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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

FACTUM OF THE UNDERWRITERS NAMED IN CLASS ACTIONS
(motion for a Plan Filing and Meeting Order, returnable on August 28, 2012)

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PART I – OVERVIEW

1. This Factum is filed by the Underwriters[1] in response to the motion of Sino-Forest Corporation ("Sino-Forest") for the "Plan Filing and Meeting Order".[2] The Underwriters oppose the motion. The Plan is unfair and unreasonable. It is unsanctionable. The defects in the Plan are manifold – they are identified below in Part II, and will be addressed in detail in connection with the Sanction Hearing.

2. One of the many defects in the proposed Plan is that it inappropriately includes the Underwriters' claims for indemnification against Sino-Forest and its Subsidiaries in respect of the Note offerings in the same voting class as the Noteholders, despite the manifestly unequal treatment of their claims and the resulting conflict in their interests. Allowing a Plan as defective as this one to be put to any kind of vote is inappropriate. However, if a Meeting Order is to be made, it should be made expressly on the basis that (i) votes in respect of Indemnified Noteholder Class Action Claims will be separately tabulated at the Meeting as Unresolved Claims but no decision has been made by this Court as to whether the votes attached to

[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.

[2] Unless otherwise defined, capitalized terms used herein have the meanings attributed to them in the Plan.

Indemnified Noteholder Class Action Claims should be voted as part of the Affected Creditor Class or as a separate class, and (ii) the granting of the Meeting Order is not determinative of any aspect of the fairness or reasonableness of the proposed Plan, and all arguments in respect of the fairness and reasonableness of the Plan and the future of the insolvency of Sino-Forest may be made at the Sanction Hearing.

PART II – THE UNDERWRITERS' POSITION

3. In this section of the Underwriters' Factum, we first identify the principles applicable to court approval of the Plan and then we explain the complete failure of the proposed Plan to comport with those principles. The defects in the proposed Plan includes the classification of creditors for voting purposes, and Section B addresses the classification issue in detail because it is the only substantive aspect of court approval of the proposed Plan that is directly raised by the Plan Filing and Meeting Order. The discussion of classification includes a proposal for deferring to the Sanction Hearing the determination that the classification sought by Sino-Forest is appropriate.

A. The Provisions of the Plan are Unfair and Unreasonable

4. *Applicable legal principles.* In the context of exercising the Court's discretion to sanction a plan of compromise and reorganization under the CCAA, Justice Farley held in *Re Campeau Corp.*, specifically with respect to the fairness and reasonableness of the plan that a plan was fair and reasonable because "there has been nothing in the nature of a confiscation of their rights but rather a reasonable balancing of interest."[3]

5. In this case, these underlying principles of fairness and reasonableness are absent – the proposed Plan is neither fair nor reasonable to parties in interest. The Plan contains no "balancing of interest" at all. Indeed, a plan of compromise and arrangement under the CCAA is wholly unnecessary to deliver to Sino-Forest's creditors the value to which they are entitled – on

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[3] *Re Campeau Corp.* (1992), 10 C.B.R. (3d) 104 (Ont. C.J. (Gen. Div.)) at para. 13, Brief of Authorities of the Underwriters, Tab 1

the contrary, a bankruptcy is the proceeding best-suited to the delivery of that value. This issue, too, will be addressed by the Underwriters at the Sanction Hearing.

6. *Defects in the proposed Plan.* The purpose of the list of issues below is to highlight for this Court in a high-level manner at this stage, a non-exhaustive list of the issues that make the proposed Plan unsanctionable:

(1) *No going concern business.* The Plan purports to, *inter alia,* transfer the SFC Business, which includes the Subsidiaries, to Newco free and clear of various claims, including as against the Subsidiaries, "so as to enable the SFC Business to continue on a viable, going concern basis". However, it is the shares of the Subsidiaries that are being distributed, not the operating businesses of the Subsidiaries. No evidence has been provided to support the contention that this mechanism is necessary to continue the Subsidiaries' businesses (i.e., that the Subsidiaries' businesses will fail if its shares are not transferred). In addition, no evidence has been provided to support the contention that the SFC Business is an operating business benefitting the communities in which it operates with a significant employee base that will benefit from a restructuring, underlining how unnecessary the Plan is in these proceedings.

(2) *No proper valuation of the SFC Business.* No evidence has been provided to support the contention that the outcome of the Plan is better for Sino-Forest's stakeholders (other than perhaps the Noteholders) than the outcome of a bankruptcy. The Plan alleges that the Plan outcome is better for persons with an economic interest in Sino-Forest, when considered as a whole, than a liquidation or bankruptcy scenario. Without a proper valuation of the SFC Business (i.e., not just an aborted sales process the details of which are opaque to stakeholders), a comparison of the different outcomes is only conjecture, and it remains unclear exactly what recovery Noteholders are to obtain under the Plan compared to other stakeholders. In the event that the value of the SFC Business is greater than the Noteholders' claims, the Plan may be a preference and/or a transfer at undervalue

at law, despite any effort to shield the transactions contemplated by the Plan from such scrutiny.

(3) *Confiscation of claims against Subsidiaries*. The Subsidiaries remain non-Applicants in these proceedings, they are not Canadian entities and there is no basis for concluding they belong in insolvency proceedings in any jurisdiction. The Plan purports to confiscate the claims of Affected Creditors against the Subsidiaries without the benefit of a vote or consideration at the level of the relevant Subsidiaries. In effect, all claims filed by the Underwriters against the Subsidiaries are to be released with no consideration. Notionally, in exchange for their substantial claims against the Subsidiaries, the Underwriters will receive only their pro-rata share of Newco, which share is much less than that of the Noteholders and which, in any event, has been neither accepted nor quantified. There has been no formal call for claims against the Subsidiaries, though the proofs of claim did contain an indication of such claims, and no official claims were actually filed against the Subsidiaries.

(4) *Confiscation of claims against Directors and Officers*. The Plan purports to confiscate the claims of Affected Creditors against the Directors and Officers without the benefit of a vote or consideration. In effect, all claims filed by the Underwriters against the Named Directors and Officers are to be released with no consideration. Although the Plan provides that claims against Directors and Officers for fraud and criminal conduct are not released, the Plan also provides that no one can actually commence an action for such claims without the consent of the Monitor or leave of this Court on notice to, *inter alia*, Sino-Forest and the Initial Consenting Noteholders. The requirement to obtain permission to pursue such claims under the Plan is contrary to the statutory protection of such claims under the CCAA.

(5) *Unfinished claims procedure and appeal process*. It is premature to proceed with the Plan Sanction Motion while the Equity Claims Order is under appeal and other significant claims remain unresolved, especially without the establishment

of a proper claims resolution process. In order to receive a distribution, a claim must be a Proven Claim. There is no clear and transparent procedure for finally determining and valuing claims and establishing Proven Claims. A Voting Claim under the Meeting Order is not, by virtue of being a Voting Claim, a Proven Claim. Given the quantum of claims that are not Proven Claims, an order of this Court establishing the procedure for disallowing claims and disputing any such disallowances should be made prior to the Meeting and Plan Sanction Motion. The fact that the proposed Plan sets out a procedure for determining and valuing claims for voting and distribution purposes underscores the backward nature of the approach taken by Sino-Forest, as a sufficient claims resolution procedure has not been established to date.

(6) *Broad and inappropriate third party releases*. The Plan provides for broad third party releases that are inappropriate in the circumstances of the present case. The Plan purports to extend such releases to, *inter alia*, the Subsidiaries, the Directors and Officers of Sino-Forest and the Subsidiaries, counsel for the Directors and Officers, the Noteholder Advisors, the SFC Advisors and the Noteholders. No evidence has been provided to support the contention that these third party-releases are appropriate and that sufficient consideration has been provided by the beneficiaries of such releases.

(7) *Unfair and unreasonable treatment of claims of Underwriters*. The Plan purports to treat certain claims of the Underwriters as Equity Claims, which claims were not determined to be Equity Claims pursuant to the Equity Claims Order (e.g., the indemnity claims of the Underwriters in respect of regulatory actions). As discussed above, the substantial claims of the Underwriters against the Subsidiaries are to be released with no consideration. In addition, the recovery of the Underwriters in respect of Defence Costs is conditional upon whether the defence of the underlying litigation is ultimately successful or unsuccessful. No compelling justification for this treatment has been provided to date. This mechanism has the effect of treating Defence Costs as Unresolved Claims until

the defence of the underlying litigation is completed, whether successfully or unsuccessfully, meaning that the quantum and validity of such claims will be unknown at the time of the Meeting and the Plan Sanction Motion.

(8) *Unfair and unreasonable treatment of claims of Third Party Defendants.* The Plan purports to establish a cap on the total amount of claims among all Third Party Defendants, presumably because there is some degree of duplication among the claims. This rationale further underlines the backward nature of this process, as a sufficient claims resolution procedure has not been established to date, which would have the effect of dispensing with the need for a cap. Without a process to formally disallow or partially disallow the claims, there is a risk that some portion of the Third Party Defendants' claims will be confiscated through the imposition of a cap through the proposed Plan.

(9) *Unequal treatment of creditors within the same class.* For the portion of the claims of Underwriters that are Affected Claims and entitled to a distribution under the proposed Plan, there is unequal treatment among different creditors in the same class owing to the following:

(a) the Early Consent Equity Sub-Pool consisting of 7.5 per cent of Newco is distributed to only certain Noteholders for signing the Support Agreement, but other Affected Creditors are ineligible to share in such pool;

(b) the Noteholders and their advisors obtain the benefit of broad third party releases, but other Affected Creditors do not;

(c) the Litigation Trust is established with assets consisting of cash and claims of Sino-Forest to benefit certain Affected Creditors in a manner unequal with others and, in some cases, to the detriment of others;

(d) Affected Creditors (including Noteholder Class Action Claimants) get a seventy-five per cent interest in Newco while the Noteholder Class Action Claimants get a twenty-five per cent interest in Newco, meaning that the

Affected Creditors who are not Noteholder Class Action Claimants receive a lesser share of Newco than other members of their class;

(e) the Plan is conditioned on the Initial Consenting Noteholders and/or the Noteholders, but not other Affected Creditors, being satisfied with the board of Newco, conducting due diligence and receiving their entitlements under the Plan; and

(f) the Noteholders can terminate the Plan if not satisfied with the Proven Claims, meaning that if too many Unresolved Claims are resolved such that they are valid (thereby resulting in a lesser recovery for their claims), they have an effective veto over the Plan.

B. The Classification of Creditors under the Plan is Improper

7. *The time for addressing classification.* In *Re Armbro Enterprises Inc.*, the Court held that the proper time to object to the classification of creditors is at the time approval of such classification is sought, within the time fixed by the Court or prior to the meeting of creditors, and that it is too late to object at the sanction hearing, unless it can be said that the classification has given rise to a substantial injustice.[4] However, the language of section 22 of the CCAA with respect to classification is permissive – it only says that a debtor may seek to establish classes of creditors prior to a meeting of them.

8. To the extent that the issue of the classification of creditors is properly addressed at the Plan Filing and Meeting Order Motion as opposed to at the Plan Sanction Motion, the Underwriters rely on the following law and argument.

9. *Applicable legal principles.* With respect to the classification of creditors, the CCAA provides as follows:

> 22. (1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it

[4] *Re Armbro Enterprises Inc.* (1993), 22 C.B.R. (3d) 80 (Ont. C.J. (Gen. Div.)) at para. 9, Brief of Authorities of the Underwriters, Tab 2

does so, it is to apply to the court for approval of the division before the meeting is held.

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

(a) the nature of the debts, liabilities or obligations giving rise to their claims;

(b) the nature and rank of any security in respect of their claims;

(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.[5]

10. In *Re Canadian Airlines Corp.*, the Court listed the following as the matters to be considered in assessing commonality of interest:

(1) Commonality of interest should be viewed on the basis of the nonfragmentation test, not on an identity of interest test.

(2) The interests to be considered are the legal interests the creditor holds qua creditor in relationship to the debtor company, prior to and under the plan as well as on liquidation.

(3) The commonality of these interests are to be viewed purposively, bearing in mind the object of the CCAA, namely to facilitate reorganizations if at all possible.

(4) In placing a broad and purposive interpretation on the CCAA, the court should be careful to resist classification approaches that would potentially jeopardize potentially viable plans.

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[5] CCAA, sections 22(1) and (2), Schedule "B"

(5) Absent bad faith, the motivations of the creditors to approve or disapprove are irrelevant.

(6) The requirement of creditors being able to consult together means being able to assess their legal entitlement as creditors before or after the plan in a similar manner.[6]

11. The Plan contemplates that all Affected Creditors, no matter what their individual legal rights will constitute a single class for the purpose of voting and considering the Plan, with Equity Claimants constituting a separate class, but with no right to attend the Meeting or vote on the Plan.

12. In the present case, there is insufficient commonality of interest between the Noteholders and the other Affected Creditors in this single class, including, *inter alia*, the Underwriters in respect of the portion of their claims that are Affected Claims and entitled to a distribution under the Plan. The remainder of this section of Part II is focused only on those of the above factors that are most relevant to the present case.

13. *Finer classification will not result in excessive fragmentation.* As described above, the Noteholders and Early Consent Noteholders are receiving special treatment under the Plan that has not been extended to other Affected Creditors, including, *inter alia*, the Underwriters.

14. In the context of reviewing the general principles of classification, the Court in *Re Woodward's Ltd.* found that:

> [t]he case authorities focus on the differences in the legal rights of the creditors in determining whether their interests are sufficiently similar or dissimilar to warrant creditors being placed in the same class or separate classes. I agree that it is the legal rights of the creditors that must be considered and that other external matters that could influence the interests of a creditor are not to be taken in account. However, it is my view that the legal rights should not be considered in isolation and that they must be considered within the context of the provisions of the reorganization plan. It would be appropriate to segregate two sets of creditors with similar legal

[6] *Re Canadian Airlines Corp.* (2000), 19 C.B.R. (4th) 12 (Alta. Q.B) at para. 31, Brief of Authorities of the Underwriters, Tab 4

> interests into separate classes if the plan treats them differently. Conversely, it may be appropriate to include two sets of creditors with different legal rights in the same class if the plan treats them in a fashion that gives them a commonality of interest despite their different legal rights. [7]

15. In deciding that holders of guarantees should not be placed in the same class as creditors that do not have such guarantees, the Court went on to find that:

> [b]y being a minority in the class of General Creditors, the holders of guarantees can have their guarantees confiscated by a vote of the requisite majority of the class who do not have the same rights. The holders of guarantees could be forced to accept the same proportionate amount as the other members of the class and to receive no value in respect of legal rights that they uniquely enjoy and that would have value in a liquidation of the two companies.[8]

16. Also, in *Re 229531 B.C. Ltd.*, the Court refused to approve a plan because, *inter alia*, a guarantee held by one creditor was to be released as a result of the plan and the creditor was to receive the same proportionate distribution as all of the other unsecured creditors. In other words, the guarantee was being confiscated by the vote of other creditors who did not enjoy the same rights as the creditor which held the guarantee.[9]

17. The thread running through the cases discussed above is the unfairness and unreasonableness of first confiscating the legal rights of a creditor, and then placing that creditor in a class with other creditors who did not share such legal rights and that can outvote that creditor. In the present case, the proposed Plan purports to do this very thing to the Underwriters.

18. The Underwriters' claims against Sino-Forest and the Subsidiaries are based on contractual indemnities provided by Sino-Forest and the Subsidiaries to the Underwriters in connection with the certain offerings of securities, pursuant to which Sino-Forest and the

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[7] *Re Woodward's Ltd.* (1993), 20 C.B.R. (3d) 74 (B.C.S.C.) [*Woodward's*] at para. 14, Brief of Authorities of the Underwriters, Tab 5

[8] *Woodward's* at para. 36, Brief of Authorities of the Underwriters, Tab 5

[9] *Re 229531 B.C. Ltd.* (1989), 72 C.B.R. (N.S.) 310 (B.C. S.C.) at paras. 44-48, Brief of Authorities of the Underwriters, Tab 6

Subsidiaries agreed to indemnify and hold harmless the Underwriters in connection with an array of matters that could arise from the offerings.

19. The proposed Plan purports to confiscate the claims of the Underwriters and other Affected Creditors against the Subsidiaries and Directors and Officers without the benefit of a vote or consideration. In effect, all claims filed by the Underwriters against the Subsidiaries, which remain non-Applicants in these proceedings, and the Directors and Officers are to be released with no consideration. Notionally, in exchange for their substantial claims against the Subsidiaries, the Underwriters will receive only their pro-rata share of Newco, which share is much less than that of the Noteholders.

20. The Affected Creditor class may also consists of creditors that do not have claims against the Subsidiaries and, therefore, are not losing such claims under the Plan, further highlighting the need for a finer classification of creditors

21. The Underwriters do not advocate an overly fine classification of creditors that would render Plan approval impossible, but a classification that is based on grouping only those creditors with similar rights and treatment under the Plan together. The Noteholders and Early Consent Noteholders receive rights and treatment under the Plan that is distinct from the general creditor body, making it inappropriate to place all Affected Creditors in a single class. While excessive fragmentation is counterproductive, this does not mean that a single class of creditors is an appropriate method of classification. There is a middle ground that groups only like creditors together, which approach was not adopted in the present case to the detriment of the general creditor body and the benefit of the Noteholders and Early Consent Noteholders.

22. *Differing interests of creditors in relationship to the debtor company.* Although the Noteholders and other members of the Affected Creditor class are unsecured creditors of Sino-Forest, this does not necessarily mean that they should be grouped in the same class. The difference in treatment between the Noteholders and other members of the class is so great in the

present case that, in addition to being an issue of fairness for the Plan Sanction Motion, it warrants a separate class for Noteholders, as it "precludes consultation between the creditors".[10]

23. As discussed above, the Noteholders and Early Consent Noteholders are afforded preferential treatment under the Plan in the form of, *inter alia*, broad releases, additional consideration and due diligence rights. However, it is the right of the Noteholders to terminate the Plan if they are not satisfied with the Proven Claims that, when layered on top of these other elements of preferential treatment, effectively precludes consultation among the Noteholders and other Affected Creditors. This right means that if too many Unresolved Claims are resolved such that they are valid (thereby resulting in a lesser recovery for the Noteholders' claims), the Noteholders have an effective veto over the Plan. This is a significant issue in the present case, as the Equity Claims Order is under appeal and other significant claims remain unresolved, including those of the Underwriters. The effective veto right held by the Noteholders results in a fundamental difference in position among class members that precludes consultation between the Noteholders and other Affected Creditors.

24. *Purposeful view of classification does not undermine the object of the CCAA.* The object of the CCAA is to facilitate reorganizations where possible and to avoid liquidation scenarios with the accompanying harm to suppliers, creditors, employees and communities. In the present case, no evidence has been provided to support the contention that the SFC Business is an operating business benefitting the communities in which it operates with a significant employee base that will benefit from a restructuring. Instead, the Plan is being used to distribute Sino-Forest's value to creditors, which can be done through a bankruptcy. Creditors of Sino-Forest, including the Noteholders and Underwriters, will obtain the economic recovery that they bargained for in a bankruptcy, and a CCAA Plan is not required to achieve this result.

25. There are also competing objects of the CCAA related to due process and fairness that should not be abandoned in the interest of facilitating the creditor approval of a Plan that is neither fair nor reasonable. While a single class of creditors dominated by the Noteholders that

[10] *Re San Francisco Gifts Ltd.* (2004), 5 C.B.R. (5th) 92 (Alta. Q.B.) at para. 24, Brief of Authorities of the Underwriters, Tab 7

have signed the Support Agreement may assure creditor approval of the Plan at the Meeting, this does not make the classification just.

26. *Finer classification will not jeopardize potentially viable plans.* For the reasons discussed above, the Underwriters view the proposed Plan as unfair and unreasonable, and the proposed classification of creditors is a further deficient aspect of the Plan. It is the resulting view of the Underwriters that the Plan is unsanctionable at the Plan Sanction Motion. To approve a flawed classification in order not to jeopardize what may be an unsanctionable plan is neither a just goal nor result in these circumstances.

27. Given the highlighted issues with the Plan and the special rights and treatment afforded under the Plan to the Noteholders, it is all the more necessary to achieve a classification of creditors that is fair to the minority creditors. The proposed classification of creditors does not achieve this result.

28. *Creditors cannot assess their legal entitlements in a similar manner.* While the Equity Claims Order is under appeal and other significant claims remain unresolved, the Underwriters cannot assess their legal entitlements under the Plan in the same way that the Noteholders can, especially without the establishment of a proper claims resolution process. There is no clear and transparent method or procedure for finally determining and valuing claims and establishing Proven Claims.

29. Given the quantum of claims that are not Proven Claims, an order of the Court establishing the procedure for disallowing claims and disputing any such disallowances should be made prior to the Meeting and Plan Sanction Motion. The fact that the proposed Plan to be voted upon, which isn't binding until approved and sanctioned, sets out a procedure for determining and valuing claims for voting and distribution purposes underscores the backward nature of this mechanism, as a sufficient and fulsome claims resolution procedure has not been established to date.

30. This is to be contrasted with the Noteholders' ability to assess their legal entitlements under the proposed Plan. The Noteholders can terminate the Plan if not satisfied with the Proven Claims, meaning that if too many Unresolved Claims are resolved such that they are valid

(thereby resulting in a lesser recovery for their claims), they have an effective veto over the Plan. The Plan is conditioned on the Initial Consenting Noteholders and/or the Noteholders, but not other Affected Creditors, being satisfied with the board of Newco, conducting due diligence and receiving their entitlements under the Plan.

31. In addition, without a proper valuation of the SFC Business (i.e., not just an aborted sales process), it is not possible to compare effectively creditors' different outcomes under the Plan against liquidation scenarios. It is evident that Noteholders and Underwriters sit in very different positions when it comes to assessing their legal entitlements under the proposed Plan.

32. Furthermore, the proposed classification has the effect of grouping in the same class parties that are potentially in conflict of interest. The Court in *Re NsC Diesel Power Incorporated* held that "court[s] should avoid putting in the same class parties with a potential conflict of interest."[11]

33. In the present case, the proposed classification has placed the Noteholders and Underwriters in the same class. As the Noteholders are beneficiaries of the Litigation Trust that may pursue the Litigation Trust Claims against various parties, including, *inter alia*, the Underwriters, there is a clear conflict of interest that could be avoided by a finer classification of creditors. This conflict of interest further underlines the lack of commonality of interest among the creditors of the proposed single class.

34. Due to the insufficient commonality of interest between the Noteholders and the other Affected Creditors in this single class, including, *inter alia*, the Underwriters in respect of the portion of their claims that are Affected Claims and entitled to a distribution under the Plan, this Court should not approve the proposed classification of creditors for purposes of voting on the Plan.

35. *Deferral of the approval of classification.* It is possible to allow a Meeting Order to be made at this time, among other things without determining the appropriateness of the voting classification sought by Sino-Forest. The solution is for the Court to make the Meeting Order

[11] *Re NsC Diesel Power Incorporated* (1990), 79 C.B.R. (N.S.) 1 (N.S. S.C.) at para. 27, Brief of Authorities of the Underwriters, Tab 8

expressly on the basis that (i) votes in respect of Indemnified Noteholder Class Action Claims will be separately tabulated at the Meeting as Unresolved Claims but no decision has been made by this Court as to whether the votes attached to Indemnified Noteholder Class Action Claims should be voted as part of the Affected Creditor Class or as a separate class, and (ii) the granting of the Meeting Order is not determinative of any aspect of the fairness or reasonableness of the proposed Plan, and that all arguments in respect of the fairness and reasonableness of the Plan and the future of the insolvency of Sino-Forest may be made at the Sanction Hearing.[12]

PART III - RELIEF REQUESTED

36. The Underwriters oppose the motion seeking a Plan Filing and Meeting Order. However, if a Meeting Order is to be made it should be on the basis set out above in paragraph 35.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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[12] Certain amendments would be necessary to the proposed draft Meeting Order consistent with this alternative, including striking out language that purports to approve the proposed classification.

SCHEDULE "A"

AUTHORITIES

1. *Re Campeau Corp.* (1992), 10 C.B.R. (3d) 104 (Ont. C.J. (Gen. Div.))
2. *Re First Marathon Inc.*, [1999] O.J. No. 2805 (Ont. S.C.J.)
3. *Re Armbro Enterprises Inc.* (1993), 22 C.B.R. (3d) 80 (Ont. C.J. (Gen. Div.))
4. *Re Canadian Airlines Corp.* (2000), 19 C.B.R. (4th) 12 (Alta. Q.B)
5. *Re Woodward's Ltd.* (1993), 20 C.B.R. (3d) 74 (B.C.S.C.)
6. *Re 229531 B.C. Ltd.* (1989), 72 C.B.R. (N.S.) 310 (B.C. S.C.)
7. *Re San Francisco Gifts Ltd.* (2004), 5 C.B.R. (5th) 92 (Alta. Q.B.)
8. *Re NsC Diesel Power Incorporated* (1990), 79 C.B.R. (N.S.) 1 (N.S. S.C.)

SCHEDULE "B"

COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36

22. (1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

(a) the nature of the debts, liabilities or obligations giving rise to their claims;
(b) the nature and rank of any security in respect of their claims;
(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

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

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SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

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