O Claim.
3. Complete documentation in support of this D&O Claim is attached.

Name Douglas Walker

Title Director, General Counsel Division.

Dated at Toronto

this 15th day of June 2012

Signature [signature]

Witness [signature]

6. Filing of D&O Claim

This Proof of Claim **must be received by the Monitor by no later than 5:00 p.m. (prevailing Eastern Time) on June 20, 2012,** by registered mail, courier, personal delivery or electronic or digital transmission at the following address:

FTI Consulting Canada Inc.
Court-appointed Monitor of Sino-Forest Corporation
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Jodi Porepa
Telephone: (416) 649-8094
E-mail: sfc@fticonsulting.com

An electronic version of this form is available at http://cfcanada.fticonsulting.com/sfc

SCHEDULE "A"
TO PROOF OF CLAIM OF
CREDIT SUISSE SECURITIES (CANADA) INC.

Background

1. On March 30, 2012 (the "Filing Date"), Sino-Forest Corporation (the "Debtor") sought and obtained from the Ontario Superior Court of Justice (the "Court") an Initial Order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), which, *inter alia*, commenced proceedings in respect of the Debtor.

2. Credit Suisse Securities (Canada) Inc. (the "Underwriter") files this Proof of Claim on behalf of itself and its affiliates, and on behalf of its (or its affiliates') current and former directors and officers (collectively, "Claimants").

3. As of the Filing Date, the Debtor and certain of its subsidiaries were, and still are, indebted and/or liable to the Claimants for certain amounts, described more fully below and in Exhibit 1 hereto.

4. The Claimants deny any and all liability arising out of or in any way related to the Litigation (as such term is defined below), and the Claimants further deny that any damages or losses were caused by their conduct rather than the conduct of other parties or events. Nonetheless, because certain parties are seeking or may in the future seek damages and/or other recovery from Claimants on contingent claims in amounts that equal or exceed the amounts described in Exhibit 1 hereto as to which Claimants are entitled to indemnity as described herein, such amounts have been included in this Proof of Claim solely for the purpose of this Proof of Claim.

Indemnification Obligations of Debtor and certain of its Subsidiaries

5. In connection with the Debtor's June 5, 2007 equity offering (Offering Amount $201,135,000) (the "June 2007 Equity Offering"), an Underwriting Agreement dated May 28, 2007 was entered into by, *inter alia*, the Debtor and the Underwriter (the "May 28 Underwriting Agreement"), pursuant to which the Debtor agreed to indemnify and hold harmless the Underwriter (see, *inter alia*, section 9 thereof). A copy of the May 28 Underwriting Agreement is attached as Exhibit 2 hereto.

6. In connection with the Debtor's June 1, 2009 equity offering (Offering Amount $379,500,000) (the "June 2009 Equity Offering"), an Underwriting Agreement dated May 22, 2009 was entered into by, *inter alia*, the Debtor and the Underwriter (the "May 22 Underwriting Agreement"), pursuant to which the Debtor agreed to indemnify and hold harmless the Underwriter (see, *inter alia*, section 9 thereof). A copy of the May 22 Underwriting Agreement is attached as Exhibit 3 hereto.

7. In connection with the Debtor's December 10, 2009 equity offering (Offering Amount $367,080,000) (the "December 2009 Equity Offering", and together with the June 2007 Equity Offering and the June 2009 Equity Offering, the "Offerings"), an Underwriting Agreement dated December 10, 2009 was entered into by, *inter alia*, the Debtor and the

the Debtor arising from, *inter alia*, the Claimants' commercial relations with the Debtor and its affiliates, including without limitation claims based on:

(a) the indemnity provisions of the Offering Documents; and

(b) breach of contract and negligent misrepresentation in connection with the Offerings and Offering Documents,

as more fully described below.

14. The Claimants hereby assert against the Debtor the following unsecured claims (collectively, the "Claim"):

(a) amounts yet to be liquidated, paid, or incurred, based upon contingent claims in respect of losses, liabilities, claims, expenses, damages, judgments, fines and amounts to be paid in settlement or to be incurred by Claimants arising from any and all Litigation in respect of the June 2007 Equity Offering (the "June 2007 Equity Offering Litigation Claim");

(b) amounts yet to be liquidated, paid, or incurred, based upon contingent claims in respect of losses, liabilities, claims, expenses, damages, judgments, fines and amounts to be paid in settlement or to be incurred by Claimants arising from any and all Litigation in respect of the June 2009 Equity Offering (the "June 2009 Equity Offering Litigation Claim");

(c) amounts yet to be liquidated, paid, or incurred, based upon contingent claims in respect of losses, liabilities, claims, expenses, damages, judgments, fines and amounts to be paid in settlement or to be incurred by Claimants arising from any and all Litigation in respect of the December 2009 Equity Offering (the "December 2009 Equity Offering Litigation Claim");

(d) amounts yet to be liquidated, paid, or incurred, based upon claims asserted by the plaintiffs in *Trustees of the Labourers' Pension Fund of Central and Eastern Canada et al. v. Sino-Forest Corporation et al.* (Ontario Superior Court of Justice, Court File No. CV-11-431153-00CP) for unjust enrichment in respect of fees earned by the Claimants for: (i) underwriting fees; and (ii) trading fees (the "Unjust Enrichment Claim");

(e) as of the date of this Proof of Claim, amounts incurred in respect of attorneys' fees and disbursements arising from any and all Litigation ("Incurred Attorneys' Fees"), which invoices in respect of such fees are attached as Exhibit 7 hereto;

(f) interest on the portion of Incurred Attorneys' Fees paid by the Claimants but not reimbursed by the Debtor and its subsidiaries, as the case may be (the "Incurred Attorneys' Fees Interest");

Underwriter (the "December 10 Underwriting Agreement", and together with the May 28 Underwriting Agreement and the May 22 Underwriting Agreement, the "Offering Documents"), pursuant to which the Debtor agreed to indemnify and hold harmless the Underwriter (see, *inter alia*, section 9 thereof). A copy of the December 10 Underwriting Agreement is attached as Exhibit 4 hereto.

Indemnification Claims and other Claims

8. As of the date of this Proof of Claim, the Claimants are or may be named parties to various threatened, pending, completed and/or future claims, actions, suits or proceedings and any appeal therefrom, whether civil, criminal, administrative or investigative, involving or related to the Claimants, or in which the Claimants were, are or may be a party, or were, are or may become involved as a witness or third party, by reason of the Claimants' commercial relationship with the Debtor and its affiliates, including without limitation to the various cases identified in Exhibit 5 hereto (collectively, the "Litigation"). Copies of certain originating documents in respect of the Litigation are attached as Exhibit 6 hereto.

9. The Litigation was cited in the Affidavit of W. Judson Martin, sworn March 30, 2012 in connection with the initial application in this case as a factor precipitating the Debtor's filing under the CCAA.

10. Pursuant to the provisions of the Offering Documents, the Claimants are entitled to reimbursement by the Debtors for any and all expenses incurred, including attorneys' fees, losses, damages, judgments, fines and amounts already paid or to be paid in settlement or already incurred or to be incurred by the Claimants, in connection with any and all Litigation.

11. The claims asserted or that may be asserted by the plaintiffs in the Litigation involve, in part, alleged misrepresentations made by the Debtor in its equity and note offerings in the primary market, including without limitation the offerings described in paragraphs 5 - 7 herein, through prospectuses and offering memoranda. The alleged misrepresentations made by the Debtor in connection with such offerings form the basis upon which general and other damages are claimed by such plaintiffs against the Underwriters.

12. No judgments have been rendered in the Litigation, nor have the Claimants made any payments to plaintiffs in connection with the Litigation. As of the date of this Proof of Claim, the Claimants have incurred expenses in connection with the Litigation in liquidated and unliquidated amounts. The Claimants anticipate incurring additional expenses in connection with the Litigation. As a result, the amount of the Claimants' claims against the Debtor and its subsidiaries, as the case may be, is, in part, contingent and unliquidated as of the date of this Proof of Claim.

The Claims

13. The Claimants' Claim (as such term is defined below) is for, *inter alia*, contractual, statutory and common law rights of indemnity, contribution, set-off and liability against

(g) amounts yet to be liquidated, paid, or incurred, based upon contingent claims in respect of attorneys' fees and disbursements arising from any and all Litigation (the "Contingent Attorneys' Fees"); and

(h) amounts in respect of any and all claims, rights and/or remedies of the Claimants against the Debtor and its subsidiaries, as the case may be, including, but not limited to claims for breach of contract, specific performance, indemnification, contribution, rescission, fraud, fraudulent inducement, fraudulent conveyance, misrepresentation, reimbursement and/or subrogation related to, or arising from or on account of any and all past, present or future litigations, actions or transactions in respect of the Debtor and its subsidiaries, as the case may be, under applicable law or equity (the "Damages Claim").

Additional Information

15. The Underwriter is authorized to file this Proof of Claim on behalf of itself and the Claimants. The signatory of this Proof of Claim, Douglas Walker, is Head of Legal & Compliance of the Underwriter and is authorized to file this Proof of Claim.

16. The Underwriter reserves the right to amend, clarify, modify, update and/or supplement this Proof of Claim at any time and in any respect, including, without limitation to assert additional claims or additional grounds for its claims, to specify the amount of any contingent, unmatured or unliquidated claim as they become non-contingent, matured and/or liquidated and/or to re-characterize its claims or any portion thereof; and to file additional and/or amended proofs of claim at any time and in any respect.

17. The Underwriter reserves the right to attach or bring forth additional documents supporting the Claim and additional documents that may become available after further investigation and discovery.

18. To the extent that the Underwriter or any Claimant(s) have or may have a right to subrogation under or any other equitable claim under common law against the Debtor and its subsidiaries, as the case may be, the Underwriter expressly preserves such rights.

19. By filing this Proof of Claim, the Underwriter does not waive, and specifically preserves, the Underwriter's and the Claimants' respective procedural and substantive defences to any claim that may be asserted against the Underwriter or the Claimants by the Debtor, by any trustee of its estate, or by any other party or group.

20. The filing of this Proof of Claim shall not constitute: (a) a waiver or release of the rights of the Underwriter or the Claimants against the Debtor or any other person or property; (b) a waiver by the Underwriter or any Claimant(s) of their right to contest the jurisdiction of the Court with respect to the subject matter of the Proof of Claim, any objection or other proceeding commenced with respect thereto or any other proceeding commenced in this case against or otherwise involving the Underwriter or any Claimant(s); or (c) an election of remedies or choice of law.

21. This Proof of Claim shall not be deemed to be a waiver of the rights of the Underwriter or any Claimant to: (a) arbitrate existing or future claims or disputes; (b) any other rights, claims, actions, or set-offs to which the Underwriter and/or any Claimant(s) are or may be entitled, in law or in equity, all of which rights, claims, actions, defences, set-offs the Underwriter expressly reserves.

22. To the extent that: (a) Claimants allegedly may be jointly liable with Debtor to an entity or person that does not file a timely proof of claim in this case; and (b) Claimants' claims for indemnification with respect to such liability to such entity or person is disallowed, then the Claimant makes this proof of claim on behalf of all such entities and persons who have claims of the kind described herein.

23. The Underwriter has filed this Proof of Claim under compulsion of the bar date established in this case and to protect Claimants from forfeiture of their claim(s) against the Debtor and its subsidiaries, as the case may be, by reason of such bar date. The Claimants have filed this Proof of Claim only with respect to claims arising out of the transactions and matters described herein. Claimants and/or its affiliates may file additional proofs of claim against the Debtor and its subsidiaries, as the case may be, with respect to claims arising out of other transactions or matters. In addition, the Claimants may file proofs of claim against the Debtor and its subsidiaries, as the case may be, who have guaranteed, or are otherwise obligated with respect to, the claims covered hereby.

24. All notices regarding this Proof of Claim should be sent to Credit Suisse Securities (Canada) Inc., 1 First Canadian Place, Suite 2900, Toronto, ON M5X 1C9, Tel: 416.352.4682, Fax: 416 352 4685, Attention: Douglas Walker, Head of Legal & Compliance (douglas.walker@credit-suisse.com), and Torys LLP, 79 Wellington Street West, Suite 3000, Box 270, TD Centre, Toronto, Ontario, M5K 1N2, Fax: (416) 865-7380, Tel: 416.865.0040, Attention: Andrew Gray (agray@torys.com) and Adam M. Slavens (aslavens@torys.com).