Court of Appeal File No.: M42068
Court File No. CV-12-9667-00-CL

COURT OF APPEAL FOR ONTARIO

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

APPLICATION UNDER THE *COMPANIES CREDITORS' ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

RESPONDING MOTION RECORD OF ERNST & YOUNG LLP

(Motion for Leave to Appeal from Sanction Order)

February 22, 2013

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TO: **ATTACHED SERVICE LIST**

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	MONDAY, THE 10th DAY
	)	
JUSTICE MORAWETZ	)	OF DECEMBER, 2012

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

PLAN SANCTION ORDER

THIS MOTION, made by Sino-Forest Corporation ("**SFC**"), for an order (i) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), sanctioning the plan of compromise and reorganization dated December 3, 2012 (including all schedules thereto), which Plan is attached as Schedule "**A**" hereto, as supplemented by the plan supplement dated November 21, 2012 previously filed with the Court, as the Plan may be further amended, varied or supplemented from time to time in accordance with the terms thereof (the "**Plan**"), and (ii) pursuant to the section 191 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (the "**CBCA**"), approving the Plan and amending the articles of SFC and giving effect to the changes and transactions arising therefrom, was heard on December 7, 2012 at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of W. Judson Martin sworn November 29, 2012 (the "**Martin Affidavit**"), the Thirteenth Report of FTI Consulting Canada Inc. in its capacity as monitor of SFC (the "**Monitor**") dated November 22, 2012 (the "**Monitor's Thirteenth Report**"), the supplemental report to the Monitor's Thirteenth Report (the "**Supplemental Report**"), and the second supplemental report to the Monitor's Thirteenth Report (the "**Second Supplemental Report**") and on hearing the submissions of counsel for

SFC, the Monitor, the *ad hoc* committee of Noteholders (the "**Ad Hoc Noteholders**"), and such other counsel as were present, no one else appearing for any other party, although duly served with the Motion Record as appears from the Affidavit of Service, filed.

DEFINED TERMS

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Plan Sanction Order shall have the meanings ascribed to such terms in the Plan and/or the Plan Filing and Meeting Order granted by the Court on August 31, 2012 (the "**Plan Filing and Meeting Order**"), as the case may be.

SERVICE, NOTICE AND MEETING

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record in support of this motion, the Monitor's Thirteenth Report, the Supplemental Report and the Second Supplemental Report be and are hereby abridged and validated so that the motion is properly returnable today and service upon any interested party other than those parties served is hereby dispensed with.

3. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service and delivery of the Plan Filing and Meeting Order and the Meeting Materials (including, without limitation, the Plan) to all Persons upon which notice, service and delivery was required.

4. **THIS COURT ORDERS AND DECLARES** that the Meeting was duly convened and held, all in conformity with the CCAA and the Orders of this Court made in the CCAA Proceeding, including, without limitation, the Plan Filing and Meeting Order.

5. **THIS COURT ORDERS AND DECLARES** that: (i) the hearing of the Plan Sanction Order was open to all of the Affected Creditors and all other Persons with an interest in SFC and that such Affected Creditors and other Persons were permitted to be heard at the hearing in respect of the Plan Sanction Order; and (ii) prior to the hearing, all of the Affected Creditors and all other Persons on the Service List in respect of the CCAA Proceeding were given adequate notice thereof.

SANCTION OF THE PLAN

6. **THIS COURT ORDERS** that the relevant class of Affected Creditors of SFC for the purposes of voting to approve the Plan is the Affected Creditors Class.

7. **THIS COURT ORDERS AND DECLARES** that the Plan, and all the terms and conditions thereof, and matters and transactions contemplated thereby, are fair and reasonable.

8. **THIS COURT ORDERS** that the Plan is hereby sanctioned and approved pursuant to section 6 of the CCAA.

PLAN IMPLEMENTATION

9. **THIS COURT ORDERS AND DECLARES** that the Plan and all associated steps, compromises, releases, discharges, cancellations, transactions, arrangements and reorganizations effected thereby are approved and shall be deemed to be implemented, binding and effective in accordance with the provisions of the Plan as of the Plan Implementation Date at the Effective Time, or at such other time, times or manner as may be set forth in the Plan, and shall enure to the benefit of and be binding upon SFC, the other Released Parties, the Affected Creditors and all other Persons and parties named or referred to in, affected by, or subject to the Plan, including, without limitation, their respective heirs, administrators, executors, legal representatives, successors, and assigns.

10. **THIS COURT ORDERS** that each of SFC and the Monitor are authorized and directed to take all steps and actions, and to do all things, necessary or appropriate to implement the Plan in accordance with its terms and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, deliveries, allocations, instruments and agreements contemplated pursuant to the Plan, and such steps and actions are hereby authorized, ratified and approved. Furthermore, neither SFC nor the Monitor shall incur any liability as a result of acting in accordance with terms of the Plan and the Plan Sanction Order.

11. **THIS COURT ORDERS** that SFC, the Monitor, Newco, the Litigation Trustee, the Trustees, DTC, the Unresolved Claims Escrow Agent, all Transfer Agents and any other Person required to make any distributions, deliveries or allocations or take any steps or actions related

thereto pursuant to the Plan are hereby directed to complete such distributions, deliveries or allocations and to take any such related steps and/or actions in accordance with the terms of the Plan, and such distributions, deliveries and allocations, and steps and actions related thereto, are hereby approved.

12. **THIS COURT ORDERS** that upon the satisfaction or waiver, as applicable, of the conditions precedent set out in section 9.1 of the Plan in accordance with the terms of the Plan, as confirmed by SFC and Goodmans LLP to the Monitor in writing, the Monitor is authorized and directed to deliver to SFC and Goodmans LLP a certificate substantially in the form attached hereto as Schedule "**B**" (the "**Monitor's Certificate**") signed by the Monitor, certifying that the Plan Implementation Date has occurred and that the Plan and this Plan Sanction Order are effective in accordance with their terms. Following the Plan Implementation Date, the Monitor shall file the Monitor's Certificate with this Court.

13. **THIS COURT ORDERS AND DECLARES** that the steps, compromises, releases, discharges, cancellations, transactions, arrangements and reorganizations to be effected on the Plan Implementation Date are deemed to occur and be effected in the sequential order contemplated in the Plan, without any further act or formality, beginning at the Effective Time.

14. **THIS COURT ORDERS** that SFC, the Monitor and the Initial Consenting Noteholders are hereby authorized and empowered to exercise all such consent and approval rights in the manner set forth in the Plan, whether prior to or after implementation of the Plan.

15. **THIS COURT ORDERS** that from and after the Plan Implementation Date, and for the purposes of the Plan only, (i) if SFC does not have the ability or the capacity pursuant to Applicable Law to provide its agreement, waiver, consent or approval to any matter requiring SFC's agreement, waiver, consent or approval under this Plan, such agreement, waiver consent or approval may be provided by the Monitor; and (ii) if SFC does not have the ability or the capacity pursuant to Applicable Law to provide its agreement, waiver, consent or approval to any matter requiring SFC's agreement, waiver, consent or approval under this Plan, and the Monitor has been discharged pursuant to an Order, such agreement, waiver consent or approval shall be deemed not to be necessary.

COMPROMISE OF CLAIMS AND EFFECT OF PLAN

16. **THIS COURT ORDERS AND DECLARES** that, pursuant to and in accordance with the terms of the Plan, on the Plan Implementation Date, any and all Affected Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred, subject only to the right of the applicable Persons to receive the distributions and interests to which they are entitled pursuant to the Plan.

17. **THIS COURT ORDERS AND DECLARES** that, pursuant to and in accordance with the terms of the Plan, on the Plan Implementation Date and at the time specified in Section 6.4 of the Plan, all accrued and unpaid interest owing on, or in respect of, or as part of, Affected Creditor Claims (including any Accrued Interest on the Notes and any interest accruing on the Notes or any Ordinary Affected Creditor Claim after the Filing Date) shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred for no consideration and no Person shall have any entitlement to any such accrued and unpaid interest.

18. **THIS COURT ORDERS AND DECLARES** that, on the Plan Implementation Date, the ability of any Person to proceed against SFC or the Subsidiaries in respect of any Released Claims shall be forever discharged, barred and restrained, and all proceedings with respect to, in connection with, or relating to any such matter shall be permanently stayed.

19. **THIS COURT ORDERS** that each Affected Creditor is hereby deemed to have consented to all of the provisions of the Plan, in its entirety, and each Affected Creditor is hereby deemed to have executed and delivered to SFC all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

20. **THIS COURT ORDERS** that, on the Plan Implementation Date and at the time specified in Section 6.4 of the Plan, the SFC Assets (including for greater certainty the Direct Subsidiary Shares, the SFC Intercompany Claims and all other SFC Assets assigned, transferred and conveyed to Newco and/or Newco II pursuant to section 6.4 of the Plan) shall vest in the Person to whom such assets are being assigned, transferred and conveyed, in accordance with the terms of the Plan, free and clear of and from any and all Charges, Claims (including, notwithstanding anything to the contrary herein, any Unaffected Claims), D&O Claims, D&O Indemnity Claims, Section 5.1(2) D&O Claims, Conspiracy Claims, Continuing Other D&O

Claims, Non-Released D&O Claims, Affected Claims, Class Action Claims, Class Action Indemnity Claims, claims or rights of any kind in respect of the Notes or the Note Indentures, and any right or claim that is based in whole or in part on facts, underlying transactions, Causes of Action or events relating to the Restructuring Transaction, the CCAA Proceedings or any of the foregoing, and any guarantees or indemnities with respect to any of the foregoing. Any Encumbrances or claims affecting, attaching to or relating to the SFC Assets in respect of the foregoing are and shall be deemed to be irrevocably expunged and discharged as against the SFC Assets, and no such Encumbrances or claims shall be pursued or enforceable as against Newco, Newco II or any other Person.

21. **THIS COURT ORDERS** that any securities, interests, rights or claims pursuant to the Plan, including the Newco Shares, the Newco Notes and the Litigation Trust Interests, issued, assigned, transferred or conveyed pursuant to the Plan will be free and clear of and from any and all Charges, Claims (including, notwithstanding anything to the contrary herein, any Unaffected Claims), D&O Claims, D&O Indemnity Claims, Affected Claims, Section 5.1(2) D&O Claims, Conspiracy Claims, Continuing Other D&O Claims, Non-Released D&O Claims, Class Action Claims, Class Action Indemnity Claims, claims or rights of any kind in respect of the Notes or the Note Indentures, and any right or claim that is based in whole or in part on facts, underlying transactions, causes of action or events relating to the Restructuring Transaction, the CCAA Proceedings or any of the foregoing, and any guarantees or indemnities with respect to any of the foregoing.

22. **THIS COURT ORDERS** that the Litigation Trust Agreement is hereby approved and deemed effective as of the Plan Implementation Date, including with respect to the transfer, assignment and delivery of the Litigation Trust Claims to the Litigation Trustee which shall, and are hereby deemed to, occur on and as of the Plan Implementation Date. For greater certainty, the Litigation Trust Claims transferred, assigned and delivered to the Litigation Trustee shall not include any Excluded Litigation Trust Claims and all Affected Creditors shall be deemed to have consented to the release of any such Excluded Litigation Trust Claims pursuant to the Plan.

23. **THIS COURT ORDERS** that section 36.1 of the CCAA, sections 95 to 101 of the BIA and any other federal or provincial Law relating to preferences, fraudulent conveyances or transfers at undervalue, shall not apply to the Plan or to any payments, distributions, transfers,

allocations or transactions made or completed in connection with the restructuring and recapitalization of SFC, whether before or after the Filing Date, including, without limitation, to any and all of the payments, distributions, transfers, allocations or transactions contemplated by and to be implemented pursuant to the Plan.

24. **THIS COURT ORDERS** that the articles of reorganization to be filed by SFC pursuant to section 191 of the CBCA, substantially in the form attached as Schedule "C" hereto, are hereby approved, and SFC is hereby authorized to file the articles of reorganization with the Director (as defined in the CBCA).

25. **THIS COURT ORDERS** that on the Equity Cancellation Date, or such other date as agreed to by the Monitor, SFC and the Initial Consenting Noteholders, all Existing Shares and other Equity Interests shall be fully, finally and irrevocably cancelled.

26. **THIS COURT ORDERS AND DECLARES** that the Newco Shares shall be and are hereby deemed to have been validly authorized, created, issued and outstanding as fully-paid and non-assessable shares in the capital of Newco as of the Effective Time.

27. **THIS COURT ORDERS AND DECLARES** that upon the Plan Implementation Date the initial Newco Share in the capital of Newco held by the Initial Newco Shareholder shall be deemed to have been redeemed and cancelled for no consideration.

28. **THIS COURT ORDERS AND DECLARES** that it was advised prior to the hearing in respect of the Plan Sanction Order that the Plan Sanction Order will be relied upon by SFC and Newco as an approval of the Plan for the purpose of relying on the exemption from the registration requirements of the *United States Securities Act of 1933*, as amended, pursuant to section 3(a)(10) thereof for the issuance of the Newco Shares, Newco Notes and, to the extent they may be deemed to be securities, the Litigation Trust Interests, and any other securities to be issued pursuant to the Plan.

STAY OF PROCEEDINGS

29. **THIS COURT ORDERS** that all obligations, agreements or leases to which (i) SFC remains a party on the Plan Implementation Date, or (ii) Newco and/or Newco II becomes a party as a result of the conveyance of the SFC Assets to Newco and the further conveyance of

the SFC Assets to Newco II on the Plan Implementation Date, shall be and remain in full force and effect, unamended, as at the Plan Implementation Date and no party to any such obligation, agreement or lease shall on or following the Plan Implementation Date, accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise disclaim or resiliate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of any such obligation, agreement or lease, (including any right of set-off, dilution or other remedy), or make any demand against SFC, Newco, Newco II, any Subsidiary or any other Person under or in respect of any such agreement with Newco, Newco II or any Subsidiary, by reason:

(a) of any event which occurred prior to, and not continuing after, the Plan Implementation Date, or which is or continues to be suspended or waived under the Plan, which would have entitled any other party thereto to enforce those rights or remedies;

(b) that SFC sought or obtained relief under the CCAA or by reason of any steps or actions taken as part of the CCAA Proceeding or this Plan Sanction Order or prior orders of this Court;

(c) of any default or event of default arising as a result of the financial condition or insolvency of SFC;

(d) of the completion of any of the steps, actions or transactions contemplated under the Plan, including, without limitation, the transfer, conveyance and assignment of the SFC Assets to Newco and the further transfer, conveyance and assignment of the SFC Assets by Newco to Newco II; or

(e) of any steps, compromises, releases, discharges, cancellations, transactions, arrangements or reorganizations effected pursuant to the Plan.

30. **THIS COURT ORDERS** that from and after the Plan Implementation Date, any and all Persons shall be and are hereby stayed from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceed with to advance any Released Claims.

31. **THIS COURT ORDERS** that between (i) the Plan Implementation Date and (ii) the earlier of the Ernst & Young Settlement Date or such other date as may be ordered by the Court on a motion to the Court on reasonable notice to Ernst & Young, any and all Persons shall be and are hereby stayed from commencing, taking, applying for or issuing or continuing any and all steps or proceedings against Ernst & Young (other than all steps or proceedings to implement the Ernst & Young Settlement) pursuant to the terms of the Order of the Honourable Justice Morawetz dated May 8, 2012, provided that no steps or proceedings against Ernst & Young by the Ontario Securities Commission or by staff of the Ontario Securities Commission under the *Securities Act* (Ontario) shall be stayed by this Order.

RELEASES

32. **THIS COURT ORDERS** that, subject to section 7.2 of the Plan, all of the following shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date at the time or times and in the manner set forth in section 6.4 of the Plan:

(a) all Affected Claims, including, without limitation, all Affected Creditor Claims, Equity Claims, D&O Claims (other than Section 5.1(2) D&O Claims, Conspiracy Claims, Continuing Other D&O Claims and Non-Released D&O Claims), D&O Indemnity Claims (except as set forth in section 7.1(d) of the Plan) and Noteholder Class Action Claims (other than the Continuing Noteholder Class Action Claims);

(b) all Claims of the Ontario Securities Commission or any other Governmental Entity that have or could give rise to a monetary liability, including, without limitation, fines, awards, penalties, costs, claims for reimbursement or other claims having a monetary value;

(c) all Class Action Claims (including, without limitation, the Noteholder Class Action Claims) against SFC, the Subsidiaries or the Named Directors or Officers of SFC or the Subsidiaries (other than Class Action Claims that are Section 5.1(2) D&O Claims, Conspiracy Claims or Non-Released D&O Claims);

(d) all Class Action Indemnity Claims (including, without limitation, related D&O Indemnity Claims), other than any Class Action Indemnity Claim by the Third Party

Defendants against SFC in respect of the Indemnified Noteholder Class Action Claims (including, without limitation, any D&O Indemnity Claim in that respect), which shall be limited to the Indemnified Noteholder Class Action Limit pursuant to the releases set out in section 7.1(f) of the Plan and the injunctions set out in section 7.3 of the Plan;

(e) any portion or amount of liability of the Third Party Defendants for the Indemnified Noteholder Class Action Claims (on a collective, aggregate basis in reference to all Indemnified Noteholder Class Action Claims together) that exceeds the Indemnified Noteholder Class Action Limit;

(f) any portion or amount of liability of the Underwriters for the Noteholder Class Action Claims (other than any Noteholder Class Action Claims against the Underwriters for fraud or criminal conduct) (on a collective, aggregate basis in reference to all such Noteholder Class Action Claims together) that exceeds the Indemnified Noteholder Class Action Limit;

(g) any portion or amount of, or liability of SFC for, any Class Action Indemnity Claims by the Third Party Defendants against SFC in respect of the Indemnified Noteholder Class Action Claims (on a collective, aggregate basis in reference to all such Noteholder Class Action Claims together) to the extent that such Class Action Indemnity Claims exceed the Indemnified Noteholder Class Action Limit;

(h) any and all Excluded Litigation Trust Claims;

(i) any and all Causes of Action against Newco, Newco II, the directors and officers of Newco, the directors and officers of Newco II, the Noteholders, members of the *ad hoc* committee of Noteholders, the Trustees, the Transfer Agent, the Monitor, FTI Consulting Canada Inc., FTI HK, counsel for the current Directors of SFC, counsel for the Monitor, counsel for the Trustees, the SFC Advisors, the Noteholder Advisors, and each and every member (including, without limitation, members of any committee or governance council), partner or employee of any of the foregoing, for or in connection with or in any way relating to: any Claims (including, without limitation, notwithstanding anything to the contrary herein, any Unaffected Claims);

Affected Claims; Section 5.1(2) D&O Claims; Conspiracy Claims; Continuing Other D&O Claims; Non-Released D&O Claims; Class Action Claims; Class Action Indemnity Claims; any right or claim in connection with or liability for the Notes or the Note Indentures; any guarantees, indemnities, claims for contribution, share pledges or Encumbrances related to the Notes or the Note Indentures; any right or claim in connection with or liability for the Existing Shares, Equity Interests or any other securities of SFC; any rights or claims of the Third Party Defendants relating to SFC or the Subsidiaries;

(j) any and all Causes of Action against Newco, Newco II, the directors and officers of Newco, the directors and officers of Newco II, the Noteholders, members of the *ad hoc* committee of Noteholders, the Trustees, the Transfer Agent, the Monitor, FTI Consulting Canada Inc., FTI HK, the Named Directors and Officers, counsel for the current Directors of SFC, counsel for the Monitor, counsel for the Trustees, the SFC Advisors, the Noteholder Advisors, and each and every member (including, without limitation, members of any committee or governance council), partner or employee of any of the foregoing, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the Plan Implementation Date (or, with respect to actions taken pursuant to the Plan after the Plan Implementation Date, the date of such actions) in any way relating to, arising out of, leading up to, for, or in connection with the CCAA Proceeding, RSA, the Restructuring Transaction, the Plan, any proceedings commenced with respect to or in connection with the Plan, or the transactions contemplated by the RSA and the Plan, including, without limitation, the creation of Newco and/or Newco II and the creation, issuance or distribution of the Newco Shares, the Newco Notes, the Litigation Trust or the Litigation Trust Interests, provided that nothing in this paragraph shall release or discharge any of the Persons listed in this paragraph from or in respect of any obligations any of them may have under or in respect of the RSA, the Plan or under or in respect of any of Newco, Newco II, the Newco Shares, the Newco Notes, the Litigation Trust or the Litigation Trust Interests, as the case may be;

(k) any and all Causes of Action against the Subsidiaries for or in connection with any Claim (including, without limitation, notwithstanding anything to the contrary herein, any Unaffected Claim); any Affected Claim (including, without limitation, any Affected Creditor Claim, Equity Claim, D&O Claim, D&O Indemnity Claim and Noteholder Class Action Claim); any Section 5.1(2) D&O Claim; any Conspiracy Claim; any Continuing Other D&O Claim; any Non-Released D&O Claim; any Class Action Claim; any Class Action Indemnity Claim; any right or claim in connection with or liability for the Notes or the Note Indentures; any guarantees, indemnities, share pledges or Encumbrances relating to the Notes or the Note Indentures; any right or claim in connection with or liability for the Existing Shares, Equity Interests or any other securities of SFC; any rights or claims of the Third Party Defendants relating to SFC or the Subsidiaries; any right or claim in connection with or liability for the RSA, the Plan, the CCAA Proceedings, the Restructuring Transaction, the Litigation Trust, the business and affairs of SFC and the Subsidiaries (whenever or however conducted), the administration and/or management of SFC and the Subsidiaries, or any public filings, statements, disclosures or press releases relating to SFC; any right or claim in connection with or liability for any indemnification obligation to Directors or Officers of SFC or the Subsidiaries pertaining to SFC, the Notes, the Note Indentures, the Existing Shares, the Equity Interests, any other securities of SFC or any other right, claim or liability for or in connection with the RSA, the Plan, the CCAA Proceedings, the Restructuring Transaction, the Litigation Trust, the business and affairs of SFC (whenever or however conducted), the administration and/or management of SFC, or any public filings, statements, disclosures or press releases relating to SFC; any right or claim in connection with or liability for any guaranty, indemnity or claim for contribution in respect of any of the foregoing; and any Encumbrance in respect of the foregoing;

(l) all Subsidiary Intercompany Claims as against SFC (which are assumed by Newco and then Newco II pursuant to the Plan);

(m) any entitlements of Ernst & Young to receive distributions of any kind (including, without limitation, Newco Shares, Newco Notes and Litigation Trust Interests) under this Plan;

(n) any entitlements of the Underwriters to receive distributions of any kind (including, without limitation, Newco Shares, Newco Notes and Litigation Trust Interests) under this Plan; and

(o) any entitlements of the Named Third Party Defendants to receive distributions of any kind (including, without limitation, Newco Shares, Newco Notes and Litigation Trust Interests) under this Plan.

33. **THIS COURT ORDERS** that nothing in the Plan nor in this Plan Sanction Order shall waive, compromise, release, discharge, cancel or bar any of the claims listed in section 7.2 of the Plan.

34. **THIS COURT ORDERS** that, for greater certainty, nothing in the Plan nor in this Plan Sanction Order shall release any obligations of the Subsidiaries owed to (i) any employees, directors or officers of those Subsidiaries in respect of any wages or other compensation related arrangements, or (ii) to suppliers and trade creditors of the Subsidiaries in respect of goods or services supplied to the Subsidiaries.

35. **THIS COURT ORDERS** that any guarantees, indemnities, Encumbrances or other obligations owing by or in respect of SFC relating to the Notes or the Note Indentures shall be and are hereby deemed to be released, discharged and cancelled.

36. **THIS COURT ORDERS** that the Trustees are hereby authorized and directed to release, discharge and cancel any guarantees, indemnities, Encumbrances or other obligations owing by or in respect of any Subsidiary relating to the Notes or the Noto Indentures.

37. **THIS COURT ORDERS** that any claims against the Named Directors and Officers in respect of Section 5.1(2) D&O Claims or Conspiracy Claims shall be limited to recovery from any insurance proceeds payable in respect of such Section 5.1(2) D&O Claims or Conspiracy Claims, as applicable, pursuant to the Insurance Policies, and Persons with any such Section 5.1(2) D&O Claims against Named Directors and Officers or Conspiracy Claims against Named Directors and Officers shall have no right to, and shall not, make any claim or seek any recoveries from any Person, (including SFC, any of the Subsidiaries, Newco or Newco II), other than enforcing such Persons' rights to be paid from the proceeds of an Insurance Policy by the applicable insurer(s).

38. **THIS COURT ORDERS** that all Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all Released Claims, from (i) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties or their property; (iii) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim, in any manner or forum, against one or more of the Released Parties; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or (v) taking any actions to interfere with the implementation or consummation of this Plan; provided, however, that the foregoing shall not apply to the enforcement of any obligations under the Plan.

39. **THIS COURT ORDERS AND DECLARES** that from and after the Plan Implementation Date, (i) subject to the prior consent of the Initial Consenting Noteholders and the terms of the Litigation Trust Agreement, each of the Litigation Trustee and the Monitor shall have the right to seek and obtain an order from any court of competent jurisdiction, including an Order of the Court in the CCAA or otherwise, that gives effect to any releases of any Litigation Trust Claims agreed to by the Litigation Trustee in accordance with the Litigation Trust Agreement, and (ii) all Affected Creditors shall be deemed to consent to any such treatment of any Litigation Trust Claims.

40. **THIS COURT ORDERS** that the Ernst & Young Settlement and the release of the Ernst & Young Claims pursuant to section 11.1 of the Plan shall become effective upon the satisfaction of the following conditions precedent:

(a) approval by this Honourable Court of the terms of the Ernst & Young Settlement, including the terms and scope of the Ernst & Young Release and the Settlement Trust Order;

(b) issuance by this Honourable Court of the Settlement Trust Order;

(c) the granting of orders under Chapter 15 of the United States *Bankruptcy Code* recognizing and enforcing the Sanction Order and the Settlement Trust Order and any court orders necessary in the United States to approve the Ernst & Young Settlement and any other necessary ancillary order;

(d) any other order necessary to give effect to the Ernst & Young Settlement (the orders referenced in (c) and (d) being collectively the "**Ernst & Young Orders**");

(e) the fulfillment of all conditions precedent in the Ernst & Young Settlement and the fulfillment by the Ontario Class Action Plaintiffs of all of their obligations thereunder;

(f) the Sanction Order, the Settlement Trust Order and all Ernst & Young Orders being final orders and not subject to further appeal or challenge; and

(g) the payment by Ernst & Young of the settlement amount as provided in the Ernst & Young Settlement to the trust established pursuant to the Settlement Trust Order,

Upon the foregoing conditions precedent having been satisfied and upon receipt of a certificate from Ernst & Young confirming it has paid the settlement amount to the Settlement Trust in accordance with the Ernst & Young Settlement and the trustee of the Settlement Trust confirming receipt of such settlement amount, the Monitor shall be authorized and directed to deliver to Ernst & Young the Monitor's Ernst & Young Settlement Certificate and the Monitor shall file the Monitor's Ernst & Young Settlement Certificate with this Honourable Court after delivery of such certificate to Ernst & Young, all as provided for in section 11.1 of the Plan.

41. **THIS COURT ORDERS** that any Named Third Party Defendant Settlement, Named Third Party Defendant Settlement Order and Named Third Party Defendant Release, the terms

and scope of which remain in each case subject to future court approval in accordance with the Plan, shall only become effective after the Plan Implementation Date and upon the satisfaction of the conditions precedent to the applicable Named Third Party Defendant Settlement and the delivery of the applicable Monitor's Named Third Party Settlement Certificate to the applicable Named Third Party Defendant, all as set forth in section 11.2 of the Plan.

THE MONITOR

42. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and the powers provided to the Monitor herein and in the Plan, shall be and is hereby authorized, directed and empowered to perform its functions and fulfill its obligations under the Plan to facilitate the implementation of the Plan.

43. **THIS COURT ORDERS** that the Monitor shall not make any payment from the Monitor's Post-Implementation Reserve to any third party professional services provider (other than its counsel) that exceeds $250,000 (alone or in a series of related payments) without the prior consent of the Initial Consenting Noteholders or an Order of this Court.

44. **THIS COURT ORDERS** that: (i) in carrying out the terms of this Plan Sanction Order and the Plan, the Monitor shall have all the protections given to it by the CCAA, the Initial Order, the Order of this Court dated April 20, 2012 expanding the powers of the Monitor, and as an officer of the Court, including the stay of proceedings in its favour; (ii) the Monitor shall incur no liability or obligation as a result of carrying out the provisions of this Plan Sanction Order and/or the Plan, save and except for any gross negligence or wilful misconduct on its part; (iii) the Monitor shall be entitled to rely on the books and records of SFC and any information provided by SFC without independent investigation; and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

45. **THIS COURT ORDERS** that upon completion by the Monitor of its duties in respect of SFC pursuant to the CCAA, the Plan and the Orders, the Monitor may file with the Court a certificate stating that all of its duties in respect of SFC pursuant to the CCAA, the Plan and the Orders have been completed and thereupon, FTI Consulting Canada Inc. shall be deemed to be

discharged from its duties as Monitor and released of all claims relating to its activities as Monitor.

46. **THIS COURT ORDERS** that in no circumstances will the Monitor have any liability for any of SFC's tax liabilities, if any, regardless of how or when such liabilities may have arisen.

47. **THIS COURT ORDERS** that, subject to the due performance of its obligations as set forth in the Plan and subject to its compliance with any written directions or instructions of the Monitor and/or directions of the Court in the manner set forth in the Plan, SFC Escrow Co. shall have no liabilities whatsoever arising from the performance of its obligations under the Plan.

RESERVES AND OTHER AMOUNTS

48. **THIS COURT ORDERS AND DECLARES** that the amount of each of the Indemnified Noteholder Class Action Limit, the Litigation Funding Amount, the Unaffected Claims Reserve, the Administration Charge Reserve, the Monitor's Post-Implementation Reserve and the Unresolved Claims Reserve, is as provided for in the Plan, the Plan Supplement or in Schedule "D" hereto, or such other amount as may be agreed by SFC, the Monitor and the Initial Consenting Noteholders, as applicable, in accordance with the terms of the Plan.

49. **THIS COURT ORDERS** that Goodmans LLP, in its capacity as counsel to the Initial Consenting Noteholders, shall be permitted to apply for an Order of the Court at any time directing the Monitor to make distributions from the Monitor's Post-Implementation Reserve.

50. **THIS COURT ORDERS AND DECLARES** that, on the Plan Implementation Date, at the time or times and in the manner set forth in section 6.4 of the Plan, each of the Charges shall be discharged, released and cancelled, and any obligations secured thereby shall be satisfied pursuant to section 4.2(b) of the Plan, and from and after the Plan Implementation Date the Administration Charge Reserve shall stand in place of the Administration Charge as security for the payment of any amounts secured by the Administration Charge.

51. **THIS COURT ORDERS AND DECLARES** that any Unresolved Claims that exceed $1 million shall not be accepted or resolved without further Order of the Court. All parties with Unresolved Claims shall have standing in any proceeding with respect to the determination or status of any other Unresolved Claim. Counsel to the Initial Consenting Noteholders, Goodmans

LLP, shall continue to have standing in any such proceeding on behalf of the Initial Consenting Noteholders, in their capacity as Affected Creditors with Proven Claims.

DOCUMENT PRESERVATION

52. **THIS COURT ORDERS AND DECLARES** that, prior to the Effective Time, SFC shall: (i) preserve or cause to be preserved copies of any documents (as such term is defined in the *Rules of Civil Procedure* (Ontario)) that are relevant to the issues raised in the Class Actions; and (ii) make arrangements acceptable to SFC, the Monitor, the Initial Consenting Noteholders, counsel to Ontario Class Action Plaintiffs, counsel to Ernst & Young, counsel to the Underwriters and counsel to the Named Third Party Defendants to provide the parties to the Class Actions with access thereto, subject to customary commercial confidentiality, privilege or other applicable restrictions, including lawyer-client privilege, work product privilege and other privileges or immunities, and to restrictions on disclosure arising from s. 16 of the *Securities Act* (Ontario) and comparable restrictions on disclosure in other relevant jurisdictions, for purposes of prosecuting and/or defending the Class Actions, as the case may be, provided that nothing in the foregoing reduces or otherwise limits the parties' rights to production and discovery in accordance with the *Rules of Civil Procedure* (Ontario) and the *Class Proceedings Act, 1992* (Ontario).

EFFECT, RECOGNITION AND ASSISTANCE

53. **THIS COURT ORDERS** that nothing in this Plan Sanction Order or as a result of the implementation of the Plan shall affect the standing any Person has at the date of this Plan Sanction Order in respect of the CCAA Proceeding or the Litigation Trust.

54. **THIS COURT ORDERS** that the transfer, assignment and delivery to the Litigation Trustee pursuant to the Litigation Trust of (i) rights, title and interests in and to the Litigation Trust Claims and (ii) all respective rights, title and interests in and to any lawyer-client privilege, work product privilege or other privilege or immunity attaching to any documents or communications (whether written or oral) associated with the Litigation Trust Claims, regardless of whether such documents or copies thereof have been requested by the Litigation Trustee pursuant to the Litigation Trust Agreement (collectively, the "**Privileges**") shall not constitute a waiver of any such Privileges, and that such Privileges are expressly maintained.

55. **THIS COURT ORDERS** that the current directors of SFC shall be deemed to have resigned on the Plan Implementation Date. The current directors of SFC shall have no liability in such capacity for any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including, without limitation, for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, arising on or after the Plan Implementation Date.

56. **THIS COURT ORDERS** that SFC and the Monitor may apply to this Court for advice and direction with respect to any matter arising from or under the Plan or this Plan Sanction Order.

57. **THIS COURT ORDERS** that this Plan Sanction Order shall have full force and effect in all provinces and territories of Canada and abroad as against all persons and parties against whom it may otherwise be enforced.

58. **THIS COURT ORDERS** that, from and after the Plan Implementation Date, the Monitor is hereby authorized and appointed to act as the foreign representative in respect of the within proceedings for the purposes of having these proceedings recognized in the United States pursuant to chapter 15 of title 11 of the United States Code.

59. **THIS COURT ORDERS** that, as promptly as practicable following the Plan Implementation Date, but in no event later than the third Business Day following the Plan Implementation Date, the Monitor, as the foreign representative of SFC and of the within proceedings, is hereby authorized and directed to commence a proceeding in a court of competent jurisdiction in the United States seeking recognition of the Plan and this Plan Sanction Order and confirming that the Plan and this Plan Sanction Order are binding and effective in the United States.

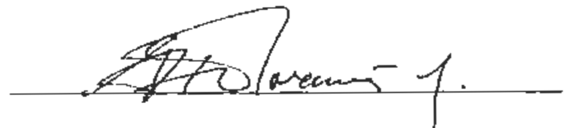
60. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body having jurisdiction in Canada, the United States, Barbados, the British Virgin Islands, Cayman Islands, Hong Kong, the People's Republic of

China or in any other foreign jurisdiction, to give effect to this Plan Sanction Order and to assist SFC, the Monitor and their respective agents in carrying out the terms of this Plan Sanction Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to SFC and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Plan Sanction Order, to grant representative status to the Monitor in any foreign proceeding, or to assist SFC and the Monitor and their respective agents in carrying out the terms of this Plan Sanction Order.

61. **THIS COURT ORDERS** that each of SFC and the Monitor shall, following consultation with Goodmans LLP, be at liberty, and is hereby authorized and empowered, to make such further applications, motions or proceedings to or before such other courts and judicial, regulatory and administrative bodies, and take such steps in Canada, the United States of America, the British Virgin Islands, Cayman Islands, Hong Kong, the People's Republic of China or in any other foreign jurisdiction, as may be necessary or advisable to give effect to this Plan Sanction Order and any other Order granted by this Court, including for recognition of this Plan Sanction Order and for assistance in carrying out its terms.

62. **THIS COURT ORDERS** that this Plan Sanction Order shall be posted on the Monitor's Website at http://cfcanada.fticonsulting.com/sfc and only be required to be served upon the parties on the Service List and those parties who appeared at the hearing of the motion for this Plan Sanction Order.

63. **THIS COURT ORDERS AND DECLARES** that any conflict or inconsistency between the Plan and this Plan Sanction Order shall be governed by the terms, conditions and provisions of the Plan, which shall take precedence and priority.



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Schedule "A"

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 AND ARRANGEMENT OF SINO-FOREST CORPORATION

APPLICANT

PLAN OF COMPROMISE AND REORGANIZATION

pursuant to the *Companies' Creditors Arrangement Act* and the *Canada Business Corporations Act* concerning, affecting and involving

SINO-FOREST CORPORATION

December 3, 2012

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PLAN OF COMPROMISE AND REORGANIZATION

WHEREAS Sino-Forest Corporation ("**SFC**") is insolvent;

AND WHEREAS, on March 30, 2012 (the "**Filing Date**"), the Honourable Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted an initial Order in respect of SFC (as such Order may be amended, restated or varied from time to time, the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and the *Canada Business Corporation Act*, R.S.C. 1985, c. C-44, as amended (the "**CBCA**");

AND WHEREAS, on August 31, 2012, the Court granted a Plan Filing and Meeting Order (as such Order may be amended, restated or varied from time to time, the "**Meeting Order**") pursuant to which, among other things, SFC was authorized to file this plan of compromise and reorganization and to convene a meeting of affected creditors to consider and vote on this plan of compromise and reorganization.

NOW THEREFORE, SFC hereby proposes this plan of compromise and reorganization pursuant to the CCAA and CBCA.

ARTICLE 1
INTERPRETATION

1.1 Definitions

In the Plan, unless otherwise stated or unless the subject matter or context otherwise requires:

"**2013 Note Indenture**" means the indenture dated as of July 23, 2008, by and between SFC, the entities listed as subsidiary guarantors therein, and The Bank of New York Mellon, as trustee, as amended, modified or supplemented.

"**2014 Note Indenture**" means the indenture dated as of July 27, 2009, by and between SFC, the entities listed as subsidiary guarantors therein, and Law Debenture Trust Company of New York, as trustee, as amended, modified or supplemented.

"**2016 Note Indenture**" means the indenture dated as of December 17, 2009, by and between SFC, the entities listed as subsidiary guarantors therein, and The Bank of New York Mellon, as trustee, as amended, modified or supplemented.

"**2017 Note Indenture**" means the indenture dated as of October 21, 2010, by and between SFC, the entities listed as subsidiary guarantors therein, and Law Debenture Trust Company of New York, as trustee, as amended, modified or supplemented.

"**2013 Notes**" means the aggregate principal amount of US$345,000,000 of 5.00% Convertible Senior Notes Due 2013 issued pursuant to the 2013 Note Indenture.

"**2014 Notes**" means the aggregate principal amount of US$399,517,000 of 10.25% Guaranteed Senior Notes Due 2014 issued pursuant to the 2014 Note Indenture.

"**2016 Notes**" means the aggregate principal amount of US$460,000,000 of 4.25% Convertible Senior Notes Due 2016 issued pursuant to the 2016 Note Indenture.

"**2017 Notes**" means the aggregate principal amount of US$600,000,000 of 6.25% Guaranteed Senior Notes Due 2017 issued pursuant to the 2017 Note Indenture.

"**Accrued Interest**" means, in respect of any series of Notes, all accrued and unpaid interest on such Notes, at the regular rates provided in the applicable Note Indentures, up to and including the Filing Date.

"**Administration Charge**" has the meaning ascribed thereto in the Initial Order.

"**Administration Charge Reserve**" means the cash reserve to be established by SFC on the Plan Implementation Date in the amount of $500,000 or such other amount as agreed to by the Monitor and the Initial Consenting Noteholders, which cash reserve: (i) shall be maintained and administered by the Monitor, in trust, for the purpose of paying any amounts secured by the Administration Charge; and (ii) upon the termination of the Administration Charge pursuant to the Plan, shall stand in place of the Administration Charge as security for the payment of any amounts secured by the Administration Charge.

"**Affected Claim**" means any Claim, D&O Claim or D&O Indemnity Claim that is not: an Unaffected Claim; a Section 5.1(2) D&O Claim; a Conspiracy Claim; a Continuing Other D&O Claim; a Non-Released D&O Claim; or a Subsidiary Intercompany Claim, and "Affected Claim" includes any Class Action Indemnity Claim. For greater certainty, all of the following are Affected Claims: Affected Creditor Claims; Equity Claims; Noteholder Class Action Claims (other than the Continuing Noteholder Class Action Claims); and Class Action Indemnity Claims.

"**Affected Creditor**" means a Person with an Affected Creditor Claim, but only with respect to and to the extent of such Affected Creditor Claim.

"**Affected Creditor Claim**" means any Ordinary Affected Creditor Claim or Noteholder Claim.

"**Affected Creditors Class**" has the meaning ascribed thereto in section 3.2(a) hereof.

"**Affected Creditors Equity Sub-Pool**" means an amount of Newco Shares representing 92.5% of the Newco Equity Pool.

"**Alternative Sale Transaction**" has the meaning ascribed thereto in section 10.1 hereof.

"**Alternative Sale Transaction Consideration**" has the meaning ascribed thereto in section 10.1 hereof.

"**Applicable Law**" means any applicable law, statute, order, decree, consent decree, judgment, rule, regulation, ordinance or other pronouncement having the effect of law whether in Canada,

the United States, Hong Kong, the PRC or any other country, or any domestic or foreign state, county, province, city or other political subdivision or of any Governmental Entity.

"**Auditors**" means the former auditors of SFC that are named as defendants to the Class Actions Claims, including for greater certainty Ernst & Young LLP and BDO Limited.

"**Barbados Loans**" means the aggregate amount outstanding at the date hereof pursuant to three loans made by SFC Barbados to SFC in the amounts of US$65,997,468.10 on February 1, 2011, US$59,000,000 on June 7, 2011 and US$176,000,000 on June 7, 2011.

"**Barbados Property**" has the meaning ascribed thereto in section 6.4(j) hereof.

"BIA" means the *Bankruptcy and Insolvency Act*, R. S. C. 1985, c. B-3.

"**Business Day**" means a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario.

"**Canadian Tax Act**" means the *Income Tax Act* (Canada) and the *Income Tax Regulations*, in each case as amended from time to time.

"**Causes of Action**" means any and all claims, actions, causes of action, demands, counterclaims, suits, rights, entitlements, litigation, arbitration, proceeding, hearing, complaint, debt, obligation, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries of whatever nature that any Person may be entitled to assert in law, equity or otherwise, whether known or unknown, foreseen or unforeseen, reduced to judgment or not reduced to judgment, liquidated or unliquidated, contingent or non-contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly, indirectly or derivatively, existing or hereafter arising and whether pertaining to events occurring before, on or after the Filing Date.

"**CBCA**" has the meaning ascribed thereto in the recitals.

"**CCAA**" has the meaning ascribed thereto in the recitals.

"**CCAA Proceeding**" means the proceeding commenced by SFC under the CCAA on the Filing Date in the Ontario Superior Court of Justice (Commercial List) under court file number CV-12-9667-00CL.

"**Charges**" means the Administration Charge and the Directors' Charge.

"**Claim**" means any right or claim of any Person that may be asserted or made against SFC, in whole or in part, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express,

implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person (including any Directors or Officers of SFC or any of the Subsidiaries) to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Filing Date, (B) relates to a time period prior to the Filing Date, or (C) is a right or claim of any kind that would be a claim provable against SFC in bankruptcy within the meaning of the BIA had SFC become bankrupt on the Filing Date, or is an Equity Claim, a Noteholder Class Action Claim against SFC, a Class Action Indemnity Claim against SFC, a Restructuring Claim or a Lien Claim, provided, however, that "Claim" shall not include a D&O Claim or a D&O Indemnity Claim.

"**Claims Bar Date**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Claims Procedure**" means the procedure established for determining the amount and status of Claims, D&O Claims and D&O Indemnity Claims, including in each case any such claims that are Unresolved Claims, pursuant to the Claims Procedure Order.

"**Claims Procedure Order**" means the Order under the CCAA of the Honourable Justice Morawetz dated May 14, 2012, establishing, among other things, a claims procedure in respect of SFC and calling for claims in respect of the Subsidiaries, as such Order may be amended, restated or varied from time to time.

"**Class Action Claims**" means, collectively, any rights or claims of any kind advanced or which may subsequently be advanced in the Class Actions or in any other similar proceeding, whether a class action proceeding or otherwise, and for greater certainty includes any Noteholder Class Action Claims.

"**Class Actions**" means, collectively, the following proceedings: (i) *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); (ii) *Guining Liu v. Sino-Forest Corporation et al.* (Quebec Superior Court, Court File No. 200-06-000132-111); (iii) *Allan Haigh v. Sino-Forest Corporation et al.* (Saskatchewan Court of Queen's Bench, Court File No. 2288 of 2011); and (iv) *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).

"**Class Action Court**" means, with respect to the Class Action Claims, the court of competent jurisdiction that is responsible for administering the applicable Class Action Claim.

"**Class Action Indemnity Claim**" means any right or claim of any Person that may be asserted or made in whole or in part against SFC and/or any Subsidiary for indemnity, contribution, reimbursement or otherwise from or in connection with any Class Action Claim asserted against

such Person. For greater certainty, Class Action Indemnity Claims are distinct from and do not include Class Action Claims.

"Consent Date" means May 15, 2012.

"Conspiracy Claim" means any D&O Claim alleging that the applicable Director or Officer committed the tort of civil conspiracy, as defined under Canadian common law.

"Continuing Noteholder Class Action Claim" means any Noteholder Class Action Claim that is: (i) a Section 5.1(2) D&O Claim; (ii) a Conspiracy Claim; (iii) a Non-Released D&O Claim; (iv) a Continuing Other D&O Claim; (v) a Noteholder Class Action Claim against one or more Third Party Defendants that is not an Indemnified Noteholder Class Action Claim; (vi) the portion of an Indemnified Noteholder Class Action Claim that is permitted to continue against the Third Party Defendants, subject to the Indemnified Noteholder Class Action Limit, pursuant to section 4.4(b)(i) hereof.

"Continuing Other D&O Claims" has the meaning ascribed thereto in section 4.9(b) hereof.

"Court" has the meaning ascribed thereto in the recitals.

"D&O Claim" means (i) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers of SFC that relates to a Claim for which such Directors or Officers are by law liable to pay in their capacity as Directors or Officers of SFC, or (ii) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers of SFC, in that capacity, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty and including, for greater certainty, any monetary administrative or other monetary penalty or claim for costs asserted against any Officer or Director of SFC by any Government Entity) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof, is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity from any such Directors or Officers of SFC or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Filing Date, or (B) relates to a time period prior to the Filing Date.

"D&O Indemnity Claim" means any existing or future right of any Director or Officer of SFC against SFC that arose or arises as a result of any Person filing a D&O Proof of Claim (as

defined in the Claims Procedure Order) in respect of such Director or Officer of SFC for which such Director or Officer of SFC is entitled to be indemnified by SFC.

"Defence Costs" has the meaning ascribed thereto in section 4.8 hereof.

"Director" means, with respect to SFC or any Subsidiary, anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of such SFC Company.

"Directors' Charge" has the meaning ascribed thereto in the Initial Order.

"Direct Registration Account" means, if applicable, a direct registration account administered by the Transfer Agent in which those Persons entitled to receive Newco Shares and/or Newco Notes pursuant to the Plan will hold such Newco Shares and/or Newco Notes in registered form.

"Direct Registration Transaction Advice" means, if applicable, a statement delivered by the Monitor, the Trustees, the Transfer Agent or any such Person's agent to any Person entitled to receive Newco Shares or Newco Notes pursuant to the Plan on the Initial Distribution Date and each subsequent Distribution Date, as applicable, indicating the number of Newco Shares and/or Newco Notes registered in the name of or as directed by the applicable Person in a Direct Registration Account.

"Direct Subsidiaries" means, collectively, Sino-Panel Holdings Limited, Sino-Global Holdings Inc., Sino-Panel Corporation, Sino-Capital Global Inc., SFC Barbados, Sino-Forest Resources Inc. Sino-Wood Partners, Limited.

"Distribution Date" means the date or dates from time to time set in accordance with the provisions of the Plan to effect distributions in respect of the Proven Claims, excluding the Initial Distribution Date.

"Distribution Escrow Position" has the meaning ascribed thereto in section 5.2(d) hereof.

"Distribution Record Date" means the Plan Implementation Date, or such other date as SFC, the Monitor and the Initial Consenting Noteholders may agree.

"DTC" means The Depository Trust Company, or any successor thereof.

"Early Consent Equity Sub-Pool" means an amount of Newco Shares representing 7.5% of the Newco Equity Pool.

"Early Consent Noteholder" means any Noteholder that:

(a) (i) as confirmed by the Monitor on June 12, 2012, executed the (A) RSA, (B) a support agreement with SFC and the Direct Subsidiaries in the form of the RSA or (C) a joinder agreement in the form attached as Schedule C to the RSA; (ii) provided evidence satisfactory to the Monitor in accordance with section 2(a) of the RSA of the Notes held by such Noteholder as at the Consent Date (the **"Early Consent Notes"**), as such list of Noteholders and Notes held has been verified

and is maintained by the Monitor on a confidential basis; and (iii) continues to hold such Early Consent Notes as at the Distribution Record Date; or

(b) (i) has acquired Early Consent Notes; (ii) has signed the necessary transfer and joinder documentation as required by the RSA and has otherwise acquired such Early Consent Notes in compliance with the RSA; and (iii) continues to hold such Early Consent Notes as at the Distribution Record Date.

"Effective Time" means 8:00 a.m. (Toronto time) on the Plan Implementation Date or such other time on such date as SFC, the Monitor and the Initial Consenting Noteholders may agree.

"Eligible Third Party Defendant" means any of the Underwriters, BDO Limited and Ernst & Young (in the event that the Ernst & Young Settlement is not completed), together with any of their respective present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns (but excluding any Director or Officer and successors, administrators, heirs and assigns of any Director or Officer in their capacity as such), and any Director or Officer together with their respective successors, administrators, heirs and assigns.

"Employee Priority Claims" means the following Claims of employees and former employees of SFC:

(a) Claims equal to the amounts that such employees and former employees would have been qualified to receive under paragraph 136(1)(d) of the BIA if SFC had become bankrupt on the Filing Date; and

(b) Claims for wages, salaries, commissions or compensation for services rendered by them after the Filing Date and on or before the Plan Implementation Date.

"Encumbrance" means any security interest (whether contractual, statutory, or otherwise), hypothec, mortgage, trust or deemed trust (whether contractual, statutory, or otherwise), lien, execution, levy, charge, demand, action, liability or other claim, action, demand or liability of any kind whatsoever, whether proprietary, financial or monetary, and whether or not it has attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including: (i) any of the Charges; and (ii) any charge, security interest or claim evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system.

"Equity Cancellation Date" means the date that is the first Business Day at least 31 days after the Plan Implementation Date, or such other date as may be agreed to by SFC, the Monitor and the Initial Consenting Noteholders.

"Equity Claim" means a Claim that meets the definition of "equity claim" in section 2(1) of the CCAA and, for greater certainty, includes any of the following:

(a) any claim against SFC resulting from the ownership, purchase or sale of an equity interest in SFC, including the claims by or on behalf of current or former shareholders asserted in the Class Actions;

(b) any indemnification claim against SFC related to or arising from the claims described in sub-paragraph (a), including any such indemnification claims against SFC by or on behalf of any and all of the Third Party Defendants (other than for Defence Costs, unless any such claims for Defence Costs have been determined to be Equity Claims subsequent to the date of the Equity Claims Order); and

(c) any other claim that has been determined to be an Equity Claim pursuant to an Order of the Court.

"Equity Claimant" means any Person having an Equity Claim, but only with respect to and to the extent of such Equity Claim.

"Equity Claimant Class" has the meaning ascribed thereto in section 3.2(b).

"Equity Claims Order" means the Order under the CCAA of the Honourable Justice Morawetz dated July 27, 2012, in respect of Shareholder Claims and Related Indemnity Claims against SFC, as such terms are defined therein.

"Equity Interest" has the meaning set forth in section 2(1) of the CCAA.

"Ernst & Young" means Ernst & Young LLP (Canada), Ernst & Young Global Limited and all other member firms thereof, and all present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns of each, but excludes any Director or Officer (in their capacity as such) and successors, administrators, heirs and assigns of any Director or Officer (in their capacity as such).

"Ernst & Young Claim" means any and all demands, claims, actions, Causes of Action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any claim, indebtedness, liability, obligation, demand or cause of action of whatever nature that any Person, including any Person who may claim contribution or indemnification against or from them and also including for greater certainty the SFC Companies, the Directors (in their capacity as such), the Officers (in their capacity as such), the Third Party Defendants, Newco, Newco II, the directors and officers of Newco and Newco II, the Noteholders or any Noteholder, any past, present or future holder of a direct or indirect equity interest in the SFC Companies, any past, present or future direct or indirect investor or security holder of the SFC Companies, any direct or indirect security holder of Newco or Newco II, the Trustees, the Transfer Agent, the Monitor, and each and every member (including members of any committee or governance council), present and former affiliate, partner, associate, employee, servant, agent, contractor, director, officer, insurer and each and every successor, administrator, heir and assign of each of any of the foregoing may or could (at any time past present or future) be entitled to assert against Ernst & Young, including any and all claims in respect of statutory liabilities of Directors (in their capacity as such), Officers (in their capacity as such) and any alleged fiduciary (in any capacity) whether known or unknown, matured or unmatured, direct or derivative, foreseen or unforeseen, suspected or unsuspected, contingent or not contingent, existing or hereafter arising, based in whole or in part

on any act or omission, transaction, dealing or other occurrence existing or taking place on, prior to or after the Ernst & Young Settlement Date relating to, arising out of or in connection with the SFC Companies, the SFC Business, any Director or Officer (in their capacity as such) and/or professional services performed by Ernst & Young or any other acts or omissions of Ernst & Young in relation to the SFC Companies, the SFC Business, any Director or Officer (in their capacity as such), including for greater certainty but not limited to any claim arising out of:

(a) all audit, tax, advisory and other professional services provided to the SFC Companies or related to the SFC Business up to the Ernst & Young Settlement Date, including for greater certainty all audit work performed, all auditors' opinions and all consents in respect of all offering of SFC securities and all regulatory compliance delivered in respect of all fiscal periods and all work related thereto up to and inclusing the Ernst & Young Settlement Date;

(b) all claims advanced or which could have been advanced in any or all of the Class Actions;

(c) all claims advanced or which could have been advanced in any or all actions commenced in all jurisdictions prior the Ernst & Young Settlement Date; or

(d) all Noteholder Claims, Litigation Trust Claims or any claim of the SFC Companies,

provided that "Ernst & Young Claim" does not include any proceedings or remedies that may be taken against Ernst & Young by the Ontario Securities Commission or by staff of the Ontario Securities Commission, and the jurisdiction of the Ontario Securities Commission and staff of the Ontario Securities Commission in relation to Ernst & Young under the Securities Act, R.S.O. 1990, c. S-5 is expressly preserved.

"Ernst & Young Orders" has the meaning ascribed thereto in section 11.1(a) hereof.

"Ernst & Young Release" means the release described in 11.1(b) hereof.

"Ernst & Young Settlement" means the settlement as reflected in the Minutes of Settlement executed on November 29, 2012 between Ernst & Young LLP, on behalf of itself and Ernst & Young Global Limited and all member firms thereof and the plaintiffs in Ontario Superior Court Action No. CV-11-4351153-00CP and in Quebec Superior Court No. 200-06-00132-111, and such other documents contemplated thereby.

"Ernst & Young Settlement Date" means the date that the Monitor's Ernst & Young Settlement Certificate is delivered to Ernst & Young.

"Excluded Litigation Trust Claims" has the meaning ascribed thereto in section 4.12(a) hereof.

"Excluded SFC Assets" means (i) the rights of SFC to be transferred to the Litigation Trust in accordance with section 6.4(o) hereof; (ii) any entitlement to insurance proceeds in respect of Insured Claims, Section 5.1(2) D&O Claims and/or Conspiracy Claims; (iii) any secured property of SFC that is to be returned in satisfaction of a Lien Claim pursuant to section 4.2(c)(i)

hereof; (iv) any input tax credits or other refunds received by SFC after the Effective Time; and (v) cash in the aggregate amount of (and for the purpose of): (A) the Litigation Funding Amount; (B) the Unaffected Claims Reserve; (C) the Administration Charge Reserve; (D) the Expense Reimbursement and the other payments to be made pursuant to section 6.4(d) hereof (having regard to the application of any outstanding retainers, as applicable); (E) any amounts in respect of Lien Claims to be paid in accordance with section 4.2(c)(ii) hereof; and (F) the Monitor's Post-Implementation Reserve; (vi) any office space, office furniture or other office equipment owned or leased by SFC in Canada; (vii) the SFC Escrow Co. Share; (viii) Newco Promissory Note 1; and (ix) Newco Promissory Note 2.

"Existing Shares" means all existing shares in the equity of SFC issued and outstanding immediately prior to the Effective Time and all warrants, options or other rights to acquire such shares, whether or not exercised as at the Effective Time.

"Expense Reimbursement" means the aggregate amount of (i) the reasonable and documented fees and expenses of the Noteholder Advisors, pursuant to their respective engagement letters with SFC, and other advisors as may be agreed to by SFC and the Initial Consenting Noteholders and (ii) the reasonable fees and expenses of the Initial Consenting Noteholders incurred in connection with the negotiation and development of the RSA and this Plan, including in each case an estimated amount for any such fees and expenses expected to be incurred in connection with the implementation of the Plan, including in the case of (ii) above, an aggregate work fee of up to $5 million (which work fee may, at the request of the Monitor, be paid by any of the Subsidiaries instead of SFC).

"Filing Date" has the meaning ascribed thereto in the recitals.

"Fractional Interests" has the meaning given in section 5.12 hereof.

"FTI HK" means FTI Consulting (Hong Kong) Limited.

"Governmental Entity" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

"Government Priority Claims" means all Claims of Governmental Entities in respect of amounts that were outstanding as of the Plan Implementation Date and that are of a kind that could be subject to a demand under:

(a) subsections 224(1.2) of the Canadian Tax Act;

(b) any provision of the *Canada Pension Plan* or the *Employment Insurance Act* (Canada) that refers to subsection 224(1.2) of the Canadian Tax Act and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or employee's premium or employer's premium as defined in the *Employment*

Insurance Act (Canada), or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the Canadian Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Canadian Tax Act; or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

"**Greenheart**" means Greenheart Group Limited, a company established under the laws of Bermuda.

"**Indemnified Noteholder Class Action Claims**" has the meaning ascribed thereto in section 4.4(b)(i) hereof.

"**Indemnified Noteholder Class Action Limit**" means $150 million or such lesser amount agreed to by SFC, the Monitor, the Initial Consenting Noteholders and counsel to the Ontario Class Action Plaintiffs prior to the Plan Implementation Date or agreed to by the Initial Consenting Noteholders and counsel to the Class Action Plaintiffs after the Plan Implementation Date.

"**Initial Consenting Noteholders**" means, subject to section 12.7 hereof, the Noteholders that executed the RSA on March 30, 2012.

"**Initial Distribution Date**" means a date no more than ten (10) Business Days after the Plan Implementation Date or such other date as SFC, the Monitor and the Initial Consenting Noteholders may agree.

"**Initial Newco Shareholder**" means a Person to be determined by the Initial Consenting Noteholders prior to the Effective Time, with the consent of SFC and the Monitor, to serve as the initial sole shareholder of Newco pursuant to section 6.2(a) hereof.

"**Initial Order**" has the meaning ascribed thereto in the recitals.

"**Insurance Policies**" means, collectively, the following insurance policies, as well as any other insurance policy pursuant to which SFC or any Director or Officer is insured: ACE INA Insurance Policy Number DO024464; Chubb Insurance Company of Canada Policy Number 8209-4449; Lloyds of London, England Policy Number XTFF0420; Lloyds of London, England

Policy Number XTFF0373; and Travelers Guarantee Company of Canada Policy Number 10181108, and **"Insurance Policy"** means any one of the Insurance Policies.

"Insured Claim" means all or that portion of any Claim for which SFC is insured and all or that portion of any D&O Claim for which the applicable Director or Officer is insured, in each case pursuant to any of the Insurance Policies.

"Intellectual Property" means: (i) patents, and applications for patents, including divisional and continuation patents; (ii) registered and unregistered trade-marks, logos and other indicia of origin, pending trade-mark registration applications, and proposed use application or similar reservations of marks, and all goodwill associated therewith; (iii) registered and unregistered copyrights, including all copyright in and to computer software programs, and applications for and registration of such copyright (including all copyright in and to the SFC Companies' websites); (iv) world wide web addresses and internet domain names, applications and reservations for world wide web addresses and internet domain names, uniform resource locators and the corresponding internet sites; (v) industrial designs; and (vi) trade secrets and proprietary information not otherwise listed in (i) through (v) above, including all inventions (whether or not patentable), invention disclosures, moral and economic rights of authors and inventors (however denominated), confidential information, technical data, customer lists, corporate and business names, trade names, trade dress, brand names, know-how, formulae, methods (whether or not patentable), designs, processes, procedures, technology, business methods, source codes, object codes, computer software programs (in either source code or object code form), databases, data collections and other proprietary information or material of any type, and all derivatives, improvements and refinements thereof, howsoever recorded, or unrecorded.

"Letter of Instruction" means a form, to be completed by each Ordinary Affected Creditor and each Early Consent Noteholder, and that is to be delivered to the Monitor in accordance with section 5.1 hereof, which form shall set out:

(a) the registration details for the Newco Shares and, if applicable, Newco Notes to be distributed to such Ordinary Affected Creditor or Early Consent Noteholder in accordance with the Plan; and

(b) the address to which such Ordinary Affected Creditor's or Early Consent Noteholder's Direct Registration Transaction Advice or its Newco Share Certificates and Newco Note Certificates, as applicable, are to be delivered.

"Lien Claim" means any Proven Claim of a Person indicated as a secured creditor in Schedule "B" to the Initial Order (other than the Trustees) that is secured by a lien or encumbrance on any property of SFC, which lien is valid, perfected and enforceable pursuant to Applicable Law, provided that the Charges and any Claims in respect of Notes shall not constitute "Lien Claims".

"Lien Claimant" means a Person having a Lien Claim, other than any Noteholder or Trustee in respect of any Noteholder Claim.

"**Litigation Funding Amount**" means the cash amount of $1,000,000 to be advanced by SFC to the Litigation Trustee for purposes of funding the Litigation Trust on the Plan Implementation Date in accordance with section 6.4(o) hereof.

"**Litigation Funding Receivable**" has the meaning ascribed thereto in section 6.4(o) hereof.

"**Litigation Trust**" means the trust to be established on the Plan Implementation Date at the time specified in section 6.4(p) in accordance with the Litigation Trust Agreement pursuant to the laws of a jurisdiction that is acceptable to SFC and the Initial Consenting Noteholders, which trust will acquire the Litigation Trust Claims and will be funded with the Litigation Funding Amount in accordance with the Plan and the Litigation Trust Agreement.

"**Litigation Trust Agreement**" means the trust agreement dated as of the Plan Implementation Date, between SFC and the Litigation Trustee, establishing the Litigation Trust.

"**Litigation Trust Claims**" means any Causes of Action that have been or may be asserted by or on behalf of: (a) SFC against any and all third parties; or (b) the Trustees (on behalf of the Noteholders) against any and all Persons in connection with the Notes issued by SFC; provided, however, that in no event shall the Litigation Trust Claims include any (i) claim, right or cause of action against any Person that is released pursuant to Article 7 hereof or (ii) any Excluded Litigation Trust Claim. For greater certainty: (x) the claims being advanced or that are subsequently advanced in the Class Actions are not being transferred to the Litigation Trust; and (y) the claims transferred to the Litigation Trust shall not be advanced in the Class Actions.

"**Litigation Trust Interests**" means the beneficial interests in the Litigation Trust to be created on the Plan Implementation Date.

"**Litigation Trustee**" means a Person to be determined by SFC and the Initial Consenting Noteholders prior to the Effective Time, with the consent of the Monitor, to serve as trustee of the Litigation Trust pursuant to and in accordance with the terms thereof.

"**Material**" means a fact, circumstance, change, effect, matter, action, condition, event, occurrence or development that, individually or in the aggregate, is, or would reasonably be expected to be, material to the business, affairs, results of operations or financial condition of the SFC Companies (taken as a whole).

"**Material Adverse Effect**" means a fact, event, change, occurrence, circumstance or condition that, individually or together with any other event, change or occurrence, has or would reasonably be expected to have a material adverse impact on the assets, condition (financial or otherwise), business, liabilities, obligations (whether absolute, accrued, conditional or otherwise) or operations of the SFC Companies (taken as a whole); provided, however, that a Material Adverse Effect shall not include and shall be deemed to exclude the impact of any fact, event, change, occurrence, circumstance or condition resulting from or relating to: (A) changes in Applicable Laws of general applicability or interpretations thereof by courts or Governmental Entities or regulatory authorities, which changes do not have a Material disproportionate effect on the SFC Companies (taken as a whole), (B) any change in the forestry industry generally, which does not have a Material disproportionate effect on the SFC Companies (taken as a whole) (relative to other industry participants operating primarily in the PRC), (C) actions and omissions

of any of the SFC Companies required pursuant to the RSA or this Plan or taken with the prior written consent of the Initial Consenting Noteholders, (D) the effects of compliance with the RSA or this Plan, including on the operating performance of the SFC Companies, (E) the negotiation, execution, delivery, performance, consummation, potential consummation or public announcement of the RSA or this Plan or the transactions contemplated thereby or hereby, (F) any change in U.S. or Canadian interest rates or currency exchange rates unless such change has a Material disproportionate effect on the SFC Companies (taken as a whole), and (G) general political, economic or financial conditions in Canada, the United States, Hong Kong or the PRC, which changes do not have a Material disproportionate effect on the SFC Companies (taken as a whole).

"**Meeting**" means the meeting of Affected Creditors, and any adjournment or extension thereof, that is called and conducted in accordance with the Meeting Order for the purpose of considering and voting on the Plan.

"**Meeting Order**" has the meaning ascribed thereto in the recitals.

"**Monitor**" means FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor of SFC in the CCAA Proceeding.

"**Monitor's Post-Implementation Reserve**" means the cash reserve to be established by SFC on the Plan Implementation Date in the amount of $5,000,000 or such other amount as may be agreed by SFC, the Monitor and the Initial Consenting Noteholders, which cash reserve shall be maintained and administered by the Monitor for the purpose of administering SFC and the Claims Procedure, as necessary, from and after the Plan Implementation Date.

"**Monitor's Ernst & Young Settlement Certificate**" has the meaning ascribed thereto in section 11.1(a) hereof.

"**Monitor's Named Third Party Settlement Certificate**" has the meaning ascribed thereto in section 11.2(b) hereof.

"**Named Directors and Officers**" means Andrew Agnew, William E. Ardell, James Bowland, Leslie Chan, Michael Cheng, Lawrence Hon, James M.E. Hyde, Richard M. Kimel, R. John (Jack) Lawrence, Jay A. Lefton, Edmund Mak, Tom Maradin, Judson Martin, Simon Murray, James F. O'Donnell, William P. Rosenfeld, Peter Donghong Wang, Garry West and Kee Y. Wong, in their respective capacities as Directors or Officers, and "**Named Director or Officer**" means any one of them.

"**Named Third Party Defendant Settlement**" means a binding settlement between any applicable Named Third Party Defendant and one or more of: (i) the plaintiffs in any of the Class Actions; and (ii) the Litigation Trustee (on behalf of the Litigation Trust) (if after the Plan Implementation Date), provided that, in each case, such settlement must be acceptable to SFC (if on or prior to the Plan Implementation Date), the Monitor, the Initial Consenting Noteholders (if on or prior to the Plan Implementation Date) and the Litigation Trustee (if after the Plan Implementation Date), and provided further that such settlement shall not affect the plaintiffs in the Class Actions without the consent of counsel to the Ontario Class Action Plaintiffs.

"**Named Third Party Defendant Settlement Order**" means a court order approving a Named Third Party Defendant Settlement in form and in substance satisfactory to the applicable Named Third Party Defendant, SFC (if occurring on or prior to the Plan Implementation Date), the Monitor, the Initial Consenting Noteholders (if on or prior to the Plan Implementation Date), the Litigation Trustee (if after the Plan Implementation Date) and counsel to the Ontario Class Action Plaintiffs (if the plaintiffs in any of the Class Actions are affected by the applicable Named Third Party Defendant Settlement).

"**Named Third Party Defendant Release**" means a release of any applicable Named Third Party Defendant agreed to pursuant to a Named Third Party Defendant Settlement and approved pursuant to a Named Third Party Defendant Settlement Order, provided that such release must be acceptable to SFC (if on or prior to the Plan Implementation Date), the Monitor, the Initial Consenting Noteholders (if on or prior to the Plan Implementation Date) and the Litigation Trustee (if after the Plan Implementation Date), and provided further that such release shall not affect the plaintiffs in the Class Actions without the consent of counsel to the Ontario Class Action Plaintiffs.

"**Named Third Party Defendants**" means the Third Party Defendants listed on Schedule "A" to the Plan in accordance with section 11.2(a) hereof, provided that only Eligible Third Party Defendants may become Named Third Party Defendants.

"**Newco**" means the new corporation to be incorporated pursuant to section 6.2(a) hereof under the laws of the Cayman Islands or such other jurisdiction as agreed to by SFC, the Monitor and the Initial Consenting Noteholders.

"**Newco II**" means the new corporation to be incorporated pursuant to section 6.2(b) hereof under the laws of the Cayman Islands or such other jurisdiction as agreed to by SFC, the Monitor and the Initial Consenting Noteholders.

"**Newco II Consideration**" has the meaning ascribed thereto in section 6.4(x) hereof.

"**Newco Equity Pool**" means all of the Newco Shares to be issued by Newco on the Plan Implementation Date. The number of Newco Shares to be issued on the Plan Implementation Date shall be agreed by SFC, the Monitor and the Initial Consenting Noteholders prior to the Plan Implementation Date.

"**Newco Note Certificate**" means a certificate evidencing Newco Notes.

"**Newco Notes**" means the new notes to be issued by Newco on the Plan Implementation Date in the aggregate principal amount of $300,000,000, on such terms and conditions as are satisfactory to the Initial Consenting Noteholders and SFC, acting reasonably.

"**Newco Promissory Note 1**", "**Newco Promissory Note 2**", "**Newco Promissory Note 3**" and "**Newco Promissory Notes**" have the meanings ascribed thereto in sections 6.4(k), 6.4(m), 6.4(n) and 6.4(q) hereof, respectively.

"**Newco Share Certificate**" means a certificate evidencing Newco Shares.

"**Newco Shares**" means common shares in the capital of Newco.

"**Non-Released D&O Claims**" has the meaning ascribed thereto in section 4.9(f) hereof.

"**Noteholder Advisors**" means Goodmans LLP, Hogan Lovells and Conyers, Dill & Pearman LLP in their capacity as legal advisors to the Initial Consenting Noteholders, and Moelis & Company LLC and Moelis and Company Asia Limited, in their capacity as the financial advisors to the Initial Consenting Noteholders.

"**Noteholder Claim**" means any Claim by a Noteholder (or a Trustee or other representative on the Noteholder's behalf) in respect of or in relation to the Notes owned or held by such Noteholder, including all principal and Accrued Interest payable to such Noteholder pursuant to such Notes or the Note Indentures, but for greater certainty does not include any Noteholder Class Action Claim.

"**Noteholder Class Action Claim**" means any Class Action Claim, or any part thereof, against SFC, any of the Subsidiaries, any of the Directors and Officers of SFC or the Subsidiaries, any of the Auditors, any of the Underwriters and/or any other defendant to the Class Action Claims that relates to the purchase, sale or ownership of Notes, but for greater certainty does not include a Noteholder Claim.

"**Noteholder Class Action Claimant**" means any Person having or asserting a Noteholder Class Action Claim.

"**Noteholder Class Action Representative**" means an individual to be appointed by counsel to the Ontario Class Action Plaintiffs.

"**Noteholders**" means, collectively, the beneficial owners of Notes as of the Distribution Record Date and, as the context requires, the registered holders of Notes as of the Distribution Record Date, and "**Noteholder**" means any one of the Noteholders.

"**Note Indentures**" means, collectively, the 2013 Note Indenture, the 2014 Note Indenture, the 2016 Note Indenture and the 2017 Note Indenture.

"**Notes**" means, collectively, the 2013 Notes, the 2014 Notes, the 2016 Notes and the 2017 Notes.

"**Officer**" means, with respect to SFC or any Subsidiary, anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of such SFC Company.

"**Ontario Class Action Plaintiffs**" means the plaintiffs in the Ontario class action case styled as *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).

"**Order**" means any order of the Court made in connection with the CCAA Proceeding or this Plan.

"Ordinary Affected Creditor" means a Person with an Ordinary Affected Creditor Claim.

"Ordinary Affected Creditor Claim" means a Claim that is not: an Unaffected Claim; a Noteholder Claim; an Equity Claim; a Subsidiary Intercompany Claim; a Noteholder Class Action Claim; or a Class Action Indemnity Claim (other than a Class Action Indemnity Claim by any of the Third Party Defendants in respect of the Indemnified Noteholder Class Action Claims).

"Other Directors and/or Officers" means any Directors and/or Officers other than the Named Directors and Officers.

"Permitted Continuing Retainer" has the meaning ascribed thereto in section 6.4(d) hereof.

"Person" means any individual, sole proprietorship, limited or unlimited liability corporation, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, body corporate, joint venture, trust, pension fund, union, Governmental Entity, and a natural person including in such person's capacity as trustee, heir, beneficiary, executor, administrator or other legal representative.

"Plan" means this Plan of Compromise and Reorganization (including all schedules hereto) filed by SFC pursuant to the CCAA and the CBCA, as it may be further amended, supplemented or restated from time to time in accordance with the terms hereof or an Order.

"Plan Implementation Date" means the Business Day on which this Plan becomes effective, which shall be the Business Day on which the Monitor has filed with the Court the certificate contemplated in section 9.2 hereof, or such other date as SFC, the Monitor and the Initial Consenting Noteholders may agree.

"PRC" means the People's Republic of China.

"Proof of Claim" means the "Proof of Claim" referred to in the Claims Procedure Order, substantially in the form attached to the Claims Procedure Order.

"Pro-Rata" means:

(a) with respect to any Noteholder in relation to all Noteholders, the proportion of (i) the principal amount of Notes beneficially owned by such Noteholder as of the Distribution Record Date plus the Accrued Interest owing on such Notes as of the Filing Date, in relation to (ii) the aggregate principal amount of all Notes outstanding as of the Distribution Record Date plus the aggregate of all Accrued Interest owing on all Notes as of the Filing Date;

(b) with respect to any Early Consent Noteholder in relation to all Early Consent Noteholders, the proportion of the principal amount of Early Consent Notes beneficially owned by such Early Consent Noteholder as of the Distribution Record Date in relation to the aggregate principal amount of Early Consent Notes held by all Early Consent Noteholders as of the Distribution Record Date; and

(c) with respect to any Affected Creditor in relation to all Affected Creditors, the proportion of such Affected Creditor's Affected Creditor Claim as at any relevant time in relation to the aggregate of all Proven Claims and Unresolved Claims of Affected Creditors as at that time.

"Proven Claim" means an Affected Creditor Claim to the extent that such Affected Creditor Claim is finally determined and valued in accordance with the provisions of the Claims Procedure Order, the Meeting Order or any other Order, as applicable.

"Released Claims" means all of the rights, claims and liabilities of any kind released pursuant to Article 7 hereof.

"Released Parties" means, collectively, those Persons released pursuant to Article 7 hereof, but only to the extent so released, and each such Person is referred to individually as a **"Released Party"**.

"Required Majority" means a majority in number of Affected Creditors with Proven Claims, and two-thirds in value of the Proven Claims held by such Affected Creditors, in each case who vote (in person or by proxy) on the Plan at the Meeting.

"Remaining Post-Implementation Reserve Amount" has the meaning ascribed thereto in section 5.7(b) hereof.

"Restructuring Claim" means any right or claim of any Person that may be asserted or made in whole or in part against SFC, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind arising out of the restructuring, termination, repudiation or disclaimer of any lease, contract, or other agreement or obligation on or after the Filing Date and whether such restructuring, termination, repudiation or disclaimer took place or takes place before or after the date of the Claims Procedure Order.

"Restructuring Transaction" means the transactions contemplated by this Plan (including any Alternative Sale Transaction that occurs pursuant to section 10.1 hereof).

"RSA" means the Restructuring Support Agreement executed as of March 30, 2012 by SFC, the Direct Subsidiaries and the Initial Consenting Noteholders, and subsequently executed or otherwise agreed to by the Early Consent Noteholders, as such Restructuring Support Agreement may be amended, restated and varied from time to time in accordance with its terms.

"Sanction Date" means the date that the Sanction Order is granted by the Court.

"Sanction Order" means the Order of the Court sanctioning and approving this Plan.

"Section 5.1(2) D&O Claim" means any D&O Claim that is not permitted to be compromised pursuant to section 5.1(2) of the CCAA, but only to the extent not so permitted, provided that any D&O Claim that qualifies as a Non-Released D&O Claim or a Continuing Other D&O Claim shall not constitute a Section 5.1(2) D&O Claim.

"Settlement Trust" has the meaning ascribed thereto in section 11.1(a) hereof.

"**Settlement Trust Order**" means a court order that establishes the Settlement Trust and approves the Ernst & Young Settlement and the Ernst & Young Release, in form and in substance satisfactory to Ernst & Young and counsel to the Ontario Class Action Plaintiffs, provided that such order shall also be acceptable to SFC (if occurring on or prior to the Plan Implementation Date), the Monitor and the Initial Consenting Noteholders, as applicable, to the extent, if any, that such order affects SFC, the Monitor or the Initial Consenting Noteholders, each acting reasonably.

"**SFC**" has the meaning ascribed thereto in the recitals.

"**SFC Advisors**" means Bennett Jones LLP, Appleby Global Group, King & Wood Mallesons and Linklaters LLP, in their respective capacities as legal advisors to SFC, and Houlihan Lokey Howard & Zukin Capital, Inc., in its capacity as financial advisor to SFC.

"**SFC Assets**" means all of SFC's right, title and interest in and to all of SFC's properties, assets and rights of every kind and description (including all restricted and unrestricted cash, contracts, real property, receivables or other debts owed to SFC, Intellectual Property, SFC's corporate name and all related marks, all of SFC's ownership interests in the Subsidiaries (including all of the shares of the Direct Subsidiaries and any other Subsidiaries that are directly owned by SFC immediately prior to the Effective Time), all of SFC's ownership interest in Greenheart and its subsidiaries, all SFC Intercompany Claims, any entitlement of SFC to any insurance proceeds and a right to the Remaining Post-Implementation Reserve Amount), other than the Excluded SFC Assets.

"**SFC Barbados**" means Sino-Forest International (Barbados) Corporation, a wholly-owned subsidiary of SFC established under the laws of Barbados.

"**SFC Business**" means the business operated by the SFC Companies.

"**SFC Continuing Shareholder**" means the Litigation Trustee or such other Person as may be agreed to by the Monitor and the Initial Consenting Noteholders.

"**SFC Companies**" means, collectively, SFC and all of the Subsidiaries, and "**SFC Company**" means any of them.

"**SFC Escrow Co.**" means the company to be incorporated as a wholly-owned subsidiary of SFC pursuant to section 6.3 hereof under the laws of the Cayman Islands or such other jurisdiction as agreed to by SFC, the Monitor and the Initial Consenting Noteholders.

"**SFC Escrow Co. Share**" has the meaning ascribed thereto in section 6.3 hereof.

"**SFC Intercompany Claim**" means any amount owing to SFC by any Subsidiary or Greenheart and any claim by SFC against any Subsidiary or Greenheart.

"**Subsidiaries**" means all direct and indirect subsidiaries of SFC, other than (i) Greenheart and its direct and indirect subsidiaries and (ii) SFC Escrow Co., and "**Subsidiary**" means any one of the Subsidiaries.

"**Subsidiary Intercompany Claim**" means any Claim by any Subsidiary or Greenheart against SFC.

"**Tax**" or "**Taxes**" means any and all federal, provincial, municipal, local and foreign taxes, assessments, reassessments and other governmental charges, duties, impositions and liabilities including for greater certainty taxes based upon or measured by reference to income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, all licence, franchise and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions, together with all interest, penalties, fines and additions with respect to such amounts.

"**Taxing Authorities**" means any one of Her Majesty the Queen, Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, any similar revenue or taxing authority of the United States, the PRC, Hong Kong or other foreign state and any political subdivision thereof, and any Canadian, United States, Hong Kong, PRC or other government, regulatory authority, government department, agency, commission, bureau, minister, court, tribunal or body or regulation-making entity exercising taxing authority or power, and "**Taxing Authority**" means any one of the Taxing Authorities.

"**Third Party Defendants**" means any defendants to the Class Action Claims (present or future) other than SFC, the Subsidiaries, the Named Directors and Officers or the Trustees.

"**Transfer Agent**" means Computershare Limited (or a subsidiary or affiliate thereof) or such other transfer agent as Newco may appoint, with the prior written consent of the Monitor and the Initial Consenting Noteholders.

"**Trustee Claims**" means any rights or claims of the Trustees against SFC under the Note Indentures for compensation, fees, expenses, disbursements or advances, including reasonable legal fees and expenses, incurred or made by or on behalf of the Trustees before or after the Plan Implementation Date in connection with the performance of their respective duties under the Note Indentures or this Plan.

"**Trustees**" means, collectively, The Bank of New York Mellon in its capacity as trustee for the 2013 Notes and the 2016 Notes, and Law Debenture Trust Company of New York in its capacity as trustee for the 2014 Notes and the 2017 Notes, and "**Trustee**" means either one of them.

"**Unaffected Claim**" means any:

(a) Claim secured by the Administration Charge;

(b) Government Priority Claim;

(c) Employee Priority Claim;

(d) Lien Claim;

(e) any other Claim of any employee, former employee, Director or Officer of SFC in respect of wages, vacation pay, bonuses, termination pay, severance pay or other remuneration payable to such Person by SFC, other than any termination pay or severance pay payable by SFC to a Person who ceased to be an employee, Director or Officer of SFC prior to the date of this Plan;

(f) Trustee Claims; and

(g) any trade payables that were incurred by SFC (i) after the Filing Date but before the Plan Implementation Date; and (ii) in compliance with the Initial Order or other Order issued in the CCAA Proceeding.

"Unaffected Claims Reserve" means the cash reserve to be established by SFC on the Plan Implementation Date and maintained by the Monitor, in escrow, for the purpose of paying certain Unaffected Claims in accordance with section 4.2 hereof.

"Unaffected Creditor" means a Person who has an Unaffected Claim, but only in respect of and to the extent of such Unaffected Claim.

"Undeliverable Distribution" has the meaning ascribed thereto in section 5.4.

"Underwriters" means any underwriters of SFC that are named as defendants in the Class Action Claims, including for greater certainty Credit Suisse Securities (Canada), Inc., TD Securities Inc., Dundee Securities Corporation, RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Canaccord Financial Ltd., Maison Placements Canada Inc., Credit Suisse Securities (USA) LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated (successor by merger to Banc of America Securities LLC).

"Unresolved Claim" means an Affected Creditor Claim in respect of which a Proof of Claim has been filed in a proper and timely manner in accordance with the Claims Procedure Order but that, as at any applicable time, has not been finally (i) determined to be a Proven Claim or (ii) disallowed in accordance with the Claims Procedure Order, the Meeting Order or any other Order.

"Unresolved Claims Escrow Agent" means SFC Escrow Co. or such other Person as may be agreed by SFC, the Monitor and the Initial Consenting Noteholders.

"Unresolved Claims Reserve" means the reserve of Newco Shares, Newco Notes and Litigation Trust Interests, if any, to be established pursuant to sections 6.4(h)(ii) and 6.4(r) hereof in respect of Unresolved Claims as at the Plan Implementation Date, which reserve shall be held and maintained by the Unresolved Claims Escrow Agent, in escrow, for distribution in accordance with the Plan. As at the Plan Implementation Date, the Unresolved Claims Reserve will consist of that amount of Newco Shares, Newco Notes and Litigation Trust Interests as is necessary to make any potential distributions under the Plan in respect of the following Unresolved Claims: (i) Class Action Indemnity Claims in an amount up to the Indemnified Noteholder Class Action Limit; (ii) Claims in respect of Defence Costs in the amount of $30 million or such other amount

as may be agreed by the Monitor and the Initial Consenting Noteholders; and (iii) other Affected Creditor Claims that have been identified by the Monitor as Unresolved Claims in an amount up to $500,000 or such other amount as may be agreed by the Monitor and the Initial Consenting Noteholders.

"**Website**" means the website maintained by the Monitor in respect of the CCAA Proceeding pursuant to the Initial Order at the following web address: http://cfcanada.fticonsulting.com/sfc.

1.2 Certain Rules of Interpretation

For the purposes of the Plan:

(a) any reference in the Plan to an Order, agreement, contract, instrument, indenture, release, exhibit or other document means such Order, agreement, contract, instrument, indenture, release, exhibit or other document as it may have been or may be validly amended, modified or supplemented;

(b) the division of the Plan into "articles" and "sections" and the insertion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of "articles" and "sections" intended as complete or accurate descriptions of the content thereof;

(c) unless the context otherwise requires, words importing the singular shall include the plural and *vice versa*, and words importing any gender shall include all genders;

(d) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;

(e) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (Toronto time) on such Business Day;

(f) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;

(g) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time

to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation; and

(h) references to a specified "article" or "section" shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specified article or section of the Plan, whereas the terms "the Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to the Plan and not to any particular "article", "section" or other portion of the Plan and include any documents supplemental hereto.

1.3 Currency

For the purposes of this Plan, all amounts shall be denominated in Canadian dollars and all payments and distributions to be made in cash shall be made in Canadian dollars. Any Claims or other amounts denominated in a foreign currency shall be converted to Canadian dollars at the Reuters closing rate on the Filing Date.

1.4 Successors and Assigns

The Plan shall be binding upon and shall enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Plan.

1.5 Governing Law

The Plan shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of the Plan and all proceedings taken in connection with the Plan and its provisions shall be subject to the jurisdiction of the Court.

1.6 Schedule "A"

Schedule "A" to the Plan is incorporated by reference into the Plan and forms part of the Plan.

ARTICLE 2
PURPOSE AND EFFECT OF THE PLAN

2.1 Purpose

The purpose of the Plan is:

(a) to effect a full, final and irrevocable compromise, release, discharge, cancellation and bar of all Affected Claims;

(b) to effect the distribution of the consideration provided for herein in respect of Proven Claims;

(c) to transfer ownership of the SFC Business to Newco and then from Newco to Newco II, in each case free and clear of all claims against SFC and certain related claims against the Subsidiaries, so as to enable the SFC Business to continue on a viable, going concern basis; and

(d) to allow Affected Creditors and Noteholder Class Action Claimants to benefit from contingent value that may be derived from litigation claims to be advanced by the Litigation Trustee.

The Plan is put forward in the expectation that the Persons with an economic interest in SFC, when considered as a whole, will derive a greater benefit from the implementation of the Plan and the continuation of the SFC Business as a going concern than would result from a bankruptcy or liquidation of SFC.

2.2 Claims Affected

The Plan provides for, among other things, the full, final and irrevocable compromise, release, discharge, cancellation and bar of Affected Claims and effectuates the restructuring of SFC. The Plan will become effective at the Effective Time on the Plan Implementation Date, other than such matters occurring on the Equity Cancellation Date (if the Equity Cancellation date does not occur on the Plan Implementation Date) which will occur and be effective on such date, and the Plan shall be binding on and enure to the benefit of SFC, the Subsidiaries, Newco, Newco II, SFC Escrow Co., any Person having an Affected Claim, the Directors and Officers of SFC and all other Persons named or referred to in, or subject to, the Plan, as and to the extent provided for in the Plan.

2.3 Unaffected Claims against SFC Not Affected

Any amounts properly owing by SFC in respect of Unaffected Claims will be satisfied in accordance with section 4.2 hereof. Consistent with the foregoing, all liabilities of the Released Parties in respect of Unaffected Claims (other than the obligation of SFC to satisfy such Unaffected Claims in accordance with section 4.2 hereof) will be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred pursuant to Article 7 hereof. Nothing in the Plan shall affect SFC's rights and defences, both legal and equitable, with respect to any Unaffected Claims, including all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims.

2.4 Insurance

(a) Subject to the terms of this section 2.4, nothing in this Plan shall prejudice, compromise, release, discharge, cancel, bar or otherwise affect any right, entitlement or claim of any Person against SFC or any Director or Officer, or any insurer, in respect of an Insurance Policy or the proceeds thereof.

(b) Nothing in this Plan shall prejudice, compromise, release or otherwise affect any right or defence of any such insurer in respect of any such Insurance Policy. Furthermore, nothing in this Plan shall prejudice, compromise, release or otherwise affect (i) any right of subrogation any such insurer may have against

any Person, including against any Director or Officer in the event of a determination of fraud against SFC or any Director or Officer in respect of whom such a determination is specifically made, and /or (ii) the ability of such insurer to claim repayment of Defense Costs (as defined in any such policy) from SFC and/or any Director or Officer in the event that the party from whom repayment is sought is not entitled to coverage under the terms and conditions of any such Insurance Policy

(c) Notwithstanding anything herein (including section 2.4(b) and the releases and injunctions set forth in Article 7 hereof), but subject to section 2.4(d) hereof, all Insured Claims shall be deemed to remain outstanding and are not released following the Plan Implementation Date, but recovery as against SFC and the Named Directors and Officers is limited only to proceeds of Insurance Policies that are available to pay such Insured Claims, either by way of judgment or settlement. SFC and the Directors or Officers shall make all reasonable efforts to meet all obligations under the Insurance Policies. The insurers agree and acknowledge that they shall be obliged to pay any Loss payable pursuant to the terms and conditions of their respective Insurance Policies notwithstanding the releases granted to SFC and the Named Directors and Officers under this Plan, and that they shall not rely on any provisions of the Insurance Policies to argue, or otherwise assert, that such releases excuse them from, or relieve them of, the obligation to pay Loss that otherwise would be payable under the terms of the Insurance Policies. For greater certainty, the insurers agree and consent to a direct right of action against the insurers, or any of them, in favour of any plaintiff who or which has (a) negotiated a settlement of any Claim covered under any of the Insurance Policies, which settlement has been consented to in writing by the insurers or such of them as may be required or (b) obtained a final judgment against one or more of SFC and/or the Directors or Officers which such plaintiff asserts, in whole or in part, represents Loss covered under the Insurance Policies, notwithstanding that such plaintiff is not a named insured under the Insurance Policies and that neither SFC nor the Directors or Officers are parties to such action.

(d) Notwithstanding anything in this section 2.4, from and after the Plan Implementation Date, any Person having an Insured Claim shall, as against SFC and the Named Directors and Officers, be irrevocably limited to recovery solely from the proceeds of the Insurance Policies paid or payable on behalf of SFC or its Directors or Officers, and Persons with any Insured Claims shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from SFC, any of the Named Directors and Officers, any of the Subsidiaries, Newco or Newco II, other than enforcing such Person's rights to be paid from the proceeds of an Insurance Policy by the applicable insurer(s), and this section 2.4(d) may be relied upon and raised or pled by SFC, Newco, Newco II, any Subsidiary and any Named Director and Officer in defence or estoppel of or to enjoin any claim, action or proceeding brought in contravention of this section

2.5 Claims Procedure Order

For greater certainty, nothing in this Plan revives or restores any right or claim of any kind that is barred or extinguished pursuant to the terms of the Claims Procedure Order, provided that nothing in this Plan, the Claims Procedure Order or any other Order compromises, releases, discharges, cancels or bars any claim against any Person for fraud or criminal conduct, regardless of whether or not any such claim has been asserted to date.

ARTICLE 3
CLASSIFICATION, VOTING AND RELATED MATTERS

3.1 Claims Procedure

The procedure for determining the validity and quantum of the Affected Claims shall be governed by the Claims Procedure Order, the Meeting Order, the CCAA, the Plan and any other Order, as applicable. SFC, the Monitor and any other creditor in respect of its own Claim, shall have the right to seek the assistance of the Court in valuing any Claim, whether for voting or distribution purposes, if required, and to ascertain the result of any vote on the Plan.

3.2 Classification

(a) The Affected Creditors shall constitute a single class, the "**Affected Creditors Class**", for the purposes of considering and voting on the Plan.

(b) The Equity Claimants shall constitute a single class, separate from the Affected Creditors Class, but shall not, and shall have no right to, attend the Meeting or vote on the Plan in such capacity.

3.3 Unaffected Creditors

No Unaffected Creditor, in respect of an Unaffected Claim, shall:

(a) be entitled to vote on the Plan;

(b) be entitled to attend the Meeting; or

(c) receive any entitlements under this Plan in respect of such Unaffected Creditor's Unaffected Claims (other than its right to have its Unaffected Claim addressed in accordance with section 4.2 hereof).

3.4 Creditors' Meeting

The Meeting shall be held in accordance with the Plan, the Meeting Order and any further Order of the Court. The only Persons entitled to attend and vote on the Plan at the Meeting are those specified in the Meeting Order.

3.5 Approval by Creditors

In order to be approved, the Plan must receive the affirmative vote of the Required Majority of the Affected Creditors Class.

ARTICLE 4
DISTRIBUTIONS, PAYMENTS AND TREATMENT OF CLAIMS

4.1 Affected Creditors

All Affected Creditor Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date. Each Affected Creditor that has a Proven Claim shall be entitled to receive the following in accordance with the Plan:

(a) such Affected Creditor's Pro-Rata number of the Newco Shares to be issued by Newco from the Affected Creditors Equity Sub-Pool in accordance with the Plan;

(b) such Affected Creditor's Pro-Rata amount of the Newco Notes to be issued by Newco in accordance with the Plan; and

(c) such Affected Creditor's Pro-Rata share of the Litigation Trust Interests to be allocated to the Affected Creditors in accordance with 4.11 hereof and the terms of the Litigation Trust.

From and after the Plan Implementation Date, each Affected Creditor, in such capacity, shall have no rights as against SFC in respect of its Affected Creditor Claim.

4.2 Unaffected Creditors

Each Unaffected Claim that is finally determined as such, as to status and amount, and that is finally determined to be valid and enforceable against SFC, in each case in accordance with the Claims Procedure Order or other Order:

(a) subject to sections 4.2(b) and 4.2(c) hereof, shall be paid in full from the Unaffceted Claims Reserve and limited to recovery against the Unaffected Claims Reserve, and Persons with Unaffected Claims shall have no right to, and shall not, make any claim or seek any recoveries from any Person in respect of Unaffected Claims, other than enforcing such Person's right against SFC to be paid from the Unaffected Claims Reserve;

(b) in the case of Claims secured by the Administration Charge:

(i) if billed or invoiced to SFC prior to the Plan Implementation Date, such Claims shall be paid by SFC in accordance with section 6.4(d) hereof; and

(ii) if billed or invoiced to SFC on or after the Plan Implementation Date, such Claims shall be paid from the Administration Charge Reserve, and all such

Claims shall be limited to recovery against the Administration Charge Reserve, and any Person with such Claims shall have no right to, and shall not, make any claim or seek any recoveries from any Person in respect of such Claims, other than enforcing such Person's right against the Administration Charge Reserve; and

(c) in the case of Lien Claims:

(i) at the election of the Initial Consenting Noteholders, and with the consent of the Monitor, SFC shall satisfy such Lien Claim by the return of the applicable property of SFC that is secured as collateral for such Lien Claim, and the applicable Lien Claimant shall be limited to its recovery against such secured property in respect of such Lien Claim.

(ii) if the Initial Consenting Noteholders do not elect to satisfy such Lien Claim by the return of the applicable secured property: (A) SFC shall repay the Lien Claim in full in cash on the Plan Implementation Date; and (B) the security held by the applicable Lien Claimant over the property of SFC shall be fully, finally, irrevocably and forever released, discharged, cancelled and barred; and

(iii) upon the satisfaction of a Lien Claim in accordance with sections 4.2(c)(i) or 4.2(c)(ii) hereof, such Lien Claims shall be fully, finally, irrevocably and forever released, discharged, cancelled and barred.

4.3 Early Consent Noteholders

As additional consideration for the compromise, release, discharge, cancellation and bar of the Affected Creditor Claims in respect of its Notes, each Early Consent Noteholder shall receive (in addition to the consideration it is entitled to receive in accordance with section 4.1 hereof) its Pro-Rata number of the Newco Shares to be issued by Newco from the Early Consent Equity Sub-Pool in accordance with the Plan.

4.4 Noteholder Class Action Claimants

(a) All Noteholder Class Action Claims against SFC, the Subsidiaries or the Named Directors or Officers (other than any Noteholder Class Action Claims against the Named Directors or Officers that are Section 5.1(2) D&O Claims, Conspiracy Claims or Non-Released D&O Claims) shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without consideration as against all said Persons on the Plan Implementation Date. Subject to section 4.4(f) hereof, Noteholder Class Action Claimants shall not receive any consideration or distributions under the Plan in respect of their Noteholder Class Action Claims. Noteholder Class Action Claimants shall not be entitled to attend or to vote on the Plan at the Meeting in respect of their Noteholder Class Action Claims.

(b) Notwithstanding anything to the contrary in section 4.4(a), Noteholder Class Action Claims as against the Third Party Defendants (x) are not compromised, discharged, released, cancelled or barred, (y) shall be permitted to continue as against the Third Party Defendants and (z) shall not be limited or restricted by this Plan in any manner as to quantum or otherwise (including any collection or recovery for such Noteholder Class Action Claims that relates to any liability of the Third Party Defendants for any alleged liability of SFC), provided that:

(i) in accordance with the releases set forth in Article 7 hereof, the collective aggregate amount of all rights and claims asserted or that may be asserted against the Third Party Defendants in respect of any such Noteholder Class Action Claims for which any such Persons in each case have a valid and enforceable Class Action Indemnity Claim against SFC (the "**Indemnified Noteholder Class Action Claims**") shall not exceed, in the aggregate, the Indemnified Noteholder Class Action Limit, and in accordance with section 7.3 hereof, all Persons shall be permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, from seeking to enforce any liability in respect of the Indemnified Noteholder Class Action Claims that exceeds the Indemnified Noteholder Class Action Limit;

(ii) subject to section 4.4(g), any Class Action Indemnity Claims against SFC by the Third Party Defendants in respect of the Indemnified Noteholder Class Action Claims shall be treated as Affected Creditor Claims against SFC, but only to the extent that any such Class Action Indemnity Claims that are determined to be properly indemnified by SFC, enforceable against SFC and are not barred or extinguished by the Claims Procedure Order, and further provided that the aggregate liability of SFC in respect of all such Class Action Indemnity Claims shall be limited to the lesser of: (A) the actual aggregate liability of the Third Party Defendants pursuant to any final judgment, settlement or other binding resolution in respect of the Indemnified Noteholder Class Action Claims; and (B) the Indemnified Noteholder Class Action Limit; and

(iii) for greater certainty, in the event that any Third Party Defendant is found to be liable for or agrees to a settlement in respect of a Noteholder Class Action Claim (other than a Noteholder Class Action Claim for fraud or criminal conduct) and such amounts are paid by or on behalf of the applicable Third Party Defendant, then the amount of the Indemnified Noteholder Class Action Limit applicable to the remaining Third Party Defendants shall be reduced by the amount paid in respect of such Noteholder Class Action Claim, as applicable.

(c) Subject to section 7.1(o), the Claims of the Underwriters for indemnification in respect of any Noteholder Class Action Claims (other than Noteholder Class Action Claims against the Underwriters for fraud or criminal conduct) shall, for purposes of the Plan, be deemed to be valid and enforceable Class Action

Indemnity Claims against SFC (as limited pursuant to section 4.4(b) hereof), provided that: (i) the Underwriters shall not be entitled to receive any distributions of any kind under the Plan in respect of such Claims; (ii) such Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date; and (iii) the amount of such Claims shall not affect the calculation of any Pro-Rata entitlements of the Affected Creditors under this Plan. For greater certainty, to the extent of any conflict with respect to the Underwriters between section 4.4(e) hereof and this section 4.4(c), this section 4.4(c) shall prevail.

(d) Subject to section 7.1(m), any and all indemnification rights and entitlements of Ernst & Young at common law and any and all indemnification agreements between Ernst & Young and SFC shall be deemed to be valid and enforceable in accordance with their terms for the purpose of determining whether the Claims of Ernst & Young for indemnification in respect of Noteholder Class Action Claims are valid and enforceable within the meaning of section 4.4(b) hereof. With respect to Claims of Ernst & Young for indemnification in respect of Noteholder Class Action Claims that are valid and enforceable: (i) Ernst & Young shall not be entitled to receive any distributions of any kind under the Plan in respect of such Claims; (ii) such Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date; and (iii) the amount of such Claims shall not affect the calculation of any Pro-Rata entitlements of the Affected Creditors under this Plan.

(e) Subject to section 7.1(n), any and all indemnification rights and entitlements of the Named Third Party Defendants at common law and any and all indemnification agreements between the Named Third Party Defendants and SFC shall be deemed to be valid and enforceable in accordance with their terms for the purpose of determining whether the Claims of the Named Third Party Defendants for indemnification in respect of Noteholder Class Action Claims are valid and enforceable within the meaning of section 4.4(b) hereof. With respect to Claims of the Named Third Party Defendants for indemnification in respect of Noteholder Class Action Claims that are valid and enforceable: (i) the Named Third Party Defendants shall not be entitled to receive any distributions of any kind under the Plan in respect of such Claims; (ii) such Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date; and (iii) the amount of such Claims shall not affect the calculation of any Pro-Rata entitlements of the Affected Creditors under this Plan.

(f) Each Noteholder Class Action Claimant shall be entitled to receive its share of the Litigation Trust Interests to be allocated to Noteholder Class Action Claimants in accordance with the terms of the Litigation Trust and section 4.11 hereof, as such Noteholder Class Action Claimant's share is determined by the applicable Class Action Court.

(g) Nothing in this Plan impairs, affects or limits in any way the ability of SFC, the Monitor or the Initial Consenting Noteholders to seek or obtain an Order, whether before or after the Plan Implementation Date, directing that Class Action Indemnity Claims in respect of Noteholder Class Action Claims or any other Claims of the Third Party Defendants should receive the same or similar treatment as is afforded to Class Action Indemnity Claims in respect of Equity Claims under the terms of this Plan.

4.5 Equity Claimants

All Equity Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date. Equity Claimants shall not receive any consideration or distributions under the Plan and shall not be entitled to vote on the Plan at the Meeting.

4.6 Claims of the Trustees and Noteholders

For purposes of this Plan, all claims filed by the Trustees in respect of the Noteholder Claims (other than any Trustee Claims) shall be treated as provided in section 4.1 and the Trustees and the Noteholders shall have no other entitlements in respect of the guarantees and share pledges that have been provided by the Subsidiaries, or any of them, all of which shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date as against the Subsidiaries pursuant to Article 7 hereof.

4.7 Claims of the Third Party Defendants

For purposes of this Plan, all claims filed by the Third Party Defendants against SFC and/or any of its Subsidiaries shall be treated as follows:

(a) all such claims against the Subsidiaries shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date in accordance with Article 7 hereof;

(b) all such claims against SFC that are Class Action Indemnity Claims in respect of Indemnified Noteholder Class Action Claims shall be treated as set out in section 4.4(b)(ii) hereof;

(c) all such claims against SFC for indemnification of Defence Costs shall be treated in accordance with section 4.8 hereof; and

(d) all other claims shall be treated as Equity Claims.

4.8 Defence Costs

All Claims against SFC for indemnification of defence costs incurred by any Person (other than a Named Director or Officer) in connection with defending against Shareholder Claims (as defined in the Equity Claims Order), Noteholder Class Action Claims or any other

claims of any kind relating to SFC or the Subsidiaries ("**Defence Costs**") shall be treated as follows:

(a) as Equity Claims to the extent they are determined to be Equity Claims under any Order; and

(b) as Affected Creditor Claims to the extent that they are not determined to be Equity Claims under any Order, provided that:

(i) if such Defence Costs were incurred in respect of a claim against the applicable Person that has been successfully defended and the Claim for such Defence Costs is otherwise valid and enforceable against SFC, the Claim for such Defence Costs shall be treated as a Proven Claim, provided that if such Claim for Defence Costs is a Class Action Indemnity Claim of a Third Party Defendant against SFC in respect of any Indemnified Noteholder Class Action Claim, such Claim for Defence Costs shall be treated in the manner set forth in section 4.4(b)(ii) hereof;

(ii) if such Defence Costs were incurred in respect of a claim against the applicable Person that has not been successfully defended or such Defence Costs are determined not to be valid and enforceable against SFC, the Claim for such Defence Costs shall be disallowed and no consideration will be payable in respect thereof under the Plan; and

(iii) until any such Claim for Defence Costs is determined to be either a Claim within section 4.8(b)(i) or a Claim within section 4.8(b)(ii), such Claim shall be treated as an Unresolved Claim,

provided that nothing in this Plan impairs, affects or limits in any way the ability of SFC, the Monitor or the Initial Consenting Noteholders to seek an Order that Claims against SFC for indemnification of any Defence Costs should receive the same or similar treatment as is afforded to Equity Claims under the terms of this Plan.

4.9 D&O Claims

(a) All D&O Claims against the Named Directors and Officers (other than Section 5.1(2) D&O Claims, Conspiracy Claims and Non-Released D&O Claims) shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without consideration on the Plan Implementation Date.

(b) All D&O Claims against the Other Directors and/or Officers shall not be compromised, released, discharged, cancelled or barred by this Plan and shall be permitted to continue as against the applicable Other Directors and/or Officers (the "**Continuing Other D&O Claims**"), provided that any Indemnified Noteholder Class Action Claims against the Other Directors and/or Officers shall be limited as described in section 4.4(b)(i) hereof.

(c) All D&O Indemnity Claims and any other rights or claims for indemnification held by the Named Directors and Officers shall be deemed to have no value and shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without consideration on the Plan Implementation Date.

(d) All D&O Indemnity Claims and any other rights or claims for indemnification held by the Other Directors and/or Officers shall be deemed to have no value and shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without consideration on the Plan Implementation Date, except that: (i) any such D&O Indemnity Claims for Defence Costs shall be treated in accordance with section 4.8 hereof; and (ii) any Class Action Indemnity Claim of an Other Director and/or Officer against SFC in respect of the Indemnified Noteholder Class Action Claims shall be treated in the manner set forth in section 4.4(b)(ii) hereof.

(e) All Section 5.1(2) D&O Claims and all Conspiracy Claims shall not be compromised, released, discharged, cancelled or barred by this Plan, provided that any Section 5.1(2) D&O Claims against Named Directors and Officers and any Conspiracy Claims against Named Directors and Officers shall be limited to recovery from any insurance proceeds payable in respect of such Section 5.1(2) D&O Claims or Conspiracy Claims, as applicable, pursuant to the Insurance Policies, and Persons with any such Section 5.1(2) D&O Claims against Named Directors and Officers or Conspiracy Claims against Named Directors and Officers shall have no right to, and shall not, make any claim or seek any recoveries from any Person (including SFC, any of the Subsidiaries, Newco or Newco II), other than enforcing such Persons' rights to be paid from the proceeds of an Insurance Policy by the applicable insurer(s).

(f) All D&O Claims against the Directors and Officers of SFC or the Subsidiaries for fraud or criminal conduct shall not be compromised, discharged, released, cancelled or barred by this Plan and shall be permitted to continue as against all applicable Directors and Officers (**"Non-Released D&O Claims"**).

(g) Notwithstanding anything to the contrary herein, from and after the Plan Implementation Date, a Person may only commence an action for a Non-Released D&O Claim against a Named Director or Officer if such Person has first obtained (i) the consent of the Monitor or (ii) leave of the Court on notice to the applicable Directors and Officers, SFC, the Monitor, the Initial Consenting Noteholders and any applicable insurers. For the avoidance of doubt, the foregoing requirement for the consent of the Monitor or leave of the Court shall not apply to any Non-Released D&O Claim that is asserted against an Other Director and/or Officer.

4.10 Intercompany Claims

All SFC Intercompany Claims (other than those transferred to SFC Barbados pursuant to section 6.4(j) hereof or set-off pursuant to section 6.4(l) hereof) shall be deemed to be assigned by SFC to Newco on the Plan Implementation Date pursuant to section 6.4(m) hereof, and shall

then be deemed to be assigned by Newco to Newco II pursuant to section 6.4(x) hereof. The obligations of SFC to the applicable Subsidiaries and Greenheart in respect of all Subsidiary Intercompany Claims (other than those set-off pursuant to section 6.4(l) hereof) shall be assumed by Newco on the Plan Implementation Date pursuant to 6.4(m) hereof, and then shall be assumed by Newco II pursuant to section 6.4(x) hereof. Notwithstanding anything to the contrary herein, Newco II shall be liable to the applicable Subsidiaries and Greenheart for such Subsidiary Intercompany Claims and SFC shall be released from such Subsidiary Intercompany Claims from and after the Plan Implementation Date, and the applicable Subsidiaries and Greenheart shall be liable to Newco II for such SFC Intercompany Claims from and after the Plan Implementation Date. For greater certainty, nothing in this Plan affects any rights or claims as between any of the Subsidiaries, Greenheart and Greenheart's direct and indirect subsidiaries.

4.11 Entitlement to Litigation Trust Interests

(a) The Litigation Trust Interests to be created in accordance with this Plan and the Litigation Trust shall be allocated as follows:

(i) the Affected Creditors shall be collectively entitled to 75% of such Litigation Trust Interests; and

(ii) the Noteholder Class Action Claimants shall be collectively entitled to 25% of such Litigation Trust Interests,

which allocations shall occur at the times and in the manner set forth in section 6.4 hereof and shall be recorded by the Litigation Trustee in its registry of Litigation Trust Interests.

(b) Notwithstanding anything to the contrary in section 4.11(a) hereof, if any of the Noteholder Class Action Claims against any of the Third Party Defendants are finally resolved (whether by final judgment, settlement or any other binding means of resolution) within two years of the Plan Implementation Date, then the Litigation Trust Interests to which the applicable Noteholder Class Action Claimants would otherwise have been entitled in respect of such Noteholder Class Action Claims pursuant to section 4.11(a)(ii) hereof (based on the amount of such resolved Noteholder Class Action Claims in proportion to all Noteholder Class Action Claims in existence as of the Claims Bar Date) shall be fully, finally, irrevocably and forever cancelled.

4.12 Litigation Trust Claims

(a) At any time prior to the Plan Implementation Date, SFC and the Initial Consenting Noteholders may agree to exclude one or more Causes of Action from the Litigation Trust Claims and/or to specify that any Causes of Action against a specified Person will not constitute Litigation Trust Claims ("**Excluded Litigation Trust Claims**"), in which case, any such Causes of Action shall not be transferred to the Litigation Trust on the Plan Implementation Date. Any such Excluded Litigation Trust Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan

Implementation Date in accordance with Article 7 hereof. All Affected Creditors shall be deemed to consent to such treatment of Excluded Litigation Trust Claims pursuant to this section 4.12(a).

(b) All Causes of Action against the Underwriters by (i) SFC or (ii) the Trustees (on behalf of the Noteholders) shall be deemed to be Excluded Litigation Trust Claims that are fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date in accordance with Article 7 hereof, provided that, unless otherwise agreed by SFC and the Initial Consenting Noteholders prior to the Plan Implementation Date in accordance with section 4.12(a) hereof, any such Causes of Action for fraud or criminal conduct shall not constitute Excluded Litigation Trust Claims and shall be transferred to the Litigation Trust in accordance with section 6.4(o) hereof.

(c) At any time from and after the Plan Implementation Date, and subject to the prior consent of the Initial Consenting Noteholders and the terms of the Litigation Trust Agreement, the Litigation Trustee shall have the right to seek and obtain an order from any court of competent jurisdiction, including an Order of the Court in the CCAA or otherwise, that gives effect to any releases of any Litigation Trust Claims agreed to by the Litigation Trustee in accordance with the Litigation Trust Agreement, including a release that fully, finally, irrevocably and forever compromises, releases, discharges, cancels and bars the applicable Litigation Trust Claims as if they were Excluded Litigation Trust Claims released in accordance with Article 7 hereof. All Affected Creditors shall be deemed to consent to any such treatment of any Litigation Trust Claims pursuant to this section 4.12(b).

4.13 Multiple Affected Claims

On the Plan Implementation Date, any and all liabilities for and guarantees and indemnities of the payment or performance of any Affected Claim, Unaffected Claim, Section 5.1(2) D&O Claim, Conspiracy Claim, Continuing Other D&O Claim or Non-Released D&O Claim by any of the Subsidiaries, and any purported liability for the payment or performance of such Affected Claim, Unaffected Claim, Section 5.1(2) D&O Claim, Conspiracy Claim, Continuing Other D&O Claim or Non-Released D&O Claim by Newco or Newco II, will be deemed eliminated and cancelled, and no Person shall have any rights whatsoever to pursue or enforce any such liabilities for or guarantees or indemnities of the payment or performance of any such Affected Claim, Unaffected Claim, Section 5.1(2) D&O Claim, Conspiracy Claim, Continuing Other D&O Claim or Non-Released D&O Claim against any Subsidiary, Newco or Newco II.

4.14 Interest

Subject to section 12.4 hereof, no holder of an Affected Claim shall be entitled to interest accruing on or after the Filing Date.

4.15 Existing Shares

Holders of Existing Shares and Equity Interests shall not receive any consideration or distributions under the Plan in respect thereof and shall not be entitled to vote on the Plan at the Meeting. Unless otherwise agreed between the Monitor, SFC and the Initial Consenting Noteholders, all Existing Shares and Equity Interests shall be fully, finally and irrevocably cancelled in accordance with and at the time specified in section 6.5 hereof.

4.16 Canadian Exempt Plans

If an Affected Creditor is a trust governed by a plan which is exempt from tax under Part I of the Canadian Tax Act (including, for example, a registered retirement savings plan), such Affected Creditor may make arrangements with Newco (if Newco so agrees) and the Litigation Trustee (if the Litigation Trustee so agrees) to have the Newco Shares, Newco Notes and Litigation Trust Interests to which it is entitled under this Plan directed to (or in the case of Litigation Trust Interests, registered in the name of) an affiliate of such Affected Creditor or the annuitant or controlling person of the governing tax-deferred plan.

ARTICLE 5
DISTRIBUTION MECHANICS

5.1 Letters of Instruction

In order to issue (i) Newco Shares and Newco Notes to Ordinary Affected Creditors and (ii) Newco Shares to Early Consent Noteholders, the following steps will be taken:

(a) with respect to Ordinary Affected Creditors with Proven Claims or Unresolved Claims:

  (i) on the next Business Day following the Distribution Record Date, the Monitor shall send blank Letters of Instruction by prepaid first class mail, courier, email or facsimile to each such Ordinary Affected Creditor to the address of each such Ordinary Affected Creditor (as specified in the applicable Proof of Claim) as of the Distribution Record Date, or as evidenced by any assignment or transfer in accordance with section 5.10;

  (ii) each such Ordinary Affected Creditor shall deliver to the Monitor a duly completed and executed Letter of Instruction that must be received by the Monitor on or before the date that is seven (7) Business Days after the Distribution Record Date or such other date as the Monitor may determine; and

  (iii) any such Ordinary Affected Creditor that does not return a Letter of Instruction to the Monitor in accordance with section 5.1(a)(ii) shall be deemed to have requested that such Ordinary Affected Creditor's Newco Shares and Newco Notes be registered or distributed, as applicable, in accordance with the information set out in such Ordinary Affected Creditor's Proof of Claim; and

(b) with respect to Early Consent Noteholders:

(i) on the next Business Day following the Distribution Record Date the Monitor shall send blank Letters of Instruction by prepaid first class mail, courier, email or facsimile to each Early Consent Noteholder to the address of each such Early Consent Noteholder as confirmed by the Monitor on or before the Distribution Record Date;

(ii) each Early Consent Noteholder shall deliver to the Monitor a duly completed and executed Letter of Instruction that must be received by the Monitor on or before the date that is seven (7) Business Days after the Distribution Record Date or such other date as the Monitor may determine; and

(iii) any such Early Consent Noteholder that does not return a Letter of Instruction to the Monitor in accordance with section 5.1(b)(ii) shall be deemed to have requested that such Early Consent Noteholder's Newco Shares be distributed or registered, as applicable, in accordance with information confirmed by the Monitor on or before the Distribution Record Date.

5.2 Distribution Mechanics with respect to Newco Shares and Newco Notes

(a) To effect distributions of Newco Shares and Newco Notes, the Monitor shall deliver a direction at least two (2) Business Days prior to the Initial Distribution Date to Newco or its agent, as applicable, directing Newco or its agent, as applicable, to issue on such Initial Distribution Date or subsequent Distribution Date:

(i) in respect of the Ordinary Affected Creditors with Proven Claims:

(A) the number of Newco Shares that each such Ordinary Affected Creditor is entitled to receive in accordance with section 4.1(a) hereof; and

(B) the amount of Newco Notes that each such Ordinary Affected Creditor is entitled to receive in accordance with section 4.1(b) hereof,

all of which Newco Shares and Newco Notes shall be issued to such Ordinary Affected Creditors and distributed in accordance with this Article 5;

(ii) in respect of the Ordinary Affected Creditors with Unresolved Claims:

(A) the number of Newco Shares that each such Ordinary Affected Creditor would have been entitled to receive in accordance with section 4.1(a) hereof had such Ordinary Affected Creditor's

Unresolved Claim been a Proven Claim on the Plan Implementation Date; and

(B) the amount of Newco Notes that each such Ordinary Affected Creditor would have been entitled to receive in accordance with section 4.1(b) hereof had such Ordinary Affected Creditor's Unresolved Claim been a Proven Claim on the Plan Implementation Date,

all of which Newco Shares and Newco Notes shall be issued in the name of the Unresolved Claims Escrow Agent for the benefit of the Persons entitled thereto under the Plan, which Newco Shares and Newco Notes shall comprise part of the Unresolved Claims Reserve and shall be held in escrow by the Unresolved Claims Escrow Agent until released and distributed in accordance with this Article 5;

(iii) in respect of the Noteholders:

(A) the number of Newco Shares that the Trustees are collectively required to receive such that, upon distribution to the Noteholders in accordance with this Article 5, each individual Noteholder receives the number of Newco Shares to which it is entitled in accordance with section 4.1(a) hereof; and

(B) the amount of Newco Notes that the Trustees are collectively required to receive such that, upon distribution to the Noteholders in accordance with this Article 5, each individual Noteholder receives the amount of Newco Notes to which it is entitled in accordance with section 4.1(b) hereof,

all of which Newco Shares and Newco Notes shall be issued to such Noteholders and distributed in accordance with this Article 5; and

(iv) in respect of Early Consent Noteholders, the number of Newco Shares that each such Early Consent Noteholder is entitled to receive in accordance with section 4.3 hereof, all of which Newco Shares shall be issued to such Early Consent Noteholders and distributed in accordance with this Article 5.

The direction delivered by the Monitor in respect of the applicable Ordinary Affected Creditors and Early Consent Noteholders shall: (A) indicate the registration and delivery details of each applicable Ordinary Affected Creditor and Early Consent Noteholder based on the information prescribed in section 5.1; and (B) specify the number of Newco Shares and, in the case of Ordinary Affected Creditors, the amount of Newco Notes to be issued to each such Person on the applicable Distribution Date. The direction delivered by the Monitor in respect of the Noteholders shall: (C) indicate that the registration and delivery details with respect to the number of Newco Shares and amount of Newco Notes

to be distributed to each Noteholder will be the same as the registration and delivery details in effect with respect to the Notes held by each Noteholder as of the Distribution Record Date; and (D) specify the number of Newco Shares and the amount of Newco Notes to be issued to each of the Trustees for purposes of satisfying the entitlements of the Noteholders set forth in sections 4.1(a) and 4.1(b) hereof. The direction delivered by the Monitor in respect of the Newco Shares and Newco Notes to be issued in the name of the Unresolved Claims Escrow Agent, for the benefit of the Persons entitled thereto under the Plan, for purposes of the Unresolved Claims Reserve shall specify the number of Newco Shares and the amount of Newco Notes to be issued in the name of the Unresolved Claims Escrow Agent for that purpose.

(b) If the registers for the Newco Shares and/or Newco Notes are maintained by the Transfer Agent in a direct registration system (without certificates), the Monitor and/or Newco and/or the Unresolved Claims Escrow Agent, as applicable, shall, on the Initial Distribution Date or any subsequent Distribution Date, as applicable:

(i) instruct the Transfer Agent to record, and the Transfer Agent shall record, in the Direct Registration Account of each applicable Ordinary Affected Creditor and each Early Consent Noteholder the number of Newco Shares and, in the case of Ordinary Affected Creditors, the amount of Newco Notes that are to be distributed to each such Person, and the Monitor and/or Newco and/or the Unresolved Claims Escrow Agent, as applicable, shall send or cause to be sent to each such Ordinary Affected Creditor and Early Consent Noteholder a Direct Registration Transaction Advice based on the delivery information as determined pursuant to section 5.1; and

(ii) with respect to the distribution of Newco Shares and/or Newco Notes to Noteholders:

(A) if the Newco Shares and/or Newco Notes are DTC eligible, the Monitor and/or Newco and/or the Unresolved Claims Escrow Agent, as applicable, shall instruct the Transfer Agent to register, and the Transfer Agent shall register, the applicable Newco Shares and/or Newco Notes in the name of DTC (or its nominee) for the benefit of the Noteholders, and the Trustees shall provide their consent to DTC to the distribution of such Newco Shares and Newco Notes to the applicable Noteholders, in the applicable amounts, through the facilities of DTC in accordance with customary practices and procedures; and

(B) if the Newco Shares and/or Newco Notes are not DTC eligible, the Monitor and/or Newco and/or the Unresolved Claims Escrow Agent, as applicable, shall instruct the Transfer Agent to register the applicable Newco Shares and/or Newco Notes in the Direct Registration Accounts of the applicable Noteholders pursuant to the registration instructions obtained through DTC and the DTC

participants (by way of a letter of transmittal process or such other process as agreed by SFC, the Monitor, the Trustees and the Initial Consenting Noteholders), and the Transfer Agent shall (A) register such Newco Shares and/or Newco Notes, in the applicable amounts, in the Direct Registration Accounts of the applicable Noteholders; and (B) send or cause to be sent to each Noteholder a Direct Registration Transaction Advice in accordance with customary practices and procedures; provided that the Transfer Agent shall not be permitted to effect the foregoing registrations without the prior written consent of the Trustees.

(c) If the registers for the Newco Shares and/or Newco Notes are not maintained by the Transfer Agent in a direct registration system, Newco shall prepare and deliver to the Monitor and/or the Unresolved Claims Escrow Agent, as applicable, and the Monitor and/or the Unresolved Claims Escrow Agent, as applicable, shall promptly thereafter, on the Initial Distribution Date or any subsequent Distribution Date, as applicable:

(i) deliver to each Ordinary Affected Creditor and each Early Consent Noteholder Newco Share Certificates and, in the case of Ordinary Affected Creditors, Newco Note Certificates representing the applicable number of Newco Shares and the applicable amount of Newco Notes that are to be distributed to each such Person; and

(ii) with respect to the distribution of Newco Shares and/or Newco Notes to Noteholders:

(A) if the Newco Shares and/or Newco Notes are DTC eligible, the Monitor and/or Newco and/or the Unresolved Claims Escrow Agent, as applicable, shall distribute to DTC (or its nominee), for the benefit of the Noteholders, Newco Share Certificates and/or Newco Note Certificates representing the aggregate of all Newco Shares and Newco Notes to be distributed to the Noteholders on such Distribution Date, and the Trustees shall provide their consent to DTC to the distribution of such Newco Shares and Newco Notes to the applicable Noteholders, in the applicable amounts, through the facilities of DTC in accordance with customary practices and procedures; and

(B) if the Newco Shares and/or Newco Notes are not DTC eligible, the Monitor and/or Newco and/or the Unresolved Claims Escrow Agent, as applicable, shall distribute to the applicable Trustees, Newco Share Certificates and/or Newco Note Certificates representing the aggregate of all Newco Shares and/or Newco Notes to be distributed to the Noteholders on such Distribution Date, and the Trustees shall make delivery of such Newco Share Certificates and Newco Note Certificates, in the applicable

amounts, directly to the applicable Noteholders pursuant to the delivery instructions obtained through DTC and the DTC participants (by way of a letter of transmittal process or such other process as agreed by SFC, the Monitor, the Trustees and the Initial Consenting Noteholders), all of which shall occur in accordance with customary practices and procedures.

(d) Upon receipt of and in accordance with written instructions from the Monitor, the Trustees shall instruct DTC to and DTC shall: (i) set up an escrow position representing the respective positions of the Noteholders as of the Distribution Record Date for the purpose of making distributions on the Initial Distribution Date and any subsequent Distribution Dates (the "**Distribution Escrow Position**"); and (ii) block any further trading of the Notes, effective as of the close of business on the day immediately preceding the Plan Implementation Date, all in accordance with DTC's customary practices and procedures.

(e) The Monitor, Newco, Newco II, the Trustees, SFC, the Named Directors and Officers and the Transfer Agent shall have no liability or obligation in respect of deliveries by DTC (or its nominee) to the DTC participants or the Noteholders pursuant to this Article 5.

5.3 Allocation of Litigation Trust Interests

The Litigation Trustee shall administer the Litigation Trust Claims and the Litigation Funding Amount for the benefit of the Persons that are entitled to the Litigation Trust Interests and shall maintain a registry of such Persons as follows:

(a) with respect to Affected Creditors:

(i) the Litigation Trustee shall maintain a record of the amount of Litigation Trust Interests that each Ordinary Affected Creditor is entitled to receive in accordance with sections 4.1(c) and 4.11(a) hereof;

(ii) the Litigation Trustee shall maintain a record of the aggregate amount of all Litigation Trust Interests to which the Noteholders are collectively entitled in accordance with sections 4.1(c) and 4.11(a) hereof, and if cash is distributed from the Litigation Trust to Persons with Litigation Trust Interests, the amount of such cash that is payable to the Noteholders will be distributed through the Distribution Escrow Position (such that each beneficial Noteholder will receive a percentage of such cash distribution that is equal to its entitlement to Litigation Trust Interests (as set forth in section 4.1(c) hereof) as a percentage of all Litigation Trust Interests); and

(iii) with respect to any Litigation Trust Interests to be allocated in respect of the Unresolved Claims Reserve, the Litigation Trustee shall record such Litigation Trust Interests in the name of the Unresolved Claims Escrow Agent, for the benefit of the Persons entitled thereto in accordance with

this Plan, which shall be held by the Unresolved Claims Escrow Agent in escrow until released and distributed unless and until otherwise directed by the Monitor in accordance with this Plan;

(b) with respect to the Noteholder Class Action Claimants, the Litigation Trustee shall maintain a record of the aggregate of all Litigation Trust Interests that the Noteholder Class Action Claimants are entitled to receive pursuant to sections 4.4(f) and 4.11(a) hereof, provided that such record shall be maintained in the name of the Noteholder Class Action Representative, to be allocated to individual Noteholder Class Action Claimants in any manner ordered by the applicable Class Action Court, and provided further that if any such Litigation Trust Interests are cancelled in accordance with section 4.11(b) hereof, the Litigation Trustee shall record such cancellation in its registry of Litigation Trust Interests.

5.4 Treatment of Undeliverable Distributions

If any distribution under section 5.2 or section 5.3 of Newco Shares, Newco Notes or Litigation Trust Interests is undeliverable (that is, for greater certainty, that it cannot be properly registered or delivered to the Applicable Affected Creditor because of inadequate or incorrect registration or delivery information or otherwise) (an **"Undeliverable Distribution"**), it shall be delivered to SFC Escrow Co., which shall hold such Undeliverable Distribution in escrow and administer it in accordance with this section 5.4. No further distributions in respect of an Undeliverable Distribution shall be made unless and until SFC and the Monitor are notified by the applicable Person of its current address and/or registration information, as applicable, at which time the Monitor shall direct SFC Escrow Co. to make all such distributions to such Person, and SFC Escrow Co. shall make all such distributions to such Person. All claims for Undeliverable Distributions must be made on or before the date that is six months following the final Distribution Date, after which date the right to receive distributions under this Plan in respect of such Undeliverable Distributions shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred, without any compensation therefore, notwithstanding any federal, state or provincial laws to the contrary, at which time any such Undeliverable Distributions held by SFC Escrow Co. shall be deemed to have been gifted by the owner of the Undeliverable Distribution to Newco or the Litigation Trust, as applicable, without consideration, and, in the case of Newco Shares, Newco Notes and Litigation Trust Interests, shall be cancelled by Newco and the Litigation Trustee, as applicable. Nothing contained in the Plan shall require SFC, the Monitor, SFC Escrow Co. or any other Person to attempt to locate any owner of an Undeliverable Distribution. No interest is payable in respect of an Undeliverable Distribution. Any distribution under this Plan on account of the Notes, other than any distributions in respect of Litigation Trust Interests, shall be deemed made when delivered to DTC or the applicable Trustee, as applicable, for subsequent distribution to the applicable Noteholders in accordance with section 5.2.

5.5 Procedure for Distributions Regarding Unresolved Claims

(a) An Affected Creditor that has asserted an Unresolved Claim will not be entitled to receive a distribution under the Plan in respect of such Unresolved Claim or any portion thereof unless and until such Unresolved Claim becomes a Proven Claim.

(b) Distributions in respect of any Unresolved Claim in existence at the Plan Implementation Date will be held in escrow by the Unresolved Claims Escrow Agent in the Unresolved Claims Reserve until settlement or final determination of the Unresolved Claim in accordance with the Claims Procedure Order, the Meeting Order or this Plan, as applicable.

(c) To the extent that Unresolved Claims become Proven Claims or are finally disallowed, the Unresolved Claims Escrow Agent shall release from escrow and deliver (or in the case of Litigation Trust Interests, cause to be registered) the following from the Unresolved Claims Reserve (on the next Distribution Date, as determined by the Monitor with the consent of SFC and the Initial Consenting Noteholders):

(i) in the case of Affected Creditors whose Unresolved Claims are ultimately determined, in whole or in part, to be Proven Claims, the Unresolved Claims Escrow Agent shall release from escrow and deliver to such Affected Creditor that number of Newco Shares, Newco Notes and Litigation Trust Interests (and any income or proceeds therefrom) that such Affected Creditor is entitled to receive in respect of its Proven Claim pursuant to section 4.1 hereof;

(ii) in the case of Affected Creditors whose Unresolved Claims are ultimately determined, in whole or in part, to be disallowed, the Unresolved Claims Escrow Agent shall release from escrow and deliver to all Affected Creditors with Proven Claims the number of Newco Shares, Newco Notes and Litigation Trust Interests (and any income or proceeds therefrom) that had been reserved in the Unresolved Claims Reserve for such Affected Creditor whose Unresolved Claims has been disallowed, Claims such that, following such delivery, all of the Affected Creditors with Proven Claims have received the amount of Newco Shares, Newco Notes and Litigation Trust Interests that they are entitled to receive pursuant to section 4.1 hereof, which delivery shall be effected in accordance with sections 5.2 and 5.3 hereof.

(d) As soon as practicable following the date that all Unresolved Claims have been finally resolved and any required distributions contemplated in section 5.5(c) have been made, the Unresolved Claims Escrow Agent shall distribute (or in the case of Litigation Trust Interests, cause to be registered) any Litigation Trust Interests, Newco Shares and Newco Notes (and any income or proceeds therefrom), as applicable, remaining in the Unresolved Claims Reserve to the Affected Creditors with Proven Claims such that after giving effect to such distributions each such Affected Creditor has received the amount of Litigation Trust Interests, Newco Shares and Newco Notes that it is entitled to receive pursuant to section 4.1 hereof.

(e) During the time that Newco Shares, Newco Notes and/or Litigation Trust Interests are held in escrow in the Unresolved Claims Reserve, any income or proceeds

received therefrom or accruing thereon shall be added to the Unresolved Claims Reserve by the Unresolved Claims Escrow Agent and no Person shall have any right to such income or proceeds until such Newco Shares, Newco Notes or Litigation Trust Interests, as applicable, are distributed (or in the case of Litigation Trust Interests, registered) in accordance with section 5.5(c) and 5.5(d) hereof, at which time the recipient thereof shall be entitled to any applicable income or proceeds therefrom.

(f) The Unresolved Claims Escrow Agent shall have no beneficial interest or right in the Unresolved Claims Reserve. The Unresolved Claims Escrow Agent shall not take any step or action with respect to the Unresolved Claims Reserve or any other matter without the consent or direction of the Monitor or the direction of the Court. The Unresolved Claims Escrow Agent shall forthwith, upon receipt of an Order of the Court or instruction of the Monitor directing the release of any Newco Shares, Newco Notes and/or Litigation Trust Interests from the Unresolved Claims Reserve, comply with any such Order or instruction.

(g) Nothing in this Plan impairs, affects or limits in any way the ability of SFC, the Monitor or the Initial Consenting Noteholders to seek or obtain an Order, whether before or after the Plan Implementation Date, directing that any Unresolved Claims should be disallowed in whole or in part or that such Unresolved Claims should receive the same or similar treatment as is afforded to Equity Claims under the terms of this Plan.

(h) Persons with Unresolved Claims shall have standing in any proceeding in respect of the determination or status of any Unresolved Claim, and Goodmans LLP (in its capacity as counsel to the Initial Consenting Noteholders) shall have standing in any such proceeding on behalf of the Initial Consenting Notheolders (in their capacity as Affected Creditors with Proven Claims).

5.6 Tax Refunds

Any input tax credits or tax refunds received by or on behalf of SFC after the Effective Time shall, immediately upon receipt thereof, be paid directly by, or on behalf of, SFC to Newco without consideration.

5.7 Final Distributions from Reserves

(a) If there is any cash remaining in: (i) the Unaffected Claims Reserve on the date that all Unaffected Claims have been finally paid or otherwise discharged and/or (ii) the Administration Charge Reserve on the date that all Claims secured by the Administration Charge have been finally paid or otherwise discharged, the Monitor shall, in each case, forthwith transfer all such remaining cash to the Monitor's Post-Implementation Reserve.

(b) The Monitor will not terminate the Monitor's Post-Implementation Reserve prior to the termination of each of the Unaffected Claims Reserve and the Administration Charge Reserve. The Monitor may, at any time, from time to time

and at its sole discretion, release amounts from the Monitor's Post-Implementation Reserve to Newco. Goodmans LLP (in its capacity as counsel to the Initial Consenting Noteholders) shall be permitted to apply for an Order of the Court directing the Monitor to make distributions from the Monitor's Post-Implementation Reserve. Once the Monitor has determined that the cash remaining in the Monitor's Post-Implementation Reserve is no longer necessary for administering SFC or the Claims Procedure, the Monitor shall forthwith transfer any such remaining cash (the **"Remaining Post-Implementation Reserve Amount"**) to Newco.

5.8 Other Payments and Distributions

All other payments and distributions to be made pursuant to this Plan shall be made in the manner described in this Plan, the Sanction Order or any other Order, as applicable.

5.9 Note Indentures to Remain in Effect Solely for Purpose of Distributions

Following completion of the steps in the sequence set forth in section 6.4, all debentures, indentures, notes (including the Notes), certificates, agreements, invoices and other instruments evidencing Affected Claims will not entitle any holder thereof to any compensation or participation other than as expressly provided for in the Plan and will be cancelled and will be null and void. Any and all obligations of SFC and the Subsidiaries under and with respect to the Notes, the Note Indentures and any guarantees or indemnities with respect to the Notes or the Note Indentures shall be terminated and cancelled on the Plan Implementation Date and shall not continue beyond the Plan Implementation Date. Notwithstanding the foregoing and anything to the contrary in the Plan, the Note Indentures shall remain in effect solely for the purpose of and only to the extent necessary to allow the Trustees to make distributions to Noteholders on the Initial Distribution Date and, as necessary, each subsequent Distribution Date thereafter, and to maintain all of the rights and protections afforded to the Trustees as against the Noteholders under the applicable Note Indentures, including their lien rights with respect to any distributions under this Plan, until all distributions provided for hereunder have been made to the Noteholders. The obligations of the Trustees under or in respect of this Plan shall be solely as expressly set out herein. Without limiting the generality of the releases, injunctions and other protections afforded to the Trustees under this Plan and the applicable Note Indentures, the Trustees shall have no liability whatsoever to any Person resulting from the due performance of their obligations hereunder, except if such Trustee is adjudged by the express terms of a non-appealable judgment rendered on a final determination on the merits to have committed gross negligence or wilful misconduct in respect of such matter.

5.10 Assignment of Claims for Distribution Purposes

(a) *Assignment of Claims by Ordinary Affected Creditors*

Subject to any restrictions contained in Applicable Laws, an Ordinary Affected Creditor may transfer or assign the whole of its Affected Claim after the Meeting provided that neither SFC nor Newco nor Newco II nor the Monitor nor the Unresolved Claims Escrow Agent shall be obliged to make distributions to any such transferee or assignee or otherwise deal with such

transferee or assignee as an Ordinary Affected Creditor in respect thereof unless and until actual notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment and such other documentation as SFC and the Monitor may reasonably require, has been received by SFC and the Monitor on or before the Plan Implementation Date, or such other date as SFC and the Monitor may agree, failing which the original transferor shall have all applicable rights as the "Ordinary Affected Creditor" with respect to such Affected Claim as if no transfer of the Affected Claim had occurred. Thereafter, such transferee or assignee shall, for all purposes in accordance with this Plan, constitute an Ordinary Affected Creditor and shall be bound by any and all notices previously given to the transferor or assignor in respect of such Claim. For greater certainty, SFC shall not recognize partial transfers or assignments of Claims.

(b) *Assignment of Notes*

Only those Noteholders who have beneficial ownership of one or more Notes as at the Distribution Record Date shall be entitled to receive a distribution under this Plan on the Initial Distribution Date or any Distribution Date. Noteholders who have beneficial ownership of Notes shall not be restricted from transferring or assigning such Notes prior to or after the Distribution Record Date (unless the Distribution Record Date is the Plan Implementation Date), provided that if such transfer or assignment occurs after the Distribution Record Date, neither SFC nor Newco nor Newco II nor the Monitor nor the Unresolved Claims Escrow Agent shall have any obligation to make distributions to any such transferee or assignee of Notes in respect of the Claims associated therewith, or otherwise deal with such transferee or assignee as an Affected Creditor in respect thereof. Noteholders who assign or acquire Notes after the Distribution Record Date shall be wholly responsible for ensuring that Plan distributions in respect of the Claims associated with such Notes are in fact delivered to the assignee, and the Trustees shall have no liability in connection therewith.

5.11 Withholding Rights

SFC, Newco, Newco II, the Monitor, the Litigation Trustee, the Unresolved Claims Escrow Agent and/or any other Person making a payment contemplated herein shall be entitled to deduct and withhold from any consideration payable to any Person such amounts as it is required to deduct and withhold with respect to such payment under the Canadian Tax Act, the United States Internal Revenue Code of 1986 or any provision of federal, provincial, territorial, state, local or foreign Tax laws, in each case, as amended. To the extent that amounts are so withheld or deducted, such withheld or deducted amounts shall be treated for all purposes hereof as having been paid to the Person in respect of which such withholding was made, provided that such amounts are actually remitted to the appropriate Taxing Authority. To the extent that the amounts so required or permitted to be deducted or withheld from any payment to a Person exceed the cash portion of the consideration otherwise payable to that Person: (i) the payor is authorized to sell or otherwise dispose of such portion of the consideration as is necessary to provide sufficient funds to enable it to comply with such deduction or withholding requirement or entitlement, and the payor shall notify the applicable Person thereof and remit to such Person any unapplied balance of the net proceeds of such sale; or (ii) if such sale is not reasonably possible, the payor shall not be required to make such excess payment until the Person has directly satisfied any such withholding obligation and provides evidence thereof to the payor.

5.12 Fractional Interests

No fractional interests of Newco Shares or Newco Notes (**"Fractional Interests"**) will be issued under this Plan. For purposes of calculating the number of Newco Shares and Newco Notes to be issued by Newco pursuant to this Plan, recipients of Newco Shares or Newco Notes will have their entitlements adjusted downwards to the nearest whole number of Newco Shares or Newco Notes, as applicable, to eliminate any such Fractional Interests and no compensation will be given for the Fractional Interest.

5.13 Further Direction of the Court

The Monitor shall, in its sole discretion, be entitled to seek further direction of the Court, including a plan implementation order, with respect to any matter relating to the implementation of the plan including with respect to the distribution mechanics and restructuring transaction as set out in Articles 5 and 6 of this Plan.

ARTICLE 6
RESTRUCTURING TRANSACTION

6.1 Corporate Actions

The adoption, execution, delivery, implementation and consummation of all matters contemplated under the Plan involving corporate action of SFC will occur and be effective as of the Plan Implementation Date, other than such matters occurring on the Equity Cancellation Date which will occur and be effective on such date, and in either case will be authorized and approved under the Plan and by the Court, where appropriate, as part of the Sanction Order, in all respects and for all purposes without any requirement of further action by shareholders, Directors or Officers of SFC. All necessary approvals to take actions shall be deemed to have been obtained from the directors or the shareholders of SFC, as applicable, including the deemed passing by any class of shareholders of any resolution or special resolution and no shareholders' agreement or agreement between a shareholder and another Person limiting in any way the right to vote shares held hy such shareholder or shareholders with respect to any of the steps contemplated by the Plan shall be deemed to be effective and shall have no force and effect, provided that, subject to sections 12.6 and 12.7 hereof, where any matter expressly requires the consent or approval of SFC, the Initial Consenting Noteholders or SFC's board of directors pursuant to this Plan, such consent or approval shall not be deemed to be given unless actually given.

6.2 Incorporation of Newco and Newco II

(a) Newco shall be incorporated prior to the Plan Implementation Date. Newco shall be authorized to issue an unlimited number of Newco Shares and shall have no restrictions on the number of its shareholders. At the time that Newco is incorporated, Newco shall issue one Newco Share to the Initial Newco Shareholder, as the sole shareholder of Newco, and the Initial Newco Shareholder shall be deemed to hold the Newco Share for the purpose of facilitating the

Restructuring Transaction. For greater certainty, the Initial Newco Shareholder shall not hold such Newco Share as agent of or for the benefit of SFC, and SFC shall have no rights in relation to such Newco Share. Newco shall not carry on any business or issue any other Newco Shares or other securities until the Plan Implementation Date, and then only in accordance with section 6.4 hereof. The Initial Newco Shareholder shall be deemed to have no liability whatsoever for any matter pertaining to its status as the Initial Newco Shareholder, other than its obligations under this Plan to act as the Initial Newco Shareholder.

(b) Newco II shall be incorporated prior to the Plan Implementation Date as a wholly-owned subsidiary of Newco. The memorandum and articles of association of Newco II will be in a form customary for a wholly-owned subsidiary under the applicable jurisidiction and the initial board of directors of Newco II will consist of the same Persons appointed as the directors of Newco on or prior to the Plan Implementation Date.

6.3 Incorporation of SFC Escrow Co.

SFC Escrow Co. shall be incorporated prior to the Plan Implementation Date. SFC Escrow Co. shall be incorporated under the laws of the Cayman Islands, or such other jurisdiction as may be agreed by SFC, the Monitor and the Initial Consenting Noteholders. The sole director of SFC Escrow Co. shall be Codan Services (Cayman) Limited, or such other Person as may be agreed by SFC, the Monitor and the Initial Consenting Noteholders. At the time that SFC Escrow Co. is incorporated, SFC Escrow Co. shall issue one share (the "SFC Escrow Co. Share") to SFC, as the sole shareholder of SFC Escrow Co. and SFC shall be deemed to hold the SFC Escrow Co. Share for the purpose of facilitating the Restructuring Transaction. SFC Escrow Co. shall have no assets other than any assets that it is required to hold in escrow pursuant to the terms of this Plan, and it shall have no liabilities other than its obligations as set forth in this Plan. SFC Escrow Co. shall not carry on any business or issue any shares or other securities (other than the SFC Escrow Co. Share). The sole activity and function of SFC Escrow Co. shall be to perform the obligations of the Unresolved Claims Escrow Agent as set forth in this Plan and to administer Undeliverable Distributions as set forth in section 5.4 of this Plan. SFC Escrow Co. shall not make any sale, distribution, transfer or conveyance of any Newco Shares, Newco Notes or any other assets or property that it holds unless it is directed to do so by an Order of the Court or by a written direction from the Monitor, in which case SFC Escrow Co. shall promptly comply with such Order of the Court or such written direction from the Monitor. SFC shall not sell, transfer or convey the SFC Escrow Co. Share nor effect or cause to be effected any liquidation, dissolution, merger or other corporate reorganization of SFC Escrow Co. unless it is directed to do so by an Order of the Court or by a written direction from the Monitor, in which case SFC shall promptly comply with such Order of the Court or such written direction from the Monitor. SFC Escrow Co. shall not exercise any voting rights (including any right to vote at a meeting of shareholders or creditors held or in any written resolution) in respect of Newco Shares or Newco Notes held in the Unresolved Claims Reserve. SFC Escrow Co. shall not be entitled to receive any compensation for the performance of its obligations under this Plan.

6.4 Plan Implementation Date Transactions

The following steps and compromises and releases to be effected shall occur, and be deemed to have occurred in the following manner and order (sequentially, each step occurring five minutes apart, except that within such order steps (a) to (f) (Cash Payments) shall occur simultaneously and steps (t) to (w) (Releases) shall occur simultaneously) without any further act or formality, on the Plan Implementation Date beginning at the Effective Time (or in such other manner or order or at such other time or times as SFC, the Monitor and the Initial Consenting Noteholders may agree):

Cash Payments and Satisfaction of Lien Claims

(a) SFC shall pay required funds to the Monitor for the purpose of funding the Unaffected Claims Reserve, and the Monitor shall hold and administer such funds in trust for the purpose of paying the Unaffected Claims pursuant to the Plan.

(b) SFC shall pay the required funds to the Monitor for the purpose of funding the Administration Charge Reserve, and the Monitor shall hold and administer such funds in trust for the purpose of paying Unaffected Claims secured by Administration Charge.

(c) SFC shall pay the required funds to the Monitor for the purpose of funding the Monitor's Post-Implementation Reserve, and the Monitor shall hold and administer such funds in trust for the purpose of administering SFC, as necessary, from and after the Plan Implementation Date.

(d) SFC shall pay to the Noteholder Advisors and the Initial Consenting Noteholders, as applicable, each such Person's respective portion of the Expense Reimbursement. SFC shall pay all fees and expenses owing to each of the SFC Advisors, the advisors to the current Board of Directors of SFC, Chandler Fraser Keating Limited and Spencer Stuart and SFC or any of the Subsidiaries shall pay all fees and expenses owing to each of Indufor Asia Pacific Limited and Stewart Murray (Singapore) Pte. Ltd. If requested by the Monitor (with the consent of the Initial Consenting Noteholders) no more than 10 days prior to the Plan Implementation Date and provided that all fees and expenses set out in all previous invoices rendered by the applicable Person to SFC have been paid, SFC and the Subsidiaries, as applicable, shall, with respect to the final one or two invoices rendored prior to the Plan Implementation Date, pay any such fees and expenses to such Persons for all work up to and including the Plan Implementation Date (including any reasonable estimates of work to be performed on the Plan Implementation Date) first by applying any such monetary retainers currently held by such Persons and then by paying any remaining balance in cash.

(e) If requested by the Monitor (with the consent of the Initial Consenting Noteholders) prior to the Plan Implementation Date, any Person with a monetary retainer from SFC that remains outstanding following the steps and payment of all

fees and expenses set out in section 6.4(d) hereof shall pay to SFC in cash the full amount of such remaining retainer, less any amount permitted by the Monitor (with the Consent of the Initial Consenting Noteholders and after prior discussion with the applicable Person as to any remaining work that may reasonably be required) to remain as a continuing monetary retainer in connection with completion of any remaining work after the Plan Implementation Date that may be requested by the Monitor, SFC or the Initial Consenting Noteholders (each such continuing monetary retainer being a "**Permitted Continuing Retainer**"). Such Persons shall have no duty or obligation to perform any further work or tasks in respect of SFC unless such Persons are satisfied that they are holding adequate retainers or other security or have received payment to compensate them for all fees and expenses in respect of such work or tasks. The obligation of such Persons to repay the remaining amounts of any monetary retainers (including the unused portions of any Permitted Continuing Retainers) and all cash received therefrom shall constitute SFC Assets.

(f) The Lien Claims shall be satisfied in accordance with section 4.2(c) hereof.

Transaction Steps

(g) All accrued and unpaid interest owing on, or in respect of, or as part of, Affected Creditor Claims (including any Accrued Interest on the Notes and any interest accruing on the Notes or any Ordinary Affected Creditor Claim after the Filing Date) shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred for no consideration, and from and after the occurrence of this step, no Person shall have any entitlement to any such accrued and unpaid interest.

(h) All of the Affected Creditors shall be deemed to assign, transfer and convey to Newco all of their Affected Creditor Claims, and from and after the occurrence of this step, Newco shall be the legal and beneficial owner of all Affected Creditor Claims. In exchange for the assignment, transfer and conveyance of the Affected Creditor Claims to Newco:

(i) with respect to Affected Creditor Claims that are Proven Claims at the Effective Time:

(A) Newco shall issue to each applicable Affected Creditor the number of Newco Shares that each such Affected Creditor is entitled to receive in accordance with section 4.1(a) hereof;

(B) Newco shall issue to each applicable Affected Creditor the amount of Newco Notes that each such Affected Creditor is entitled to receive in accordance with section 4.1(b) hereof;

(C) Newco shall issue to each of the Early Consent Noteholders the number of Newco Shares that each such Early Consent Noteholder is entitled to receive pursuant to section 4.3 hereof;

(D) such Affected Creditors shall be entitled to receive the Litigation Trust Interests to be acquired by Newco in section 6.4(q) hereof, following the establishment of the Litigation Trust;

(E) such Affected Creditors shall be entitled to receive, at the time or times contemplated in sections 5.5(c) and 5.5(d) hereof, the Newco Shares, Newco Notes and Litigation Trust Interests that are subsequently distributed to (or in the case of Litigation Trust Interests registered for the benefit of) Affected Creditors with Proven Claims pursuant to sections 5.5(c) and 5.5(d) hereof (if any),

and all such Newco Shares and Newco Notes shall be distributed in the manner described in section 5.2 hereof; and

(ii) with respect to Affected Creditor Claims that are Unresolved Claims as at the Effective Time, Newco shall issue in the name of the Unresolved Claims Escrow Agent, for the benefit of the Persons entitled thereto under the Plan, the Newco Shares and the Newco Notes that would have been distributed to the applicable Affected Creditors in respect of such Unresolved Claims if such Unresolved Claims had been Proven Claims at the Effective Time; such Newco Shares, Newco Notes and Litigation Trust Interests acquired by Newco in section 6.4(q) and assigned to and registered in the name of the Unresolved Claims Escrow Agent in accordance with section 6.4(r) shall comprise part of the Unresolved Claims Reserve and the Unresolved Claims Escrow Agent shall hold all such Newco Shares, Newco Notes and Litigation Trust Interests in escrow for the benefit of those Persons entitled to receive distributions thereof pursuant to the Plan.

(i) The initial Newco Share in the capital of Newco held by the Initial Newco Shareholder shall be redeemed and cancelled for no consideration.

(j) SFC shall be deemed to assign, transfer and convey to SFC Barbados those SFC Intercompany Claims and/or Equity Interests in one or more Direct Subsidiaries as agreed to by SFC and the Initial Consenting Noteholders prior to the Plan Implementation Date (the "**Barbados Property**") first in full repayment of the Barbados Loans and second, to the extent the fair market value of the Barbados Property exceeds the amount owing under the Barbados Loans, as a contribution to the capital of SFC Barbados by SFC. Immediately after the time of such assignment, transfer and conveyance, the Barbados Loans shall be considered to be fully paid by SFC and no longer outstanding.

(k) SFC shall be deemed to assign, transfer and convey to Newco all shares and other Equity Interests (other than the Barbados Property) in the capital of (i) the Direct Subsidiaries and (ii) any other Subsidiaries that are directly owned by SFC immediately prior to the Effective Time, other than SFC Escrow Co. (all such

shares and other equity interests being the "**Direct Subsidiary Shares**") for a purchase price equal to the fair market value of the Direct Subsidiary Shares and, in consideration therefor, Newco shall be deemed to pay to SFC consideration equal to the fair market value of the Direct Subsidiary Shares, which consideration shall be comprised of a U.S. dollar denominated demand non-interest-bearing promissory note issued to SFC by Newco having a principal amount equal to the fair market value of the Direct Subsidiary Shares (the "**Newco Promissory Note 1**"). At the time of such assignment, transfer and conveyance, all prior rights that Newco had to acquire the Direct Subsidiary Shares, under the Plan or otherwise, shall cease to be outstanding. For greater certainty, SFC shall not assign, transfer or convey the SFC Escrow Co. Share, and the SFC Escrow Co. Share shall remain the property of SFC.

(l) If the Initial Consenting Noteholders and SFC agree prior to the Plan Implementation Date, there will be a set-off of any SFC Intercompany Claim so agreed against a Subsidiary Intercompany Claim owing between SFC and the same Subsidiary. In such case, the amounts will be set-off in repayment of both claims to the extent of the lesser of the two amounts, and the excess (if any) shall continue as an SFC Intercompany Claim or a Subsidiary Intercompany Claim, as applicable.

(m) SFC shall be deemed to assign, transfer and convey to Newco all SFC Intercompany Claims (other than the SFC Intercompany Claims transferred to SFC Barbados in section 6.4(j) hereof or set-off pursuant to section 6.4(l) hereof) for a purchase price equal to the fair market value of such SFC Intercompany Claims and, in consideration therefor, Newco shall be deemed to pay SFC consideration equal to the fair market value of the SFC Intercompany Claims, which consideration shall be comprised of the following: (i) the assumption by Newco of all of SFC's obligations to the Subsidiaries in respect of Subsidiary Intercompany Claims (other than the Subsidiary Intercompany Claims set-off pursuant to section 6.4(l) hereof); and (ii) if the fair market value of the transferred SFC Intercompany Claims exceeds the fair market value of the assumed Subsidiary Intercompany Claims, Newco shall issue to SFC a U.S. dollar denominated demand non-interest-bearing promissory note having a principal amount equal to such excess (the "**Newco Promissory Note 2**").

(n) SFC shall be deemed to assign, transfer and convey to Newco all other SFC Assets (namely, all SFC Assets other than the Direct Subsidiary Shares and the SFC Intercompany Claims (which shall have already been transferred to Newco in accordance with sections 6.4(k) and 6.4(m) hereof)), for a purchase price equal to the fair market value of such other SFC Assets and, in consideration therefor, Newco shall be deemed to pay to SFC consideration equal to the fair market value of such other SFC Assets, which consideration shall be comprised of a U.S. dollar denominated demand non-interest-bearing promissory note issued to SFC by Newco having a principal amount equal to the fair market value of such other SFC Assets (the "**Newco Promissory Note 3**").

(o) SFC shall establish the Litigation Trust and SFC and the Trustees (on behalf of the Noteholders) shall be deemed to convey, transfer and assign to the Litigation Trustee all of their respective rights, title and interest in and to the Litigation Trust Claims. SFC shall advance the Litigation Funding Amount to the Litigation Trustee for use by the Litigation Trustee in prosecuting the Litigation Trust Claims in accordance with the Litigation Trust Agreement, which advance shall be deemed to create a non-interest bearing receivable from the Litigation Trustee in favour of SFC in the amount of the Litigation Funding Amount (the "**Litigation Funding Receivable**"). The Litigation Funding Amount and Litigation Trust Claims shall be managed by the Litigation Trustee in accordance with the terms and conditions of the Litigation Trust Agreement.

(p) The Litigation Trust shall be deemed to be effective from the time that it is established in section 6.4(o) hereof. Initially, all of the Litigation Trust Interests shall be held by SFC. Immediately thereafter, SFC shall assign, convey and transfer a portion of the Litigation Trust Interests to the Noteholder Class Action Claimants in accordance with the allocation set forth in section 4.11 hereof.

(q) SFC shall settle and discharge the Affected Creditor Claims by assigning Newco Promissory Note 1, Newco Promissory Note 2 and Newco Promissory Note 3 (collectively, the "**Newco Promissory Notes**"), the Litigation Funding Receivable and the remaining Litigation Trust Interests held by SFC to Newco. Such assignment shall constitute payment, by set-off, of the full principal amount of the Newco Promissory Notes and of a portion of the Affected Creditor Claims equal to the aggregate principal amount of the Newco Promissory Notes, the Litigation Trust Receivable and the fair market value of the Litigation Trust Interests so transferred (with such payment being allocated first to the Noteholder Claims and then to the Ordinary Affected Creditor Claims). As a consequence thereof:

(i) Newco shall be deemed to discharge and release SFC of and from all of SFC's obligations to Newco in respect of the Affected Creditor Claims, and all of Newco's rights against SFC of any kind in respect of the Affected Creditor Claims shall thereupon be fully, finally, irrevocably and forever compromised, released, discharged and cancelled; and

(ii) SFC shall be deemed to discharge and release Newco of and from all of Newco's obligations to SFC in respect of the Newco Promissory Notes, and the Newco Promissory Notes and all of SFC's rights against Newco in respect thereof shall thereupon be fully, finally, irrevocably and forever released, discharged and cancelled.

(r) Newco shall cause a portion of the Litigation Trust Interests it acquired in section 6.4(q) hereof to be assigned to and registered in the name of the Affected Creditors with Proven Claims as contemplated in section 6.4(h), and with respect to any Affected Creditor Claims that are Unresolved Claims as at the Effective Time, the remaining Litigation Trust Interests held by Newco that would have been allocated to the applicable Affected Creditors in respect of such Unresolved

Claims if such Unresolved Claims had been Proven Claims at the Effective Time shall be assigned and registered by the Litigation Trustee to the Unresolved Claims Escrow Agent and in the name of the Unresolved Claims Escrow Agent, in escrow for the benefit of Persons entitled thereto, and such Litigation Trust Interests shall comprise part of the Unresolved Claims Reserve. The Litigation Trustee shall record entitlements to the Litigation Trust Interests in the manner set forth in section 5.3.

Cancellation of Instruments and Guarantees

(s) Subject to section 5.9 hereof, all debentures, indentures, notes, certificates, agreements, invoices, guarantees, pledges and other instruments evidencing Affected Claims, including the Notes and the Note Indentures, will not entitle any holder thereof to any compensation or participation other than as expressly provided for in the Plan and shall be cancelled and will thereupon be null and void. The Trustees shall be directed by the Court and shall be deemed to have released, discharged and cancelled any guarantees, indemnities, Encumbrances or other obligations owing by or in respect of any Subsidiary relating to the Notes or the Note Indentures.

Releases

(t) Each of Newco and Newco II shall be deemed to have no liability or obligation of any kind whatsoever for: any Claim (including, notwithstanding anything to the contrary herein, any Unaffected Claim); any Affected Claim (including any Affected Creditor Claim, Equity Claim, D&O Claim, D&O Indemnity Claim and Noteholder Class Action Claim); any Section 5.1(2) D&O Claim; any Conspiracy Claim; any Continuing Other D&O Claim; any Non-Released D&O Claim; any Class Action Claim; any Class Action Indemnity Claim; any right or claim in connection with or liability for the Notes or the Note Indentures; any guarantees, indemnities, share pledges or Encumbrances relating to the Notes or the Note Indentures; any right or claim in connection with or liability for the Existing Shares or other Equity Interests or any other securities of SFC; any rights or claims of the Third Party Defendants relating to SFC or the Subsidiaries; any right or claim in connection with or liability for the RSA, the Plan, the CCAA Proceedings, the Restructuring Transaction, the Litigation Trust, the business and affairs of SFC and the Subsidiaries (whenever or however conducted), the administration and/or management of SFC and the Subsidiaries, or any public filings, statements, disclosures or press releases relating to SFC; any right or claim in connection with or liability for any guaranty, indemnity or claim for contribution in respect of any of the foregoing; and any Encumbrance in respect of the foregoing, provided only that Newco shall assume SFC's obligations to the applicable Subsidiaries in respect of the Subsidiary Intercompany Claims pursuant to section 6.4(l) hereof and Newco II shall assume Newco's obligations to the applicable Subsidiaries in respect of the Subsidiary Intercompany Claims pursuant to section 6.4(x) hereof.

(u) Each of the Charges shall be discharged, released and cancelled.

(v) The releases and injunctions referred to in Article 7 of the Plan shall become effective in accordance with the Plan.

(w) Any contract defaults arising as a result of the CCAA Proceedings and/or the implementation of the Plan (including, notwithstanding anything to the contrary herein, any such contract defaults in respect of the Unaffected Claims) shall be deemed to be cured.

Newco II

(x) Newco shall be deemed to assign, transfer and convey to Newco II all of Newco's right, title and interest in and to all of its properties, assets and rights of every kind and description (namely the SFC Assets acquired by Newco pursuant to the Plan) for a purchase price equal to the fair market value thereof and, in consideration therefor, Newco II shall be deemed to pay to Newco consideration equal to the fair market value of such properties, assets and rights (the "**Newco II Consideration**"). The Newco II Consideration shall be comprised of: (i) the assumption by Newco II of any and all indebtedness of Newco other than the indebtedness of Newco in respect of the Newco Notes (namely, any indebtedness of Newco in respect of the Subsidiary Intercompany Claims); and (ii) the issuance to Newco of that number of common shares in Newco II as is necessary to ensure that the value of the Newco II Consideration is equal to the fair market value of the properties, assets and rights conveyed by Newco to Newco II pursuant to this section 6.4(x).

6.5 Cancellation of Existing Shares and Equity Interests

Unless otherwise agreed between the Monitor, SFC and the Initial Consenting Noteholders, on the Equity Cancellation Date all Existing Shares and Equity Interests shall be fully, finally and irrevocably cancelled, and the following steps will be implemented pursuant to the Plan as a plan of reorganization under section 191 of the *CBCA*, to be effected by articles of reorganization to be filed by SFC, subject to the receipt of any required approvals from the Ontario Securities Commission with respect to the trades in securities contemplated by the following:

(a) SFC will create a new class of common shares to be called Class A common shares that are equivalent to the current Existing Shares except that they carry two votes per share;

(b) SFC will amend the share conditions of the Existing Shares to provide that they are cancellable for no consideration at such time as determined by the board of directors of SFC;

(c) prior to the cancellation of the Existing Shares, SFC will issue for nominal consideration one Class A common share of SFC to the SFC Continuing Shareholder;

(d) SFC will cancel the Existing Shares for no consideration on the Equity Cancellation Date; and

(e) SFC will apply to Canadian securities regulatory authorities for SFC to cease to be a reporting issuer effective immediately before the Effective Time.

Unless otherwise agreed by SFC, the Monitor and the Initial Consenting Noteholders or as otherwise directed by Order of the Court, SFC shall maintain its corporate existence at all times from and after the Plan Implementation Date until the later of the date: (i) on which SFC Escrow Co. has completed all of its obligations as Unresolved Claims Escrow Agent under this Plan; (ii) on which SFC escrow Co. no longer holds any Undeliverable Distributions delivered to it in accordance with the section 5.4 hereof; and (iii) as determined by the Litigation Trustee.

6.6 Transfers and Vesting Free and Clear

(a) All of the SFC Assets (including for greater certainty the Direct Subsidiary Shares, the SFC Intercompany Claims and all other SFC Assets assigned, transferred and conveyed to Newco and/or Newco II pursuant to section 6.4) shall be deemed to vest absolutely in Newco or Newco II, as applicable, free and clear of and from any and all Charges, Claims (including, notwithstanding anything to the contrary herein, any Unaffected Claims), D&O Claims, D&O Indemnity Claims, Section 5.1(2) D&O Claims, Conspiracy Claims, Continuing Other D&O Claims, Non-Released D&O Claims, Affected Claims, Class Action Claims, Class Action Indemnity Claims, claims or rights of any kind in respect of the Notes or the Note Indentures, and any right or claim that is based in whole or in part on facts, underlying transactions, Causes of Action or events relating to the Restructuring Transaction, the CCAA Proceedings or any of the foregoing, and any guarantees or indemnities with respect to any of the foregoing. Any Encumbrances or claims affecting, attaching to or relating to the SFC Assets in respect of the foregoing shall be deemed to be irrevocably expunged and discharged as against the SFC Assets, and no such Encumbrances or claims shall be pursued or enforceable as against Newco or Newco II. For greater certainty, with respect to the Subsidiaries, Greenheart and Greenheart's direct and indirect subsidiaries: (i) the vesting free and clear in Newco and/or Newco II, as applicable, and the expunging and discharging that occurs by operation of this paragraph shall only apply to SFC's ownership interests in the Subsidiaries, Greenheart and Greenheart's subsidiaries; and (ii) except as provided for in the Plan (including this section 6.6(a) and sections 4.9(g), 6.4(k), 6.4(l) and 6.4(m) hereof and Article 7 hereof) and the Sanction Order, the assets, liabilities, business and property of the Subsidiaries, Greenheart and Greenheart's direct and indirect subsidiaries shall remain unaffected by the Restructuring Transaction.

(b) Any issuance, assignment, transfer or conveyance of any securities, interests, rights or claims pursuant to the Plan, including the Newco Shares, the Newco Notes and the Affected Creditor Claims, will be free and clear of and from any and all Charges, Claims (including, notwithstanding anything to the contrary herein, any Unaffected Claims), D&O Claims, D&O Indemnity Claims, Affected

Claims, Section 5.1(2) D&O Claims; Conspiracy Claims; Continuing Other D&O Claims, Non-Released D&O Claims; Class Action Claims, Class Action Indemnity Claims, claims or rights of any kind in respect of the Notes or the Note Indentures, and any right or claim that is based in whole or in part on facts, underlying transactions, Causes of Action or events relating to the Restructuring Transaction, the CCAA Proceedings or any of the foregoing, and any guarantees or indemnities with respect to any of the foregoing. For greater certainty, with respect to the Subsidiaries, Greenheart and Greenheart's direct and indirect subsidiaries: (i) the vesting free and clear in Newco and Newco II that occurs by operation of this paragraph shall only apply to SFC's direct and indirect ownership interests in the Subsidiaries, Greenheart and Greenheart's direct and indirect subsidiaries; and (ii) except as provided for in the Plan (including section 6.6(a) and sections 4.9(g), 6.4(k), 6.4(l) and 6.4(m) hereof and Article 7 hereof) and the Sanction Order, the assets, liabilities, business and property of the Subsidiaries, Greenheart and Greenheart's direct and indirect subsidiaries shall remain unaffected by the Restructuring Transaction.

ARTICLE 7
RELEASES

7.1 Plan Releases

Subject to 7.2 hereof, all of the following shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date:

(a) all Affected Claims, including all Affected Creditor Claims, Equity Claims, D&O Claims (other than Section 5.1(2) D&O Claims, Conspiracy Claims, Continuing Other D&O Claims and Non-Released D&O Claims), D&O Indemnity Claims (except as set forth in section 7.1(d) hereof) and Noteholder Class Action Claims (other than the Continuing Noteholder Class Action Claims);

(b) all Claims of the Ontario Securities Commission or any other Governmental Entity that have or could give rise to a monetary liability, including fines, awards, penalties, costs, claims for reimbursement or other claims having a monetary value;

(c) all Class Action Claims (including the Noteholder Class Action Claims) against SFC, the Subsidiaries or the Named Directors or Officers of SFC or the Subsidiaries (other than Class Action Claims that are Section 5.1(2) D&O Claims, Conspiracy Claims or Non-Released D&O Claims);

(d) all Class Action Indemnity Claims (including related D&O Indemnity Claims), other than any Class Action Indemnity Claim by the Third Party Defendants against SFC in respect of the Indemnified Noteholder Class Action Claims (including any D&O Indemnity Claim in that respect), which shall be limited to the Indemnified Noteholder Class Action Limit pursuant to the releases set out in section 7.1(f) hereof and the injunctions set out in section 7.3 hereof;

(e) any portion or amount of liability of the Third Party Defendants for the Indemnified Noteholder Class Action Claims (on a collective, aggregate basis in reference to all Indemnified Noteholder Class Action Claims together) that exceeds the Indemnified Noteholder Class Action Limit;

(f) any portion or amount of liability of the Underwriters for the Noteholder Class Action Claims (other than any Noteholder Class Action Claims against the Underwriters for fraud or criminal conduct) (on a collective, aggregate basis in reference to all such Noteholder Class Action Claims together) that exceeds the Indemnified Noteholder Class Action Limit;

(g) any portion or amount of, or liability of SFC for, any Class Action Indemnity Claims by the Third Party Defendants against SFC in respect of the Indemnified Noteholder Class Action Claims (on a collective, aggregate basis in reference to all such Class Action Indemnity Claims together) to the extent that such Class Action Indemnity Claims exceed the Indemnified Noteholder Class Action Limit;

(h) any and all Excluded Litigation Trust Claims;

(i) any and all Causes of Action against Newco, Newco II, the directors and officers of Newco, the directors and officers of Newco II, the Noteholders, members of the *ad hoc* committee of Noteholders, the Trustees, the Transfer Agent, the Monitor, FTI Consulting Canada Inc., FTI HK, counsel for the current Directors of SFC, counsel for the Monitor, counsel for the Trustees, the SFC Advisors, the Noteholder Advisors, and each and every member (including members of any committee or governance council), partner or employee of any of the foregoing, for or in connection with or in any way relating to: any Claims (including, notwithstanding anything to the contrary herein, any Unaffected Claims); Affected Claims; Section 5.1(2) D&O Claims; Conspiracy Claims; Continuing Other D&O Claims; Non-Released D&O Claims; Class Action Claims; Class Action Indemnity Claims; any right or claim in connection with or liability for the Notes or the Note Indentures; any guarantees, indemnities, claims for contribution, share pledges or Encumbrances related to the Notes or the Note Indentures; any right or claim in connection with or liability for the Existing Shares, Equity Interests or any other securities of SFC; any rights or claims of the Third Party Defendants relating to SFC or the Subsidiaries;

(j) any and all Causes of Action against Newco, Newco II, the directors and officers of Newco, the directors and officers of Newco II, the Noteholders, members of the *ad hoc* committee of Noteholders, the Trustees, the Transfer Agent, the Monitor, FTI Consulting Canada Inc., FTI HK, the Named Directors and Officers, counsel for the current Directors of SFC, counsel for the Monitor, counsel for the Trustees, the SFC Advisors, the Noteholder Advisors, and each and every member (including members of any committee or governance council), partner or employee of any of the foregoing, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the Plan Implementation

Date (or, with respect to actions taken pursuant to the Plan after the Plan Implementation Date, the date of such actions) in any way relating to, arising out of, leading up to, for, or in connection with the CCAA Proceeding, RSA, the Restructuring Transaction, the Plan, any proceedings commenced with respect to or in connection with the Plan, or the transactions contemplated by the RSA and the Plan, including the creation of Newco and/or Newco II and the creation, issuance or distribution of the Newco Shares, the Newco Notes, the Litigation Trust or the Litigation Trust Interests, provided that nothing in this paragraph shall release or discharge any of the Persons listed in this paragraph from or in respect of any obligations any of them may have under or in respect of the RSA, the Plan or under or in respect of any of Newco, Newco II, the Newco Shares, the Newco Notes, the Litigation Trust or the Litigation Trust Interests, as the case may be;

(k) any and all Causes of Action against the Subsidiaries for or in connection with any Claim (including, notwithstanding anything to the contrary herein, any Unaffected Claim); any Affected Claim (including any Affected Creditor Claim, Equity Claim, D&O Claim, D&O Indemnity Claim and Noteholder Class Action Claim); any Section 5.1(2) D&O Claim; any Conspiracy Claim; any Continuing Other D&O Claim; any Non-Released D&O Claim; any Class Action Claim; any Class Action Indemnity Claim; any right or claim in connection with or liability for the Notes or the Note Indentures; any guarantees, indemnities, share pledges or Encumbrances relating to the Notes or the Note Indentures; any right or claim in connection with or liability for the Existing Shares, Equity Interests or any other securities of SFC; any rights or claims of the Third Party Defendants relating to SFC or the Subsidiaries; any right or claim in connection with or liability for the RSA, the Plan, the CCAA Proceedings, the Restructuring Transaction, the Litigation Trust, the business and affairs of SFC and the Subsidiaries (whenever or however conducted), the administration and/or management of SFC and the Subsidiaries, or any public filings, statements, disclosures or press releases relating to SFC; any right or claim in connection with or liability for any indemnification obligation to Directors or Officers of SFC or the Subsidiaries pertaining to SFC, the Notes, the Note Indentures, the Existing Shares, the Equity Interests, any other securities of SFC or any other right, claim or liability for or in connection with the RSA, the Plan, the CCAA Proceedings, the Restructuring Transaction, the Litigation Trust, the business and affairs of SFC (whenever or however conducted), the administration and/or management of SFC, or any public filings, statements, disclosures or press releases relating to SFC; any right or claim in connection with or liability for any guaranty, indemnity or claim for contribution in respect of any of the foregoing; and any Encumbrance in respect of the foregoing;

(l) all Subsidiary Intercompany Claims as against SFC (which are assumed by Newco and then Newco II pursuant to the Plan);

(m) any entitlements of Ernst & Young to receive distributions of any kind (including Newco Shares, Newco Notes and Litigation Trust Interests) under this Plan;

(n) any entitlements of the Named Third Party Defendants to receive distributions of any kind (including Newco Shares, Newco Notes and Litigation Trust Interests) under this Plan; and

(o) any entitlements of the Underwriters to receive distributions of any kind (including Newco Shares, Newco Notes and Litigation Trust Interests) under this Plan.

7.2 Claims Not Released

Notwithstanding anything to the contrary in section 7.1 hereof, nothing in this Plan shall waive, compromise, release, discharge, cancel or bar any of the following:

(a) SFC of its obligations under the Plan and the Sanction Order;

(b) SFC from or in respect of any Unaffected Claims (provided that recourse against SFC in respect of Unaffected Claims shall be limited in the manner set out in section 4.2 hereof);

(c) any Directors or Officers of SFC or the Subsidiaries from any Non-Released D&O Claims, Conspiracy Claims or any Section 5.1(2) D&O Claims, provided that recourse against the Named Directors or Officers of SFC in respect of any Section 5.1(2) D&O Claims and any Conspiracy Claims shall be limited in the manner set out in section 4.9(e) hereof;

(d) any Other Directors and/or Officers from any Continuing Other D&O Claims, provided that recourse against the Other Directors and/or Officers in respect of the Indemnified Noteholder Class Action Claims shall be limited in the manner set out in section 4.4(b)(i) hereof;

(e) the Third Party Defendants from any claim, liability or obligation of whatever nature for or in connection with the Class Action Claims, provided that the maximum aggregate liability of the Third Party Defendants collectively in respect of the Indemnified Noteholder Class Action Claims shall be limited to the Indemnified Noteholder Class Action Limit pursuant to section 4.4(b)(i) hereof and the releases set out in sections 7.1(e) and 7.1(f) hereof and the injunctions set out in section 7.3 hereof;

(f) Newco II from any liability to the applicable Subsidiaries in respect of the Subsidiary Intercompany Claims assumed by Newco II pursuant to section 6.4(x) hereof;

(g) the Subsidiaries from any liability to Newco II in respect of the SFC Intercompany Claims conveyed to Newco II pursuant to section 6.4(x) hereof;

(h) SFC of or from any investigations by or non-monetary remedies of the Ontario Securities Commission, provided that, for greater certainty, all monetary rights, claims or remedies of the Ontario Securities Commission against SFC shall be

treated as Affected Creditor Claims in the manner described in section 4.1 hereof and released pursuant to section 7.1(b) hereof;

(i) the Subsidiaries from their respective indemnification obligations (if any) to Directors or Officers of the Subsidiaries that relate to the ordinary course operations of the Subsidiaries and that have no connection with any of the matters listed in section 7.1(i) hereof;

(j) SFC or the Directors and Officers from any Insured Claims, provided that recovery for Insured Claims shall be irrevocably limited to recovery solely from the proceeds of Insurance Policies paid or payable on behalf of SFC or its Directors and Officers in the manner set forth in section 2.4 hereof;

(k) insurers from their obligations under insurance policies; and

(l) any Released Party for fraud or criminal conduct.

7.3 Injunctions

All Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all Released Claims, from (i) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties or their property; (iii) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim, in any manner or forum, against one or more of the Released Parties; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or (v) taking any actions to interfere with the implementation or consummation of this Plan; provided, however, that the foregoing shall not apply to the enforcement of any obligations under the Plan.

7.4 Timing of Releases and Injunctions

All releases and injunctions set forth in this Article 7 shall become effective on the Plan Implementation Date at the time or times and in the manner set forth in section 6.4 hereof.

7.5 Equity Class Action Claims Against the Third Party Defendants

Subject only to Article 11 hereof, and notwithstanding anything else to the contrary in this Plan, any Class Action Claim against the Third Party Defendants that relates to the purchase, sale or ownership of Existing Shares or Equity Interests: (a) is unaffected by this Plan; (b) is not

discharged, released, cancelled or barred pursuant to this Plan; (c) shall be permitted to continue as against the Third Party Defendants; (d) shall not be limited or restricted by this Plan in any manner as to quantum or otherwise (including any collection or recovery for any such Class Action Claim that relates to any liability of the Third Party Defendants for any alleged liability of SFC); and (e) does not constitute an Equity Claim or an Affected Claim under this Plan.

ARTICLE 8
COURT SANCTION

8.1 Application for Sanction Order

If the Plan is approved by the Required Majority, SFC shall apply for the Sanction Order on or before the date set for the hearing of the Sanction Order or such later date as the Court may set.

8.2 Sanction Order

The Sanction Order shall, among other things:

(a) declare that: (i) the Plan has been approved by the Required Majority in conformity with the CCAA; (ii) the activities of SFC have been in reasonable compliance with the provisions of the CCAA and the Orders of the Court made in this CCAA Proceeding in all respects; (iii) the Court is satisfied that SFC has not done or purported to do anything that is not authorized by the CCAA; and (iv) the Plan and the transactions contemplated thereby are fair and reasonable;

(b) declare that the Plan and all associated steps, compromises, releases, discharges, cancellations, transactions, arrangements and reorganizations effected thereby are approved, binding and effective as herein set out as of the Plan Implementation Date;

(c) confirm the amount of each of the Unaffected Claims Reserve, the Administration Charge Reserve and the Monitor's Post-Implementation Reserve;

(d) declare that, on the Plan Implementation Date, all Affected Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred, subject only to the right of the applicable Persons to receive the distributions to which they are entitled pursuant to the Plan;

(e) declare that, on the Plan Implementation Date, the ability of any Person to proceed against SFC or the Subsidiaries in respect of any Released Claims shall be forever discharged and restrained, and all proceedings with respect to, in connection with or relating to any such matter shall be permanently stayed;

(f) declare that the steps to be taken, the matters that are deemed to occur and the compromises and releases to be effective on the Plan Implementation Date are deemed to occur and be effected in the sequential order contemplated by section 6.4, beginning at the Effective Time;

(g) declare that, on the Plan Implementation Date, the SFC Assets vest absolutely in Newco and that, in accordance with section 6.4(x) hereof, the SFC Assets transferred by Newco to Newco II vest absolutely in Newco II, in each case in accordance with the terms of section 6.6(a) hereof;

(h) confirm that the Court was satisfied that: (i) the hearing of the Sanction Order was open to all of the Affected Creditors and all other Persons with an interest in SFC and that such Affected Creditors and other Persons were permitted to be heard at the hearing in respect of the Sanction Order; (ii) prior to the hearing, all of the Affected Creditors and all other Persons on the service list in respect of the CCAA Proceeding were given adequate notice thereof;

(i) provide that the Court was advised prior to the hearing in respect of the Sanction Order that the Sanction Order will be relied upon by SFC and Newco as an approval of the Plan for the purpose of relying on the exemption from the registration requirements of the United States Securities Act of 1933, as amended, pursuant to Section 3(a)(10) thereof for the issuance of the Newco Shares, Newco Notes and, to the extent they may be deemed to be securities, the Litigation Trust Interests, and any other securities to be issued pursuant to the Plan;

(j) declare that all obligations, agreements or leases to which (i) SFC remains a party on the Plan Implementation Date, or (ii) Newco and/or Newco II becomes a party as a result of the conveyance of the SFC Assets to Newco and the further conveyance of the SFC Assets to Newco II on the Plan Implementation Date, shall be and remain in full force and effect, unamended, as at the Plan Implementation Date and no party to any such obligation or agreement shall on or following the Plan Implementation Date, accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise disclaim or resiliate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of any such obligation or agreement, by reason:

  (i) of any event which occurred prior to, and not continuing after, the Plan Implementation Date, or which is or continues to be suspended or waived under the Plan, which would have entitled any other party thereto to enforce those rights or remedies;

  (ii) that SFC sought or obtained relief or has taken steps as part of the Plan or under the CCAA;

  (iii) of any default or event of default arising as a result of the financial condition or insolvency of SFC;

  (iv) of the completion of any of the transactions contemplated under the Plan, including the transfer, conveyance and assignment of the SFC Assets to Newco and the further transfer, conveyance and assignment of the SFC Assets by Newco to Newco II; or

(v) of any compromises, settlements, restructurings, recapitalizations or reorganizations effected pursuant to the Plan;

(k) stay the commencing, taking, applying for or issuing or continuing any and all steps or proceedings, including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceed with to advance any Released Claims;

(l) stay as against Ernst & Young the commencing, taking, applying for or issuing or continuing any and all steps or proceedings (other than all steps or proceedings to implement the Ernst & Young Settlement) pursuant to the terms of the Order of the Honourable Justice Morawetz dated May 8, 2012 between (i) the Plan Implementation Date and (ii) the earlier of the Ernst & Young Settlement Date or such other date as may be ordered by the Court on a motion to the Court on reasonable notice to Ernst & Young;

(m) declare that in no circumstances will the Monitor have any liability for any of SFC's tax liability regardless of how or when such liability may have arisen;

(n) authorize the Monitor to perform its functions and fulfil its obligations under the Plan to facilitate the implementation of the Plan;

(o) direct and deem the Trustees to release, discharge and cancel any guarantees, indemnities, Encumbrances or other obligations owing by or in respect of any Subsidiary relating to the Notes or the Note Indentures;

(p) declare that upon completion by the Monitor of its duties in respect of SFC pursuant to the CCAA and the Orders, the Monitor may file with the Court a certificate of Plan Implementation stating that all of its duties in respect of SFC pursuant to the CCAA and the Orders have been completed and thereupon, FTI Consulting Canada Inc. shall be deemed to be discharged from its duties as Monitor and released of all claims relating to its activities as Monitor; and

(q) declare that, on the Plan Implementation Date, each of the Charges shall be discharged, released and cancelled, and that any obligations secured thereby shall satisfied pursuant to section 4.2(b) hereof, and that from and after the Plan Implementation Date the Administration Charge Reserve shall stand in place of the Administration Charge as security for the payment of any amounts secured by the Administration Charge;

(r) declare that the Monitor may not make any payment from the Monitor's Post-Implementation Plan Reserve to any third party professional services provider (other than its counsel) that exceeds $250,000 (alone or in a series of related payments) without the prior consent of the Initial Consenting Noteholders or an Order of the Court;

(s) declare that SFC and the Monitor may apply to the Court for advice and direction in respect of any matters arising from or under the Plan;

(t) declare that, subject to the due performance of its obligations as set forth in the Plan and subject to its compliance with any written directions or instructions of the Monitor and/or directions of the Court in the manner set forth in the Plan, SFC Escrow Co. shall have no liabilities whatsoever arising from the performance of its obligations under the Plan;

(u) order and declare that all Persons with Unresolved Claims shall have standing in any proceeding in respect of the determination or status of any Unresolved Claim, and that Goodmans LLP (in its capacity as counsel to the Initial Consenting Noteholders) shall have standing in any such proceeding on behalf of the Initial Consenting Notheolders (in their capacity as Affected Creditors with Proven Claims);

(v) order and declare that, from and after the Plan Implementation Date, Newco will be permitted, in its sole discretion and on terms acceptable to Newco, to advance additional cash amounts to the Litigation Trustee from time to time for the purpose of providing additional financing to the Litigation Trust, including the provision of such additional amounts as a non-interest bearing loan to the Litigation Trust that is repayable to Newco on similar terms and conditions as the Litigation Funding Receivable;

(w) order and declare that: (i) subject to the prior consent of the Initial Consenting Noteholders, each of the Monitor and the Litigation Trustee shall have the right to seek and obtain an order from any court of competent jurisdiction, including an Order of the Court in the CCAA or otherwise, that gives effect to any releases of any Litigation Trust Claims agreed to by the Litigation Trustee in accordance with the Litigation Trust Agreement, and (ii) in accordance with this section 8.2(w), all Affected Creditors shall be deemed to consent to any such releases in any such proceedings;

(x) order and declare that, prior to the Effective Time, SFC shall: (i) preserve or cause to be preserved copies of any documents (as such term is defined in the *Rules of Civil Procedure* (Ontario)) that are relevant to the issues raised in the Class Actions; and (ii) make arrangements acceptable to SFC, the Monitor, the Initial Consenting Noteholders, counsel to Ontario Class Action Plaintiffs, counsel to Ernst & Young, counsel to the Underwriters and counsel to the Named Third Party Defendants to provide the parties to the Class Actions with access thereto, subject to customary commercial confidentiality, privilege or other applicable restrictions, including lawyer-client privilege, work product privilege and other privileges or immunities, and to restrictions on disclosure arising from s. 16 of the *Securities Act* (Ontario) and comparable restrictions on disclosure in other relevant jurisdictions, for purposes of prosecuting and/or defending the Class Actions, as the case may be, provided that nothing in the foregoing reduces or otherwise limits the parties' rights to production and discovery in accordance with the *Rules of Civil Procedure* (Ontario) and the *Class Proceedings Act, 1992* (Ontario);

(y) order that releases and injunctions set forth in Article 7 of this Plan are effective on the Plan Implementation Date at the time or times and in the manner set forth in section 6.4 hereof;

(z) order that the Ernst & Young Release shall become effective on the Ernst & Young Settlement Date in the manner set forth in section 11.1 hereof;

(aa) order that any Named Third Party Defendant Releases shall become effective if and when the terms and conditions of sections 11.2(a), 11.2(b), 11.2(c) have been fulfilled.;

(bb) order and declare that the matters described in Article 11 hereof shall occur subject to and in accordance with the terms and conditions of Article 11; and

(cc) declare that section 95 to 101 of the BIA shall not apply to any of the transactions implemented pursuant to the Plan.

If agreed by SFC, the Monitor and the Initial Consenting Noteholders, any of the relief to be included in the Sanction Order pursuant to this section 8.2 in respect of matters relating to the Litigation Trust may instead be included in a separate Order of the Court satisfactory to SFC, the Monitor and the Initial Consenting Noteholders granted prior to the Plan Implementation Date.

ARTICLE 9
CONDITIONS PRECEDENT AND IMPLEMENTATION

9.1 Conditions Precedent to Implementation of the Plan

The implementation of the Plan shall be conditional upon satisfaction or waiver of the following conditions prior to or at the Effective Time, each of which is for the benefit of SFC and the Initial Consenting Noteholders and may be waived only by SFC and the Initial Consenting Noteholders collectively; provided, however, that the conditions in sub-paragraphs (g), (h), (n), (o), (q), (r), (u), (z), (ff), (gg), (mm), (ll) and (nn) shall only be for the benefit of the Initial Consenting Noteholders and, if not satisfied on or prior to the Effective Time, may be waived only by the Initial Consenting Noteholders; and provided further that such conditions shall not be enforceable by SFC if any failure to satisfy such conditions results from an action, error, omission by or within the control of SFC and such conditions shall not be enforceable by the Initial Consenting Noteholders if any failure to satisfy such conditions results from an action, error, omission by or within the control of the Initial Consenting Noteholders:

Plan Approval Matters

(a) the Plan shall have been approved by the Required Majority and the Court, and in each case the Plan shall have been approved in a form consistent with the RSA or otherwise acceptable to SFC and the Initial Consenting Noteholders, each acting reasonably;

(b) the Sanction Order shall have been made and shall be in full force and effect prior to December 17, 2012 (or such later date as may be consented to by SFC and the

Initial Consenting Noteholders), and all applicable appeal periods in respect thereof shall have expired and any appeals therefrom shall have been disposed of by the applicable appellate court;

(c) the Sanction Order shall be in a form consistent with the Plan or otherwise acceptable to SFC and the Initial Consenting Noteholders, each acting reasonably;

(d) all filings under Applicable Laws that are required in connection with the Restructuring Transaction shall have been made and any regulatory consents or approvals that are required in connection with the Restructuring Transaction shall have been obtained and, in the case of waiting or suspensory periods, such waiting or suspensory periods shall have expired or been terminated; without limiting the generality of the foregoing, such filings and regulatory consents or approvals include:

(i) any required filings, consents and approvals of securities regulatory authorities in Canada;

(ii) a consultation with the Executive of the Hong Kong Securities and Futures Commission that is satisfactory to SFC, the Monitor and the Initial Consenting Noteholders confirming that implementation of the Restructuring Transaction will not result in an obligation arising for Newco, its shareholders, Newco II or any Subsidiary to make a mandatory offer to acquire shares of Greenheart;

(iii) the submission by SFC and each applicable Subsidiary of a Circular 698 tax filing with all appropriate tax authorities in the PRC within the requisite time prior to the Plan Implementation Date, such filings to be in form and substance satisfactory to the Initial Consenting Noteholders; and

(iv) if notification is necessary or desirable under the *Antimonopoly Law of People's Republic of China* and its implementation rules, the submission of all antitrust filings considered necessary or prudent by the Initial Consenting Noteholders and the acceptance and (to the extent required) approval thereof by the competent Chinese authority, each such filing to be in form and substance satisfactory to the Initial Consenting Noteholders;

(e) there shall not be in effect any preliminary or final decision, order or decree by a Governmental Entity, no application shall have been made to any Governmental Entity, and no action or investigation shall have been announced, threatened or commenced by any Governmental Entity, in consequence of or in connection with the Restructuring Transaction that restrains, impedes or prohibits (or if granted could reasonably be expected to restrain, impede or prohibit) the Restructuring Transaction or any material part thereof or requires or purports to require a variation of the Restructuring Transaction, and SFC shall have provided the Initial Consenting Noteholders with a certificate signed by an officer of SFC, without

personal liability on the part of such officer, certifying compliance with this Section 9.1(e) as of the Plan Implementation Date;

Newco and Newco II Matters

(f) the organization, incorporating documents, articles, by-laws and other constating documents of Newco and Newco II (including any shareholders agreement, shareholder rights plan and classes of shares (voting and non-voting)) and any affiliated or related entities formed in connection with the Restructuring Transaction or the Plan, and all definitive legal documentation in connection with all of the foregoing, shall be acceptable to the Initial Consenting Noteholders and in form and in substance reasonably satisfactory to SFC;

(g) the composition of the board of directors of Newco and Newco II and the senior management and officers of Newco and Newco II that will assume office, or that will continue in office, as applicable, on the Plan Implementation Date shall be acceptable to the Initial Consenting Noteholders;

(h) the terms of employment of the senior management and officers of Newco and Newco II shall be acceptable to the Initial Consenting Noteholders;

(i) except as expressly set out in this Plan, neither Newco nor Newco II shall have: (i) issued or authorized the issuance of any shares, notes, options, warrants or other securities of any kind, (ii) become subject to any Encumbrance with respect to its assets or property; (iii) become liable to pay any indebtedness or liability of any kind (other than as expressly set out in section 6.4 hereof); or (iv) entered into any Material agreement;

(j) any securities that are formed in connection with the Plan, including the Newco Shares and the Newco Notes, when issued and delivered pursuant to the Plan, shall be duly authorized, validly issued and fully paid and non-assessable and the issuance and distribution thereof shall be exempt from all prospectus and registration requirements of any applicable securities, corporate or other law, statute, order, decree, consent decree, judgment, rule, regulation, ordinance, notice, policy or other pronouncement having the effect of law applicable in the provinces of Canada;

(k) Newco shall not be a reporting issuer (or equivalent) in any province of Canada or any other jurisdiction;

(l) all of the steps, terms, transactions and documents relating to the conveyance of the SFC Assets to Newco and the further conveyance of the SFC Assets by Newco to Newco II in accordance with the Plan shall be in form and in substance acceptable to SFC and the Initial Consenting Noteholders;

(m) all of the following shall be in form and in substance acceptable to the Initial Consenting Noteholders and reasonably satisfactory to SFC: (i) the Newco Shares; (ii) the Newco Notes (including the aggregate principal amount of the

Newco Notes); (iii) any trust indenture or other document governing the terms of the Newco Notes; and (iv) the number of Newco Shares and Newco Notes to be issued in accordance with this Plan;

Plan Matters

(n) the Indemnified Noteholder Class Action Limit shall be acceptable to the Initial Consenting Noteholders;

(o) the aggregate amount of the Proven Claims held by Ordinary Affected Creditors shall be acceptable to the Initial Consenting Noteholders;

(p) the amount of each of the Unaffected Claims Reserve and the Administration Charge Reserve shall, in each case, be acceptable to SFC, the Monitor and the Initial Consenting Noteholders;

(q) the amount of the Monitor's Post-Implementation Reserve and the amount of any Permitted Continuing Retainers shall be acceptable to the Initial Consenting Noteholders, and the Initial Consenting Noteholders shall be satisfied that all outstanding monetary retainers held by any SFC Advisors (net of any Permitted Continuing Retainers) have been repaid to SFC on the Plan Implementation Date;

(r) **[Intentionally deleted]**;

(s) the amount of each of the following shall be acceptable to SFC, the Monitor and the Initial Consenting Noteholders: (i) the aggregate amount of Lien Claims to be satisfied by the return to the applicable Lien Claimants of the applicable secured property in accordance with section 4.2(c)(i) hereof; and (ii) the aggregate amount of Lien Claims to be repaid in cash on the Plan Implementation Date in accordance with section 4.2(c)(ii) hereof;

(t) the aggregate amount of Unaffected Claims, and the aggregate amount of the Claims listed in each subparagraph of the definition of "Unaffected Claims" shall, in each case, be acceptable to SFC, the Monitor and the Initial Consenting Noteholders;

(u) the aggregate amount of Unresolved Claims and the amount of the Unresolved Claims Reserve shall, in each case, be acceptable to the Initial Consenting Noteholders and shall be confirmed in the Sanction Order;

(v) Litigation Trust and the Litigation Trust Agreement shall be in form and in substance acceptable to SFC and the Initial Consenting Noteholders, each acting reasonably, and the Litigation Trust shall be established in a jurisdiction that is acceptable to the Initial Consenting Noteholders and SFC, each acting reasonably;

(w) SFC, the Monitor and the Initial Consenting Noteholders, each acting reasonably, shall be satisfied with the proposed use of proceeds and payments relating to all aspects of the Restructuring Transaction and the Plan, including, without

limitation, any change of control payments, consent fees, transaction fees, third party fees or termination or severance payments, in the aggregate of $500,000 or more, payable by SFC or any Subsidiary to any Person (other than a Governmental Entity) in respect of or in connection with the Restructuring Transaction or the Plan, including without limitation, pursuant to any employment agreement or incentive plan of SFC or any Subsidiary;

(x) SFC, the Monitor and the Initial Consenting Noteholders, each acting reasonably, shall be satisfied with the status and composition of all liabilities, indebtedness and obligations of the Subsidiaries and all releases of the Subsidiaries provided for in the Plan and the Sanction Order shall be binding and effective as of the Plan Implementation Date;

Plan Implementation Date Matters

(y) the steps required to complete and implement the Plan shall be in form and in substance satisfactory to SFC and the Initial Consenting Noteholders;

(z) the Noteholders and the Early Consent Noteholders shall receive, on the Plan Implementation Date, all of the consideration to be distributed to them pursuant to the Plan;

(aa) all of the following shall be in form and in substance satisfactory to SFC and the Initial Consenting Noteholders: (i) all materials filed by SFC with the Court or any court of competent jurisdiction in the United States, Canada, Hong Kong, the PRC or any other jurisdiction that relates to the Restructuring Transaction; (ii) the terms of any court-imposed charges on any of the assets, property or undertaking of any of SFC, including without limitation any of the Charges; (iii) the Initial Order; (iv) the Claims Procedure Order; (v) the Meeting Order; (vi) the Sanction Order; (vii) any other Order granted in connection with the CCAA Proceeding or the Restructuring Transaction by the Court or any other court of competent jurisdiction in Canada, the United States, Hong Kong, the PRC or any other jurisdiction; and (viii) the Plan (as it is approved by the Required Majority and the Sanction Order);

(bb) any and all court-imposed charges on any assets, property or undertaking of SFC, including the Charges, shall be discharged on the Plan Implementation Date on terms acceptable to the Initial Consenting Noteholders and SFC, each acting reasonably;

(cc) SFC shall have paid, in full, the Expense Reimbursement and all fees and costs owing to the SFC Advisors on the Plan Implementation Date, and neither Newco nor Newco II shall have any liability for any fees or expenses due to the SFC Advisors or the Noteholder Advisors either as at or following the Plan Implementation Date;

(dd) SFC or the Subsidiaries shall have paid, in full all fees owing to each of Chandler Fraser Keating Limited and Spencer Stuart on the Plan Implementation Date, and

neither Newco nor Newco II shall have any liability for any fees or expenses due to either Chandler Fraser Keating Limited and Spencer Stuart as at or following the Plan Implementation Date;

(ee) SFC shall have paid all Trustee Claims that are outstanding as of the Plan Implementation Date, and the Initial Consenting Noteholders shall be satisfied that SFC has made adequate provision in the Unaffected Claims Reserve for the payment of all Trustee Claims to be incurred by the Trustees after the Plan Implementation Date in connection with the performance of their respective duties under the Note Indentures or this Plan;

(ff) there shall not exist or have occurred any Material Adverse Effect, and SFC shall have provided the Initial Consenting Noteholders with a certificate signed by an officer of the Company, without any personal liability on the part of such officer, certifying compliance with this section 9.1(ff) as of the Plan Implementation Date;

(gg) there shall have been no breach of the Noteholder Confidentiality Agreements (as defined in the RSA) by SFC or any of the Sino-Forest Representatives (as defined therein) in respect of the applicable Initial Consenting Noteholder;

(hh) the Plan Implementation Date shall have occurred no later than January 15, 2013 (or such later date as may be consented to by SFC and the Initial Consenting Noteholders);

RSA Matters

(ii) all conditions set out in sections 6 and 7 of the RSA shall have been satisfied or waived in accordance with the terms of the RSA;

(jj) the RSA shall not have been terminated;

Other Matters

(kk) the organization, incorporating documents, articles, by-laws and other constating documents of SFC Escrow Co. and all definitive legal documentation in connection with SFC Escrow Co., shall be acceptable to the Initial Consenting Noteholders and the Monitor and in form and in substance reasonably satisfactory to SFC;

(ll) except as expressly set out in this Plan, SFC Escrow Co. shall not have: (i) issued or authorized the issuance of any shares, notes, options, warrants or other securities of any kind, (ii) become subject to any Encumbrance with respect to its assets or property; (iii) acquired any assets or become liable to pay any indebtedness or liability of any kind (other than as expressly set out in this Plan); or (iv) entered into any agreement;

(mm) the Initial Consenting Noteholders shall have completed due diligence in respect of SFC and the Subsidiaries and the results of such due diligence shall be acceptable to the Initial Consenting Noteholders prior to the date for the hearing of the Sanction Order, except in respect of any new material information or events arising or discovered on or after the date of the hearing for the Sanction Order of which the Initial Consenting Noteholders were previously unaware, in respect of which the date for the Initial Consenting Noteholders to complete such due diligence shall be the Plan Implementation Date, provided that "new material information or events" for purposes of this Section 9.1(mm) shall not include any information or events disclosed prior to the date of the hearing for the Sanction Order in a press release issued by SFC, an affidavit filed with the Court by SFC or a Monitor's Report filed with the Court;

(nn) if so requested by the Initial Consenting Noteholders, the Sanction Order shall have been recognized and confirmed as binding and effective pursuant to an order of a court of competent jurisdiction in Canada and any other jurisdiction requested by the Initial Consenting Noteholders, and all applicable appeal periods in respect of any such recognition order shall have expired and any appeals therefrom shall have been disposed of by the applicable appellate court;

(oo) all press releases, disclosure documents and definitive agreements in respect of the Restructuring Transaction or the Plan shall be in form and substance satisfactory to SFC and the Initial Consenting Noteholders, each acting reasonably; and

(pp) Newco and SFC shall have entered into arrangements reasonably satisfactory to SFC and the Initial Consenting Noteholders for ongoing preservation and access to the books and records of SFC and the Subsidiaries in existence as at the Plan Implementation Date, as such access may be reasonably requested by SFC or any Director or Officer in the future in connection with any administrative or legal proceeding, in each such case at the expense of the Person making such request.

For greater certainty, nothing in Article 11 hereof is a condition precedent to the implementation of the Plan.

9.2 Monitor's Certificate of Plan Implementation

Upon delivery of written notice from SFC and Goodmans LLP (on behalf of the Initial Consenting Noteholders) of the satisfaction of the conditions set out in section 9.1, the Monitor shall deliver to Goodmans LLP and SFC a certificate stating that the Plan Implementation Date has occurred and that the Plan and the Sanction Order are effective in accordance with their respective terms. Following the Plan Implementation Date, the Monitor shall file such certificate with the Court.

ARTICLE 10
ALTERNATIVE SALE TRANSACTION

10.1 Alternative Sale Transaction

At any time prior to the Plan Implementation Date (whether prior to or after the granting of the Sanction Order), and subject to the prior written consent of the Initial Consenting Noteholders, SFC may complete a sale of all or substantially all of the SFC Assets on terms that are acceptable to the Initial Consenting Noteholders (an "**Alternative Sale Transaction**"), provided that such Alternative Sale Transaction has been approved by the Court pursuant to section 36 of the CCAA on notice to the service list. In the event that such an Alternative Sale Transaction is completed, the terms and conditions of this Plan shall continue to apply in all respects, subject to the following:

(a) The Newco Shares and Newco Notes shall not be distributed in the manner contemplated herein. Instead, the consideration paid or payable to SFC pursuant to the Alternative Sale Transaction (the "**Alternative Sale Transaction Consideration**") shall be distributed to the Persons entitled to receive Newco Shares hereunder, and such Persons shall receive the Alternative Sale Transaction Consideration in the same proportions and subject to the same terms and conditions as are applicable to the distribution of Newco Shares hereunder.

(b) All provisions in this Plan that address Newco or Newco II shall be deemed to be ineffective to the extent that they address Newco or Newco II, given that Newco and Newco II will not be required in connection with an Alternative Sale Transaction.

(c) All provisions addressing the Newco Notes shall be deemed to be ineffective to the extent such provisions address the Newco Notes, given that the Newco Notes will not be required in connection with an Alternative Sale Transaction.

(d) All provisions relating to the Newco Shares shall be deemed to address the Alternative Sale Transaction Consideration to the limited extent such provisions address the Newco Shares.

(e) SFC, with the written consent of the Monitor and the Initial Consenting Noteholders, shall be permitted to make such amendments, modifications and supplements to the terms and conditions of this Plan as are necessary to: (i) facilitate the Alternative Sale Transaction; (ii) cause the Alternative Sale Transaction Consideration to be distributed in the same proportions and subject to the same terms and conditions as are subject to the distribution of Newco Shares hereunder; and (iii) complete the Alternative Sale Transaction and distribute the Alternative Sale Transaction Proceeds in a manner that is tax efficient for SFC and the Affected Creditors with Proven Claims, provided in each case that (y) a copy of such amendments, modifications or supplements is filed with the Court and served upon the service list; and (z) the Monitor is satisfied that such amendments, modifications or supplements do not materially alter the

proportionate entitlements of the Affected Creditors, as amongst themselves, to the consideration distributed pursuant to the Plan.

Except for the requirement of obtaining the prior written consent of the Initial Consenting Noteholders with respect to the matters set forth in this section 10.1 and subject to the approval of the Alternative Sale Transaction by the Court pursuant to section 36 of the CCAA (on notice to the service list), once this Plan has been approved by the Required Majority of Affected Creditors, no further meeting, vote or approval of the Affected Creditors shall be required to enable SFC to complete an Alternative Sale Transaction or to amend the Plan in the manner described in this 10.1.

ARTICLE 11
SETTLEMENT OF CLAIMS AGAINST THIRD PARTY DEFENDANTS

11.1 Ernst & Young

(a) Notwithstanding anything to the contrary herein, subject to: (i) the granting of the Sanction Order; (ii) the issuance of the Settlement Trust Order (as may be modified in a manner satisfactory to the parties to the Ernst & Young Settlement and SFC (if occurring on or prior to the Plan Implementation Date), the Monitor and the Initial Consenting Noteholders, as applicable, to the extent, if any, that such modifications affect SFC, the Monitor or the Initial Consenting Noteholders, each acting reasonably); (iii) the granting of an Order under Chapter 15 of the United States Bankruptcy Code recognizing and enforcing the Sanction Order and the Settlement Trust Order in the United States; (iv) any other order necessary to give effect to the Ernst & Young Settlement (the orders referenced in (iii) and (iv) being collectively the "**Ernst & Young Orders**"); (v) the fulfillment of all conditions precedent in the Ernst & Young Settlement and the fulfillment by the Ontario Class Action Plaintiffs of all of their obligations thereunder; and (vi) the Sanction Order, the Settlement Trust Order and all Ernst & Young Orders being final orders and not subject to further appeal or challenge, Ernst & Young shall pay the settlement amount as provided in the Ernst & Young Settlement to the trust established pursuant to the Settlement Trust Order (the "**Settlement Trust**"). Upon receipt of a certificate from Ernst & Young confirming it has paid the settlement amount to the Settlement Trust in accordance with the Ernst & Young Settlement and the trustee of the Settlement Trust confirming receipt of such settlement amount, the Monitor shall deliver to Ernst & Young a certificate (the "**Monitor's Ernst & Young Settlement Certificate**") stating that (i) Ernst & Young has confirmed that the settlement amount has been paid to the Settlement Trust in accordance with the Ernst & Young Settlement; (ii) the trustee of the Settlement Trust has confirmed that such settlement amount has been received by the Settlement Trust; and (iii) the Ernst & Young Release is in full force and effect in accordance with the Plan. The Monitor shall thereafter file the Monitor's Ernst & Young Settlement Certificate with the Court.

(b) Notwithstanding anything to the contrary herein, upon receipt by the Settlement Trust of the settlement amount in accordance with the Ernst & Young Settlement:

(i) all Ernst & Young Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, barred and deemed satisfied and extinguished as against Ernst & Young; (ii) section 7.3 hereof shall apply to Ernst & Young and the Ernst & Young Claims *mutatis mutandis* on the Ernst & Young Settlement Date; and (iii) none of the plaintiffs in the Class Actions shall be permitted to claim from any of the other Third Party Defendants that portion of any damages that corresponds to the liability of Ernst & Young, proven at trial or otherwise, that is the subject of the Ernst & Young Settlement.

(c) In the event that the Ernst & Young Settlement is not completed in accordance with its terms, the Ernst & Young Release and the injunctions described in section 11.1(b) shall not become effective.

11.2 Named Third Party Defendants

(a) Notwithstanding anything to the contrary in section 12.5(a) or 12.5(b) hereof, at any time prior to 10:00 a.m. (Toronto time) on December 6, 2012 or such later date as agreed in writing by the Monitor, SFC (if on or prior to the Plan Implementation Date) and the Initial Consenting Noteholders, Schedule "A" to this Plan may be amended, restated, modified or supplemented at any time and from time to time to add any Eligible Third Party Defendant as a "Named Third Party Defendant", subject in each case to the prior written consent of such Third Party Defendant, the Initial Consenting Noteholders, counsel to the Ontario Class Action Plaintiffs, the Monitor and, if occurring on or prior to the Plan Implementation Date, SFC. Any such amendment, restatement, modification and/or supplement of Schedule "A" shall be deemed to be effective automatically upon all such required consents being received. The Monitor shall: (A) provide notice to the service list of any such amendment, restatement, modification and/or supplement of Schedule "A"; (B) file a copy thereof with the Court; and (C) post an electronic copy thereof on the Website. All Affected Creditors shall be deemed to consent thereto any and no Court Approval thereof will be required.

(b) Notwithstanding anything to the contrary herein, subject to: (i) the granting of the Sanction Order; (ii) the granting of the applicable Named Third Party Defendant Settlement Order; and (iii) the satisfaction or waiver of all conditions precedent contained in the applicable Named Third Party Defendant Settlement, the applicable Named Third Party Defendant Settlement shall be given effect in accordance with its terms. Upon receipt of a certificate (in form and in substance satisfactory to the Monitor) from each of the parties to the applicable Named Third Party Defendant Settlement confirming that all conditions precedent thereto have been satisfied or waived, and that any settlement funds have been paid and received, the Monitor shall deliver to the applicable Named Third Party Defendant a certificate (the "**Monitor's Named Third Party Settlement Certificate**") stating that (i) each of the parties to such Named Third Party Defendant Settlement has confirmed that all conditions precedent thereto have been satisfied or waived; (ii) any settlement funds have been paid and received; and (iii) immediately upon the delivery of the Monitor's Named Third Party

Settlement Certificate, the applicable Named Third Party Defendant Release will be in full force and effect in accordance with the Plan. The Monitor shall thereafter file the Monitor's Named Third Party Settlement Certificate with the Court.

(c) Notwithstanding anything to the contrary herein, upon delivery of the Monitor's Named Third Party Settlement Certificate, any claims and Causes of Action shall be dealt with in accordance with the terms of the applicable Named Third Party Defendant Settlement, the Named Third Party Defendant Settlement Order and the Named Third Party Defendant Release. To the extent provided for by the terms of the applicable Named Third Party Defendant Release: (i) the applicable Causes of Action against the applicable Named Third Party Defendant shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, barred and deemed satisfied and extinguished as against the applicable Named Third Party Defendant; and (ii) section 7.3 hereof shall apply to the applicable Named Third Party Defendant and the applicable Causes of Action against the applicable Named Third Party Defendant *mutatis mutandis* on the effective date of the Named Third Party Defendant Settlement.

ARTICLE 12
GENERAL

12.1 Binding Effect

On the Plan Implementation Date:

(a) the Plan will become effective at the Effective Time;

(b) the Plan shall be final and binding in accordance with its terms for all purposes on all Persons named or referred to in, or subject to, the Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns;

(c) each Person named or referred to in, or subject to, the Plan will be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety and shall be deemed to have executed and delivered all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

12.2 Waiver of Defaults

(a) From and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of SFC then existing or previously committed by SFC, or caused by SFC, the commencement of the CCAA Proceedings by SFC, any matter pertaining to the CCAA Proceedings, any of the provisions in the Plan or steps contemplated in the Plan, or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, indenture, note, lease,

guarantee, agreement for sale or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and SFC, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under any such agreement shall be deemed to have been rescinded and of no further force or effect, provided that nothing shall be deemed to excuse SFC from performing its obligations under the Plan or be a waiver of defaults by SFC under the Plan and the related documents.

(b) Effective on the Plan Implementation Date, any and all agreements that are assigned to Newco and/or to Newco II as part of the SFC Assets shall be and remain in full force and effect, unamended, as at the Plan Implementation Date, and no Person shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations under, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand against Newco, Newco II or any Subsidiary under or in respect of any such agreement with Newco, Newco II or any Subsidiary, by reason of:

(i) any event that occurred on or prior to the Plan Implementation Date that would have entitled any Person thereto to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of SFC);

(ii) the fact that SFC commenced or completed the CCAA Proceedings;

(iii) the implementation of the Plan, or the completion of any of the steps, transactions or things contemplated by the Plan; or

(iv) any compromises, arrangements, transactions, releases, discharges or injunctions effected pursuant to the Plan or this Order.

12.3 Deeming Provisions

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

12.4 Non-Consummation

SFC reserves the right to revoke or withdraw the Plan at any time prior to the Sanction Date, with the consent of the Monitor and the Initial Consenting Noteholders. If SFC so revokes or withdraws the Plan, or if the Sanction Order is not issued or if the Plan Implementation Date does not occur, (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan, including the fixing or limiting to an amount certain any Claim, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against SFC or any other Person; (ii) prejudice in any manner the rights of SFC or any other Person in any further proceedings involving SFC; or (iii) constitute an admission of any sort by SFC or any other Person.

12.5 Modification of the Plan

(a) SFC may, at any time and from time to time, amend, restate, modify and/or supplement the Plan with the consent of the Monitor and the Initial Consenting Noteholders, provided that: any such amendment, restatement, modification or supplement must be contained in a written document that is filed with the Court and:

(i) if made prior to or at the Meeting: (A) the Monitor, SFC or the Chair (as defined in the Meeting Order) shall communicate the details of any such amendment, restatement, modification and/or supplement to Affected Creditors and other Persons present at the Meeting prior to any vote being taken at the Meeting; (B) SFC shall provide notice to the service list of any such amendment, restatement, modification and/or supplement and shall file a copy thereof with the Court forthwith and in any event prior to the Court hearing in respect of the Sanction Order; and (C) the Monitor shall post an electronic copy of such amendment, restatement, modification and/or supplement on the Website forthwith and in any event prior to the Court hearing in respect of the Sanction Order; and

(ii) if made following the Meeting: (A) SFC shall provide notice to the service list of any such amendment, restatement, modification and/or supplement and shall file a copy thereof with the Court; (B) the Monitor shall post an electronic copy of such amendment, restatement, modification and/or supplement on the Website; and (C) such amendment, restatement, modification and/or supplement shall require the approval of the Court following notice to the Affected Creditors and the Trustees.

(b) Notwithstanding section 12.5(a), any amendment, restatement, modification or supplement may be made by SFC: (i) if prior to the Sanction Date, with the consent of the Monitor and the Initial Consenting Noteholders; and (ii) if after the Sanction Date, with the consent of the Monitor and the Initial Consenting Noteholders and upon approval by the Court, provided in each case that it concerns a matter that, in the opinion of SFC, acting reasonably, is of an administrative nature required to better give effect to the implementation of the Plan and the Sanction Order or to cure any errors, omissions or ambiguities and is not materially adverse to the financial or economic interests of the Affected Creditors or the Trustees.

(c) Any amended, restated, modified or supplementary plan or plans of compromise filed with the Court and, if required by this section, approved by the Court, shall, for all purposes, be and be deemed to be a part of and incorporated in the Plan.

12.6 Actions and Approvals of SFC after Plan Implementation

(a) From and after the Plan Implementation Date, and for the purpose of this Plan only:

(i) if SFC does not have the ability or the capacity pursuant to Applicable Law to provide its agreement, waiver, consent or approval to any matter requiring SFC's agreement, waiver, consent or approval under this Plan, such agreement, waiver consent or approval may be provided by the Monitor; and

(ii) if SFC does not have the ability or the capacity pursuant to Applicable Law to provide its agreement, waiver, consent or approval to any matter requiring SFC's agreement, waiver, consent or approval under this Plan, and the Monitor has been discharged pursuant to an Order, such agreement, waiver consent or approval shall be deemed not to be necessary.

12.7 Consent of the Initial Consenting Noteholders

For the purposes of this Plan, any matter requiring the agreement, waiver, consent or approval of the Initial Consenting Noteholders shall be deemed to have been agreed to, waived, consented to or approved by such Initial Consenting Noteholders if such matter is agreed to, waived, consented to or approved in writing by Goodmans LLP, provided that Goodmans LLP expressly confirms in writing (including by way of e-mail) to the applicable Person that it is providing such agreement, consent or waiver on behalf of Initial Consenting Noteholders. In addition, following the Plan Implementation Date, any matter requiring the agreement, waiver, consent or approval of the Initial Consenting Noteholders shall: (i) be deemed to have been given if agreed to, waived, consented to or approved by Initial Consenting Noteholders in their capacities as holders of Newco Shares, Newco Notes or Litigation Trust Interests (provided that they continue to hold such consideration); and (ii) with respect to any matter concerning the Litigation Trust or the Litigation Trust Claims, be deemed to be given if agreed to, waived, consented to or approved by the Litigation Trustee.

12.8 Claims Not Subject to Compromise

Nothing in this Plan, including section 2.4 hereof, shall prejudice, compromise, release, discharge, cancel, bar or otherwise affect any: (i) Non-Released D&O Claims (except to the extent that such Non-Released D&O Claim is asserted against a Named Director or Officer, in which case section 4.9(g) applies); (ii) Section 5.1(2) D&O Claims or Conspiracy Claims (except that, in accordance with section 4.9(e) hereof, any Section 5.1(2) D&O Claims against Named Directors and Officers and any Conspiracy Claims against Named Directors and Officers shall be limited to recovery from any insurance proceeds payable in respect of such Section 5.1(2) D&O Claims or Conspiracy Claims, as applicable, pursuant to the Insurance Policies, and Persons with any such Section 5.1(2) D&O Claims against Named Directors and Officers or Conspiracy Claims against Named Directors and Officers shall have no right to, and shall not, make any claim or seek any recoveries from any Person, other than enforcing such Persons' rights to be paid from the proceeds of an Insurance Policy by the applicable insurer(s)); or (iii) any Claims that are not permitted to be compromised under section 19(2) of the *CCAA*.

12.9 Paramountcy

From and after the Effective Time on the Plan Implementation Date, any conflict between:

(a) the Plan; and

(b) the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, note, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between any Person and SFC and/or the Subsidiaries as at the Plan Implementation Date,

will be deemed to be governed by the terms, conditions and provisions of the Plan and the Sanction Order, which shall take precedence and priority.

12.10 Foreign Recognition

(a) From and after the Plan Implementation Date, if requested by the Initial Consenting Noteholders or Newco, the Monitor (at the Monitor's election) or Newco (if the Monitor does not so elect) shall and is hereby authorized to seek an order of any court of competent jurisdiction recognizing the Plan and the Sanction Order and confirming the Plan and the Sanction Order as binding and effective in Canada, the United States, and any other jurisdiction so requested by the Initial Consenting Noteholders or Newco, as applicable.

(b) Without limiting the generality of section 12.10(a), as promptly as practicable, but in no event later than the third Business Day following the Plan Implementation Date, a foreign representative of SFC (as agreed by SFC, the Monitor and the Initial Consenting Noteholders) (the "**Foreign Representative**") shall commence a proceeding in a court of competent jurisdiction in the United States seeking recognition of the Plan and the Sanction Order and confirming that the Plan and the Sanction Order are binding and effective in the United States, and the Foreign Representative shall use its best efforts to obtain such recognition order.

12.11 Severability of Plan Provisions

If, prior to the Sanction Date, any term or provision of the Plan is held by the Court to be invalid, void or unenforceable, the Court, at the request of SFC and with the consent of the Monitor and the Initial Consenting Noteholders, shall have the power to either (a) sever such term or provision from the balance of the Plan and provide SFC with the option to proceed with the implementation of the balance of the Plan as of and with effect from the Plan Implementation Date, or (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, and provided that SFC proceeds with the implementation of the Plan, the remainder of the terms and provisions of

the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

12.12 Responsibilities of the Monitor

The Monitor is acting in its capacity as Monitor in the CCAA Proceeding and the Plan with respect to SFC and will not be responsible or liable for any obligations of SFC.

12.13 Different Capacities

Persons who are affected by this Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder, and will be affected hereunder, in each such capacity. Any action taken by or treatment of a Person in one capacity will not affect such Person in any other capacity, unless expressly agreed by the Person, SFC, the Monitor and the Initial Consenting Noteholders in writing, or unless the Person's Claims overlap or are otherwise duplicative.

12.14 Notices

Any notice or other communication to be delivered hereunder must be in writing and reference the Plan and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail or by facsimile or email addressed to the respective parties as follows:

(a) if to SFC or any Subsidiary:

Sino-Forest Corporation
Room 3815-29 38/F, Sun Hung Kai Centre
30 Harbour Road, Wanchai, Hong Kong

Attention: Mr. Judson Martin, Executive Vice-Chairman and Chief Executive Officer
Fax: +852-2877-0062

with a copy by email or fax (which shall not be deemed notice) to:

Bennett Jones LLP
One First Canadian Place, Suite 3400
Toronto, ON M5X 1A4

Attention: Kevin J. Zych and Raj S. Sahni
Email: zychk@bennettjones.com and sahnir@bennettjones.com
Fax: 416-863-1716

(b) if to the Initial Consenting Noteholders:

c/o Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Attention:	Robert Chadwick and Brendan O'Neill
Email:	rchadwick@goodmans.ca and boneill@goodmans.ca
Fax:	416-979-1234

and with a copy by email or fax (which shall not be deemed notice) to:

Hogan Lovells International LLP
11th Floor, One Pacific Place, 88 Queensway
Hong Kong China

Attention:	Neil McDonald
Email:	neil.mcdonald@hoganlovells.com
Fax:	852-2219-0222

(c) if to the Monitor:

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Attention:	Greg Watson
Email:	greg.watson@fticonsulting.com
Fax:	(416) 649-8101

and with a copy by email or fax (which shall not be deemed notice) to:

Gowling Lafleur Henderson LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario M5X 1G5

Attention:	Derrick Tay
Email:	derrick.tay@gowlings.com
Fax:	(416) 862-7661

(d) if to Ernst & Young:

Ernst & Young LLP
Ernst & Young Tower
222 Bay Street
P.O. Box 251

Toronto, ON M5K 1J7

Attention:	Doris Stamml
Email:	doris.stamml@ca.ey.com
Fax:	(416) 943-[TBD]

and with a copy by email or fax (which shall not be deemed notice) to:

Lenczner Slaght Royce Smith Griffin
130 Adelaide Street West, Suite 2600
Toronto, Ontario M5H 3P5

Attention:	Peter Griffin
Email:	pgriffin@litigate.com
Fax:	(416) 865-2921

or to such other address as any party may from time to time notify the others in accordance with this section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed or sent before 5:00 p.m. (Toronto time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

12.15 Further Assurances

SFC, the Subsidiaries and any other Person named or referred to in the Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of the Plan and to give effect to the transactions contemplated herein.

DATED as of the 3rd day of December, 2012.

SCHEDULE A

NAMED THIRD PARTY DEFENDANTS

1. The Underwriters, together with their respective present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns, excluding any Director or Officer and successors, administrators, heirs and assigns of any Director or Officer in their capacity as such.

2. Ernst & Young LLP (Canada), Ernst & Young Global Limited and all other member firms thereof, together with their respective present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns, excluding any Director or Officer and successors, administrators, heirs and assigns of any Director or Officer in their capacity as such, in the event that the Ernst & Young Settlement is not completed.

3. BDO Limited, together with its respective present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns, excluding any Director or Officer and successors, administrators, heirs and assigns of any Director or Officer in their capacity as such.

Schedule "B"

FORM OF MONITOR'S CERTIFICATE OF PLAN IMPLEMENTATION

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

MONITOR'S CERTIFICATE
(Plan Implementation)

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Plan of Compromise and Reorganization of Sino-Forest Corporation ("**SFC**") dated December 3, 2012 (the "**Plan**"), which is attached as Schedule "A" to the Order of the Honourable Mr. Justice Morawetz made in these proceedings on the [7th] day of December, 2012 (the "**Order**"), as such Plan may be further amended, varied or supplemented from time to time in accordance with the terms thereof.

Pursuant to paragraph 12 of the Order, FTI Consulting Canada Inc. (the "**Monitor**") in its capacity as Court-appointed Monitor of SFC delivers to SFC and Goodmans LLP this certificate and hereby certifies that:

1. The Monitor has received written notice from SFC and Goodmans LLP (on behalf of the Initial Consenting Noteholders) that the conditions precedent set out in section 9.1 of the Plan have been satisfied or waived in accordance with the terms of the Plan; and

2. The Plan Implementation Date has occurred and the Plan and the Plan Sanction Order are effective in accordance with their terms.

DATED at the City of Toronto, in the Province of Ontario, this ■ day of ■ , 201■.

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor of the Sino-Forest Corporation and not in its personal capacity

By: ______________________________

Name:

Title:

Schedule "C"

Industry Canada | Industrie Canada

Canada Business Corporations Act | Loi canadienne sur les sociétés par actions

FORM 14
ARTICLES OF REORGANIZATION
(SECTION 191)

FORMULAIRE 14
CLAUSES DE RÉORGANISATION
(ARTICLE 191)

1 -- Name of Corporation - Dénomination sociale de la société	2 -- Corporation No. - N° de la société
Sino-Forest Corporation	409023-3

3 -- In accordance with the order for reorganization, the articles of incorporation are amended as follows:

Conformément à l'ordonnance de réorganisation, les statuts constitutifs sont modifiés comme suit :

Please see Schedule A attached hereto.

Signature	Printed Name - Nom en lettres moulées	4 -- Capacity of - En qualité de	5 -- Tel. N°. - N° de tél.

FOR DEPARTMENTAL USE ONLY - À L'USAGE DU MINISTÈRE SEULEMENT

IC3409 (2003/08)

Canada

Schedule A

3. In accordance with the order for reorganization, the articles of continuance of the Corporation dated June 25, 2002, as amended by articles of amendment dated June 22, 2004, are amended as follows:

(a) to decrease the minimum number of directors of the Corporation from three (3) directors to one (1) director;

(b) to create a new class of shares consisting of an unlimited number of "Class A Common Shares" having the following rights, privileges, restrictions and conditions:

The holders of Class A Common Shares are entitled:

(i) to two (2) votes per Class A Common Share at any meeting of shareholders of the Corporation, except meetings at which only holders of a specified class of shares are entitled to vote;

(ii) subject to the rights, privileges, restrictions and conditions attaching to shares of any other class or series of shares of the Corporation, to receive the remaining property of the Corporation upon dissolution pro rata with the holders of the Common Shares; and

(iii) subject to the rights, privileges, restrictions and conditions attaching to shares of any other class or series of shares of the Corporation, to receive any dividend declared by the directors of the Corporation and payable on the Class A Common Shares.

(c) to delete the rights, privileges, restrictions and conditions attaching to the Common Shares and to substitute therefor the following:

(1) The holders of Common Shares are entitled:

(i) to one (1) vote per Common Share at any meeting of shareholders of the Corporation, except meetings at which only holders of a specified class of shares are entitled to vote;

(ii) subject to the rights, privileges, restrictions and conditions attaching to shares of any other class or series of shares of the Corporation, to receive the remaining property of the Corporation upon dissolution pro rata with the holders of the Class A Common Shares; and

(iii) subject to the rights, privileges, restrictions and conditions attaching to shares of any other class or series of shares of the Corporation, to receive any dividend declared by the directors of the Corporation and payable on the Common Shares.

(2) At a time to be determined by the board of directors of the Corporation, the Common Shares shall be cancelled and eliminated for no consideration whatsoever, and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and the obligation of the Corporation thereunder or in any way related thereto shall be deemed to

be satisfied and discharged and the holders of the Common Shares shall have no further rights or interest in the Corporation on account thereof and the rights, privileges, restrictions and conditions attached to the Common Shares shall be deleted.

(d) to confirm that the authorized capital of the Corporation consists of an unlimited number of Class A Common Shares, an unlimited number of Common Shares and an unlimited number of Preference Shares, issuable in series.

Schedule "D"

1. Unaffected Claims Reserve: $1,500,000

2. Unresolved Claims Reserve for Defence Costs: $8,000,000

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 OR COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

PLAN SANCTION ORDER

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Rob Staley (LSUC #27115J)
Kevin Zych (LSUC #33129T)
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Tel: 416-863-1200
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Lawyers for Sino-Forest Corporation

WSLegal\059250\00007\8331150v9

TAB 2

CITATION: Sino-Forest Corporation (Re), 2012 ONSC 7055
COURT FILE NO.: CV-12-9667-00CL
DATE: 20121210

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, Kevin Zych, Derek J. Bell and Jonathan Bell, for Sino-Forest Corporation**

Derrick Tay, Jennifer Stam, and Cliff Prophet for the Monitor, FTI Consulting Canada Inc.

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

Kenneth Rosenberg, Kirk Baert, Max Starnino, and A. Dimitri Lascaris, for the Class Action Plaintiffs

Won J. Kim, James C. Orr, Michael C. Spencer, and Megan B. McPhee, for Invesco Canada Ltd., Northwest & Ethical Investments LP and Comite Syndicale Nationale de Retraite Batirente Inc.

Peter Griffin, Peter Osborne and Shara Roy, for Ernst & Young Inc.

Peter Greene and Ken Dekkar, for BDO Limited

Edward A. Sellers and Larry Lowenstein, for the Board of Directors of Sino-Forest Corporation

John Pirie and David Gadsden, for Poyry (Beijing)

James Doris, for the Plaintiff in the New York Class Action

David Bish, for the Underwriters

Simon Bieber and Erin Pleet, for David Horsley

James Grout, for the Ontario Securities Commission

Emily Cole and Joseph Marin, for Allen Chan

Susan E. Freedman and Brandon Barnes, for Kai Kit Poon

Paul Emerson, for ACE/Chubb

Sam Sasso, for Travelers

HEARD: DECEMBER 7, 2012

ENDORSEMENT

[1] For reasons to follow, the motion is granted and an order shall issue sanctioning the Plan substantially in the form of the draft Sanction Order.

MORAWETZ J.

Date: December 10, 2012

CITATION: Sino-Forest Corporation (Re), 2012 ONSC 7050
COURT FILE NO.: CV-12-9667-00CL
DATE: 20121212

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, Kevin Zych, Derek J. Bell and Jonathan Bell, for Sino-Forest Corporation

Derrick Tay, Jennifer Stam, and Cliff Prophet for the Monitor, FTI Consulting Canada Inc.

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

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Won J. Kim, James C. Orr, Michael C. Spencer, and Megan B. McPhee, for Invesco Canada Ltd., Northwest & Ethical Investments LP and Comité Syndicale Nationale de Retraite Bâtirente Inc.

Peter Griffin, Peter Osborne and Shara Roy, for Ernst & Young Inc.

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Edward A. Sellers and Larry Lowenstein, for the Board of Directors of Sino-Forest Corporation

John Pirie and David Gadsden, for Poyry (Beijing)

James Doris, for the Plaintiff in the New York Class Action

David Bish, for the Underwriters

Simon Bieber and Erin Pleet, for David Horsley

James Grout, for the Ontario Securities Commission

Emily Cole and Joseph Marin, for Allen Chan

Susan E. Freedman and Brandon Barnes, for Kai Kit Poon

Paul Emerson, for ACE/Chubb

Sam Sasso, for Travelers

HEARD: DECEMBER 7, 2012

ENDORSED: DECEMBER 10, 2012

REASONS: DECEMBER 12, 2012

ENDORSEMENT

[1] On December 10, 2012, I released an endorsement granting this motion with reasons to follow. These are those reasons.

Overview

[2] The Applicant, Sino-Forest Corporation ("SFC"), seeks an order sanctioning (the "Sanction Order") a plan of compromise and reorganization dated December 3, 2012 as modified, amended, varied or supplemented in accordance with its terms (the "Plan") pursuant to section 6 of the *Companies' Creditors Arrangement Act* ("CCAA").

[3] With the exception of one party, SFC's position is either supported or is not opposed.

[4] Invesco Canada Ltd., Northwest & Ethical Investments LP and Comité Syndicale Nationale de Retraite Bâtirente Inc. (collectively, the "Funds") object to the proposed Sanction Order. The Funds requested an adjournment for a period of one month. I denied the Funds' adjournment request in a separate endorsement released on December 10, 2012 (*Re Sino-Forest Corporation*, 2012 ONSC 7041). Alternatively, the Funds requested that the Plan be altered so as to remove Article 11 "Settlement of Claims Against Third Party Defendants".

[5] The defined terms have been taken from the motion record.

[6] SFC's counsel submits that the Plan represents a fair and reasonable compromise reached with SFC's creditors following months of negotiation. SFC's counsel submits that the Plan, including its treatment of holders of equity claims, complies with CCAA requirements and is consistent with this court's decision on the equity claims motions (the "Equity Claims Decision") (2012 ONSC 4377, 92 C.B.R. (5th) 99), which was subsequently upheld by the Court of Appeal for Ontario (2012 ONCA 816).

[7] Counsel submits that the classification of creditors for the purpose of voting on the Plan was proper and consistent with the CCAA, existing law and prior orders of this court, including the Equity Claims Decision and the Plan Filing and Meeting Order.

[8] The Plan has the support of the following parties:

(a) the Monitor;

(b) SFC's largest creditors, the Ad Hoc Committee of Noteholders (the "Ad Hoc Noteholders");

(c) Ernst & Young LLP ("E&Y");

(d) BDO Limited ("BDO"); and

(e) the Underwriters.

[9] The Ad Hoc Committee of Purchasers of the Applicant's Securities (the "Ad Hoc Securities Purchasers Committee", also referred to as the "Class Action Plaintiffs") has agreed not to oppose the Plan. The Monitor has considered possible alternatives to the Plan, including liquidation and bankruptcy, and has concluded that the Plan is the preferable option.

[10] The Plan was approved by an overwhelming majority of Affected Creditors voting in person or by proxy. In total, 99% in number, and greater than 99% in value, of those Affected Creditors voting favoured the Plan.

[11] Options and alternatives to the Plan have been explored throughout these proceedings. SFC carried out a court-supervised sales process (the "Sales Process"), pursuant to the sales process order (the "Sales Process Order"), to seek out potential qualified strategic and financial purchasers of SFC's global assets. After a canvassing of the market, SFC determined that there were no qualified purchasers offering to acquire its assets for qualified consideration ("Qualified Consideration"), which was set at 85% of the value of the outstanding amount owing under the notes (the "Notes").

[12] SFC's counsel submits that the Plan achieves the objective stated at the commencement of the CCAA proceedings (namely, to provide a "clean break" between the business operations of the global SFC enterprise as a whole ("Sino-Forest") and the problems facing SFC, with the aspiration of saving and preserving the value of SFC's underlying business for the benefit of SFC's creditors).

Facts

[13] SFC is an integrated forest plantation operator and forest products company, with most of its assets and the majority of its business operations located in the southern and eastern regions of the People's Republic of China ("PRC"). SFC's registered office is located in Toronto and its principal business office is located in Hong Kong.

[14] SFC is a holding company with six direct subsidiaries (the "Subsidiaries") and an indirect majority interest in Greenheart Group Limited (Bermuda), a publicly-traded company. Including SFC and the Subsidiaries, there are 137 entities that make up Sino-Forest: 67 companies incorporated in PRC, 58 companies incorporated in British Virgin Islands, 7 companies incorporated in Hong Kong, 2 companies incorporated in Canada and 3 companies incorporated elsewhere.

[15] On June 2, 2011, Muddy Waters LLC ("Muddy Waters"), a short-seller of SFC's securities, released a report alleging that SFC was a "near total fraud" and a "Ponzi scheme". SFC subsequently became embroiled in multiple class actions across Canada and the United States and was subjected to investigations and regulatory proceedings by the Ontario Securities Commission ("OSC"), Hong Kong Securities and Futures Commission and the Royal Canadian Mounted Police.

[16] SFC was unable to file its 2011 third quarter financial statements, resulting in a default under its note indentures.

[17] Following extensive arm's length negotiations between SFC and the Ad Hoc Noteholders, the parties agreed on a framework for a consensual resolution of SFC's defaults under its note indentures and the restructuring of its business. The parties ultimately entered into a restructuring support agreement (the "Support Agreement") on March 30, 2012, which was initially executed by holders of 40% of the aggregate principal amount of SFC's Notes. Additional consenting noteholders subsequently executed joinder agreements, resulting in noteholders representing a total of more than 72% of aggregate principal amount of the Notes agreeing to support the restructuring.

[18] The restructuring contemplated by the Support Agreement was commercially designed to separate Sino-Forest's business operations from the problems facing the parent holding company outside of PRC, with the intention of saving and preserving the value of SFC's underlying business. Two possible transactions were contemplated:

(a) First, a court-supervised Sales Process to determine if any person or group of persons would purchase SFC's business operations for an amount in excess of the 85% Qualified Consideration;

(b) Second, if the Sales Process was not successful, a transfer of six immediate holding companies (that own SFC's operating business) to an acquisition vehicle to be owned by Affected Creditors in compromise of their claims against SFC. Further, the creation of a litigation trust (including funding) (the "Litigation Trust") to enable SFC's litigation claims against any person not otherwise released within the CCAA proceedings, preserved and pursued for the benefit of SFC's stakeholders in accordance with the Support Agreement (concurrently, the "Restructuring Transaction").

[19] SFC applied and obtained an initial order under the CCAA on March 30, 2012 (the "Initial Order"), pursuant to which a limited stay of proceedings ("Stay of Proceedings") was also granted in respect of the Subsidiaries. The Stay of Proceedings was subsequently extended

by orders dated May 31, September 28, October 10, and November 23, 2012, and unless further extended, will expire on February 1, 2013.

[20] On March 30, 2012, the Sales Process Order was granted. While a number of Letters of Intent were received in respect of this process, none were qualified Letters of Intent, because none of them offered to acquire SFC's assets for the Qualified Consideration. As such, on July 10, 2012, SFC announced the termination of the Sales Process and its intention to proceed with the Restructuring Transaction.

[21] On May 14, 2012, this court granted an order (the "Claims Procedure Order") which approved the Claims Process that was developed by SFC in consultation with the Monitor.

[22] As of the date of filing, SFC had approximately $1.8 billion of principal amount of debt owing under the Notes, plus accrued and unpaid interest. As of May 15, 2012, Noteholders holding in aggregate approximately 72% of the principal amount of the Notes, and representing more than 66.67% of the principal amount of each of the four series of Notes, agreed to support the Plan.

[23] After the Muddy Waters report was released, SFC and certain of its officers, directors and employees, along with SFC's former auditors, technical consultants and Underwriters involved in prior equity and debt offerings, were named as defendants in a number of proposed class action lawsuits. Presently, there are active proposed class actions in four jurisdictions: Ontario, Quebec, Saskatchewan and New York (the "Class Action Claims").

[24] *The Labourers v. Sino-Forest Corporation Class Action* (the "Ontario Class Action") was commenced in Ontario by Koskie Minsky LLP and Siskinds LLP. It has the following two components: first, there is a shareholder claim (the "Shareholder Class Action Claims") brought on behalf of current and former shareholders of SFC seeking damages in the amount of $6.5 billion for general damages, $174.8 million in connection with a prospectus issued in June 2007, $330 million in relation to a prospectus issued in June 2009, and $319.2 million in relation to a prospectus issued in December 2009; second, there is a $1.8 billion noteholder claim (the "Noteholder Class Action Claims") brought on behalf of former holders of SFC's Notes. The noteholder component seeks damages for loss of value in the Notes.

[25] The Quebec Class Action is similar in nature to the Ontario Class Action, and both plaintiffs filed proof of claim in this proceeding. The plaintiffs in the Saskatchewan Class Action did not file a proof of claim in this proceeding, whereas the plaintiffs in the New York Class Action did file a proof of claim in this proceeding. A few shareholders filed proofs of claim separately, but no proof of claim was filed by the Funds.

[26] In this proceeding, the Ad Hoc Securities Purchasers Committee - represented by Siskinds LLP, Koskie Minsky, and Paliare Roland Rosenberg Rothstein LLP - has appeared to represent the interests of the shareholders and noteholders who have asserted Class Action Claims against SFC and others.

[27] Since 2000, SFC has had the following two auditors ("Auditors"): E&Y from 2000 to 2004 and 2007 to 2012 and BDO from 2005 to 2006.

[28] The Auditors have asserted claims against SFC for contribution and indemnity for any amounts paid or payable in respect of the Shareholder Class Action Claims, with each of the Auditors having asserted claims in excess of $6.5 billion. The Auditors have also asserted indemnification claims in respect the Noteholder Class Action Claims.

[29] The Underwriters have similarly filed claims against SFC seeking contribution and indemnity for the Shareholder Class Action Claims and Noteholder Class Action Claims.

[30] The Ontario Securities Commission ("OSC") has also investigated matters relating to SFC. The OSC has advised that they are not seeking any monetary sanctions against SFC and are not seeking monetary sanctions in excess of $100 million against SFC's directors and officers (this amount was later reduced to $84 million).

[31] SFC has very few trade creditors by virtue of its status as a holding company whose business is substantially carried out through its Subsidiaries in PRC and Hong Kong.

[32] On June 26, 2012, SFC brought a motion for an order declaring that all claims made against SFC arising in connection with the ownership, purchase or sale of an equity interest in SFC and related indemnity claims to be "equity claims" (as defined in section 2 of the CCAA). These claims encapsulate the commenced Shareholder Class Action Claims asserted against SFC. The Equity Claims Decision did not purport to deal with the Noteholder Class Action Claims.

[33] In reasons released on July 27, 2012, I granted the relief sought by SFC in the Equity Claims Decision, finding that the "the claims advanced in the shareholder claims are clearly equity claims." The Auditors and Underwriters appealed the decision and on November 23, 2012, the Court of Appeal for Ontario dismissed the appeal.

[34] On August 31, 2012, an order was issued approving the filing of the Plan (the "Plan Filing and Meeting Order").

[35] According to SFC's counsel, the Plan endeavours to achieve the following purposes:

(a) to effect a full, final and irrevocable compromise, release, discharge, cancellation and bar of all affected claims;

(b) to effect the distribution of the consideration provided in the Plan in respect of proven claims;

(c) to transfer ownership of the Sino-Forest business to Newco and then to Newco II, in each case free and clear of all claims against SFC and certain related claims against the Subsidiaries so as to enable the Sino-Forest business to continue on a viable, going concern basis for the benefit of the Affected Creditors; and

(d) to allow Affected Creditors and Noteholder Class Action Claimants to benefit from contingent value that may be derived from litigation claims to be advanced by the litigation trustee.

[36] Pursuant to the Plan, the shares of Newco ("Newco Shares") will be distributed to the Affected Creditors. Newco will immediately transfer the acquired assets to Newco II.

[37] SFC's counsel submits that the Plan represents the best available outcome in the circumstances and those with an economic interest in SFC, when considered as a whole, will derive greater benefit from the implementation of the Plan and the continuation of the business as a going concern than would result from bankruptcy or liquidation of SFC. Counsel further submits that the Plan fairly and equitably considers the interests of the Third Party Defendants, who seek indemnity and contribution from SFC and its Subsidiaries on a contingent basis, in the event that they are found to be liable to SFC's stakeholders. Counsel further notes that the three most significant Third Party Defendants (E&Y, BDO and the Underwriters) support the Plan.

[38] SFC filed a version of the Plan in August 2012. Subsequent amendments were made over the following months, leading to further revised versions in October and November 2012, and a final version dated December 3, 2012 which was voted on and approved at the meeting. Further amendments were made to obtain the support of E&Y and the Underwriters. BDO availed itself of those terms on December 5, 2012.

[39] The current form of the Plan does not settle the Class Action Claims. However, the Plan does contain terms that would be engaged if certain conditions are met, including if the class action settlement with E&Y receives court approval.

[40] Affected Creditors with proven claims are entitled to receive distributions under the Plan of (i) Newco Shares, (ii) Newco notes in the aggregate principal amount of U.S. $300 million that are secured and guaranteed by the subsidiary guarantors (the "Newco Notes"), and (iii) Litigation Trust Interests.

[41] Affected Creditors with proven claims will be entitled under the Plan to: (a) their *pro rata* share of 92.5% of the Newco Shares with early consenting noteholders also being entitled to their *pro rata* share of the remaining 7.5% of the Newco Shares; and (b) their *pro rata* share of the Newco Notes. Affected Creditors with proven claims will be concurrently entitled to their *pro rata* share of 75% of the Litigation Trust Interests; the Noteholder Class Action Claimants will be entitled to their *pro rata* share of the remaining 25% of the Litigation Trust Interests.

[42] With respect to the indemnified Noteholder Class Action Claims, these relate to claims by former noteholders against third parties who, in turn, have alleged corresponding indemnification claims against SFC. The Class Action Plaintiffs have agreed that the aggregate amount of those former noteholder claims will not exceed the Indemnified Noteholder Class Action Limit of $150 million. In turn, indemnification claims of Third Party Defendants against SFC with respect to indemnified Noteholder Class Action Claims are also limited to the $150 million Indemnified Noteholder Class Action Limit.

[43] The Plan includes releases for, among others, (a) the subsidiary; (b) the Underwriters' liability for Noteholder Class Action Claims in excess of the Indemnified Noteholder Class Action Limit; (c) E&Y in the event that all of the preconditions to the E&Y settlement with the Ontario Class Action plaintiffs are met; and (d) certain current and former directors and officers of SFC (collectively, the "Named Directors and Officers"). It was emphasized that non-released

D&O Claims (being claims for fraud or criminal conduct), conspiracy claims and section 5.1 (2) D&O Claims are not being released pursuant to the Plan.

[44] The Plan also contemplates that recovery in respect of claims of the Named Directors and Officers of SFC in respect of any section 5.1 (2) D&O Claims and any conspiracy claims shall be directed and limited to insurance proceeds available from SFC's maintained insurance policies.

[45] The meeting was carried out in accordance with the provisions of the Plan Filing and Meeting Order and that the meeting materials were sent to stakeholders in the manner required by the Plan Filing and Meeting Order. The Plan supplement was authorized and distributed in accordance with the Plan Filing and Meeting Order.

[46] The meeting was ultimately held on December 3, 2012 and the results of the meeting were as follows:

(a) the number of voting claims that voted on the Plan and their value for and against the Plan;

(b) The results of the Meeting were as follows:

a. the number of Voting Claims that voted on the Plan and their value for and against the Plan:

	Number of Votes	%		Value of Votes	%
Total Claims Voting For	250	98.81%	$	1,465,766,204	99.97%
Total Claims Voting Against	3	1.19%	$	414,087	0.03%
Total Claims Voting	253	100.00%	$	1,466,180,291	100.00%

b. the number of votes for and against the Plan in connection with Class Action Indemnity Claims in respect of Indemnified Noteholder Class Action Claims up to the Indemnified Noteholder Limit:

	Vote For	Vote Against	Total Votes
Class Action Indemnity Claims	4	1	5

c. the number of Defence Costs Claims votes for and against the Plan and their value:

	Number of Votes	%		Value of Votes	%
Total Claims Voting For	12	92.31%	$	8,375,016	96.10%
Total Claims Voting Against	1	7.69%	$	340,000	3.90%
Total Claims Voting	13	100.00%	$	8,715,016	100.00%

d. the overall impact on the approval of the Plan if the count were to include Total Unresolved Claims (including Defence Costs Claims) and, in order to demonstrate the "worst case scenario" if the entire $150 million of the Indemnified Noteholder Class Action Limit had been voted a "no" vote (even

though 4 of 5 votes were "yes" votes and the remaining "no" vote was from BDO, who has now agreed to support the Plan):

	Number of Votes	%		Value of Votes	%
Total Claims Voting For	263	98.50%	$	1,474,149,082	90.72%
Total Claims Voting Against	4	1.50%	$	150,754,087	9.28%
Total Claims Voting	267	100.00%	$	1,624,903,169	100.00%

[47] E&Y has now entered into a settlement ("E&Y Settlement") with the Ontario plaintiffs and the Quebec plaintiffs, subject to several conditions and approval of the E&Y Settlement itself.

[48] As noted in the endorsement dated December 10, 2012, which denied the Funds' adjournment request, the E&Y Settlement does not form part of the Sanction Order and no relief is being sought on this motion with respect to the E&Y Settlement. Rather, section 11.1 of the Plan contains provisions that provide a framework pursuant to which a release of the E&Y claims under the Plan will be effective if several conditions are met. That release will only be granted if all conditions are met, including further court approval.

[49] Further, SFC's counsel acknowledges that any issues relating to the E&Y Settlement, including fairness, continuing discovery rights in the Ontario Class Action or Quebec Class Action, or opt out rights, are to dealt with at a further court-approval hearing.

Law and Argument

[50] Section 6(1) of the CCAA provides that courts may sanction a plan of compromise if the plan has achieved the support of a majority in number representing two-thirds in value of the creditors.

[51] To establish the court's approval of a plan of compromise, the debtor company must establish the following:

(a) there has been strict compliance with all statutory requirements and adherence to previous orders of the court;

(b) nothing has been done or purported to be done that is not authorized by the CCAA; and

(c) the plan is fair and reasonable.

(See *Re Canadian Airlines Corporation*, 2000 ABQB 442, leave to appeal denied, 2000 ABCA 238, aff'd 2001 ABCA 9, leave to appeal to SCC refused July 21, 2001, [2001] S.C.C.A. No. 60 and Re Nelson Financial Group Limited, 2011 ONSC 2750, 79 C.B.R. (5th) 307).

[52] SFC submits that there has been strict compliance with all statutory requirements.

[53] On the initial application, I found that SFC was a "debtor company" to which the CCAA applies. SFC is a corporation continued under the *Canada Business Corporations Act* ("CBCA") and is a "company" as defined in the CCAA. SFC was "reasonably expected to run out of

liquidity within a reasonable proximity of time" prior to the Initial Order and, as such, was and continues to be insolvent. SFC has total claims and liabilities against it substantially in excess of the $5 million statutory threshold.

[54] The Notice of Creditors' Meeting was sent in accordance with the Meeting Order and the revised Noteholder Mailing Process Order and, further, the Plan supplement and the voting procedures were posted on the Monitor's website and emailed to each of the ordinary Affected Creditors. It was also delivered by email to the Trustees and DTC, as well as to Globic who disseminated the information to the Registered Noteholders. The final version of the Plan was emailed to the Affected Creditors, posted on the Monitor's website, and made available for review at the meeting.

[55] SFC also submits that the creditors were properly classified at the meeting as Affected Creditors constituted a single class for the purposes of considering the voting on the Plan. Further, and consistent with the Equity Claims Decision, equity claimants constituted a single class but were not entitled to vote on the Plan. Unaffected Creditors were not entitled to vote on the Plan.

[56] Counsel submits that the classification of creditors as a single class in the present case complies with the commonality of interests test. See *Re Canadian Airlines Corporation*.

[57] Courts have consistently held that relevant interests to consider are the legal interests of the creditors hold *qua* creditor in relationship to the debtor prior to and under the plan. Further, the commonality of interests should be considered purposively, bearing in mind the object of the CCAA, namely, to facilitate reorganizations if possible. See *Stelco Inc.* (2005), 78 O.R. (3d) 241 (Ont. C.A.), *Re Canadian Airlines Corporation*, and *Re Nortel Networks Corporation* (2009) O.J. No. 2166 (Ont. S.C.). Further, courts should resist classification approaches that potentially jeopardize viable plans.

[58] In this case, the Affected Creditors voted in one class, consistent with the commonality of interests among Affected Creditors, considering their legal interests as creditors. The classification was consistent with the Equity Claims Decision.

[59] I am satisfied that the meeting was properly constituted and the voting was properly carried out. As described above, 99% in number, and more than 99% in value, voting at the meeting favoured the Plan.

[60] SFC's counsel also submits that SFC has not taken any steps unauthorized by the CCAA or by court orders. SFC has regularly filed affidavits and the Monitor has provided regular reports and has consistently opined that SFC is acting in good faith and with due diligence. The court has so ruled on this issue on every stay extension order that has been granted.

[61] In *Nelson Financial*, I articulated relevant factors on the sanction hearing. The following list of factors is similar to those set out in *Re Canwest Global Communications Corporation*, 2010 ONSC 4209, 70 C.B.R. (5th) 1:

1. The claims must have been properly classified, there must be no secret arrangements to give an advantage to a creditor or creditor; the approval of the plan by the requisite majority of creditors is most important;

2. It is helpful if the Monitor or some other disinterested person has prepared an analysis of anticipated receipts and liquidation or bankruptcy;

3. If other options or alternatives have been explored and rejected as workable, this will be significant;

4. Consideration of the oppression rights of certain creditors; and

5. Unfairness to shareholders.

6. The court will consider the public interest.

[62] The Monitor has considered the liquidation and bankruptcy alternatives and has determined that it does not believe that liquidation or bankruptcy would be a preferable alternative to the Plan. There have been no other viable alternatives presented that would be acceptable to SFC and to the Affected Creditors. The treatment of shareholder claims and related indemnity claims are, in my view, fair and consistent with CCAA and the Equity Claims Decision.

[63] In addition, 99% of Affected Creditors voted in favour of the Plan and the Ad Hoc Securities Purchasers Committee have agreed not to oppose the Plan. I agree with SFC's submission to the effect that these are exercises of those parties' business judgment and ought not to be displaced.

[64] I am satisfied that the Plan provides a fair and reasonable balance among SFC's stakeholders while simultaneously providing the ability for the Sino-Forest business to continue as a going concern for the benefit of all stakeholders.

[65] The Plan adequately considers the public interest. I accept the submission of counsel that the Plan will remove uncertainty for Sino-Forest's employees, suppliers, customers and other stakeholders and provide a path for recovery of the debt owed to SFC's non-subordinated creditors. In addition, the Plan preserves the rights of aggrieved parties, including SFC through the Litigation Trust, to pursue (in litigation or settlement) those parties that are alleged to share some or all of the responsibility for the problems that led SFC to file for CCAA protection. In addition, releases are not being granted to individuals who have been charged by OSC staff, or to other individuals against whom the Ad Hoc Securities Purchasers Committee wishes to preserve litigation claims.

[66] In addition to the consideration that is payable to Affected Creditors, Early Consent Noteholders will receive their *pro rata* share of an additional 7.5% of the Newco Shares ("Early Consent Consideration"). Plans do not need to provide the same recovery to all creditors to be considered fair and reasonable and there are several plans which have been sanctioned by the courts featuring differential treatment for one creditor or one class of creditors. See, for example, *Canwest Global* and *Re Armbro Enterprises Inc.* (1993), 22 C.B.R. (3d) 80 (Ont. Gen.

Div.). A common theme permeating such cases has been that differential treatment does not necessarily result in a finding that the Plan is unfair, as long as there is a sufficient rational explanation.

[67] In this case, SFC's counsel points out that the Early Consent Consideration has been a feature of the restructuring since its inception. It was made available to any and all noteholders and noteholders who wished to become Early Consent Noteholders were invited and permitted to do so until the early consent deadline of May 15, 2012. I previously determined that SFC made available to the noteholders all information needed to decide whether they should sign a joinder agreement and receive the Early Consent Consideration, and that there was no prejudice to the noteholders in being put to that election early in this proceeding.

[68] As noted by SFC's counsel, there was a rational purpose for the Early Consent Consideration. The Early Consent Noteholders supported the restructuring through the CCAA proceedings which, in turn, provided increased confidence in the Plan and facilitated the negotiations and approval of the Plan. I am satisfied that this feature of the Plan is fair and reasonable.

[69] With respect to the Indemnified Noteholder Class Action Limit, I have considered SFC's written submissions and accept that the $150 million agreed-upon amount reflects risks faced by both sides. The selection of a $150 million cap reflects the business judgment of the parties making assessments of the risk associated with the noteholder component of the Ontario Class Action and, in my view, is within the "general range of acceptability on a commercially reasonable basis". See *Re Ravelston Corporation,* (2005) 14 C.B.R. (5th) 207 (Ont. S.C). Further, as noted by SFC's counsel, while the New York Class Action Plaintiffs filed a proof of claim, they have not appeared in this proceeding and have not stated any opposition to the Plan, which has included this concept since its inception.

[70] Turning now to the issue of releases of the Subsidiaries, counsel to SFC submits that the unchallenged record demonstrates that there can be no effective restructuring of SFC's business and separation from its Canadian parent if the claims asserted against the Subsidiaries arising out of or connected to claims against SFC remain outstanding. The Monitor has examined all of the releases in the Plan and has stated that it believes that they are fair and reasonable in the circumstances.

[71] The Court of Appeal in *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corporation*, 2008 ONCA 587, 45 C.B.R. (5th) 163 stated that the "court has authority to sanction plans incorporating third party releases that are reasonably related to the proposed restructuring".

[72] In this case, counsel submits that the release of Subsidiaries is necessary and essential to the restructuring of SFC. The primary purpose of the CCAA proceedings was to extricate the business of Sino-Forest, through the operation of SFC's Subsidiaries (which were protected by the Stay of Proceedings), from the cloud of uncertainty surrounding SFC. Accordingly, counsel submits that there is a clear and rational connection between the release of the Subsidiaries in the Plan. Further, it is difficult to see how any viable plan could be made that does not cleanse the Subsidiaries of the claims made against SFC.

[73] Counsel points out that the Subsidiaries who are to have claims against them released are contributing in a tangible and realistic way to the Plan. The Subsidiaries are effectively contributing their assets to SFC to satisfy SFC's obligations under their guarantees of SFC's note indebtedness, for the benefit of the Affected Creditors. As such, counsel submits the releases benefit SFC and the creditors generally.

[74] In my view, the basis for the release falls within the guidelines previously set out by this court in *ATB Financial*, *Re Nortel Networks*, 2010 ONSC 1708, and *Re Kitchener Frame Limited*, 2012 ONSC 234, 86 C.B.R. (5th) 274. Further, it seems to me that the Plan cannot succeed without the releases of the Subsidiaries. I am satisfied that the releases are fair and reasonable and are rationally connected to the overall purpose of the Plan.

[75] With respect to the Named Directors and Officers release, counsel submits that this release is necessary to effect a greater recovery for SFC's creditors, rather than having those directors and officers assert indemnity claims against SFC. Without these releases, the quantum of the unresolved claims reserve would have to be materially increased and, to the extent that any such indemnity claim was found to be a proven claim, there would have been a corresponding dilution of consideration paid to Affected Creditors.

[76] It was also pointed out that the release of the Named Directors and Officers is not unlimited; among other things, claims for fraud or criminal conduct, conspiracy claims, and section 5.1 (2) D&O Claims are excluded.

[77] I am satisfied that there is a reasonable connection between the claims being compromised and the Plan to warrant inclusion of this release.

[78] Finally, in my view, it is necessary to provide brief comment on the alternative argument of the Funds, namely, the Plan be altered so as to remove Article 11 "Settlement of Claims Against Third Party Defendants". The Plan was presented to the meeting with Article 11 in place. This was the Plan that was subject to the vote and this is the Plan that is the subject of this motion. The alternative proposed by the Funds was not considered at the meeting and, in my view, it is not appropriate to consider such an alternative on this motion.

Disposition

[79] Having considered the foregoing, I am satisfied that SFC has established that:

(i) there has been strict compliance with all statutory requirements and adherence to the previous orders of the court;

(ii) nothing has been done or purported to be done that is not authorized by the CCAA; and

(iii) the Plan is fair and reasonable.

[80] Accordingly, the motion is granted and the Plan is sanctioned. An order has been signed substantially in the form of the draft Sanction Order.

MORAWETZ J.

Date: December 12, 2012

TAB 3

CITATION: Sino-Forest Corporation (Re), 2012 ONSC 7041
COURT FILE NO.: CV-12-9667-00CL
DATE: 20121210

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, Kevin Zych, Derek J. Bell and Jonathan Bell, for Sino-Forest Corporation

Derrick Tay, Jennifer Stam, and Cliff Prophet for the Monitor, FTI Consulting Canada Inc.

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

Kenneth Rosenberg, Kirk Baert, Max Starnino, and A. Dimitri Lascaris, for the Class Action Plaintiffs

Won J. Kim, James C. Orr, Michael C. Spencer, and Megan B. McPhee, for Invesco Canada Ltd., Northwest & Ethical Investments LP and Comité Syndicale Nationale de Retraite Bâtirente Inc.

Peter Griffin, Peter Osborne and Shara Roy, for Ernst & Young Inc.

Peter Greene and Ken Dekkar, for BDO Limited

Edward A. Sellers and Larry Lowenstein, for the Board of Directors of Sino-Forest Corporation

John Pirie and David Gadsden, for Poyry (Beijing)

James Doris, for the Plaintiff in the New York Class Action

David Bish, for the Underwriters

Simon Bieber and Erin Pleet, for David Horsley

James Grout, for the Ontario Securities Commission

Emily Cole and Joseph Marin, for Allen Chan

Susan E. Freedman and Brandon Barnes, for Kai Kit Poon

Paul Emerson, for ACE/Chubb

Sam Sasso, for Travelers

HEARD: DECEMBER 7, 2012

ENDORSEMENT

[1] The Applicant, Sino-Forest Corporation ("SFC"), seeks an order sanctioning the Plan of Compromise and Arrangement dated December 3, 2012, as modified, amended, varied or supplemented in accordance with its terms (the "Plan") pursuant to section 6 of the *Companies' Creditors Arrangement Act* ("CCAA"), and ancillary relief as set out in the proposed sanction order (the "Sanction Order").

[2] The Plan is supported by:

(a) the Monitor;

(b) SFC's largest creditors, the Ad Hoc Committee of Noteholders (the "Ad Hoc Committee");

(c) Ernst & Young LLP ("E&Y");

(d) BDO Limited ("BDO"); and

(e) the Underwriters.

The Ad Hoc Committee of Purchasers of the Applicant's Securities (the "Ad Hoc Securities Purchasers Committee" including the "Class Action Plaintiffs") has agreed not to oppose the Plan.

[3] The Plan was approved by an overwhelming majority of Affected Creditors voting on the Plan in person or by proxy. In total, 99% in number, and greater than 99% in value, of those Affected Creditors voting favoured the Plan.

[4] Invesco Canada Ltd. ("Invesco"), Northwest & Ethical Investments LP and Comité Syndicale Nationale de Retraite Bâtirente Inc. (collectively, the "Funds") object to the proposed Sanction Order. The Funds request an adjournment of the motion for a period of one month. Alternatively, the Funds request that the Plan be altered so as to remove Article 11 "Settlement of Claims Against Third Party Defendants".

[5] This endorsement fully addresses the adjournment request of the Funds. In this endorsement, defined terms have been taken from the motion record.

[6] The Funds are institutional, public and private equity funds that owned 3,085,786 common shares of SFC on June 2, 2011. The Funds alleged that they suffered substantial losses after the market in SFC shares collapsed following a public issuance of a report suggesting that fraud permeated SFC's assets and operations.

[7] Following the collapse of SFC's share price, class actions were commenced against SFC, certain of its directors and officers, the auditors, the Underwriters and other expert firms.

[8] On January 6, 2012, Perell J. granted carriage of the class action to Koskie Minsky LLP and Siskinds LLP ("Class Counsel"). The class has not been certified.

[9] Counsel to the Funds takes the position that Class Counsel does not represent the Funds.

[10] In his affidavit sworn December 6, 2012, Mr. Eric J. Adelson, Senior Vice President, Secretary and head of Legal of Invesco stated that on December 3, 2012, Class Counsel and E&Y announced that they had entered into a settlement by which E&Y would pay $117 million into a "Trust" formed as part of the CCAA proceedings, in return for releases of all claims that could be brought against E&Y by any person in connection with SFC.

[11] Mr. Adelson also states that on December 3, 2012, an Amended Plan was issued that, for the first time in the CCAA proceedings, contained provisions for settlement of claims against Third Party Defendants (Article 11), including specific provisions concerning the settlement by and releases for E&Y, and also allowing other Third Party Defendants to avail themselves of similar provisions for unspecified settlements and releases in the future.

[12] Mr. Adelson acknowledges that on December 5, 2012, counsel for E&Y advised Invesco's counsel that the parties had decided not to request court approval of the proposed E&Y Settlement at the motion scheduled for December 7, 2012. However, Mr. Adelson takes the position that provisions of the Plan, even apart from the E&Y Settlement, appear to affect the legal and practical ability of Invesco and other investors to seek adjudication of their claims against defendants in the SFC litigation on the merits, rendering it vital that sufficient time be provided to fully understand the present matters.

[13] Mr. Adelson also details "preliminary reasons for objecting to the Plan's release provisions":

> 15. If the effect of the Plan is to allow a Third Party Defendant (such as E&Y) to settle its liability to investors in connection with Sino-Forest through a settlement agreement with Class Counsel, and to bind the investors to that settlement without giving them the opportunity to opt out and pursue their claims on the merits outside the Class Action, then Invesco would strenuously object and oppose approval of such an arrangement.
>
> 16. The Class Action has not been certified, so Invesco does not view Class Counsel, with whom we have no other relationship, as authorized to represent its

interests in connection with Sino-Forest. Our views have not been heard and our interests have not been represented in connection with the Plan and the proposed settlement. It is my understanding that Invesco, as an investor with claims against Sino-Forest and the other defendants in the Class Action, is not a "creditor" with respect to the Plan. Invesco accordingly submits that it would be contrary to its rights to bind it to a release or a settlement involving Third Party Defendants unless Invesco directly participated in proceedings or unless in certified class proceedings it was given the opportunity to opt out. We do not understand the CCAA to authorize releases of third parties, that is, parties other than the Applicant and certain officers and directors under certain circumstances, as part of a Sanction Order. Invesco objects to any such provisions or results in this matter.

[14] Counsel to the Funds made specific reference to Article 11.2 of the Plan which, counsel submits, if approved, establishes an open-ended mechanism for eligible Third Party Defendants, defined to include the 11 Underwriters named as defendants in the class action, BDO and/or E&Y (if its proposed settlement is not already concluded), to enter into a "Named Third Party Defendant Settlement" with "one or more of (i) counsel to the plaintiffs in any of the class actions...".

[15] Counsel to the Funds further submits that under Articles 11.2 (b) and (c), once a settlement is concluded among the specified parties, the settling defendant will obtain releases and bar orders in the CCAA proceeding, preventing the continued litigation of any SFC-related claims against them. If a settlement is reached in the future, counsel submits that the CCAA release and bar orders will remain available notwithstanding that the CCAA process may have concluded. Accordingly, counsel submits that it appears that these provisions purport to vest authority in the parties as described to enter into settlements that may have the effect of barring any claimants (such as the Funds) from prosecuting SFC-related claims against the Underwriters, BDO and/or E&Y, subject to the approval of this court. This bar, counsel submits, would be imposed without compliance with establishes prerequisites of the *Class Proceedings Act* ("CPA") – including class certification, a fairness hearing, approval by the court supervising the class action, and provision of opt-out rights – necessary to impose releases or other restrictions on class members who are not named parties before that court.

[16] Stated more succinctly, counsel submits that the Plan appears designed to unnecessarily fetter the powers of a future court, namely, the class action case management court, by assigning to the CCAA court the power to approve and effectuate class-wide settlements without regard to established statutory and rule-based procedural safeguards found in the CPA.

[17] The adjournment request was opposed, primarily on the basis that the Funds had misunderstood the terms of the Plan. Oral submissions were made by counsel on behalf of the Monitor, SFC, Ad Hoc Noteholders, SFC Board, Ontario Securities Commission, E&Y and the Class Action Plaintiffs. Specifically, these parties submit there was a misunderstanding on the part of the Funds as to what was before the court for approval and, perhaps more importantly, what was not before the court for approval.

[18] Counsel to the Monitor also submits that SFC has limited funds and time is critical.

[19] The thrust of the arguments of the combined forces opposing the adjournment request is that the court is not being asked, at this time, to approve the settlement. Rather, what is before the court is a motion to approve the Plan, which includes approval of a framework with respect to a proposed settlement of claims against Third Party Defendants.

[20] Essentially, if certain conditions are met and further court approvals and orders are obtained, it is conceivable that E&Y will get a release. However, such a release is not being requested at this time. Further, it is not a condition of Plan Implementation that the E&Y matter be settled.

[21] To support this position, counsel referenced a number of provisions in the Plan including:

1. The defined term "Settlement Trust Order", which means a court order that establishes the Settlement Trust (section 11.1 (a) of the Plan) and approves the E&Y Settlement and the E&Y Release…;

2. Section 8.2, which outlines the effect the Sanction Order and includes a reference in Section 8.2 (z) that the E&Y Release shall become effective on the E&Y Settlement Date in the manner set forth in section 11.1;

3. Section 11.1, which details settlement of claims against Third Party Defendants and specifically E&Y. This provision sets out a number of pre-conditions to the required payment to be made by E&Y as provided for in the E&Y Settlement. These pre-conditions are:

   (i) the granting of the Sanction Order;

   (ii) the issuance of the Settlement Trust Order;

   (iii) the granting of an order under Chapter 15 of the United States Bankruptcy Code recognizing and enforcing the Sanction Order and the Settlement Trust Order in the United States;

   (iv) any other order necessary to give effect to the E&Y Settlement;

   (v) the fulfillment of all conditions precedent in the E&Y Settlement and the fulfillment by the Ontario Class Action Plaintiffs of all of their obligations thereunder; and

   (vi) the Sanction Order, the Settlement Trust Order and all E&Y Orders being final orders and not subject to further appeal or challenge.

[22] Having reviewed these documents, it is apparent that approval of the E&Y Settlement is not before the court on this motion and no release is being provided to E&Y as a result of this motion. In the event all of the pre-conditions are satisfied and if all of the required court approvals and orders are issued, the position of the Funds could be affected. However, the Funds will have the opportunity to make argument on such hearings.

[23] I have also reviewed the form of Sanction Order being requested specifically paragraph 40. This provision provides that the E&Y Settlement and the release of the E&Y Claims pursuant to section 11.1 of the Plan shall become effective upon the satisfaction of certain conditions precedent, including court approval of the terms of the E&Y Settlement, the terms and scope of the E&Y Release and the Settlement Trust Order and the granting of the Settlement Trust Order.

[24] Paragraph 41 of the draft Sanction Order also provides that any Named Third Party Defendant Settlement, Named Third Party Defendant Settlement Order and Named Third Party Defendant Release, the terms and scope of which remain in each case subject to further court approval in accordance with the Plan, shall only become effective after the Plan Implementation Date and upon the satisfaction of the conditions precedent, set forth in section 11.2 of the Plan.

[25] The requested Sanction Order confirms my view that the arguments put forth by counsel on behalf of the Funds are premature and can be addressed on the return of the motion to approve the specific settlements and releases.

[26] In the result, I have not been persuaded that the adjournment is necessary. The motion for the adjournment is accordingly denied.

MORAWETZ J.

Date: December 10, 2012

TAB 4

Court File No CV-12-9667-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	FRIDAY, THE 30th
	)	
JUSTICE MORAWETZ	)	DAY OF MARCH, 2012

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

INITIAL ORDER

THIS APPLICATION, made by Sino-Forest Corporation (the "Applicant"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of W. Judson Martin sworn March 30, 2012 and the Exhibits thereto (the "Martin Affidavit") and the Pre-Filing Report of the Proposed Monitor, FTI Consulting Canada Inc. ("FTI") (the "Monitor's Pre-Filing Report"), and on being advised that there are no secured creditors who are likely to be affected by the charges created herein, and on hearing the submissions of counsel for the Applicant, the Applicant's directors, FTI, the *ad hoc* committee of holders of notes issued by the Applicant (the "Ad Hoc Noteholders"), and no one else appearing for any other party, and on reading the consent of FTI to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application, the Application Record and the Monitor's Pre-Filing Report is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

4. THIS COURT ORDERS that the Applicant shall be entitled to seek any ancillary or other relief from this Court in respect of any of its subsidiaries in connection with the Plan or otherwise in respect of these proceedings.

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses, whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;

(c) the fees and disbursements of the directors and counsel to the directors, at their standard rates and charges; and

(d) such other amounts as are set out in the March 29 Forecast (as defined in the Monitor's Pre-Filing Report and attached as Exhibit "DD" to the Martin Affidavit).

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order.

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Support Agreement (as defined below), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding US$500,000 in any one transaction or US$1,000,000 in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

(c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business.

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the

disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

RESTRUCTURING SUPPORT AGREEMENT

14. THIS COURT ORDERS that the Applicant and the Monitor are authorized and directed to engage in the following procedures to notify noteholders of the restructuring support agreement dated as of March 30, 2012 (the "Support Agreement") between, among others, the Applicant and certain noteholders (the "Initial Consenting Noteholders"), appended as Exhibit "B" to the Martin Affidavit, to enable any additional noteholders to execute a Joinder Agreement in the form attached as Schedule "C" to the Support Agreement and to become bound thereby as Consenting Noteholders (as defined in the Support Agreement):

(a) the Monitor shall without delay post a copy of the Support Agreement on its website at http://cfcanada.fticonsulting.com/sfc (the "Monitor's Website"); and

(b) the notice to be published by the Monitor pursuant to paragraph 51 of this Order shall include a statement in form and substance acceptable to the Applicant, the Monitor and counsel to the Ad Hoc Noteholders, each acting reasonably, notifying noteholders of the Support Agreement and of the deadline of 5:00 p.m. (Toronto time) on May 15, 2012 (the "Consent Date") by which any noteholder (other than an Initial Consenting Noteholder) who wishes to become entitled to the Early Consent Consideration pursuant to the Support Agreement (if such Early Consent Consideration becomes payable pursuant to the terms thereof) must execute and return the Joinder Agreement to the Applicant, and shall direct noteholders to the Monitor's Website where a copy of the Support Agreement (including the Joinder Agreement) can be obtained.

15. THIS COURT ORDERS that any noteholder (other than an Initial Consenting Noteholder) who wishes to become a Consenting Noteholder and become entitled to the Early Consent Consideration (if such Early Consent Consideration becomes payable pursuant to the terms thereof, and subject to such noteholder demonstrating its holdings to the Monitor in accordance with the Support Agreement) must execute a Joinder Agreement and return it to the Applicant and the Noteholder Advisors (as defined below) in accordance with the instructions set out in the Support Agreement such that it is received by the Applicant and the Noteholder Advisors prior to the Consent Deadline and, upon so doing, such noteholder shall become a Consenting Noteholder and shall be bound by the terms of the Support Agreement.

16. THIS COURT ORDERS that as soon as practicable after the Consent Deadline, the Applicant shall provide to the Monitor copies of all executed Joinder Agreements received from noteholders prior to the Consent Deadline.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

17. THIS COURT ORDERS that until and including April 29, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

18. THIS COURT ORDERS that until and including the Stay Period, no Proceeding shall be commenced or continued by any noteholder, indenture trustee or security trustee (each in respect of the notes issued by the Applicant, collectively, the "Noteholders") against or in respect of any of the Applicant's subsidiaries listed on Schedule "A" (each a "Subsidiary Guarantor", and collectively, the "Subsidiary Guarantors"), except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way by a Noteholder against or in respect of any Subsidiary Guarantors are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

19. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued, except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien, or (v) prevent the exercise of any termination rights of the Consenting Noteholders under the Support Agreement.

20. THIS COURT ORDERS that during the Stay Period, all rights and remedies of the Noteholders against or in respect of the Subsidiary Guarantors are hereby stayed and suspended and shall not be commenced, proceeded with or continued, except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower any Subsidiary Guarantor to carry on any business which such Subsidiary Guarantor is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

21. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

22. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant or exercising any other remedy provided under such agreement or arrangements, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

23. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

24. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such

obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the affected creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

25. THIS COURT ORDERS that the Applicant shall (i) indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, and (ii) make payments of amounts for which its directors and officers may be liable as obligations they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

26. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property (other than the Applicant's assets which are subject to the Personal Property Security Act registrations on Schedule "B" hereto (the "Excluded Property")), which charge shall not exceed an aggregate amount of $3,200,000, as security for the indemnity provided in paragraph 25 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

27. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 25 of this Order.

APPOINTMENT OF MONITOR

28. THIS COURT ORDERS that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor

in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

29. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicant in its preparation of the Applicant's cash flow statements, as required from time to time;

(d) advise the Applicant in its development of the Plan and any amendments to the Plan;

(e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan, as applicable;

(f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(h) carry out and fulfill its obligations under the Support Agreement in accordance with its terms; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

30. THIS COURT ORDERS that without limiting paragraph 29 above, in carrying out its rights and obligations in connection with this Order, the Monitor shall be entitled to take such reasonable steps and use such services as it deems necessary in discharging its powers and obligations, including, without limitation, utilizing the services of FTI Consulting (Hong Kong) Limited ("FTI HK").

31. THIS COURT ORDERS that the Monitor shall not take possession of the Property (or any property or assets of the Applicant's subsidiaries) and shall take no part whatsoever in the management or supervision of the management of the Business (or any business of the Applicant's subsidiaries) and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof (or of any business, property or assets, or any part thereof, of any subsidiary of the Applicant).

32. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property (or any property of any subsidiary of the Applicant) that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property (or of any property of any subsidiary of the Applicant) within the meaning of any Environmental Legislation, unless it is actually in possession.

33. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any

responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

34. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicant, counsel to the directors, Houlihan Lokey Capital Inc. (the "Financial Advisor"), FTI HK, counsel to the Ad Hoc Noteholders and the financial advisor to the Ad Hoc Noteholders (together with counsel to the Ad Hoc Noteholders, the "Noteholder Advisors") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant, whether incurred prior to or subsequent to the date of this Order, as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicant, counsel to the directors, the Financial Advisor, FTI HK, and the Noteholder Advisors on a weekly basis or otherwise in accordance with the terms of their engagement letters.

36. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicant's counsel, counsel to the directors, the Financial Advisor, FTI HK, and the Noteholder Advisors shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property (other than the Excluded Property), which charge shall not exceed an aggregate amount of $15,000,000 as security for their professional fees and disbursements incurred at their respective standard rates and charges in respect of such services, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as between them, shall be as follows:

First – Administration Charge (to the maximum amount of $15,000,000); and

Second – Directors' Charge (to the maximum amount of $3,200,000).

39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property (other than the Excluded Property) and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the beneficiaries of the Directors' Charge and the beneficiaries of the Administration Charge, or further Order of this Court.

42. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees"), shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or

other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

APPROVAL OF FINANCIAL ADVISOR AGREEMENT

44. THIS COURT ORDERS that the letter agreement dated as of December 22, 2012 with respect to the Financial Advisor in the form attached as Exhibit "CC" to the Martin Affidavit (the "Financial Advisor Agreement") and the retention of the Financial Advisor under the terms thereof, including the payments to be made to the Financial Advisor thereunder, are hereby approved.

45. THIS COURT ORDERS that the Applicant is authorized and directed to make the payments contemplated in the Financial Advisor Agreement in accordance with the terms and conditions thereof.

POSTPONEMENT OF ANNUAL GENERAL MEETING

46. THIS COURT ORDERS that the Applicant be and is hereby relieved of any obligation to call and hold an annual meeting of its shareholders until further Order of this Court.

FOREIGN PROCEEDINGS

47. THIS COURT ORDERS that the Monitor is hereby authorized and empowered to act as the foreign representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside of Canada.

48. THIS COURT ORDERS that the Monitor is hereby authorized, as the foreign representative of the Applicant and of the within proceedings, to apply for foreign recognition of these proceedings, as necessary, in any jurisdiction outside of Canada, including as "Foreign Main Proceedings" in the United States pursuant to Chapter 15 of the *U.S. Bankruptcy Code*.

49. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Barbados, the British Virgin Islands, Cayman Islands, Hong Kong, the People's Republic of China or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

50. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and any other Order issued in these proceedings.

SERVICE AND NOTICE

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail and the Wall Street Journal a notice containing the information prescribed under the CCAA, (ii) within seven days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

52. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

53. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on the Monitor's Website.

GENERAL

54. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

55. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

56. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

57. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 2 - 2012

Schedule "A"

1. Sino-Panel Holdings Limited (BVI)
2. Sino-Global Holdings Inc. (BVI)
3. Sino-Wood Partners, Limited (HK)
4. Grandeur Winway Limited (BVI)
5. Sinowin Investments Limited (BVI)
6. Sinowood Limited (Cayman Islands)
7. Sino-Forest Bio-Science Limited (BVI)
8. Sino-Forest Resources Inc. (BVI)
9. Sino-Plantation Limited (HK)
10. Suri-Wood Inc. (BVI)
11. Sino-Forest Investments Limited (BVI)
12. Sino-Wood (Guangxi) Limited (HK)
13. Sino-Wood (Jiangxi) Limited (HK)
14. Sino-Wood (Guangdong) Limited (HK)
15. Sino-Wood (Fujian) Limited (HK)
16. Sino-Panel (Asia) Inc. (BVI)
17. Sino-Panel (Guangxi) Limited (BVI)
18. Sino-Panel (Yunnan) Limited (BVI)
19. Sino-Panel (North East China) Limited (BVI)
20. Sino-Panel [Xiangxi] Limited (BVI)
21. Sino-Panel [Hunan] Limited (BVI)
22. SFR (China) Inc. (BVI)
23. Sino-Panel [Suzhou] Limited (BVI)
24. Sino-Panel (Gaoyao) Ltd. (BVI)
25. Sino-Panel (Guangzhou) Limited (BVI)
26. Sino-Panel (North Sea) Limited (BVI)
27. Sino-Panel (Guizhou) Limited (BVI)
28. Sino-Panel (Huaihua) Limited (BVI)
29. Sino-Panel (Qinzhou) Limited (BVI)
30. Sino-Panel (Yongzhou) Limited (BVI)
31. Sino-Panel (Fujian) Limited (BVI)
32. Sino-Panel (Shaoyang) Limited (BVI)
33. Amplemax Worldwide Limited (BVI)
34. Ace Supreme International Limited (BVI)
35. Express Point Holdings Limited (BVI)
36. Glory Billion International Limited (BVI)
37. Smart Sure Enterprises Limited (BVI)
38. Expert Bonus Investment Limited (BVI)
39. Dynamic Profit Holdings Limited (BVI)
40. Alliance Max Limited (BVI)
41. Brain Force Limited (BVI)
42. General Excel Limited (BVI)
43. Poly Market Limited (BVI)
44. Prime Kinetic Limited (BVI)
45. Trillion Edge Limited (BVI)
46. Sino-Panel (China) Nursery Limited (BVI)

47. Sino-Wood Trading Limited (BVI)
48. Homix Limited (BVI)
49. Sino-Panel Trading Limited (BVI)
50. Sino-Panel (Russia) Limited (BVI)
51. Sino-Global Management Consulting Inc. (BVI)
52. Value quest International Limited (BVI)
53. Well Keen Worldwide Limited (BVI)
54. Harvest Wonder Worldwide Limited (BVI)
55. Cheer Gold Worldwide Limited (BVI)
56. Regal Win Capital Limited (BVI)
57. Rich Choice Worldwide Limited (BVI)
58. Sino-Forest International (Barbados) Corporation
59. Mandra Forestry Holdings Limited (BVI)
60. Mandra Forestry Finance Limited (BVI)
61. Mandra Forestry Anhui Limited (BVI)
62. Mandra Forestry Hubei Limited (BVI)
63. Sino-Capital Global Inc. (BVI)
64. Elite Legacy Limited (BVI)

Schedule "B"

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
SEARCH RESULTS

Date Search Conducted: 3/29/2012
File Currency Date: 03/28/2012
Family(ies): 6
Page(s): 8

SEARCH : Business Debtor : SINO-FOREST CORPORATION

The attached report has been created based on the data received by Cyberbahn, a Thomson Reuters business from the Province of Ontario, Ministry of Government Services. No liability is assumed by Cyberbahn regarding its correctness, timeliness, completeness or the interpretation and use of the report. Use of the Cyberbahn service, including this report is subject to the terms and conditions of Cyberbahn's subscription agreement.

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
SEARCH RESULTS

Date Search Conducted: 3/29/2012
File Currency Date: 03/28/2012
Family(ies): 6
Page(s): 8

SEARCH : Business Debtor : SINO-FOREST CORPORATION

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FAMILY :   1 OF   6                              ENQUIRY PAGE :   1 OF   8
SEARCH  : BD  : SINO-FOREST CORPORATION

00 FILE NUMBER : 609324408   EXPIRY DATE : 27SEP 2015 STATUS :
01 CAUTION FILING :          PAGE : 001 OF 1        MV SCHEDULE ATTACHED :
   REG NUM : 20040927 1631 1793 0430 REG TYP: P  PPSA    REG PERIOD: 10
02 IND DOB :             IND NAME:
03 BUS NAME: SINO-FOREST CORPORATION
                                                              OCN :
04 ADDRESS : 90 BURNHAMTHORPE ROAD WEST, SUITE 1208
   CITY    : MISSISSAUGA              PROV: ON    POSTAL CODE: L5B3C3
05 IND DOB :             IND NAME:
06 BUS NAME:
                                                              OCN :
07 ADDRESS :
   CITY    :                          PROV:       POSTAL CODE:


08 SECURED PARTY/LIEN CLAIMANT :
        LAW DEBENTURE TRUST COMPANY OF NEW YORK
09 ADDRESS : 767 THIRD AVENUE, 31ST FLOOR
   CITY    : NEW YORK                 PROV: NY    POSTAL CODE: 10017
  CONS.                                MV                    DATE OF  OR NO FIXED
  GOODS INVTRY. EQUIP  ACCTS  OTHER  INCL     AMOUNT       MATURITY    MAT DATE
10                      X      X
   YEAR MAKE                        MODEL                V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR PURSUANT TO
14 A PLEDGE AGREEMENT AND SHARE CHARGE.
15
16 AGENT: AIRD & BERLIS LLP #2
17 ADDRESS : 181 BAY STREET, SUITE 1800
   CITY    : TORONTO                  PROV: ON    POSTAL CODE: M5J2T9
```

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FAMILY :   1 OF   6                                    ENQUIRY PAGE :   2 OF   8
SEARCH  : BD  : SINO-FOREST CORPORATION
                                                            FILE NUMBER 609324408
                PAGE   TOT                     REGISTRATION NUM      REG TYPE
01 CAUTION  :     001 OF 1   MV SCHED:    20090720 1614 1793 6085
21 REFERENCE FILE NUMBER : 609324408
22 AMEND PAGE:     NO PAGE:    CHANGE: A  AMNDMNT REN YEARS:      CORR PER:
23 REFERENCE DEBTOR/    IND NAME:
24       TRANSFEROR:    BUS NAME: SINO-FOREST CORPORATION

25 OTHER CHANGE:
26 REASON: TO AMEND SECURED PARTY ADDRESS AND TO AMEND GENERAL COLLATERAL
27 /DESCR: DESCRIPTION TO DELETE THE WORDS "PURSUANT TO A PLEDGE AGREEMENT AND
28       : SHARE CHARGE"
02/05 IND/TRANSFEREE:
03/06 BUS NAME/TRFEE:
                                                                 OCN:
04/07 ADDRESS:
       CITY:                         PROV:       POSTAL CODE:
29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :
      LAW DEBENTURE TRUST COMPANY OF NEW YORK
09 ADDRESS : 400 MADISON AVENUE, 4TH FLOOR
  CITY    : NEW YORK                PROV : NY    POSTAL CODE : 10017
 CONS.                             MV                         DATE OF      NO FIXED
 GOODS INVTRY EQUIP ACCTS OTHER   INCL      AMOUNT         MATURITY OR  MAT DATE
10
11
12
13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR
14
15
16 NAME : AIRD & BERLIS LLP
17 ADDRESS : 181 BAY STREET, SUITE 1800, BOX# 754
  CITY    : TORONTO                PROV : ON    POSTAL CODE : M5J2T9
```

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FAMILY :   1 OF   6                                    ENQUIRY PAGE :   3 OF   8
SEARCH   : BD   : SINO-FOREST CORPORATION
                                                            FILE NUMBER 609324408
                   PAGE   TOT                       REGISTRATION NUM       REG TYPE
01 CAUTION   :     001 OF 1    MV SCHED:      20090720 1616 1793 6087
21 REFERENCE FILE NUMBER : 609324408
22 AMEND PAGE:      NO PAGE:    CHANGE: B  RENEWAL REN YEARS: 1     CORR PER:
23 REFERENCE DEBTOR/     IND NAME:
24        TRANSFEROR:     BUS NAME: SINO-FOREST CORPORATION

25 OTHER CHANGE:
26 REASON:
27 /DESCR:
28        :
02/05 IND/TRANSFEREE:
03/06 BUS NAME/TRFEE:
                                                                     OCN:
04/07 ADDRESS:
       CITY:                          PROV:        POSTAL CODE:
29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :
   CITY     :                        PROV :        POSTAL CODE :
  CONS.                             MV                         DATE OF      NO FIXED
  GOODS INVTRY EQUIP ACCTS OTHER   INCL       AMOUNT       MATURITY OR  MAT DATE
10
11
12
13
14
15
16 NAME : AIRD & BERLIS LLP
17 ADDRESS : 181 BAY STREET, SUITE 1800, BOX# 754
   CITY     : TORONTO                PROV : ON    POSTAL CODE : M5J2T9
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FAMILY :    2 OF    6                                    ENQUIRY PAGE :    4 OF    8
SEARCH  : BD  : SINO-FOREST CORPORATION

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03 BUS NAME: SINO-FOREST CORPORATION
                                                                OCN :
04 ADDRESS : 1208-90 BURNHAMTHORPE RD W
   CITY    : MISSISSAUGA            PROV: ON    POSTAL CODE: L5B3C3
05 IND DOB :              IND NAME:
06 BUS NAME:
                                                                OCN :
07 ADDRESS :
   CITY    :                        PROV:       POSTAL CODE:


08 SECURED PARTY/LIEN CLAIMANT :
        XEROX CANADA LTD
09 ADDRESS : 33 BLOOR ST. E. 3RD FLOOR
   CITY    : TORONTO                PROV: ON    POSTAL CODE: M4W3H1
  CONS.                                  MV                    DATE OF  OR NO FIXED
  GOODS INVTRY. EQUIP  ACCTS  OTHER  INCL     AMOUNT       MATURITY    MAT DATE
10             X            X                                             X
   YEAR MAKE                      MODEL               V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13
14
15
16 AGENT: XEROX CANADA LTD
17 ADDRESS : 33 BLOOR ST. E. 3RD FLOOR
   CITY    : TORONTO                PROV: ON     POSTAL CODE: M4W3H1
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SEARCH : BD : SINO-FOREST CORPORATION

00 FILE NUMBER : 655022304 EXPIRY DATE : 20JUL 2015 STATUS :
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03 BUS NAME: SINO-FOREST CORPORATION
OCN :
04 ADDRESS : 90 BURNHAMTHORPE ROAD WEST, SUITE 1208
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B3C3
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
LAW DEBENTURE TRUST COMPANY OF NEW YORK
09 ADDRESS : 400 MADISON AVENUE, 4TH FLOOR
CITY : NEW YORK PROV: NY POSTAL CODE: 10017

	CONS. GOODS	INVTRY.	EQUIP	ACCTS	OTHER	MV INCL	AMOUNT	DATE OF MATURITY	OR NO FIXED MAT DATE
10				X	X				

YEAR MAKE MODEL V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR
14
15
16 AGENT: AIRD & BERLIS LLP - SUSAN PAK
17 ADDRESS : 181 BAY STREET, SUITE 1800
CITY : TORONTO PROV: ON POSTAL CODE: M5J2T9

SEARCH : BD : SINO-FOREST CORPORATION

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03 BUS NAME: SINO-FOREST CORPORATION
                                                               OCN :
04 ADDRESS : 90 BURNHAMTHORPE ROAD WEST, SUITE 1208
   CITY    : MISSISSAUGA              PROV: ON    POSTAL CODE: L5B3C3
05 IND DOB :              IND NAME:
06 BUS NAME:
                                                               OCN :
07 ADDRESS :
   CITY    :                          PROV:       POSTAL CODE:


08 SECURED PARTY/LIEN CLAIMANT :
        LAW DEBENTURE TRUST COMPANY OF NEW YORK
09 ADDRESS : 400 MADISON AVENUE, 4TH FLOOR
   CITY    : NEW YORK                 PROV: NY    POSTAL CODE: 10017
  CONS.                               MV                      DATE OF  OR NO FIXED
  GOODS INVTRY. EQUIP  ACCTS  OTHER  INCL     AMOUNT         MATURITY    MAT DATE
10                      X      X
   YEAR MAKE                       MODEL               V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR
14
15
16 AGENT: AIRD & BERLIS LLP (SPAK - 102288)
17 ADDRESS : 181 BAY STREET, SUITE 1800
   CITY    : TORONTO                  PROV: ON     POSTAL CODE: M5J2T9
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FAMILY :   5 OF   6                                    ENQUIRY PAGE :   7 OF   8
SEARCH  : BD  : SINO-FOREST CORPORATION

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03 BUS NAME: SINO-FOREST CORPORATION
                                                                OCN :
04 ADDRESS : 90 BURNHAMTHORPE ROAD WEST, SUITE 1208
   CITY    : MISSISSAUGA              PROV: ON    POSTAL CODE: L5B3C3
05 IND DOB :              IND NAME:
06 BUS NAME:
                                                                OCN :
07 ADDRESS :
   CITY    :                          PROV:       POSTAL CODE:


08 SECURED PARTY/LIEN CLAIMANT :
       LAW DEBENTURE TRUST COMPANY OF NEW YORK
09 ADDRESS : 400 MADISON AVENUE, 4TH FLOOR
   CITY    : NEW YORK                 PROV: NY    POSTAL CODE: 10017
  CONS.                                MV                       DATE OF  OR NO FIXED
  GOODS INVTRY. EQUIP  ACCTS  OTHER  INCL     AMOUNT        MATURITY    MAT DATE
10                     X      X
   YEAR MAKE                        MODEL                V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR.
14
15
16 AGENT: AIRD & BERLIS LLP (RMK-106760)
17 ADDRESS : 181 BAY STREET, SUITE 1800
   CITY    : TORONTO                  PROV: ON     POSTAL CODE: M5J2T9
```

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FAMILY :   6 OF   6                                    ENQUIRY PAGE :   8 OF   8
SEARCH  : BD  : SINO-FOREST CORPORATION

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03 BUS NAME: SINO-FOREST CORPORATION
                                                             OCN :
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   CITY    : MISSISSAUGA              PROV: ON    POSTAL CODE: L5B3C3
05 IND DOB :                IND NAME:
06 BUS NAME:
                                                             OCN :
07 ADDRESS :
   CITY    :                          PROV:       POSTAL CODE:


08 SECURED PARTY/LIEN CLAIMANT :
        XEROX CANADA LTD
09 ADDRESS : 33 BLOOR ST. E. 3RD FLOOR
   CITY    : TORONTO                  PROV: ON    POSTAL CODE: M4W3H1
  CONS.                               MV                       DATE OF  OR NO FIXED
  GOODS INVTRY. EQUIP  ACCTS  OTHER  INCL     AMOUNT         MATURITY    MAT DATE
10              X              X                                            X
   YEAR MAKE                      MODEL                V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13
14
15
16 AGENT: PPSA CANADA INC. - (3992)
17 ADDRESS : 110 SHEPPARD AVE EAST, SUITE 303
   CITY    : TORONTO                  PROV: ON     POSTAL CODE: M2N6Y8
```

Schedule "A"

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

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

INITIAL ORDER

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Robert W. Staley (LSUC #27115J)
Kevin Zych (LSUC #33129T)
Derek J. Bell (LSUC #43420J)
Jonathan Bell (LSUC #55457P)
Tel: 416-863-1200
Fax: 416-863-1716

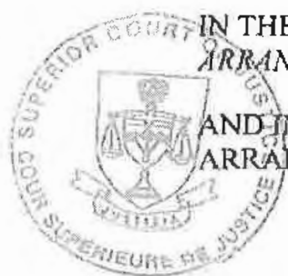
Lawyers for the Applicant

TAB 5

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	TUESDAY, THE 8th
	)	
JUSTICE MORAWETZ	)	DAY OF MAY, 2012



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

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

ORDER

(Third Party Stay)

THIS MOTION, made by Sino-Forest Corporation (the "Applicant") for an order addressing the scope of the stay of proceedings herein was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Applicant's Notice of Motion and the materials summarized in Schedule "A" to the factum dated May 7, 2012, filed on behalf of the Monitor, as amended, including the affidavit of W. Judson Martin sworn April 23, 2012 (the "**Judson Affidavit**"), and on hearing the submissions of counsel for FTI Consulting Canada Inc. in its capacity as monitor (the "**Monitor**"), in the presence of counsel for the Applicant, the Applicant's directors and officers named as defendants (the "**Directors**") in the Ontario Class Action (as defined in the Judson Affidavit), Ernst & Young LLP, the plaintiffs in the Ontario Class Action, the underwriters named as defendants in the Ontario Class Action (the "**Underwriters**") and BDO Limited and those other parties present, no one appearing for the other parties served with the Applicant's Motion Record, although duly served as appears from the affidavit of service, filed:

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

THIRD PARTY STAY AND TOLLING AGREEMENT

2. **THIS COURT ORDERS** that no Proceeding (as defined in the initial order granted by this Court on March 30, 2012 (as the same may be amended from time to time, the "**Initial Order**")) against or in respect of the Applicant, the Business or the Property (each as defined in the Initial Order), including without limitation the Ontario Class Action and any litigation in which the Applicant and the Directors, or any of them, are defendants, shall be commenced or continued as against any other party to such Proceeding or between or amongst such other parties (cross-claims and third party claims if any), until and including the expiration of the Stay Period (as defined in the Initial Order and as the same may be extended from time to time), provided that, notwithstanding the foregoing and anything to the contrary in the Initial Order, there shall be no stay of any Proceeding against Pöyry (Beijing) Consulting Co. Limited and/or any affiliate, any other Pöyry entity, representative or agent.

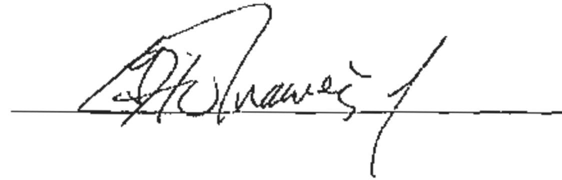
3. **THIS COURT ORDERS** that the Applicant is authorized to enter into agreements among the plaintiffs and defendants in the Ontario Class Action and in the action styled as Guining Liu v. Sino-Forest Corporation et al., bearing (Quebec) Court File No. 200-06-000132-111 (the "**Quebec Class Action**"), providing for, among other things, the tolling of certain limitation periods, as it sees fit, subject to the Monitor's approval.

MISCELLANEOUS

4. **THIS COURT ORDERS** that this order is subject to any further order of the court on a motion of any party, and is without prejudice to the right of the parties in the Ontario Class Action to move or vary this order on or after September 1, 2012.

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Barbados, the

British Virgin Islands, Cayman Islands, Hong Kong, the People's Republic of China or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAY 1 1 2012

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

(PROCEEDING COMMENCED AT TORONTO)

ORDER

BENNETT JONES LLP
Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 3400
Toronto ON M5X 1A4

Rob Stanley (LSUC # 27115J)
Kevin Zych (LSUC #33129T)
Derek Bell (LSUC #43420J)
Jonathan Bell (LSUC #55457P)

Lawyers for the Applicant

TAB 6

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	MONDAY, THE 14th
	)	
JUSTICE MORAWETZ	)	DAY OF MAY, 2012

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

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

CLAIMS PROCEDURE ORDER

THIS MOTION, made by Sino-Forest Corporation (the "Applicant") for an order establishing a claims procedure for the identification and determination of certain claims was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Applicant's Notice of Motion, the affidavit of W. Judson Martin sworn on May 2, 2012, the Second Report of FTI Consulting Canada Inc. (the "Monitor") dated April 30, 2012 (the "Monitor's Second Report") and the Supplemental Report to the Monitor's Second Report dated May 12, 2012 (the "Supplemental Report"), and on hearing the submissions of counsel for the Applicant, the Applicant's directors, the Monitor, the *ad hoc* committee of Noteholders (the "Ad Hoc Noteholders"), and those other parties present, no one appearing for the other parties served with the Applicant's Motion Record, although duly served as appears from the affidavit of service, filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Motion Record, the Monitor's Second Report and the Supplemental Report is hereby abridged and

validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS AND INTERPRETATION

2. The following terms shall have the following meanings ascribed thereto:

(a) "2013 and 2016 Trustee" means The Bank of New York Mellon, in its capacity as trustee for the 2013 Notes and the 2016 Notes;

(b) "2014 and 2017 Trustee" means Law Debenture Trust Company of New York, in its capacity as trustee for the 2014 Notes and the 2017 Notes;

(c) "2013 Note Indenture" means the indenture dated as of July 23, 2008, by and between the Applicant, the entities listed as subsidiary guarantors thereto, and The Bank of New York Mellon, as trustee, as amended, modified or supplemented;

(d) "2014 Note Indenture" means the indenture dated as of July 27, 2009 entered into by and between the Applicant, the entities listed as subsidiary guarantors thereto, and Law Debenture Trust Company of New York, as trustee, as amended, modified or supplemented;

(e) "2016 Note Indenture" means the indenture dated as of December 17, 2009, by and between the Applicant, the entities listed as subsidiary guarantors thereto, and The Bank of New York Mellon, as trustee, as amended, modified or supplemented;

(f) "2017 Note Indenture" means the indenture dated as of October 21, 2010, by and between the Applicant, the entities listed as subsidiary guarantors thereto, and Law Debenture Trust Company of New York, as trustee, as amended, modified or supplemented;

(g) "2013 Notes" means the US$345,000,000 of 5.00% Convertible Senior Notes Due 2013 issued pursuant to the 2013 Note Indenture;

(h) "2014 Notes" means the US$399,517,000 of 10.25% Guaranteed Senior Notes Due 2014 issued pursuant to the 2014 Note Indenture;

(i) "2016 Notes" means the US$460,000,000 of 4.25% Convertible Senior Notes Due 2016 issued pursuant to the 2016 Note Indenture;

(j) "2017 Notes" means the US$600,000,000 of 6.25% Guaranteed Senior Notes Due 2017 issued pursuant to the 2017 Note Indenture;

(k) "Administration Charge" has the meaning given to that term in paragraph 37 of the Initial Order;

(l) "BIA" means the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended;

(m) "Business Day" means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;

(n) "CCAA" means the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended;

(o) "CCAA Proceedings" means the proceedings commenced by the Applicant in the Court under Court File No. CV-12-9667-00CL;

(p) "CCAA Service List" means the service list in the CCAA Proceedings posted on the Monitor's Website, as amended from time to time;

(q) "Claim" means:

(i) any right or claim of any Person that may be asserted or made in whole or in part against the Applicant, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement

(oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person (including Directors and Officers) to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Filing Date, (B) relates to a time period prior to the Filing Date, or (C) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA had the Applicant become bankrupt on the Filing Date, or an Equity Claim (each a "Prefiling Claim", and collectively, the "Prefiling Claims");

(ii) a Restructuring Claim; and

(iii) a Secured Claim;

provided, however, that "Claim" shall not include an Excluded Claim, a D&O Claim or a D&O Indemnity Claim;

(r) "Claimant" means any Person having a Claim, a D&O Claim or a D&O Indemnity Claim and includes the transferee or assignee of a Claim, a D&O Claim or a D&O Indemnity Claim transferred and recognized as a Claimant in accordance with paragraphs 46 and 47 hereof or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person;

(s) "Claimants' Guide to Completing the D&O Proof of Claim" means the guide to completing the D&O Proof of Claim form, in substantially the form attached as Schedule "E-2" hereto;

(t) "Claimants' Guide to Completing the Proof of Claim" means the guide to completing the Proof of Claim form, in substantially the form attached as Schedule "E" hereto;

(u) "Claims Bar Date" means June 20, 2012;

(v) "Class" means the National Class and the Quebec Class;

(w) "Court" means the Ontario Superior Court of Justice (Commercial List);

(x) "Creditors' Meeting" means any meeting of creditors called for the purpose of considering and voting in respect of the Plan, if one is filed, to be scheduled pursuant to further order of the Court;

(y) "D&O Claim" means, other than an Excluded Claim, (i) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers that relates to a Claim for which such Directors or Officers are by law liable to pay in their capacity as Directors or Officers, or (ii) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers, in that capacity, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof, is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,

disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity from any such Directors or Officers or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Filing Date, or (B) relates to a time period prior to the Filing Date;

(z) "D&O Indemnity Claim" means any existing or future right of any Director or Officer against the Applicant which arose or arises as a result of any Person filing a D&O Proof of Claim in respect of such Director or Officer for which such Director or Officer is entitled to be indemnified by the Applicant;

(aa) "D&O Indemnity Claims Bar Date" has the meaning set forth in paragraph 19 of this Order;

(bb) "D&O Indemnity Proof of Claim" means the indemnity proof of claim in substantially the form attached as Schedule "F" hereto to be completed and filed by a Director or Officer setting forth its purported D&O Indemnity Claim;

(cc) "D&O Proof of Claim" means the proof of claim in substantially the form attached as Schedule "D-2" hereto to be completed and filed by a Person setting forth its purported D&O Claim and which shall include all supporting documentation in respect of such purported D&O Claim;

(dd) "Directors" means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of the Applicant;

(ee) "Directors' Charge" has the meaning given to that term in paragraph 26 of the Initial Order;

(ff) "Dispute Notice" means a written notice to the Monitor, in substantially the form attached as Schedule "B" hereto, delivered to the Monitor by a Person who has received a Notice of Revision or Disallowance, of its intention to dispute such Notice of Revision or Disallowance;

(gg) "Employee Amounts" means all outstanding wages, salaries and employee benefits (including, employee medical, dental, disability, life insurance and similar benefit plans or arrangements, incentive plans, share compensation plans and employee assistance programs and employee or employer contributions in respect of pension and other benefits), vacation pay, commissions, bonuses and other incentive payments, termination and severance payments, and employee expenses and reimbursements, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(hh) "Equity Claim" has the meaning set forth in Section 2(1) of the CCAA;

(ii) "Excluded Claim" means:

(i) any Claims entitled to the benefit of the Administration Charge or the Directors' Charge, or any further charge as may be ordered by the Court;

(ii) any Claims of the Subsidiaries against the Applicant;

(iii) any Claims of employees of the Applicant as at the Filing Date in respect of Employee Amounts;

(iv) any Post-Filing Claims;

(v) any Claims of the Ontario Securities Commission; and

(vi) any D&O Claims in respect of (i) though (v) above;

(jj) "Filing Date" means March 30, 2012;

(kk) "Government Authority" means a federal, provincial, territorial, municipal or other government or government department, agency or authority (including a court of law) having jurisdiction over the Applicant;

(ll) "Initial Order" means the Initial order of the Honourable Mr. Justice Morawetz made March 30, 2012 in the CCAA Proceedings, as amended, restated or varied from time to time;

(mm) "Known Claimants" means:

(i) any Persons which, based upon the books and records of the Applicant, was owed monies by the Applicant as of the Filing Date and which monies remain unpaid in whole or in part;

(ii) any Person who has commenced a legal proceeding in respect of a Claim or D&O Claim or given the Applicant written notice of an intention to commence a legal proceeding or a demand for payment in respect of a Claim or D&O Claim, provided that where a lawyer of record has been listed in connection with any such proceedings, the "Known Claimant" for the purposes of any notice required herein or to be given hereunder shall be, in addition to that Person, its lawyer of record; and

(iii) any Person who is a party to a lease, contract, or other agreement or obligation of the Applicant which was restructured, terminated, repudiated or disclaimed by the Applicant between the Filing Date and the date of this Order;

(nn) "Monitor's Website" has the meaning set forth in paragraph 12(a) of this Order;

(oo) "National Class" has the meaning given to it in the Fresh As Amended Statement of Claim in the Ontario Class Action;

(pp) "Note Indenture Trustees" means, collectively, the 2013 and 2016 Trustee and the 2014 and 2017 Trustee;

(qq) "Notes" means, collectively, the 2013 Notes, the 2014 Notes, the 2016 Notes, and the 2017 Notes;

(rr) "Noteholder" means a registered or beneficial holder on or after the Filing Date of a Note in that capacity, and, for greater certainty, does not include former registered or beneficial holders of Notes;

(ss) "Notice of Revision or Disallowance" means a notice, in substantially the form attached as Schedule "A" hereto, advising a Person that the Monitor has revised or disallowed all or part of such Person's purported Claim, D&O Claim or D&O Indemnity Claim set out in such Person's Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim;

(tt) "Notice to Claimants" means the notice to Claimants for publication in substantially the form attached as Schedule "C" hereto;

(uu) "Officers" means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of the Applicant;

(vv) "Ontario Class Action: means the action commenced against the Applicant and others in the Ontario Superior Court of Justice, bearing (Toronto) Court File No. CV-11-431153-00CP;

(ww) "Ontario Plaintiffs" means the Trustees of the Labourers' Pension Fund of Central and Eastern Canada and the other named Plaintiffs in the Ontario Class Action;

(xx) "Person" is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, Government Authority or any agency, regulatory body, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity;

(yy) "Plan" means any proposed plan of compromise or arrangement filed in respect of the Applicant pursuant to the CCAA as the same may be amended, supplemented or restated from time to time in accordance with its terms;

(zz) "Post-Filing Claims" means any claims against the Applicant that arose from the provision of authorized goods and services provided or otherwise incurred on or after the Filing Date in the ordinary course of business, but specifically excluding any Restructuring Claim;

(aaa) "Proof of Claim" means the proof of claim in substantially the form attached as Schedule "D" hereto to be completed and filed by a Person setting forth its purported Claim and which shall include all supporting documentation in respect of such purported Claim;

(bbb) "Proof of Claim Document Package" means a document package that includes a copy of the Notice to Claimants, the Proof of Claim form, the D&O Proof of Claim form, the Claimants' Guide to Completing the Proof of Claim form, the Claimants' Guide to Completing the D&O Proof of Claim form, and such other materials as the Monitor, in consultation with the Applicant, may consider appropriate or desirable;

(ccc) "Proven Claim" means the amount and Status of a Claim, D&O Claim or D&O Indemnity Claim of a Claimant as determined in accordance with this Order;

(ddd) "Quebec Class" has the meaning given to it in the statement of claim in the Quebec Class Action;

(eee) "Quebec Class Action" means the action commenced against the Applicant and others in the Quebec Superior Court, bearing Court File No. 200-06-000132-111 ;

(fff) "Quebec Plaintiffs" means Guining Liu and the other named plaintiffs in the Quebec Class Action;

(ggg) "Restructuring Claim" means any right or claim of any Person that may be asserted or made in whole or in part against the Applicant, whether or not asserted

or made, in connection with any indebtedness, liability or obligation of any kind arising out of the restructuring, termination, repudiation or disclaimer of any lease, contract, or other agreement or obligation on or after the Filing Date and whether such restructuring, termination, repudiation or disclaimer took place or takes place before or after the date of this Order;

(hhh) "Restructuring Claims Bar Date" means, in respect of a Restructuring Claim, the later of (i) the Claims Bar Date, and (ii) 30 days after a Person is deemed to receive a Proof of Claim Document Package pursuant to paragraph 12(e) hereof.

(iii) "Secured Claim" means that portion of a Claim that is (i) secured by security validly charging or encumbering property or assets of the Applicant (including statutory and possessor liens that create security interests) up to the value of such collateral, and (ii) duly and properly perfected in accordance with the relevant legislation in the appropriate jurisdiction as of the Filing Date;

(jjj) "Status" means, with respect to a Claim, D&O Claim or D&O Indemnity Claim, or a purported Claim, D&O Claim or D&O Indemnity Claim, whether such claim is secured or unsecured; and

(kkk) "Subsidiaries" means all direct and indirect subsidiaries of the Applicant other than Greenheart Group Limited (Bermuda) and its direct and indirect subsidiaries, and "Subsidiary" means any one of the Subsidiaries.

3. THIS COURT ORDERS that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein.

4. THIS COURT ORDERS that all references to the word "including" shall mean "including without limitation".

5. THIS COURT ORDERS that all references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.

GENERAL PROVISIONS

6. THIS COURT ORDERS that the Monitor, in consultation with the Applicant, is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may, where it is satisfied that a Claim, a D&O Claim or a D&O Indemnity Claim has been adequately proven, waive strict compliance with the requirements of this Order as to completion and execution of such forms and to request any further documentation from a Person that the Monitor, in consultation with the Applicant, may require in order to enable it to determine the validity of a Claim, a D&O Claim or a D&O Indemnity Claim.

7. THIS COURT ORDERS that if any purported Claim, D&O Claim or D&O Indemnity Claim arose in a currency other than Canadian dollars, then the Person making the purported Claim, D&O Claim or D&O Indemnity Claim shall complete its Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim, as applicable, indicating the amount of the purported Claim, D&O Claim or D&O Indemnity Claim in such currency, rather than in Canadian dollars or any other currency. The Monitor shall subsequently calculate the amount of such purported Claim, D&O Claim or D&O Indemnity Claim in Canadian Dollars, using the Reuters closing rate on the Filing Date (as found at http://www.reuters.com/finance/currencies), without prejudice to a different exchange rate being proposed in any Plan.

8. THIS COURT ORDERS that a Person making a purported Claim, D&O Claim or D&O Indemnity Claim shall complete its Proof of Claim, D&O Proof of Claim or Indemnity Proof of Claim, as applicable, indicating the amount of the purported Claim, D&O Claim or D&O Indemnity Claim without including any interest and penalties that would otherwise accrue after the Filing Date.

9. THIS COURT ORDERS that the form and substance of each of the Notice of Revision or Disallowance, Dispute Notice, Notice to Claimants, the Proof of Claim, the D&O Proof of Claim, the Claimants' Guide to Completing the Proof of Claim, the Claimants' Guide to Completing the D&O Proof of Claim, and D&O Indemnity Proof of Claim substantially in the forms attached as Schedules "A", "B", "C", "D", "D-2", "E", "E-2" and "F" respectively to this Order are hereby approved. Notwithstanding the foregoing, the Monitor, in consultation with the

Applicant, may from time to time make minor non-substantive changes to such forms as the Monitor, in consultation with the Applicant, considers necessary or advisable.

MONITOR'S ROLE

10. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

11. THIS COURT ORDERS that (i) in carrying out the terms of this Order, the Monitor shall have all of the protections given to it by the CCAA, the Initial Order, and this Order, or as an officer of the Court, including the stay of proceedings in its favour, (ii) the Monitor shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, (iii) the Monitor shall be entitled to rely on the books and records of the Applicant and any information provided by the Applicant, all without independent investigation, and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

NOTICE TO CLAIMANTS, DIRECTORS AND OFFICERS

12. THIS COURT ORDERS that:

(a) the Monitor shall no later than five (5) Business Days following the making of this Order, post a copy of the Proof of Claim Document Package on its website at http://cfcanada.fticonsulting.com/sfc ("Monitor's Website");

(b) the Monitor shall no later than five (5) Business Days following the making of this Order, send on behalf of the Applicant to the Note Indenture Trustees (or to counsel for the Note Indenture Trustees as appears on the CCAA Service List if applicable) a copy of the Proof of Claim Document Package;

(c) the Monitor shall no later than five (5) Business Days following the making of this Order, send on behalf of the Applicant to each of the Known Claimants a copy of the Proof of Claim Document Package, provided however that the

Monitor is not required to send Proof of Claim Document Packages to Noteholders;

(d) the Monitor shall no later than five (5) Business Days following the making of this Order, cause the Notice to Claimants to be published in (i) The Globe and Mail newspaper (National Edition) on one such day, and (ii) the Wall Street Journal (Global Edition) on one such day;

(e) with respect to Restructuring Claims arising from the restructuring, termination, repudiation or disclaimer of any lease, contract, or other agreement or obligation, the Monitor shall send to the counterparty(ies) to such lease, contract, or other agreement or obligation a Proof of Claim Document Package no later than five (5) Business Days following the time the Monitor becomes aware of the restructuring, termination, repudiation or disclaimer of any such lease, contract, or other agreement or obligation;

(f) the Monitor shall, provided such request is received by the Monitor prior to the Claims Bar Date, deliver as soon as reasonably possible following receipt of a request therefor a copy of the Proof of Claim Document Package to any Person requesting such material; and

(g) the Monitor shall send to any Director of Officer named in a D&O Proof of Claim received by the Claims Bar Date a copy of such D&O Proof of Claim as soon as practicable along with an D&O Indemnity Proof of Claim form, with a copy to counsel for such Directors or Officers.

13. THIS COURT ORDERS that the Applicant shall (i) inform the Monitor of all Known Claimants by providing the Monitor with a list of all Known Claimants and their last known addresses according to the books and records of the Applicant and (ii) provide the Monitor with a list of all Directors and Officers and their last known addresses according to the books and records of the Applicant.

14. THIS COURT ORDERS that, except as otherwise set out in this Order or other orders of the Court, neither the Monitor nor the Applicant is under any obligation to send notice to any

Person holding a Claim, a D&O Claim or a D&O Indemnity Claim, and without limitation, neither the Monitor nor the Applicant shall have any obligation to send notice to any Person having a security interest in a Claim, D&O Claim or D&O Indemnity Claim (including the holder of a security interest created by way of a pledge or a security interest created by way of an assignment of a Claim, D&O Claim or D&O Indemnity Claim), and all Persons (including Known Claimants) shall be bound by any notices published pursuant to paragraphs 12(a) and 12(d) of this Order regardless of whether or not they received actual notice, and any steps taken in respect of any Claim, D&O Claim or D&O Indemnity Claim in accordance with this Order.

15. THIS COURT ORDERS that the delivery of a Proof of Claim, D&O Proof of Claim, or D&O Indemnity Proof of Claim by the Monitor to a Person shall not constitute an admission by the Applicant or the Monitor of any liability of the Applicant or any Director of Officer to any Person.

CLAIMS BAR DATES

Claims and D&O Claims

16. THIS COURT ORDERS that (i) Proofs of Claim (but not in respect of any Restructuring Claims) and D&O Proofs of Claim shall be filed with the Monitor on or before the Claims Bar Date, and (ii) Proofs of Claim in respect of Restructuring Claims shall be filed with the Monitor on or before the Restructuring Claims Bar Date. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed in respect of every Claim or D&O Claim, regardless of whether or not a legal proceeding in respect of a Claim or D&O Claim was commenced prior to the Filing Date.

17. THIS COURT ORDERS that any Person that does not file a Proof of Claim as provided for herein such that the Proof of Claim is received by the Monitor on or before the Claims Bar Date or the Restructuring Claims Bar Date, as applicable, (a) shall be and is hereby forever barred from making or enforcing such Claim against the Applicant and all such Claims shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such Claim as against any other Person who could claim contribution or indemnity from the Applicant; (c) shall not be entitled to vote such Claim at the Creditors' Meeting in respect of the

Plan or to receive any distribution thereunder in respect of such Claim; and (d) shall not be entitled to any further notice in, and shall not be entitled to participate as a Claimant or creditor in, the CCAA Proceedings in respect of such Claim.

18. THIS COURT ORDERS that any Person that does not file a D&O Proof of Claim as provided for herein such that the D&O Proof of Claim is received by the Monitor on or before the Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such D&O Claim against any Directors or Officers, and all such D&O Claims shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such D&O Claim as against any other Person who could claim contribution or indemnity from any Directors or Officers; (c) shall not be entitled to vote such D&O Claim at the Creditors' Meeting or to receive any distribution in respect of such D&O Claim; and (d) shall not be entitled to any further notice in, and shall not be entitled to participate as a Claimant or creditor in, the CCAA Proceedings in respect of such D&O Claim.

D&O Indemnity Claims

19. THIS COURT ORDERS that any Director of Officer wishing to assert a D&O Indemnity Claim shall deliver a D&O Indemnity Proof of Claim to the Monitor so that it is received by no later than fifteen (15) Business Days after the date of receipt of the D&O Proof of Claim by such Director or Officer pursuant to paragraph 12(g) hereof (with respect to each D&O Indemnity Claim, the "D&O Indemnity Claims Bar Date").

20. THIS COURT ORDERS that any Director of Officer that does not file a D&O Indemnity Proof of Claim as provided for herein such that the D&O Indemnity Proof of Claim is received by the Monitor on or before the D&O Indemnity Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such D&O Indemnity Claim against the Applicant, and such D&O Indemnity Claim shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such D&O Indemnity Claim as against any other Person who could claim contribution or indemnity from the Applicant; and (c) shall not be entitled to vote such D&O Indemnity Claim at the Creditors' Meeting or to receive any distribution in respect of such D&O Indemnity Claim.

Excluded Claims

21. THIS COURT ORDERS that Persons with Excluded Claims shall not be required to file a Proof of Claim in this process in respect of such Excluded Claims, unless required to do so by further order of the Court.

PROOFS OF CLAIM

22. THIS COURT ORDERS that (i) each Person shall include any and all Claims it asserts against the Applicant in a single Proof of Claim, provided however that where a Person has taken assignment or transfer of a purported Claim after the Filing Date, that Person shall file a separate Proof of Claim for each such assigned or transferred purported Claim, and (ii) each Person that has or intends to assert a right or 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 purported Claim made against the Applicant shall so indicate on such Claimant's Proof of Claim.

23. THIS COURT ORDERS that each Person shall include any and all D&O Claims it asserts against one or more Directors or Officers in a single D&O Proof of Claim, provided however that where a Person has taken assignment or transfer of a purported D&O Claim after the Filing Date, that Person shall file a separate D&O Proof of Claim for each such assigned or transferred purported D&O Claim.

24. THIS COURT ORDERS that the 2013 and 2016 Trustee is authorized and directed to file one Proof of Claim on or before the Claims Bar Date in respect of each of the 2013 Notes and the 2016 Notes, indicating the amount owing on an aggregate basis as at the Filing Date under each of the 2013 Note Indenture and the 2016 Note Indenture.

25. THIS COURT ORDERS that the 2014 and 2017 Trustee is authorized and directed to file one Proof of Claim on or before the Claims Bar Date in respect of each of the 2014 Notes and the 2017 Notes, indicating the amount owing on an aggregate basis as at the Filing Date under each of the 2014 Note Indenture and the 2017 Note Indenture.

26. Notwithstanding any other provisions of this Order, Noteholders are not required to file individual Proofs of Claim in respect of Claims relating solely to the debt evidenced by their

Notes. The Monitor may disregard any Proofs of Claim filed by any individual Noteholder claiming the debt evidenced by the Notes, and such Proofs of Claim shall be ineffective for all purposes. The process for determining each individual Noteholder's Claim for voting and distribution purposes with respect to the Plan and the process for voting on the Plan by Noteholders will be established by further order of the Court.

27. THIS COURT ORDERS that the Ontario Plaintiffs are, collectively, authorized to file, on or before the Claims Bar Date, one Proof of Claim and, if applicable, one D&O Proof of Claim, in respect of the substance of the matters set out in the Ontario Class Action, notwithstanding that leave to make a secondary market liability claim has not be granted and that the National Class has not yet been certified, and that members of the National Class may rely on the one Proof of Claim and/or one D&O Proof of Claim filed by the counsel for the Ontario Plaintiffs and are not required to file individual Proofs of Claim or D&O Proofs of Claim in respect of the Claims forming the subject matter of the Ontario Class Action.

28. THIS COURT ORDERS that the Quebec Plaintiffs are, collectively, authorized to file, on or before the Claims Bar Date, one Proof of Claim and, if applicable, one D&O Proof of Claim, in respect of the substance of the matters set out in the Quebec Class Action, notwithstanding that leave to make a secondary market liability claim has not be granted and that the Quebec Class has not yet been certified, and that members of the Quebec Class may rely on the one Proof of Claim and/or one D&O Proof of Claim filed by the counsel for the Quebec Plaintiffs and are not required to file individual Proofs of Claim or D&O Proofs of Claim in respect of the Claims forming the subject matter of the Quebec Class Action.

REVIEW OF PROOFS OF CLAIM

29. THIS COURT ORDERS that any Claimant filing a Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim shall clearly mark as "Confidential" any documents or portions thereof that that Person believes should be treated as confidential.

30. THIS COURT ORDERS that with respect to documents or portions thereof that are marked "Confidential", the following shall apply:

(a) any information that is otherwise publicly available shall not be treated as "Confidential" regardless of whether it is marked as such;

(b) subject to the following, such information will be accessible to and may be reviewed only by the Monitor, the Applicant, any Director or Officer named in the applicable D&O Proof of Claim or D&O Indemnity Proof of Claim and each of their respective counsel, or as otherwise ordered by the Court ("**Designated Persons**") or consented to by the Claimant, acting reasonably; and

(c) any Designated Person may provide Confidential Information to other interested stakeholders (who shall have provided non-disclosure undertakings or agreements) on not less than 3 Business Days' notice to the Claimant. If such Claimant objects to such disclosure, the Claimant and the relevant Designated Person shall attempt to settle any objection, failing which, either party may seek direction from the Court.

31. THIS COURT ORDERS that the Monitor (in consultation with the Applicant and the Directors and Officers named in the D&O Proof of Claim, as applicable), subject to the terms of this Order, shall review all Proofs of Claim and D&O Proofs of Claim filed, and at any time:

(a) may request additional information from a purported Claimant;

(b) may request that a purported Claimant file a revised Proof of Claim or D&O Proof of Claim, as applicable;

(c) may, with the consent of the Applicant and any Person whose liability may be affected or further order of the Court, attempt to resolve and settle any issue arising in a Proof of Claim or D&O Proof of Claim or in respect of a purported Claim or D&O Claim, provided that if a Director or Officer disputes all or any portion of a purported D&O Claim, then the disputed portion of such purported D&O Claim may not be resolved or settled without such Director or Officer's consent or further order of the Court;

(d) may, with the consent of the Applicant and any Person whose liability may be affected or further order of the Court, accept (in whole or in part) the amount and/or Status of any Claim or D&O Claim, provided that if a Director or Officer disputes all or any portion of a purported D&O Claim against such Director or Officer, then the disputed portion of such purported D&O Claim may not be accepted without such Director or Officer's consent or further order of the Court; and

(e) may by notice in writing revise or disallow (in whole or in part) the amount and/or Status of any purported Claim or D&O Claim.

32. THIS COURT ORDERS that where a Claim or D&O Claim has been accepted by the Monitor in accordance with this Order, such Claim or D&O Claim shall constitute such Claimant's Proven Claim. The acceptance of any Claim or D&O Claim or other determination of same in accordance with this Order, in full or in part, shall not constitute an admission of any fact, thing, liability, or quantum or status of any claim by any Person, save and except in the context of the CCAA Proceedings, and, for greater certainty, shall not constitute an admission of any fact, thing, liability, or quantum or status of any claim by any Person as against any Subsidiary.

33. THIS COURT ORDERS that where a purported Claim or D&O Claim is revised or disallowed (in whole or in part, and whether as to amount and/or Status), the Monitor shall deliver to the purported Claimant a Notice of Revision or Disallowance, attaching the form of Dispute Notice.

34. THIS COURT ORDERS that where a purported Claim or D&O Claim has been revised or disallowed (in whole or in part, and whether as to amount and/or as to Status), the revised or disallowed purported Claim or D&O Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the procedures set out in paragraphs 42 to 45 hereof or as otherwise ordered by the Court.

REVIEW OF D&O INDEMNITY PROOFS OF CLAIM

35. THIS COURT ORDERS that the Monitor, subject to the terms of this Order, shall review all D&O Indemnity Proofs of Claim filed, and at any time:

(a) may request additional information from a Director of Officer;

(b) may request that a Director or Officer file a revised D&O Indemnity Proof of Claim;

(c) may attempt to resolve and settle any issue arising in a D&O Indemnity Proof of Claim or in respect of a purported D&O Indemnity Claim;

(d) may accept (in whole or in part) the amount and/or Status of any D&O Indemnity Claim; and

(e) may by notice in writing revise or disallow (in whole or in part) the amount and/or Status of any purported D&O Indemnity Claim.

36. THIS COURT ORDERS that where a D&O Indemnity Claim has been accepted by the Monitor in accordance with this Order, such D&O Indemnity Claim shall constitute such Director or Officer's Proven Claim. The acceptance of any D&O Indemnity Claim or other determination of same in accordance with this Order, in full or in part, shall not constitute an admission of any fact, thing, liability, or quantum or Status of any claim by any Person, save and except in the context of the CCAA Proceedings, and, for greater certainty, shall not constitute an admission of any fact, thing, liability, or quantum or Status of any claim by any Person as against any Subsidiary.

37. THIS COURT ORDERS that where a purported D&O Indemnity Claim is revised or disallowed (in whole or in part, and whether as to amount and/or Status), the Monitor shall deliver to the Director or Officer a Notice of Revision or Disallowance, attaching the form of Dispute Notice.

38. THIS COURT ORDERS that where a purported D&O Indemnity Claim has been revised or disallowed (in whole or in part, and whether as to amount and/or as to Status), the revised or

disallowed purported D&O Indemnity Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the procedures set out in paragraphs 42 to 45 hereof or as otherwise ordered by the Court.

39. THIS COURT ORDERS that, notwithstanding anything to the contrary in this Order, in respect of any Claim, D&O Claim or D&O Indemnity Claim that exceeds $1 million, the Monitor and the Applicant shall not accept, admit, settle, resolve, value (for any purpose), revise or reject such Claim, D&O Claim or D&O Indemnity Claim ~~without the consent of the Ad Hoc Noteholders or~~ Order of the Court.

DISPUTE NOTICE

40. THIS COURT ORDERS that a purported Claimant who intends to dispute a Notice of Revision or Disallowance shall file a Dispute Notice with the Monitor as soon as reasonably possible but in any event such that such Dispute Notice shall be received by the Monitor on the day that is fourteen (14) days after such purported Claimant is deemed to have received the Notice of Revision or Disallowance in accordance with paragraph 50 of this Order. The filing of a Dispute Notice with the Monitor within the fourteen (14) day period specified in this paragraph shall constitute an application to have the amount or Status of such claim determined as set out in paragraphs 42 to 45 of this Order.

41. THIS COURT ORDERS that where a purported Claimant that receives a Notice of Revision or Disallowance fails to file a Dispute Notice with the Monitor within the time period provided therefor in this Order, the amount and Status of such purported Claimant's purported Claim, D&O Claim or D&O Indemnity Claim, as applicable, shall be deemed to be as set out in the Notice of Revision or Disallowance and such amount and Status, if any, shall constitute such purported Claimant's Proven Claim, and the balance of such purported Claimant's purported Claim, D&O Claim, or D&O Indemnity Claim, if any, shall be forever barred and extinguished.

RESOLUTION OF CLAIMS, D&O CLAIMS AND D&O INDEMNITY CLAIMS

42. THIS COURT ORDERS that as soon as practicable after the delivery of the Dispute Notice to the Monitor, the Monitor, in accordance with paragraph 31(c), shall attempt to resolve and settle the purported Claim or D&O Claim with the purported Claimant.

43. THIS COURT ORDERS that as soon as practicable after the delivery of the Dispute Notice in respect of a D&O Indemnity Claim to the Monitor, the Monitor, in accordance with paragraph 35(c), shall attempt to resolve and settle the purported D&O Indemnity Claim with the Director or Officer.

44. THIS COURT ORDERS that in the event that a dispute raised in a Dispute Notice is not settled within a time period or in a manner satisfactory to the Monitor, the Applicant and the applicable Claimant, the Monitor shall seek direction from the Court, on the correct process for resolution of the dispute. Without limitation, the foregoing includes any dispute arising as to whether a Claim is or is not an "equity claim" as defined in the CCAA.

45. THIS COURT ORDERS that any Claims and related D&O Claims and/or D&O Indemnity Claims shall be determined at the same time and in the same proceeding.

NOTICE OF TRANSFEREES

46. THIS COURT ORDERS that neither the Monitor nor the Applicant shall be obligated to send notice to or otherwise deal with a transferee or assignee of a Claim, D&O Claim or D&O Indemnity Claim as the Claimant in respect thereof unless and until (i) actual written notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the Monitor and the Applicant, and (ii) the Monitor shall have acknowledged in writing such transfer or assignment, and thereafter such transferee or assignee shall for all purposes hereof constitute the "Claimant" in respect of such Claim, D&O Claim or D&O Indemnity Claim. Any such transferee or assignee of a Claim, D&O Claim or D&O Indemnity Claim, and such Claim, D&O Claim or D&O Indemnity Claim shall be bound by all notices given or steps taken in respect of such Claim, D&O Claim or D&O Indemnity Claim in accordance with this Order prior to the written acknowledgement by the Monitor of such transfer or assignment.

47. THIS COURT ORDERS that if the holder of a Claim, D&O Claim or D&O Indemnity Claim has transferred or assigned the whole of such Claim, D&O Claim or D&O Indemnity Claim to more than one Person or part of such Claim, D&O Claim or D&O Indemnity Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim, D&O

Claim or D&O Indemnity Claim and such Claim, D&O Claim or D&O Indemnity Claim shall continue to constitute and be dealt with as a single Claim, D&O Claim or D&O Indemnity Claim notwithstanding such transfer or assignment, and the Monitor and the Applicant shall in each such case not be bound to acknowledge or recognize any such transfer or assignment and shall be entitled to send notice to and to otherwise deal with such Claim, D&O Claim or D&O Indemnity Claim only as a whole and then only to and with the Person last holding such Claim, D&O Claim or D&O Indemnity Claim in whole as the Claimant in respect of such Claim, D&O Claim or D&O Indemnity Claim. Provided that a transfer or assignment of the Claim, D&O Claim or D&O Indemnity Claim has taken place in accordance with paragraph 46 of this Order and the Monitor has acknowledged in writing such transfer or assignment, the Person last holding such Claim, D&O Claim or D&O Indemnity Claim in whole as the Claimant in respect of such Claim, D&O Claim or D&O Indemnity Claim may by notice in writing to the Monitor direct that subsequent dealings in respect of such Claim, D&O Claim or D&O Indemnity Claim, but only as a whole, shall be with a specified Person and, in such event, such Claimant, transferee or assignee of the Claim, D&O Claim or D&O Indemnity Claim shall be bound by any notices given or steps taken in respect of such Claim, D&O Claim or D&O Indemnity Claim by or with respect to such Person in accordance with this Order.

48. THIS COURT ORDERS that the transferee or assignee of any Claim, D&O Claim or D&O Indemnity Claim (i) shall take the Claim, D&O Claim or D&O Indemnity Claim subject to the rights and obligations of the transferor/assignor of the Claim, D&O Claim or D&O Indemnity Claim, and subject to the rights of the Applicant or Director or Officer against any such transferor or assignor, including any rights of set-off which the Applicant, Director or Officers had against such transferor or assignor, and (ii) cannot use any transferred or assigned Claim, D&O Claim or D&O Indemnity Claim to reduce any amount owing by the transferee or assignee to the Applicant, Director or Officer, whether by way of set off, application, merger, consolidation or otherwise.

DIRECTIONS

49. THIS COURT ORDERS that the Monitor, the Applicant and any Person (but only to the extent such Person may be affected with respect to the issue on which directions are sought) may, at any time, and with such notice as the Court may require, seek directions from the Court with respect to this Order and the claims process set out herein, including the forms attached as Schedules hereto.

SERVICE AND NOTICE

50. THIS COURT ORDERS that the Monitor and the Applicant may, unless otherwise specified by this Order, serve and deliver the Proof of Claim Document Package, and any letters, notices or other documents to Claimants, purported Claimants, Directors or Officers, or other interested Persons, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission to such Persons (with copies to their counsel as appears on the CCAA Service List if applicable) at the address as last shown on the records of the Applicant or set out in such Person's Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim. Any such service or notice by courier, personal delivery or electronic or digital transmission shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by electronic or digital transmission by 6:00 p.m. on a Business Day, on such Business Day, and if delivered after 6:00 p.m. or other than on a Business Day, on the following Business Day. Notwithstanding anything to the contrary in this paragraph 50, Notices of Revision or Disallowance shall be sent only hy (i) facsimile to a number that has been provided in writing by the purported Claimant, Director or Officer, or (ii) courier.

51. THIS COURT ORDERS that any notice or other communication (including Proofs of Claim, D&O Proofs of Claims, D&O Indemnity Proofs of Claim and Notices of Dispute) to be given under this Order by any Person to the Monitor shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by prepaid registered mail, courier, personal delivery or electronic or digital transmission addressed to:

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

Any such notice or other communication by a Person shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day, or if delivered outside of a normal business hours, the next Business Day.

52. THIS COURT ORDERS that if during any period during which notices or other communications are being given pursuant to this Order a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary mail and then not received shall not, absent further Order of the Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery or electronic or digital transmission in accordance with this Order.

53. THIS COURT ORDERS that in the event that this Order is later amended by further order of the Court, the Monitor shall post such further order on the Monitor's Website and such posting shall constitute adequate notice of such amended claims procedure.

MISCELLANEOUS

54. THIS COURT ORDERS that notwithstanding any other provision of this Order, the solicitation of Proofs of Claim, D&O Proofs of Claim and D&O Indemnity Proofs of Claim and the filing by a Person of any Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim shall not, for that reason only, grant any Person any standing in the CCAA Proceedings or rights under the Plan.

55. THIS COURT ORDERS that the rights of the Ontario Plaintiffs and the Quebec Plaintiffs granted pursuant to paragraphs 27 and 28 of this Order are limited to filing a single Proof of

Claim and, if applicable, a single D&O Proof in respect of each of the National Class and the Quebec Class in these proceedings, and not for any other purpose. Without limiting the generality of the foregoing, the filing of any Proof of Claim or D&O Proof of Claim by the Ontario Plaintiffs or the Quebec Plaintiffs pursuant to this Order:

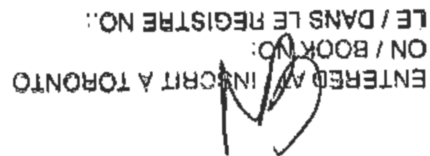
(a) is not an admission or recognition of their right to represent the Class for any other purpose, including with respect to settlement or voting in these proceedings, the Ontario Class Action or the Quebec Class Action; and

(b) is without prejudice to the right of the Ontario Plaintiffs and the Quebec Plaintiffs or their counsel to seek an order granting them rights of representation in these proceedings, the Ontario Class Action or the Quebec Class Action.

56. THIS COURT ORDERS that nothing in this Order shall constitute or be deemed to constitute an allocation or assignment of Claims, D&O Claims, D&O Indemnity Claims, or Excluded Claims into particular affected or unaffected classes for the purpose of a Plan and, for greater certainty, the treatment of Claims, D&O Claims, D&O Indemnity Claims, Excluded Claims or any other claims are to be subject to a Plan and the class or classes of creditors for voting and distribution purposes shall be subject to the terms of any proposed Plan or further Order of the Court.

57. THIS COURT ORDERS that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers or other persons under any existing Director and Officers or other insurance policy or prevent or bar any Person from seeking recourse against or payment from the Applicant's insurance and any Director's and/or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors and/or Officers or other persons, whether such recourse or payment is sought directly by the Person asserting a Claim or a D&O Claim from the insurer or derivatively through the Director or Officer or Applicant; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such claim available to the insurer pursuant to the provisions of any insurance policy or at law.

58. *THIS COURT HEREBY REQUESTS* the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Barbados, the British Virgin Islands, Cayman Islands, Hong Kong, the People's Republic of China or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.



SCHEDULE "A"

NOTICE OF REVISION OR DISALLOWANCE

For Persons that have asserted Claims against Sino-Forest Corporation, D&O Claims against the Directors or Officers of Sino-Forest Corporation or D&O Indemnity Claims against Sino-Forest Corporation

Claim Reference Number: ______________________

TO: ______________________
(Name of purported claimant)

Defined terms not defined in this Notice of Revision or Disallowance have the meaning ascribed in the Order of the Ontario Superior Court of Justice dated May 8, 2012 (the "Claims Procedure Order"). **All dollar values contained herein are in Canadian dollars unless otherwise noted.**

Pursuant to 31 of the Claims Procedure Order, the Monitor hereby gives you notice that it has reviewed your Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim and has revised or disallowed all or part of your purported Claim, D&O Claim or D&O Indemnity Claim, as the case may be. Subject to further dispute by you in accordance with the Claims Procedure Order, your Proven Claim will be as follows:

	Amount as submitted		**Amount allowed by Monitor**
	(original currency amount)	**(in Canadian dollars)**	**(in Canadian dollars)**
A. Prefiling Claim	$	$	$
B. Restructuring Claim	$	$	$
C. Secured Claim	$	$	$
D. D&O Claim	$	$	$
E. D&O Indemnity Claim	$	$	$
F. Total Claim	$	$	$

Reasons for Revision or Disallowance:

____

____

____

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (prevailing time in Toronto) on the day that is fourteen (14) days after this Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Dispute Notice to the Monitor by registered mail, courier, personal delivery or electronic or digital transmission to the address below. In accordance with the Claims Procedure Order, notices shall be deemed to be received upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day. The form of Dispute Notice is enclosed and can also be accessed on the Monitor's website at http://cfcanada.fticonsulting.com/sfc.

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

IF YOU FAIL TO FILE A DISPUTE NOTICE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED at Toronto, this day of , 2012.

FTI Consulting Canada Inc., solely in its capacity as Court-appointed Monitor of Sino-Forest Corporation and not in its personal or corporate capacity

Per: Greg Watson / Jodi Porepa

SCHEDULE "B"

DISPUTE NOTICE

With respect to Sino-Forest Corporation

Claim Reference Number: ______________________

1. **Particulars of Claimant:**

Full Legal Name of claimant (include trade name, if different):

____

____

(the "Claimant")

Full Mailing Address of the Claimant:

____

____

Other Contract Information of the Claimant:

Telephone Number: ______________________

Email Address: ______________________

Facsimile Number: ______________________

Attention (Contact Person): ______________________

2. **Particulars of original Claimant from whom you acquired the Claim, D&O Claim or D&O Indemnity Claim:**

Have you acquired this purported Claim, D&O Claim or D&O Indemnity Claim by assignment?

Yes: ☐ No: ☐

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): ______________________

3. **Dispute of Revision or Disallowance of Claim, D&O Claim or D&O Indemnity Claim, as the case may be:**

For the purposes of the Claims Procedure Order only (and without prejudice to the terms of any plan of arrangement or compromise), claims in a foreign currency will be converted to Canadian dollars at the exchange rates set out in the Claims Procedure Order.

The Claimant hereby disagrees with the value of its Claim, D&O Claim or D&O Indemnity Claim, as the case may be, as set out in the Notice of Revision or Disallowance and asserts a Claim, D&O Claim or D&O Indemnity Claim, as the case may be, as follows:

	Amount allowed by Monitor: (Notice of Revision or Disallowance) (in Canadian dollars)	**Amount claimed by Claimant: (in Canadian Dollars)**
A. Prefiling Claim	$	$
B. Restructuring Claim	$	$
C. Secured Claim	$	$
D. D&O Claim	$	$
E. D&O Indemnity Claim	$	$
F. Total Claim	$	$

REASON(S) FOR THE DISPUTE:

____

____

____

____

SERVICE OF DISPUTE NOTICES

If you intend to dispute a Notice of Revision or Disallowance, you must, by no later than the date that is fourteen (14) days after the Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph 50 of the Claims Procedure Order), deliver to the Monitor this Dispute Notice by registered mail, courier, personal delivery or electronic or digital transmission to the address below. In accordance with the Claims Procedure Order, notices shall be deemed to be received upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

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

DATED this _______ day of ______________________, 2012.

Name of Claimant: ____

______________________________ Per: ______________________________

Witness

Name:

Title:

(please print)

SCHEDULE "C"

NOTICE TO CLAIMANTS
AGAINST SINO-FOREST CORPORATION
(hereinafter referred to as the "Applicant")

RE: NOTICE OF CLAIMS PROCEDURE FOR THE APPLICANT PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT* (the "CCAA")

PLEASE TAKE NOTICE that this notice is being published pursuant to an Order of the Superior Court of Justice of Ontario made on May 8, 2012 (the "Claims Procedure Order"). Pursuant to the Claims Procedure Order, Proof of Claim Document Packages will be sent to claimants by mail, on or before May 15, 2012, if those claimants are known to the Applicant. Claimants may also obtain the Claims Procedure Order and a Proof of Claim Document Package from the website of the Monitor at http://cfcanada.fticonsulting.com/sfc, or by contacting the Monitor by telephone (416-649-8094).

Proofs of Claim (including D&O Proofs of Claim) must be submitted to the Monitor for any claim against the Applicant, whether unliquidated, contingent or otherwise, or a claim against any current or former officer or director of the Applicant, in each case where the claim (i) arose prior to March 30, 2012, or (ii) arose on or after March 30, 2012 as a result of the restructuring, termination, repudiation or disclaimer of any lease, contract, or other agreement or obligation. Please consult the Proof of Claim Document Package for more details.

Completed Proofs of Claim must be received by the Monitor by 5:00 p.m. (prevailing Eastern Time) on the applicable claims bar date, as set out in the Claims Procedure Order. It is your responsibility to ensure that the Monitor receives your Proof of Claim or D&O Proof of Claim by the applicable claims bar date.

Certain Claimants are exempted from the requirement to file a Proof of Claim. Among those claimants who do not need to file a Proof of Claim are individual noteholders in respect of Claims relating solely to the debt evidenced by their notes and persons whose Claims form the subject matter of the Ontario Class Action or the Quebec Class Action. Please consult the Claims Procedure Order for additional details.

CLAIMS AND D&O CLAIMS WHICH ARE NOT RECEIVED BY THE APPLICABLE CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.

DATED at Toronto this • day of •, 2012.

SCHEDULE "D"

PROOF OF CLAIM AGAINST SINO-FOREST CORPORATION

1. Original Claimant Identification (the "Claimant")

Legal Name of Claimant ____________________

Address ____________________

____

____

City ____________________ Prov / State ____

Postal/Zip code ____________________

Name of Contact ____________________

Title ____________________

Phone # ____________________

Fax # ____________________

e-mail ____________________

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
____	____	☐	☐	☐
____	____	☐	☐	☐
____	____	☐	☐	☐
____	____	☐	☐	☐
____	____	☐	☐	☐

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
____	____	____	____
____	____	____	____
____	____	____	____
____	____	____	____
____	____	____	____

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.

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 ______________________________

Title ______________________________

Dated at ______________

this _____ day of __________ 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 "D-2"

PROOF OF CLAIM AGAINST DIRECTORS OR OFFICERS OF SINO-FOREST CORPORATION

This form is to be used only by Claimants asserting a claim against any director and/or officers of Sino-Forest Corporation, and NOT for claims against Sino-Forest Corporation itself. For claims against Sino-Forest Corporation, please use the form titled "Proof of Claim Against Sino-Forest Corporation", which is available on the Monitor's website at http://cfcanada.fticonsulting.com/sfc.

1. Original Claimant Identification (the "Claimant")

Legal Name of Claimant ______________________ Name of Contact ______________________

Address ______________________ Title ______________________

______________________ Phone # ______________________

______________________ Fax # ______________________

City ______________ Prov / State ______ e-mail ______________________

Postal/Zip code ______________

2. Assignee, if D&O Claim has been assigned

Full Legal Name of Assignee ______________________ Name of Contact ______________________

Address ______________________ Phone # ______________________

______________________ Fax # ______________________

City ______________ Prov / State ______ e-mail ______________________

Postal/Zip code ______________

3. Amount of D&O Claim

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

☐ I/we have a claim against a Director(s) and/or Officer(s)

Name(s) of Director(s) and/or Officer(s)	Currency	Original Currency Amount	Amount of Claim

4. Documentation

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

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 D&O Claim.
3. Complete documentation in support of this D&O Claim is attached.

Name ______________________________

Title ______________________________

Dated at ______________________

this _____ day of ___________2012

Signature ______________________________

Witness ______________________________

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 "E"

GUIDE TO COMPLETING THE PROOF OF CLAIM FOR CLAIMS AGAINST SINO-FOREST-CORPORATION

This Guide has been prepared to assist Claimants in filling out the Proof of Claim with respect to Sino-Forest Corporation (the "Applicant"). If you have any additional questions regarding completion of the Proof of Claim, please consult the Monitor's website at http://cfcanada.fticonsulting.com/sfc or contact the Monitor, whose contact information is shown below.

Additional copies of the Proof of Claim may be found at the Monitor's website address noted above.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on May 8, 2012 (the "Claims Procedure Order"), the terms of the Claims Procedure Order will govern.

SECTION 1 - ORIGINAL CLAIMANT

4. A separate Proof of Claim must be filed by each legal entity or person asserting a claim against the Applicant.

5. The Claimant shall include any and all Claims it asserts against the Applicant in a single Proof of Claim.

6. The full legal name of the Claimant must be provided.

7. If the Claimant operates under a different name, or names, please indicate this in a separate schedule in the supporting documentation.

8. If the Claim has been assigned or transferred to another party, Section 2 must also be completed.

9. Unless the Claim is assigned or transferred, all future correspondence, notices, etc. regarding the Claim will be directed to the address and contact indicated in this section.

10. Certain Claimants are exempted from the requirement to file a Proof of Claim. Among those claimants who do not need to file a Proof of Claim are individual noteholders in respect of Claims relating solely to the debt evidenced by their notes. Please consult the Claims Procedure Order for details with respect to these and other exemptions.

SECTION 2 - ASSIGNEE

11. If the Claimant has assigned or otherwise transferred its Claim, then Section 2 must be completed.

12. The full legal name of the Assignee must be provided.

13. If the Assignee operates under a different name, or names, please indicate this in a separate schedule in the supporting documentation.

14. If the Monitor in consultation with the Applicant is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc. regarding the Claim will be directed to the Assignee at the address and contact indicated in this section.

SECTION 3A - AMOUNT OF CLAIM OF CLAIMANT AGAINST DEBTOR

15. Indicate the amount the Applicant was and still is indebted to the Claimant.

Currency, Original Currency Amount

16. The amount of the Claim must be provided in the currency in which it arose.

17. Indicate the appropriate currency in the Currency column.

18. If the Claim is denominated in multiple currencies, use a separate line to indicate the Claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.

19. Claims denominated in a currency other than Canadian dollars will be converted into Canadian dollars in accordance with the Claims Procedure Order.

Unsecured Prefiling Claim

20. Check this box ONLY if the Claim recorded on that line is an unsecured prefiling claim.

Restructuring Claim

21. Check this box ONLY if the amount of the Claim against the Applicant arose out of the restructuring, termination, repudiation or disclaimer of a lease, contract, or other agreement or obligation on or after March 30, 2012.

Secured Claim

Check this box ONLY if the Claim recorded on that line is a secured claim.

SECTION 3B - CLAIM AGAINST SUBSIDIARIES

22. Check this box ONLY 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, and list the Subsidiaries against whom you assert your claim.

SECTION 4 - DOCUMENTATION

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

SECTION 5 - CERTIFICATION

24. The person signing the Proof of Claim should:

(a) be the Claimant, or authorized representative of the Claimant.

(b) have knowledge of all the circumstances connected with this Claim.

(c) have a witness to its certification.

25. By signing and submitting the Proof of Claim, the Claimant is asserting the claim against the Applicant.

SECTION 6 - FILING OF CLAIM

26. 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. Proofs of Claim should be sent by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission to 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

Failure to file your Proof of Claim so that it is received by the Monitor by 5:00 p.m., on the applicable claims bar date will result in your claim being barred and you will be prevented from making or enforcing a Claim against the Applicant. In addition, you shall not be entitled to further notice in and shall not be entitled to participate as a creditor in these proceedings.

SCHEDULE "E-2"

GUIDE TO COMPLETING THE PROOF OF CLAIM FOR CLAIMS AGAINST DIRECTORS OR OFFICERS OF SINO-FOREST-CORPORATION

This Guide has been prepared to assist Claimants in filling out the D&O Proof of Claim against any Directors or Officers of Sino-Forest Corporation (the "Applicant"). If you have any additional questions regarding completion of the Proof of Claim, please consult the Monitor's website at http://cfcanada.fticonsulting.com/sfc or contact the Monitor, whose contact information is shown below.

The D&O Proof of Claim is to be used only by Claimants asserting a claim against a director and/or officer of Sino-Forest Corporation, and NOT for claims against Sino-Forest Corporation itself. For claims against Sino-Forest Corporation, please use the form titled "Proof of Claim Against Sino-Forest Corporation", which is available on the Monitor's website at http://cfcanada.fticonsulting.com/sfc.

Additional copies of the D&O Proof of Claim may be found at the Monitor's website address noted above.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on May 8, 2012 (the "Claims Procedure Order"), the terms of the Claims Procedure Order will govern.

SECTION 1 - ORIGINAL CLAIMANT

27. A separate D&O Proof of Claim must be filed by each legal entity or person asserting a claim against any Directors or Officers of the Applicant.

28. The Claimant shall include any and all D&O Claims it asserts in a single D&O Proof of Claim.

29. The full legal name of the Claimant must be provided.

30. If the Claimant operates under a different name, or names, please indicate this in a separate schedule in the supporting documentation.

31. If the D&O Claim has been assigned or transferred to another party, Section 2 must also be completed.

32. Unless the D&O Claim is assigned or transferred, all future correspondence, notices, etc. regarding the D&O Claim will be directed to the address and contact indicated in this section.

SECTION 2 - ASSIGNEE

33. If the Claimant has assigned or otherwise transferred its D&O Claim, then Section 2 must be completed.

34. The full legal name of the Assignee must be provided.

35. If the Assignee operates under a different name, or names, please indicate this in a separate schedule in the supporting documentation.

36. If the Monitor in consultation with the Applicant is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc. regarding the D&O Claim will be directed to the Assignee at the address and contact indicated in this section.

SECTION 3 - AMOUNT OF CLAIM OF CLAIMANT AGAINST DIRECTOR OR OFFICER

37. Indicate the amount the Director or Officer is claimed to be indebted to the Claimant and provide all other request details.

Currency, Original Currency Amount

38. The amount of the D&O Claim must be provided in the currency in which it arose.

39. Indicate the appropriate currency in the Currency column.

40. If the D&O Claim is denominated in multiple currencies, use a separate line to indicate the Claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.

41. D&O Claims denominated in a currency other than Canadian dollars will be converted into Canadian dollars in accordance with the Claims Procedure Order.

SECTION 4 - DOCUMENTATION

42. Attach to the claim form all particulars of the D&O Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) or breach(es) giving rise to the D&O Claim.

SECTION 5 - CERTIFICATION

43. The person signing the D&O Proof of Claim should:

(a) be the Claimant, or authorized representative of the Claimant.

(b) have knowledge of all the circumstances connected with this D&O Claim.

(c) have a witness to its certification.

44. By signing and submitting the D&O Proof of Claim, the Claimant is asserting the claim against the Directors and Officers identified therein.

SECTION 6 - FILING OF CLAIM

45. The D&O Proof of Claim must be received by the Monitor by no later than 5:00 p.m. (prevailing Eastern Time) on June 20, 2012. D&O Proofs of Claim should be sent by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission to 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

Failure to file your D&O Proof of Claim so that it is received by the Monitor by 5:00 p.m., on the applicable claims bar date will result in your claim being barred and you will be prevented from making or enforcing a D&O Claim against the any directors or officers of the Applicant. In addition, you shall not be entitled to further notice in and shall not be entitled to participate as a D&O claimant in these proceedings.

SCHEDULE "F"

D&O INDEMNITY PROOF OF CLAIM
SINO-FOREST CORPORATION

1. Director and /or Officer Particulars (the "Indemnitee")

Legal Name of Indemnitee ______________________

Address ______________________ Phone # ______________________

______________________ Fax # ______________________

____

City______________________ Prov / State____ e-mail ______________________

Postal/Zip code______________

2. Indemnification Claim

Position(s) Held______________________

Dates Position(s) Held: From ______________ to ______________

Reference Number of Proof of Claim with respect to which this D&O Indemnity Claim is made ______________

Particulars of and basis for D&O Indemnity Claim______________________

____

____

____

(Provide all particulars of the D&O Indemnity Claim, including all supporting documentation)

3 Filing of Claim

This D&O Indemnity Proof of Claim and supporting documentation are to be returned to the Monitor within ten Business Days of the date of deemed receipt by the Director or Officer of the Proof of Claim 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

Failure to file your D&O Indemnity Proof of Claim in accordance with the Claims Procedure Order will result in your D&O Indemnity Claim being barred and forever extinguished and you will be prohibited from making or enforcing such D&O Indemnity Claim against the Applicant.

Dated at ______________________, this ______ day of __________________, 2012.

Per: ____________________________________
Name

Signature: ______________________________ (Former Director and/or Officer)

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 OR COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

ORDER

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Robert W. Staley (LSUC #27115J)
Kevin Zych (LSUC #33129T)
Derek J. Bell (LSUC #43420J)
Jonathan Bell (LSUC #55457P)
Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicant

TAB 7

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

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

May 8, 2012

Adjourned to May 14, 2012

[signature]

Counsel - See attached. May 14, 2012

The motion proceeded on an unopposed basis. I am satisfied that it is appropriate to grant the requested relief. The attached typewritten language forms part and is incorporated by reference into this endorsement.

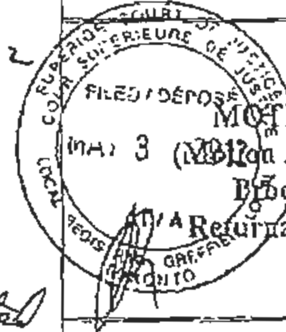
[signature]

May 8/12

ONTARIO

SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

Proceedings commenced in Toronto

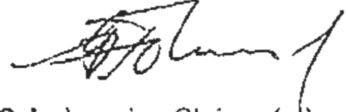


MOTION RECORD
(Motion Approving Claims Procedure Order, Returnable May 8, 2012)

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Robert W. Staley (LSUC #27115J)
Kevin Zych (LSUC #33129T)
Derek J. Bell (LSUC #43420J)
Jonathan Bell (LSUC #55457P)
Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicant



Proposed Endorsement Language

In granting this Order which calls for Claims, D&O Claims and D&O Indemnity Claims (all as defined in the Claims Procedure Order), the parties acknowledge that no determination has been made as to arguments regarding quantum, classification or the extent to which such claims can be compromised by a Plan and all rights are reserved thereunder. The rights of all parties to argue as to the impact, if any, of the claims bar and resolution process under this Order in the event that a Plan is not ultimately successfully implemented are also reserved.

The Monitor has advised that as part of this claims procedure, where it concludes a Claim, D&O Claim or D&O Indemnity Claim is an Equity Claim, it will revise or disallow such claims on that basis pursuant to the Claims Procedure Order.

In the event that Claims, D&O Claims and/or D&O Indemnity Claims are not resolved or otherwise disposed of in these proceedings and the stay is terminated, then any admissions, findings of fact, decisions or other determinations made in accordance with this Order and the within claims process (whether by the Court, a Claims Officer, the Monitor, the Applicant or otherwise) shall not be binding on any Claimant or of any force or effect and shall not give rise to issue estoppel or be res judicata or be admissible in the Ontario Class Action, the Quebec Class Action or any similar litigation already commenced or which may be commenced in the future (the "Litigation").

To the extent the stay is terminated and the Litigation proceeds, no finding of fact or decision of a Claims Officer or of the Court made pursuant to this Order and the within claims process and no determination of the validity and/or quantum of any Claim pursuant to this Order, whether by: (i) failure to deliver a Proof of Claim or a Dispute Notice within the time provided in this Order; (ii) agreement of the applicable parties; (iii) a Claims Officer; (iv) the Court; or (v) otherwise, shall be binding on any Claimant or shall give rise to issue estoppel or be res judicata or be admissible in any Litigation other than with respect to parties released in these proceedings.

For greater certainty, nothing in the preceding two paragraphs is intended to restrict the Applicant's or the Monitor's ability to seek foreign recognition of these proceedings or relief granted herein in any jurisdiction.

TAB 8

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)

TAB 9

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	WEDNESDAY, THE 25th
	)	
JUSTICE MORAWETZ	)	DAY OF JULY, 2012

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

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

ORDER
(Mediation)

THIS MOTION, made by FTI Consulting Canada Inc. in its capacity as monitor (the "**Monitor**") of Sino-Forest Corporation (the "**Applicant**") for a consent order concerning mediation and related relief was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Monitor's Notice of Motion dated July 13, 2012 and the Fifth Report of the Monitor dated July 13, 2012 (the "**Fifth Report**"), the Responding Motion Record of the Applicants and the Responding Motion Record of Pöyry Beijing (as defined below), and on hearing the submissions of counsel for the Applicant, the Monitor, the ad hoc committee of Noteholders (the "**Ad Hoc Noteholders**"), the ad hoc group of purchasers of the Applicant's securities (the "**Plaintiffs**") and the other defendants in the Ontario Class Action and the Quebec Class Action (the "**Third Party Defendants**") and those other parties present, no one appearing for any of the other parties served with the Monitor's Motion Record, although duly served as appears from the affidavit of service of Alma Cano sworn July 13, 2012, filed.

SERVICE AND INTERPRETATION

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record, including the Fifth Report, is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Fifth Report.

MEDIATION

3. THIS COURT ORDERS that the parties eligible to participate in the Mediation pursuant to paragraph 5 of this Order are the Applicant, the Plaintiffs, the Third Party Defendants (which shall be read to include Pöyry (Beijing) Consulting Company Limited ("**Pöyry Beijing**")), the Monitor, the Ad Hoc Noteholders and any insurers providing coverage in respect of the Applicant and the Third Party Defendants (collectively, the "**Mediation Parties**") .

4. THIS COURT ORDERS that the subject matter of the Mediation shall be the resolution of the claims of the Plaintiffs against the Applicant and the Third Party Defendants as set out in the statements of claim in the Ontario Class Action and the Quebec Class Action and any and all related claims (the "**Subject Claims**"), provided that for the purpose of the Mediation, the Plaintiffs shall not seek contribution from any of the Mediation Parties with respect to amounts that could have been sought by the Plaintiffs from Pöyry Beijing had the Plaintiffs not reached a settlement with Pöyry Beijing (the "**Pöyry Settlement**") and provided that the Plaintiffs shall provide to the Mediation Parties, within 10 days of the date of this Order or such further time as this Court may direct, a written summary of evidence proffered by Pöyry Beijing pursuant to the Pöyry Settlement, which summary shall be treated in the same manner as material in the Data Room (as defined below) pursuant to this Order.

5. THIS COURT ORDERS that, where practicable, the Mediation Parties shall participate in the Mediation in person and with representatives present with full authority to settle the Subject Claims (including any insurer providing coverage), provided that, where not practicable, the Mediation Parties may participate in the Mediation through counsel or other representatives, subject to those counsel or other representatives having access to representatives with full

authority and undertaking to promptly pursue instructions with respect to any proposed agreements that arise from the Mediation.

6. THIS COURT ORDERS that parties in addition to the Mediation Parties shall only have standing to participate in the Mediation on consent of the Applicant and the Monitor, acting reasonably, or by further Order of this Court.

DATA ROOM

7. THIS COURT ORDERS that in connection with the Mediation, as soon as practicable, but in any event no later than August 3, 2012, the Applicant shall provide access to the Mediation Parties to the existing data room maintained by Merrill (the "**Data Room**"), provided however that prior to access to the Data Room, all participants (other than the Applicant, the incumbent directors of the Applicant and the Monitor) shall have entered into a confidentiality agreement with the Applicant on terms reasonably acceptable to the Applicant and the Monitor.

8. THIS COURT ORDERS that any Mediation Parties who enter into a confidentiality agreement as contemplated by paragraph 7 of this order shall comply with the terms of such confidentiality agreement.

9. THIS COURT ORDERS that the Applicant, its subsidiaries and affiliates, and their directors, officers, employees, agents and advisors, shall incur no liability in connection with causing, effecting or acquiescing in the establishment of the Data Room or disclosure in respect of such materials and the information contained therein in accordance with this Order. The materials in the Data Room shall be made available without any representation as to the truth of their contents or their completeness, and persons relying on those materials shall do so at their own risk. The disclosure of such materials and the information contained therein in accordance with this Order is not and shall not be public disclosure in any respect. Nothing in this paragraph affects any rights or causes of action that any person may have in relation to the prior disclosure of any of the contents of the Data Room, insofar as such rights or causes of action are independent from and not related to the provision of materials and information in accordance with this Order.

MEDIATION SCHEDULE

10. THIS COURT ORDER THAT, the schedule for the Mediation shall be as follows:

(a) the Mediation shall be conducted on September 4th and 5th, and if a third day is required, on September 10th, 2012 (the "**Mediation Dates**");

(b) additional Mediation dates shall only be added, and any adjournments of any mediation dates shall only be accepted, with the prior written consent of all Mediation Parties;

(c) the Mediation shall be conducted at a location to be determined by the Mediator (as defined below); and

(d) the Applicant, the Plaintiffs and the Third Party Defendants shall deliver their respective written position statements to each other and to the other Mediation Parties on or before August 27, 2012.

APPOINTMENT OF THE MEDIATOR

11. THIS COURT ORDERS that the Honourable Justice Newbould shall be appointed mediator (the "**Mediator**").

12. THIS COURT ORDERS that, prior to the commencement of the Mediation, the Mediator shall have the right to communicate with this Court and the Monitor from time to time as deemed necessary or advisable by the Mediator in their sole discretion.

TERMINATION OF THE MEDIATION

13. THIS COURT ORDERS that the Mediation process shall be terminated under any of the following circumstances:

(a) by declaration by the Mediator that a settlement has been reached;

(b) by declaration by the Mediator that further efforts at mediation are no longer considered worthwhile;

(c) for any other reason determined by the Mediator;

(d) mutual agreement by the Mediation Parties; or

(e) further Order of this Court,

provided that, the Mediation shall in any event terminate on September 10, 2012, unless extended with the prior written consent of all Mediation Parties.

NO IMPACT ON OTHER PROCEEDINGS

14. THIS COURT ORDERS that all offers, promises, conduct statements, whether written or oral, made in the course of the Mediation are inadmissible in any arbitration or court proceeding. No person shall subpoena or require the Mediator to testify, produce records, notes or work product in any other existing or future proceedings, and no video or audio recording will be made of the Mediation. Evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the Mediation. In the event that the Mediation Parties (or any group of them) do reach a settlement, the terms of that settlement will be admissible in any court or other proceeding required to enforce it, unless the Mediation Parties agree otherwise. Information disclosed to the Mediator by any Mediation Party at a private caucus during the Mediation shall remain confidential unless such Mediation Party authorizes disclosure.

15. THIS COURT ORDERS that nothing in this Order nor the participation of any party in the Mediation shall provide such party with rights within these proceedings than such party may otherwise have.

16. THIS COURT ORDERS that, subject to any applicable stay of proceedings, nothing in this Order shall prevent the Applicant, the Monitor or any other party of standing from otherwise pursuing the resolution of claims under the Claims Procedure Order granted by this Court on May 14, 2012, or any other matter in these CCAA proceedings, including without limitation, the filing and advancement of the Meetings Order and a Plan.

CONFIDENTIALITY

17. THIS COURT ORDERS that any mediation briefs or other documents filed by the Mediation Parties shall be used only in the context of the Mediation and for no other purpose and shall be kept confidential by all such parties irrespective of whether such Mediation Parties sign a confidentiality agreement.

18. THIS COURT ORDERS that any mediation briefs or other documents filed by the Mediation Parties that contain information obtained from the Data Room may not be shared with or otherwise disclosed to any person or entity that has not signed a confidentiality agreement, other than the Applicant, the incumbent directors of the Applicant , the Monitor and Mediator.

MISCELLANEOUS

19. THIS COURT ORDERS that the terms of this Order may only be varied by further Order of this Court, which may be sought on an ex parte basis on consent of the Mediation Parties.

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ON / BOOK NO:
LE / DANS LE REGISTRE NO.:
JUL 2 5 2012
PER/PAR: NB

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)

ORDER
(Mediation)

GOWLING LAFLEUR HENDERSON LLP
Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
TORONTO, Ontario
M5X 1G5

Derrick Tay / Clifton Prophet / Jennifer Stam
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Telephone: (416) 862-7525
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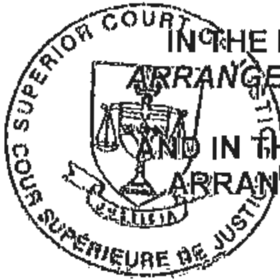
Lawyers for FTI Consulting Canada Inc.,
in its capacity as Monitor of the Applicant

TAB 10

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	FRIDAY, THE 27th
	)	
JUSTICE MORAWETZ	)	DAY OF JULY, 2012



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

ORDER

THIS MOTION made by the Applicant, Sino-Forest Corporation ("**SFC**") regarding the status of shareholder claims and related indemnity claims was heard this day, at the courthouse at 330 University Avenue, Toronto, Ontario,

ON READING the Motion Record of the Applicant, the Responding Motion Record of Ernst & Young LLP, the Book of Previously Filed Materials and Court Orders, and the Responding Motion Record of BDO Limited and the facta of the parties, and on hearing the submissions of counsel for the Moving Party, Sino-Forest Corporation, the Monitor, the Ad Hoc Committee of Noteholders, Ernst & Young, BDO, and certain underwriters named as defendants in the Ontario Class Action:

1. **THIS COURT ORDERS** that further service of the Notice of Motion and Motion Record on any party not already served is hereby dispensed with, such that this motion is properly returnable today.

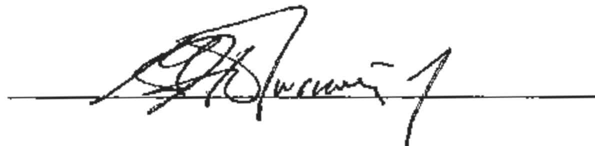
2. **THIS COURT ORDERS** that the claims against SFC resulting from the ownership, purchase or sale of an equity interest in SFC, including, without

limitation, the claims by or on behalf of current or former shareholders asserted in the proceedings listed in Schedule "A", (collectively, the "Shareholder Claims") are "equity claims" as defined in section 2 of the *Companies' Creditors Arrangement Act* (the "CCAA"), being claims in respect of monetary losses resulting from the ownership, purchase or sale of an equity interest.

3. **THIS COURT ORDERS** that any indemnification claims against SFC related to or arising from the Shareholder Claims, including, without limitation, by or on behalf of any of the other defendants to the proceedings listed in Schedule "A", (the "Related Indemnity Claims") are "equity claims" under the CCAA, being claims for contribution or indemnity in respect of claims that are equity claims.

4. **THIS COURT ORDERS** that nothing in paragraph 3 determines whether this Order extends to the aspect of any Related Indemnity Claims that corresponds to defence costs in connection with the defence of any Shareholder Claims.

5. **THIS COURT ORDERS** that the order is without prejudice to SFC's right to apply for a similar order with respect to (i) any claims that are in respect of Securities other than shares and (ii) any indemnification claims against SFC related thereto.



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ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG 0 3 2012

PER/PAR:

Schedule "A"

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)

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 OR COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

ORDER
(Regarding the Status of Shareholder Claims and Related Indemnity Claims under the CCAA)

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Robert W. Staley (LSUC #27115J)
Kevin Zych (LSUC #33129T)
Derek J. Bell (LSUC #43420J)
Raj Sahni (LSUC #42942U)
Jonathan Bell (LSUC #55457P)
Tel: 416-863-1200
Fax: 416-863-1716
Lawyers for the Applicant

TAB 11

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	~~TUESDAY~~ FRIDAY, THE ~~4th~~ 31st DAY
	)	
JUSTICE MORAWETZ	)	OF ~~SEPTEMBER~~ AUGUST, 2012

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

PLAN FILING AND MEETING ORDER

THIS MOTION, made by Sino-Forest Corporation (the "**Applicant**" or "**SFC**") for an order, *inter alia*, (a) accepting the filing of the Plan, (b) authorizing the classification of creditors for purposes of voting on the Plan, (c) authorizing and directing the Applicant to call, hold and conduct a meeting of Affected Creditors to consider and vote on a resolution to approve the Plan, (d) authorizing and directing the mailing and distribution of the Meeting Materials, (e) approving the procedures to be followed with respect to the meeting of Affected Creditors, (f) setting a date for the hearing of the Applicant's motion for Court approval of the Plan and (g) amending the Claims Procedure Order to call for monetary Claims of the Ontario Securities Commission, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Applicant's Notice of Motion, the affidavit of W. Judson Martin sworn on August 14, 2012, the affidavit of Audra Hawkins sworn on August 15, 2012, the affidavit of Elizabeth Fimio sworn on August 27, 2012 and the Seventh Report of FTI Consulting Canada Inc. (the "**Monitor**") dated August 17, 2012 (the "**Monitor's Seventh Report**"), and on hearing the submissions of counsel for the Monitor, no one appearing for the other parties served with the Applicant's Motion Record, although duly served as appears from the affidavit of service, filed;

AND FURTHER TO the endorsement of this Honourable Court made August 31, 2012 (the "**Endorsement**"):

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Applicant's Motion Record and the Monitor's Seventh Report is hereby abridged and validated such that this Motion is properly returnable today and service upon any interested party other than those parties served is hereby dispensed with.

MONITOR'S ROLE

2. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under (i) the CCAA, (ii) the Initial Order, (iii) the Order of this Court dated April 20, 2012 expanding the powers of the Monitor and (iv) the Claims Procedure Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Meeting Order.

3. THIS COURT ORDERS that: (i) in carrying out the terms of this Meeting Order, the Monitor shall have all the protections given to it by the CCAA, the Initial Order, the Order of this Court dated April 20, 2012 expanding the powers of the Monitor, or as an officer of the Court, including the stay of proceedings in its favour; (ii) the Monitor shall incur no liability or obligation as a result of carrying out the provisions of this Meeting Order, save and except for any gross negligence or wilful misconduct on its part; (iii) the Monitor shall be entitled to rely on the books and records of the Applicant and any information provided by the Applicant without independent investigation; and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

4. THIS COURT ORDERS that the Monitor and the Applicant, with the consent of the Monitor, are hereby authorized to retain such agents as they deem to be advisable to assist them in connection with calling and conducting the Meeting, including with respect to the distribution of Meeting Materials, the identification of the applicable Ordinary Affected Creditors and Noteholders, and the solicitation of proxies from Persons entitled to vote at the Meeting.

DEFINITIONS

5. THIS COURT ORDERS that any capitalized terms used herein but not otherwise defined herein have the meanings ascribed thereto in the Plan.

6. THIS COURT ORDERS that for the purposes of this Meeting Order, in addition to the terms defined elsewhere in this Meeting Order or in the Plan, the following terms shall have the following meanings:

(a) "**Affected Creditor**" means a Person with an Affected Creditor Claim, but only with respect to and to the extent of such Affected Creditor Claim;

(b) "**Affected Creditor Claim**" means any Ordinary Affected Creditor Claim or Noteholder Claim;

(c) "**Beneficial Noteholder**" means a beneficial owner of any Notes as at the Voting Record Date (or, if applicable, an investment advisor, manager or representative with voting discretion over the Notes owned by such beneficial owners), regardless of whether such beneficial owner is a Registered Noteholder or an Unregistered Noteholder;

(d) "**DTC**" means The Depository Trust Company, or any successor thereof;

(e) "**Equity Claim**" means a Claim that meets the definition of "equity claim" in section 2(1) of the CCAA and, for greater certainty, includes any claim that has been determined to be an Equity Claim by the Court in these proceedings;

(f) "**Equity Claimant**" means any Person having an Equity Claim, but only with respect to and to the extent of such Equity Claim;

(g) "**Equity Claims Order**" means the Order of this Court dated July 27, 2012, in respect of Shareholder Claims and Related Indemnity Claims against SFC, as such terms are defined therein;

(h) "**Information Circular**" means the information circular in respect of the Plan and the Meeting substantially in the form filed by the Applicant prior to the date hereof, as the same may be amended, supplemented or restated from time to time;

(i) "**Instructions to Ordinary Affected Creditors**" means the instructions substantially in the form attached as Schedule "C" hereto;

(j) "**Instructions to Participant Holders**" means the instructions substantially in the form attached as Schedule "B" hereto;

(k) "**Instructions to Registered Noteholders**" means the instructions substantially in the form attached as Schedule "D" hereto;

(l) "**Instructions to Unregistered Noteholders**" means the instructions substantially in the form attached as Schedule "E" hereto;

(m) "**Mailing Date**" means the date to be selected by the Monitor (in consultation with the Applicant and counsel to the Initial Consenting Noteholders) on which the Monitor shall make the mailings contemplated by paragraphs 18 and 20 of this Meeting Order, which date shall be within twenty (20) days of the date of this Meeting Order (unless extended with the consent of the Applicant and counsel to the Initial Consenting Noteholders);

(n) "**Meeting**" means the meeting of Affected Creditors, and any extension or adjournment thereof, that is called and conducted in accordance with this Meeting Order for the purpose of considering and voting on the Plan;

(o) "**Meeting Date**" means the date and time for the Meeting to be selected by the Monitor (in consultation with the Applicant and counsel to the Initial Consenting Noteholders), which date shall be within thirty (30) days of the Mailing Date (unless extended with the consent of the Applicant and counsel to the Initial Consenting Noteholders);

(p) "**Meeting Materials**" means the Noteholder Meeting Materials and the Ordinary Affected Creditor Meeting Materials;

(q) "**Meeting Order**" means this Order, as it may be amended by any further Order of the Court;

(r) "**Noteholder Claim**" means any Claim by a Beneficial Noteholder (or a Trustee or other representative on such Beneficial Noteholder's behalf) in respect of or in relation to Notes, including all principal, Accrued Interest and any amounts payable pursuant to the Notes or the Note Indentures;

(s) "**Noteholder**" means, as at the Voting Record Date, any Registered Noteholder, Unregistered Noteholder, Participant Holder or Beneficial Noteholder, as the context requires, in such capacity;

(t) "**Noteholder Meeting Materials**" means copies of:

   (i) the Notice to Affected Creditors;

   (ii) the Plan;

   (iii) the Information Circular;

   (iv) the Meeting Order and Endorsement;

   (v) a blank form of the Noteholders' Proxy;

   (vi) the Instructions to Registered Noteholders; and

   (vii) the Instructions to Unregistered Noteholders;

(u) "**Noteholders' Proxy**" means a proxy substantially in the form of Schedule "F", to be submitted to the Monitor by any Beneficial Noteholder that wishes to vote by proxy at the Meeting;

(v) "**Notes**" means, collectively, the 2013 Notes, the 2014 Notes, the 2016 Notes and the 2017 Notes;

(w) "**Notice to Affected Creditors**" means the notice to Affected Creditors substantially in the form attached as Schedule "A" hereto;

(x) "**Ordinary Affected Creditor**" means a Person with an Ordinary Affected Creditor Claim;

(y) "**Ordinary Affected Creditor Claim**" means a Claim that is not: an Unaffected Claim; a Noteholder Claim; an Equity Claim; a Subsidiary Intercompany Claim; a Noteholder Class Action Claim; or a Class Action Indemnity Claim (other than a Class Action Indemnity Claim by any of the Third Party Defendants in respect of the Indemnified Noteholder Class Action Claims);

(z) "**Ordinary Affected Creditor Meeting Materials**" means copies of:

(i) the Notice to Affected Creditors;

(ii) the Plan;

(iii) the Information Circular;

(iv) the Meeting Order and Endorsement;

(v) a blank form of the Ordinary Affected Creditors' Proxy; and

(vi) the Instructions to Ordinary Affected Creditors;

(aa) "**Ordinary Affected Creditors' Proxy**" means a proxy substantially in the form attached as Schedule "G" hereto, to be submitted to the Monitor by any Ordinary Affected Creditor who wishes to vote by proxy at the Meeting;

(bb) "**Participant Holder**" means a Person whose name appears on any of the Participant Holders Lists as at the Voting Record Date but who is not a Beneficial Noteholder;

(cc) "**Participant Holders Lists**" means the lists of DTC participant holders of Notes as at the Voting Record Date to be provided to the Monitor by DTC or any similar depository or trust company with respect to each series of Notes in accordance with paragraph 23 of this Meeting Order;

(dd) "**Plan**" means the plan of compromise and reorganization proposed by the Applicant as described in the Martin Affidavit and attached as Exhibit "B" to the

affidavit of Elizabeth Fimio, as such plan of compromise and reorganization may be amended from time to time in accordance with its terms;

(ee) "**Plan Supplement**" means the supplement(s) to the Plan, which shall contain draft copies of the Litigation Trust Agreement, relevant documents concerning Newco (including the terms of the Newco Shares and the Newco Notes) and such other documents as the Applicant and the Monitor may consider appropriate or necessary for purposes of the Meeting and voting on the Plan;

(ff) "**Proof of Claim**" means the "Proof of Claim" referred to in the Claims Procedure Order, substantially in the form attached to the Claims Procedure Order;

(gg) "**Registered Noteholder**" means a Noteholder who is the legal owner or holder of one or more Notes and whose name appears on any Registered Noteholder List;

(hh) "**Registered Noteholder List**" means each list of Registered Noteholders as at the Voting Record Date provided by the Trustees to the Monitor in accordance with paragraph 21 of this Meeting Order;

(ii) "**Required Majority**" means a majority in number of Affected Creditors with Voting Claims, and two-thirds in value of the Voting Claims held by such Affected Creditors, in each case who vote (in person or by proxy) on the Plan at the Meeting;

(jj) "**Sanction Hearing Date**" means the date to be selected by the Monitor for the Sanction Hearing (in consultation with the Applicant and counsel to the Initial Consenting Noteholders), which date shall be within seven (7) days of the Meeting Date (or such other date on or after the Meeting Date as may be set by the Monitor or the Court);

(kk) "**Shareholder Claims**" has the meaning ascribed thereto in the endorsement of this Court dated July 27, 2012 in these proceedings;

(ll) "**Unregistered Noteholder**" means a Noteholder whose name does not appear on any Registered Noteholder List;

(mm) "**Unresolved Claim**" means an Affected Creditor Claim in respect of which a Proof of Claim has been filed in a proper and timely manner in accordance with the Claims Procedure Order but that, as at any applicable time, has not been (i) determined to be a Voting Claim or (ii) finally disallowed;

(nn) "**Voting Claim**" means an Affected Creditor Claim to the extent that such Affected Creditor Claim has been accepted by the Monitor solely for purpose of voting on the Plan (which acceptance for the purpose of voting shall have no effect on whether such Claim is a Proven Claim for purposes of the Plan), in each case in accordance with the provisions of the Claims Procedure Order or any other Order, as applicable;

(oo) "**Voting Record Date**" means the date of this Meeting Order; and

(pp) "**Website**" means the website maintained by the Monitor in respect of the CCAA proceedings pursuant to the Initial Order at the following web address: http://cfcanada.fticonsulting.com/sfc/.

7. THIS COURT ORDERS that all references to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 P.M. on such Business Day unless otherwise indicated herein.

8. THIS COURT ORDERS that all references to the word "including" shall mean "including without limitation".

9. THIS COURT ORDERS that, unless the context otherwise requires, words importing the singular shall include the plural and *vice versa*, and words importing any gender shall include all genders.

THE PLAN

10. THIS COURT ORDERS that the Plan is hereby accepted for filing, and the Applicant is hereby authorized and directed to call and hold a meeting of Affected Creditors to vote on the Plan in the manner set forth herein.

11. THIS COURT ORDERS that the Applicant may, at any time and from time to time prior to or at the Meeting, amend, restate, modify and/or supplement the Plan, subject to the terms of the Plan, provided that: (i) the Monitor, the Applicant or the Chair shall communicate the details of any such amendments, restatements, modifications and/or supplements to Affected Creditors present at the Meeting prior to any vote being taken at the Meeting; (ii) the Applicant shall forthwith provide notice to the service list of any such amendments, restatements, modifications and/or supplements and shall file a copy thereof with this Court forthwith and in any event prior to the Sanction Hearing; and (iii) the Monitor shall post an electronic copy of any such amendments, restatements, modifications and/or supplements on the Website forthwith and in any event prior to the Sanction Hearing.

12. THIS COURT ORDERS that the Applicant shall serve and file the Plan Supplement, and the Monitor shall post the Plan Supplement on the Website, no later than seven (7) days prior to the Meeting. Thereafter, the Applicant may, at any time and from time to time prior to or at the Meeting, amend, restate, modify and/or supplement the Plan Supplement, subject to the terms of the Plan, provided that: (i) the Monitor, the Applicant or the Chair shall communicate the details of any such amendments, restatements, modifications and/or supplements to Affected Creditors present at the Meeting prior to any vote being taken at the Meeting; (ii) the Applicant shall forthwith provide notice to the service list of any such amendments, restatements, modifications and/or supplements and shall file a copy thereof with this Court forthwith and in any event prior to the Sanction Hearing; and (iii) the Monitor shall post an electronic copy of any such amendments, restatements, modifications and/or supplements on the Website forthwith and in any event prior to the Sanction Hearing.

FORMS OF DOCUMENTS

13. THIS COURT ORDERS that the forms of Information Circular, Notice to Affected Creditors, Ordinary Affected Creditors' Proxy, Noteholders' Proxy, Instructions to Ordinary Affected Creditors, Instructions to Registered Noteholders, Instructions to Unregistered Noteholders and Instructions to Participant Holders are hereby approved. The Applicant, with the consent of the Monitor, may (x) make any changes to such materials as are necessary or desirable to conform the content thereof to the terms of the Plan or this Meeting Order, and (y) at any time and from time to time prior to or at the Meeting, amend, restate, modify and/or supplement any of such materials, subject to the terms of the Plan, provided that: (i) the Monitor, the Applicant or the Chair shall communicate the details of any such amendments, restatements, modifications and/or supplements to Affected Creditors present at the Meeting prior to any vote being taken at the Meeting; (ii) the Applicant shall forthwith provide notice to the service list of any such amendments, restatements, modifications and/or supplements and shall file a copy thereof with this Court forthwith and in any event prior to the Sanction Hearing; and (iii) the Monitor shall post an electronic copy of any such amendments, restatements, modifications and/or supplements on the Website forthwith and in any event prior to the Sanction Hearing.

VOTING BY CREDITORS

14. THIS COURT ORDERS that, the Affected Creditors shall constitute a single class, the "**Affected Creditors Class**", for the purposes of considering and voting on the Plan.

15. [Intentionally deleted]

16. [Intentionally deleted]

NOTICE TO ORDINARY AFFECTED CREDITORS

17. THIS COURT ORDERS that the Monitor shall, no later than three (3) Business Days following the date of this Meeting Order, post an electronic copy of the Notice to Affected Creditors, the Plan and the Information Circular (in the form provided by the Applicant as at the date of this Meeting Order) on the Website.

18. THIS COURT ORDERS that the Monitor shall, on the Mailing Date, deliver the Ordinary Affected Creditor Meeting Materials by courier, personal delivery or email to each Ordinary Affected Creditor with a Voting Claim and/or an Unresolved Claim at the address set out in such Ordinary Affected Creditor's Proof of Claim (or in any other written notice that has been received by the Monitor in advance of such date regarding a change of address for an Ordinary Affected Creditor).

NOTICE TO NOTEHOLDERS

19. THIS COURT ORDERS that, no later than three (3) Business Days following the date of this Meeting Order, the Monitor shall post an electronic copy of the Notice to Affected Creditors, the Plan and the Information Circular (in the form provided by the Applicant as at the date of this Meeting Order) on the Website.

20. THIS COURT ORDERS that the Monitor shall, on the Mailing Date, deliver the Noteholder Meeting Materials by courier, personal delivery or email to the Trustees and DTC.

21. THIS COURT ORDERS that, no later than four (4) Business Days following the date of this Meeting Order, each of the Trustees shall provide to the Applicant and the Monitor a Registered Noteholder List for each series of Notes in respect of which such Trustee acts as trustee, each of which Registered Noteholder Lists shall list the Registered Noteholders of the applicable series of Notes as at the Voting Record Date and their respective addresses, telephone numbers, fax numbers and email addresses, to the extent available.

22. THIS COURT ORDERS that, on the later of (i) the Mailing Date and (ii) the date upon which the Monitor receives a Registered Noteholder List from any Trustee as provided for in paragraph 21, the Monitor shall send the Noteholder Meeting Materials to each Person listed on the Registered Noteholder List.

23. THIS COURT ORDERS that: (i) no later than four (4) Business Days following the date of this Meeting Order, DTC shall provide to the Applicant and the Monitor a Participant Holders List in respect of the Notes; and (ii) as soon as practicable following the date of this Meeting Order and in any event within four (4) Business Days of receiving notice from the Monitor of this Meeting Order, any other Registered Noteholder (if any) who holds Notes on behalf of one

or more Participant Holders shall provide to the Applicant and the Monitor a Participant Holders List in respect of the Notes. In each case the Participant Holder List so provided shall list the Participant Holders as at the Voting Record Date and their respective addresses and telephone numbers, fax numbers and email addresses, to the extent available.

24. THIS COURT ORDERS that, upon receipt by the Monitor of the Participant Holders Lists, the Monitor shall contact each Participant Holder listed thereon to determine the number of copies of the Noteholder Meeting Materials such Participant Holder requires in order to provide one copy of the Noteholder Meeting Materials to each of its customers or principals who are Unregistered Noteholders as at the Voting Record Date, and each Participant Holder shall provide the Monitor with a response as to the number of copies of the Noteholder Meeting Materials required within two (2) Business Days of being so contacted by the Monitor.

25. THIS COURT ORDERS that on the later of (i) the Mailing Date, and (ii) the date upon which the Monitor receives the information referred to in paragraph 24, the Monitor shall deliver by courier, personal delivery or email to such Participant Holder a copy of the Instructions to Participant Holders together with that number of copies of the Noteholder Meeting Materials required by such Participant Holder for distribution to the Unregistered Noteholders that are its customers or principals.

26. THIS COURT ORDERS that, within five (5) Business Days of any Participant Holder's receipt of the Noteholder Meeting Materials from the Monitor pursuant to paragraph 25, such Participant Holder shall: (i) complete and sign the applicable section of the Noteholders' Proxy relating to Participant Holders for each Unregistered Noteholder that has an account (directly or through an agent or custodian) with such Participant Holder; and (ii) deliver by courier or personal delivery to each such Unregistered Noteholder the Noteholders' Proxy as so completed and signed together with one copy of the Noteholder Meeting Materials. Each Participant Holder shall take any other action reasonably required to enable any Unregistered Noteholder that has an account (directly or through an agent or custodian) with such Participant Holder to provide a Noteholders' Proxy to the Monitor with respect to the Notes owned by or held for the benefit of such Unregistered Noteholder.

27. THIS COURT ORDERS that where: (i) a Participant Holder or its agent has a standard practice for distribution of meeting materials to Unregistered Noteholders and for the gathering of information and proxies or voting instructions from Unregistered Noteholders; (ii) the Participant Holder has discussed such standard practice in advance with the Applicant, the Monitor and counsel to the Initial Consenting Noteholders; and (iii) such standard practice is acceptable to the Applicant, the Monitor and counsel to the Initial Consenting Noteholders, such Participant Holder or its agent may, in lieu of following the procedure set out in paragraph 26 above, follow such standard practice provided that all applicable proxies or voting instructions are received by the Monitor no later than 5:00 P.M. on the third Business Day before the Meeting.

NOTICE, SERVICE AND DELIVERY

28. THIS COURT ORDERS that the Monitor's fulfillment of the notice, delivery and Website posting requirements set out in this Meeting Order shall constitute good and sufficient notice, service and delivery thereof on all Persons who may be entitled to receive notice, service or delivery thereof or who may wish to be present or vote (in person or by proxy) at the Meeting, and that no other form of notice, service or delivery need be given or made on such Persons and no other document or material need be served on such Persons.

CONDUCT OF MEETING AND DELIVERY OF PROXIES

29. THIS COURT ORDERS that the Applicant is hereby authorized and directed to call the Meeting and to hold and conduct the Meeting on the Meeting Date at the offices of Bennett Jones LLP, 3400 One First Canadian Place, Toronto, Ontario, for the purpose of seeking approval of the Plan by the Affected Creditors with Voting Claims at the Meeting in the manner set forth herein. In the event that the Meeting Date is extended after the Mailing Date, the Monitor shall post notice of the extension of the Meeting Date on the Website and provide notice of the extension of the Meeting Date to the service list.

30. THIS COURT ORDERS that Greg Watson or another representative of the Monitor, designated by the Monitor, shall preside as the chair of the Meeting (the "**Chair**") and, subject to

this Meeting Order or any further Order of the Court, shall decide all matters relating to the conduct of the Meeting.

31. THIS COURT ORDERS that the Monitor may appoint scrutineers for the supervision and tabulation of the attendance at, quorum at and votes cast at the Meeting (the "**Scrutineers**"). A person designated by the Monitor shall act as secretary of the Meeting (the "**Secretary**").

32. THIS COURT ORDERS that the quorum required at the Meeting shall be one Affected Creditor with a Voting Claim present at the Meeting (in person or by proxy).

33. THIS COURT ORDERS that if the requisite quorum is not present at the Meeting, or if the Meeting is postponed by the vote of a majority in value of Voting Claims of the Affected Creditors present at the Meeting (in person or by proxy), then the Meeting shall be adjourned by the Chair to a later date, time and place as designated by the Chair. The Chair shall be entitled to adjourn and further adjourn the Meeting at the Meeting or at any adjourned Meeting. Any adjournment or adjournments described in this paragraph 33 shall be for a period of not more than thirty (30) days in total unless otherwise agreed to by the Applicant, the Monitor and counsel to the Initial Consenting Noteholders. In the event of any adjournment described in this paragraph 33, no Person shall be required to deliver any notice of the adjournment of the Meeting or adjourned Meeting, provided that the Monitor shall: (i) announce the adjournment at the Meeting or adjourned Meeting, as applicable; (ii) post notice of the adjournment at the originally designated time and location of the Meeting or adjourned Meeting, as applicable; (iii) forthwith post notice of the adjournment on the Website; and (iv) provide notice of the adjournment to the service list forthwith. Any Ordinary Affected Creditor Proxies and Noteholder Proxies validly delivered in connection with the Meeting shall be accepted as proxies in respect of any adjourned Meeting.

34. THIS COURT ORDERS that the only Persons entitled to attend and speak at the Meeting are: (i) the Affected Creditors entitled to vote at the Meeting (or, if applicable, any Person holding a valid Ordinary Creditors' Proxy or Noteholders' Proxy on behalf of one or more such Affected Creditors) and any such Affected Creditor's or valid proxyholder's legal counsel and financial advisors; (ii) the Chair, the Scrutineers and the Secretary; (iii) one or more representatives of the Monitor and the Monitor's legal counsel; (iv) one or more representatives

of the current board of directors and/or senior management of Applicant, as selected by the Applicant, and the Applicant's legal counsel and financial advisors; (v) counsel to the Directors and Officers; (vi) one or more representatives of the Initial Consenting Noteholders and the Initial Consenting Noteholders' legal counsel and financial advisors; and (vii) the Trustees and their respective legal counsel. Any other person may be admitted to the Meeting on invitation of the Chair.

35. THIS COURT ORDERS that the Monitor may, with the consent of the Applicant, waive in writing the time limits imposed on Affected Creditors as set out in this Meeting Order (including the schedules hereto), generally or in individual circumstances, if the Monitor deems it advisable to do so.

ASSIGNMENT OF AFFECTED CLAIMS PRIOR TO THE MEETING

36. THIS COURT ORDERS that, subject to any restrictions contained in Applicable Laws, an Ordinary Affected Creditor may transfer or assign the whole of its Ordinary Affected Creditor Claim prior to the Meeting (or any adjournment thereof), provided that neither the Applicant nor the Monitor shall be obliged to deal with any transferee or assignee thereof as an Ordinary Affected Creditor in respect of such Ordinary Affected Creditor Claim, including allowing such transferee or assignee to attend or vote at the Meeting, unless and until actual notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been received and acknowledged by the Applicant and the Monitor, which receipt and acknowledgment must have occurred on or before 5 p.m. (Toronto time) on the date that is seven (7) days prior to the date of the Meeting (or any adjournment thereof), failing which the original transferor shall have all applicable rights as the "Ordinary Affected Creditor" with respect to such Ordinary Affected Creditor Claim as if no transfer of the Ordinary Affected Creditor Claim had occurred. If such receipt and acknowledgment by the Applicant and the Monitor have occurred on or before 5 p.m. (Toronto time) on the date that is seven (7) days prior to the date of the Meeting (or any adjournment thereof): (i) the transferor of the applicable Ordinary Affected Creditor Claim shall no longer constitute an Ordinary Affected Creditor in respect of such Ordinary Affected Creditor Claim; and (ii) the transferee or assignee of the applicable Ordinary Affected Creditor Claim shall, for all purposes in accordance with this Meeting Order, constitute

an Ordinary Affected Creditor in respect of such Ordinary Affected Creditor Claim and shall be bound by any and all notices previously given to the transferor or assignor in respect thereof and shall be bound by any Ordinary Creditors' Proxy duly submitted to the Monitor in accordance with this Meeting Order. For greater certainty, the Applicant and the Monitor shall not recognize partial transfers or assignments of Ordinary Affected Creditor Claims.

37. THIS COURT ORDERS that only those Beneficial Noteholders that have beneficial ownership of one or more Notes as at the Voting Record Date shall be entitled to vote at the Meeting (whether in person or by proxy). Nothing in this Meeting Order restricts the Beneficial Noteholders from transferring or assigning such Notes prior to or after the Voting Record Date, provided that if such transfer or assignment occurs after the Voting Record Date, only the original Beneficial Noteholder of such Notes as at the Voting Record Date (and not any transferee) shall be treated as a Beneficial Noteholder for purposes of this Meeting Order and the Meeting.

VOTING PROCEDURE

38. THIS COURT ORDERS that at the Meeting, the Chair shall direct a vote, by written ballot, on a resolution to approve the Plan and any amendments thereto.

39. THIS COURT ORDERS that, subject to paragraph 49, the only Persons entitled to vote at the Meeting (whether in person or by proxy) are: (i) Beneficial Noteholders with Voting Claims that have beneficial ownership of one or more Notes as at the Voting Record Date (or any such Beneficial Noteholder's validly appointed holder of its Noteholders' Proxy); and (ii) Ordinary Affected Creditors with Voting Claims as at the Voting Record Date (which, for greater certainty, includes any transferee of an Ordinary Affected Creditor Claim that is a Voting Claim, provided that such transferee has been recognized as an Ordinary Affected Creditor in respect of such transferred Ordinary Affected Creditor Claim in accordance with paragraph 36) (or any such Ordinary Affected Creditor's validly appointed holder of its Ordinary Affected Creditors' Proxy).

40. THIS COURT ORDERS that each Ordinary Affected Creditor with a Voting Claim shall be entitled to one vote as a member of the Affected Creditors Class, which vote shall have a value equal to the dollar value of such Ordinary Affected Creditor's Voting Claim.

41. THIS COURT ORDERS that each Beneficial Noteholder with a Voting Claim shall be entitled to one vote as a member of the Affected Creditors' Class, which vote shall have a value equal to the principal and Accrued Interest owing under the Notes owned by such Beneficial Noteholder as at the Voting Record Date. For greater certainty, with respect to voting by Beneficial Noteholders, only the Beneficial Noteholders, and not Registered Noteholders or Participant Holders (unless any such Registered Noteholder or Participant Noteholder is itself a Beneficial Noteholder), shall be entitled to vote on the Plan as provided for in this Meeting Order.

42. THIS COURT ORDERS that for the purpose of calculating the two-thirds majority in value of Voting Claims, the aggregate amount of Voting Claims held by all Affected Creditors that vote in favour of the Plan (in person or by proxy) shall be divided by the aggregate amount of all Voting Claims held by all Affected Creditors that vote on the Plan (in person or by proxy). For the purpose of calculating a majority in number of Affected Creditors voting on the Plan, (i) each Ordinary Affected Creditor that votes on the Plan (in person or by proxy) shall only be counted once, without duplication; and (ii) each individual Beneficial Noteholder that votes on the Plan (in person or by proxy) shall only be counted once, without duplication, even if that Beneficial Noteholder holds Notes through more than one Registered Noteholder or Participant Holder.

43. THIS COURT ORDERS that, for purposes of tabulating the votes cast on any matter that may come before the Meeting, the Chair shall be entitled to rely on any vote cast by a holder of an Ordinary Affected Creditors' Proxy and/or a Noteholders' Proxy that has been duly submitted to the Monitor in the manner set forth in this Meeting Order.

44. THIS COURT ORDERS that any Ordinary Affected Creditor or Beneficial Noteholder that is entitled to vote at the Meeting and that wishes to vote at the Meeting in person must: (i) duly complete and sign an Ordinary Creditors' Proxy or a Noteholders' Proxy, as applicable; (ii) identify itself in the Ordinary Creditors' Proxy or a Noteholders' Proxy, as applicable, as the

Person with the power to attend and vote at the Meeting on behalf of such Ordinary Affected Creditor or Beneficial Noteholder, as the case may be; and (iii) deliver such Ordinary Affected Creditors' Proxy or Noteholders' Proxy, as the case may be, to the Monitor so that it is received on or before 5:00 p.m. on the third Business Day before the Meeting (or any adjournment thereof), and such delivery must be made in accordance with the instructions accompanying such Ordinary Affected Creditors' Proxy or Noteholders' Proxy.

45. THIS COURT ORDERS that any Ordinary Affected Creditor or Beneficial Noteholder that is entitled to vote at the Meeting and that wishes to appoint a nominee to vote on its behalf at the Meeting must: (i) duly complete and sign an Ordinary Creditors' Proxy or a Noteholders' Proxy, as applicable; (ii) identify its desired nominee in the Ordinary Creditors' Proxy or a Noteholders' Proxy, as applicable, as the Person with the power to attend and vote at the Meeting on behalf of such Ordinary Affected Creditor or Beneficial Noteholder, as the case may be; and (iii) deliver such Ordinary Affected Creditors' Proxy or Noteholders' Proxy, as the case may be, to the Monitor so that it is received on or before 5:00 p.m. on the third Business Day before the Meeting (or any adjournment thereof), and such delivery must be made in accordance with the instructions accompanying such Ordinary Affected Creditors' Proxy or Noteholders' Proxy.

46. THIS COURT ORDERS that, in order to be effective, any Noteholders' Proxy must clearly state the name and contain the signature of the applicable Participant Holder, the applicable account number or numbers of the account or accounts maintained by the applicable Beneficial Noteholder with such Participant Holder, and the principal amount of Notes (excluding any pre-or post-filing interest) that such Beneficial Noteholder holds in each such account or accounts. Where a Beneficial Noteholder holds Notes through more than one Participant Holder, its Noteholders' Proxy is required to be executed by only one of those Participant Holders, provided that the Beneficial Noteholder shall provide the information required in its Noteholders' Proxy with respect to its Notes held with all Participant Holders to allow the Monitor to verify the aggregate amount of Notes held by such Beneficial Noteholder for the purposes of voting on the Plan.

47. THIS COURT ORDERS that notwithstanding anything in paragraphs 44, 45 or 46 or any minor error or omission in any Ordinary Affected Creditors' Proxy or Noteholders' Proxy

that is submitted to the Monitor, the Chair shall have the discretion to accept for voting purposes any Ordinary Affected Creditors' Proxy or Noteholders' Proxy submitted to the Monitor in accordance with the Meeting Order.

48. THIS COURT ORDERS that if there is any dispute as to the principal amount or number of Notes held by any Beneficial Noteholder, the Monitor will request the Participant Holder, if any, who maintains book entry records or other records evidencing such Beneficial Noteholder's ownership of Notes, to confirm with the Monitor the information provided by such Beneficial Noteholder. If any such dispute is not resolved by such Beneficial Noteholder and the Monitor by the date of the Meeting (or any adjournment thereof), the Monitor shall tabulate the vote for or against the Plan in respect of the disputed principal amount of such Beneficial Noteholder's Notes separately. If: (i) any such dispute remains unresolved as of the date of the Sanction Hearing; and (ii) the approval or non-approval of the Plan would be affected by the votes cast in respect of such disputed principal amount of Notes, then such result shall be reported to the Court at the Sanction Hearing and, if necessary, the Monitor may make a request to the Court for directions.

VOTING OF UNRESOLVED CLAIMS

49. THIS COURT ORDERS that notwithstanding anything to the contrary herein or in the Plan, each Affected Creditor with an Unresolved Claim as at the Voting Record Date shall be entitled to attend the Meeting and shall be entitled to one vote at the Meeting in respect of such Unresolved Claim. Any vote cast in respect of an Unresolved Claim shall be dealt with in accordance with paragraph 50, unless and until (and then only to the extent that) such Unresolved Claim is ultimately determined to be: (i) a Voting Claim, in which case such vote shall have the dollar value attributable to such Voting Claim; or (ii) disallowed, in which case such vote shall not be counted for any purpose.

50. THIS COURT ORDERS that the Monitor shall keep a separate record of votes cast by Affected Creditors with Unresolved Claims and shall report to the Court with respect thereto at the Sanction Hearing. If approval or non-approval of the Plan by Affected Creditors would be altered by the votes cast in respect of Unresolved Claims: (i) such result shall be reported to the Court as soon as reasonably practicable after the Meeting; (ii) if a deferral of the Sanction

Hearing is deemed to be necessary or advisable by the Monitor (in consultation with the Applicant and counsel to the Initial Consenting Noteholders), the Monitor shall request an appropriate deferral of the Sanction Hearing; and (iii) the Monitor may make a request to the Court for directions.

51. THIS COURT ORDERS that each of the Third Party Defendants shall be entitled to one vote as a member of the Affected Creditors Class in respect of any Class Action Indemnity Claim that it has properly filed in respect of the Indemnified Noteholder Class Action Claims, provided that the aggregate value of all such Class Action Indemnity Claims shall, for voting purposes, be deemed to be limited to the amount of the Indemnified Noteholder Class Action Limit in the event that such Indemnified Noteholder Class Action Limit is in place at the time of voting. The Monitor shall keep a separate record of votes cast by the Third Party Defendants in respect of such Class Action Indemnity Claims, and the Monitor shall report to the Court with respect thereto at the Sanction Hearing, including as to whether or not a vote in favour of the Plan or against the Plan by the Third Party Defendants would have had any effect on the approval of the Plan by the Required Majority.

52. THIS COURT ORDERS that the Applicant and the Monitor shall have the right to seek the assistance of the Court at any time in valuing any Unresolved Claim if required to ascertain the result of any vote on the Plan.

53. THIS COURT ORDERS that, pursuant to the Order of this Court dated July 27, 2012 in these proceedings, any Claims that have been properly filed by any of the Third Party Defendants against the Applicant in respect of defence costs incurred or to be incurred by the Third Party Defendants in connection with defending themselves against the Shareholder Claims ("**Defence Costs Claims**") shall be treated as Unresolved Claims for purposes of this Meeting Order and voting at the Meeting.

PERSONS NOT ENTITLED TO VOTE

54. THIS COURT ORDERS that, for greater certainty, the following Persons, in such capacity, shall have no right to, and shall not, vote at the Meeting: Unaffected Creditors; Noteholder Class Action Claimants; Equity Claimants; any Person with a D&O Claim; any

Person with a D&O Indemnity Claim (other than a D&O Indemnity Claim in respect of Defence Costs Claims or in respect of the Indemnified Noteholder Class Action Claims); any Person with a Subsidiary Intercompany Claim; and any other Person asserting Claims against the Applicant whose Claims do not constitute Affected Creditor Claims on the Voting Record Date.

CLAIMS OF THE ONTARIO SECURITIES COMMISSION

55. THIS COURT ORDERS that the Ontario Securities Commission (the "**OSC**") shall (i) advise the Applicant and the Monitor as to whether it will pursue any rights or claims against the Applicant or the Directors or Officers that have or could give rise to a monetary administrative or other monetary penalty or claim ("**OSC Monetary Claims**") on or prior to September 13, 2012, which date shall serve in effect as a claims bar date for purposes of any OSC Monetary Claims that may be asserted by the OSC as against the Applicant or any Director or Officer, and (ii) with respect to any OSC Monetary Claims that the OSC may so assert, shall in each case specify the quantum of each such OSC Monetary Claim.

56. THIS COURT ORDERS that, in the event that the Applicant and the Monitor are advised of any OSC Monetary Claims pursuant to and in accordance with paragraph 55, the Monitor shall within three (3) Business Days of being so advised, deliver the Ordinary Affected Creditor Meeting Materials by courier, personal delivery or email to the OSC (or to counsel for the OSC as appears on the service list).

RESTRUCTURING CLAIMS

57. THIS COURT ORDERS that the Monitor shall, no later than three (3) Business Days following the receipt of a Proof of Claim from any Person asserting a Restructuring Claim, deliver the Ordinary Affected Creditor Meeting Materials by courier, personal delivery or email to such Person at the address set out in any such Proof of Claim.

APPROVAL OF THE PLAN

58. THIS COURT ORDERS that the Plan must receive an affirmative vote of the Required Majority in order to be approved by the Affected Creditors.

59. THIS COURT ORDERS that the result of any vote at the Meeting shall be binding on all Affected Creditors, regardless of whether such Affected Creditor was present at or voted at the Meeting.

PLAN SANCTION

60. THIS COURT ORDERS that the Monitor shall report to the Court the results of any votes taken at the Meeting as soon as reasonably practicable after the Meeting (or any adjournment thereof). If the Plan is approved by the Required Majority, the Applicant may apply to the Court at 10:00 A.M. on the Sanction Hearing Date for the Sanction Order (the "**Sanction Hearing**").

61. THIS COURT ORDERS that service of this Meeting Order by the Monitor or the Applicant to the parties on the service list shall constitute good and sufficient service of notice of the Sanction Hearing on all Persons entitled to receive such service and no other form of notice or service need be made and no other materials need be served in respect of the Sanction Hearing, except that any party shall also serve the service list with any additional materials that it intends to use in support of the Sanction Hearing.

62. THIS COURT ORDERS that any Person who wishes to oppose the Sanction Hearing shall serve on the Applicant, the Monitor and the service list a notice setting out the basis for such opposition and a copy of the materials to be used to oppose the Sanction Hearing at least four (4) days before the date set for the Sanction Hearing.

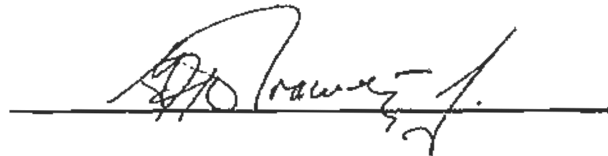
MISCELLANEOUS

63. THIS COURT ORDERS that nothing in this Meeting Order (including the acceptance or determination of any Claim, or any part thereof, as a Voting Claim in accordance with this Meeting Order) has the effect of determining Proven Claims for purposes of the Plan.

64. THIS COURT ORDERS that, for the purposes of this Meeting Order (including the calculation of the Required Majority), all Affected Creditor Claims shall be deemed to be denominated in Canadian dollars and any Affected Creditor Claims denominated in a foreign currency shall be deemed to be converted to Canadian dollars using the Reuters closing rate on

the Filing Date (as found at http://www.reuters.com/finance/currencies), without prejudice to a different exchange rate being proposed in the Plan.

65. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.



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SEP 4 - 2012

SCHEDULE "A"

NOTICE TO AFFECTED CREDITORS OF SINO-FOREST CORPORATION

NOTICE IS HEREBY GIVEN that a plan of compromise and reorganization (as amended from time to time, the "**Plan**") has been filed with the Ontario Superior Court of Justice (Commercial List) (the "**Court**") in respect of Sino-Forest Corporation (the "**Applicant**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

A copy of the Plan is set out as a schedule to the information circular dated ● (the "**Circular**") for the Meeting (as defined below).

NOTICE IS ALSO HEREBY GIVEN that a meeting of Affected Creditors (the "**Meeting**") will be held at 10:00 a.m. on ●, 2012 (or such other date as may be set and announced in accordance with the Meeting Order) at the offices of Bennett Jones LLP, 3400 One First Canadian Place, Toronto, Ontario, for the purpose of considering and, if thought advisable, passing, with or without variation, a resolution to approve the Plan (the full text of which resolution is set out as a schedule to the Circular) and to transact such other business as may properly come before the Meeting (or any adjournment thereof). The Meeting is being held pursuant to the Order of the Court made on ● (the "**Meeting Order**") and the endorsement of the Court made on August 31, 2012 (the "**Endorsement**"). Copies of the Meeting Order and the Endorsement are set out as schedules to the Circular. Capitalized terms used but not otherwise defined in this notice have the meaning ascribed to them in the Meeting Order.

The Plan must receive an affirmative vote of the Required Majority in order to be approved by the Affected Creditors. The Required Majority is a majority in number of Affected Creditors with Voting Claims, and two-thirds in value of the Voting Claims held by such Affected Creditors, in each case who vote (in person or by proxy) on the Plan at the Meeting. The Plan must also be sanctioned by a final order of the Court (the "**Sanction Order**") pursuant to the CCAA. Notice is also hereby given that, if the Plan is approved by the Required Majority at the Meeting, the Sanction Order will be sought in an application before the Court at 10:00 a.m. on ●, 2012 (or such other date after the Meeting as may be set by the Court), to seek approval of the Plan. If the Plan is approved by the Requisite Majority and sanctioned by the Court, then,

subject to the satisfaction or waiver of the conditions to implementation of the Plan, all Persons referred to in the Plan (including the Affected Creditors) will receive the treatment set out in the Plan.

AMENDMENTS TO THE PLAN

The Applicant may, at any time and from time to time prior to or at the Meeting, amend, restate, modify and/or supplement the Plan, subject to the terms of the Plan, provided that: (i) the Monitor, the Applicant or the Chair shall communicate the details of any such amendment, restatement and/or supplement to all Affected Creditors present at the Meeting prior to any vote being taken at the Meeting; (ii) the Applicant shall provide notice to the service list of any such amendment, restatement and/or supplement and shall file a copy thereof with this Court forthwith and in any event prior to the Sanction Hearing; and (iii) the Monitor shall post an electronic copy of any such amendment, restatement and/or supplement on the Website forthwith and in any event prior to the Sanction Hearing.

COMPLETION OF PROXIES

Any Affected Creditor who is entitled to vote at the Meeting and that wishes to vote at the Meeting must complete, sign and return the applicable form of proxy enclosed in the Circular in the return envelope provided or by fax at the fax number below or by email in PDF format at the email address below. In order to be effective, a proxy must be deposited with the Monitor, at the address, fax or email below, at any time prior to 5:00 p.m. on the third Business Day before the Meeting (or any adjournment thereof).

The Monitor's contact information for the purpose of filing forms of proxy and for obtaining any additional information or materials related to the Meeting is:

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West, Suite 2010
P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Jodi Porepa
Email: sfc@fticonsulting.com

Fax: (416) 649-8101

This notice is given by the Monitor pursuant to the Meeting Order.

You can also view copies of documents relating to this process on the following website http://cfcanada.fticonsulting.com/sfc/.

Dated at Toronto, Ontario this ● day of ●, 2012.

SCHEDULE "B"

INSTRUCTIONS TO PARTICIPANT HOLDERS

URGENT – IMMEDIATE ACTION REQUIRED

●, 2012

TO: PARTICIPANT HOLDERS OF SINO-FOREST CORPORATION'S:

(i) **US$345,000,000 5.00% CONVERTIBLE SENIOR NOTES DUE 2013 (Rule 144A CUSIP No. 82934HAB7/Regulation S CUSIP No. C83912AB8)**;

(ii) **US$399,517,000 10.25% GUARANTEED SENIOR NOTES DUE 2014 (Rule 144A CUSIP No. 82934HAC5/Regulation S CUSIP No. C83912AC6)**;

(iii) **US$460,000,000 4.25% CONVERTIBLE SENIOR NOTES DUE 2016 (Rule 144A CUSIP No. 82934HAD3/Regulation S CUSIP No. C83912AD4)**; and

(iv) **US$600,000,000 6.25% GUARANTEED SENIOR NOTES DUE 2017 Rule 144A CUSIP No. 82934HAF8/Regulation S CUSIP No. C83912AF9)**,

(collectively, the "**Notes**")

Re: Meeting of Affected Creditors of Sino-Forest Corporation to vote on the Plan of Compromise and Reorganization pursuant to the *Companies' Creditors Arrangement Act* (the "Plan")

According to the records of The Depository Trust Company ("**DTC**") or the applicable note indenture trustee, you are the holder or custodian (the "**Participant Holder**") on behalf of an unregistered holder of one or more of the Notes (an "**Unregistered Noteholder**"). You (or your agent) are required by paragraph 26 of the enclosed Court Order (the "**Meeting Order**") to complete and sign the applicable part of an enclosed Noteholders' Proxy (the box on page 2) for each Unregistered Noteholder for whom you act as Participant Holder and to mail it directly to each such applicable Unregistered Noteholder **within five (5) Business Days**.

We enclose Noteholder Meeting Materials to be forwarded by you or your agent (together with an appropriately completed and signed Noteholders' Proxy) to each of the Unregistered Noteholders recorded in your account records or book entry records. We enclose one additional copy of these materials for your use. **THE MATERIALS ARE TIME SENSITIVE AND MUST BE FORWARDED TO EACH OF THE UNREGISTERED NOTEHOLDERS TOGETHER WITH THE NOTEHOLDERS' PROXY COMPLETED BY YOU FOR THAT UNREGISTERED NOTEHOLDER WITHOUT DELAY.**

THE TOTAL AMOUNT OF ALL NOTEHOLDER CLAIMS HAS BEEN FILED BY THE NOTE INDENTURE TRUSTEES. THEREFORE YOU DO NOT HAVE TO PROVIDE A PROOF OF CLAIM.

The Noteholders' Proxy is to be completed and signed by you or your agent and by the Unregistered Noteholder and is to be provided by the Unregistered Noteholder directly to Sino-Forest's Monitor, FTI Consulting Canada Inc., in the enclosed envelope or by facsimile transmission or email.

PLEASE INSTRUCT UNREGISTERED NOTEHOLDERS TO DELIVER THEIR PROXIES DIRECTLY TO FTI CONSULTING CANADA INC. IN ACCORDANCE WITH THE INSTRUCTIONS TO UNREGISTERED NOTEHOLDERS. PROXIES MUST BE RECEIVED BY FTI CONSULTING CANADA INC. PRIOR TO THE DEADLINE OF 5:00 P.M. ON THE THIRD BUSINESS DAY BEFORE THE MEETING (OR ANY ADJOURNMENT THEREOF).

Before sending the Noteholders' Proxy and the other materials to an Unregistered Noteholder, please:

1. insert in the Noteholders' Proxy in the appropriate spaces (in the box on page 2) the name of the applicable Unregistered Noteholder, your organization's name as Participant Holder, the applicable account number and the principal amount of the Notes held in such account; and

2. sign the Noteholders' Proxy as Participant Holder where indicated.

We request that you provide any assistance that an Unregistered Noteholder may require in completing its Noteholders' Proxy. You are required by the Meeting Order to complete and forward such Noteholders' Proxies and the other materials to the applicable Unregistered Noteholders as specified in these instructions.

If you have a standard practice for distribution of meeting materials to Unregistered Noteholders and for the gathering of information and proxies or voting instructions from Unregistered Noteholders that differs from the process described above, **please contact the Monitor immediately** to determine whether you are able to use such standard practice as an alternative to the process described above.

If you have any questions regarding your obligations or the process, or require additional copies of any materials, please contact the Monitor at the following address:

FTI Consulting Canada Inc., the 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
Email: sfc@fticonsulting.com
Fax: (416) 649-8101

You can also view copies of documents relating to this process on the following website http://cfcanada.fticonsulting.com/sfc/.

SCHEDULE "C"

INSTRUCTIONS TO ORDINARY AFFECTED CREDITORS

URGENT – IMMEDIATE ACTION REQUIRED

●, 2012

TO: ORDINARY AFFECTED CREDITORS OF SINO-FOREST CORPORATION

Re: **Meeting of Affected Creditors of Sino-Forest Corporation to vote on the Plan of Compromise and Reorganization pursuant to the *Companies' Creditors Arrangement Act* (the "Plan")**

We enclose in this package the following documents for your review and consideration:

1. Notice to Affected Creditors;
2. the Plan proposed in respect of Sino-Forest Corporation;
3. an Information Circular in respect of Sino-Forest Corporation and the Plan;
4. copy of the Meeting Order of the Ontario Superior Court of Justice dated ● (the "**Meeting Order**");
5. copy of the endorsement of the Ontario Superior Court of Justice made on August 31, 2012 (the "**Endorsement**"); and
6. blank form of Ordinary Affected Creditors' Proxy, completion instructions and a return envelope.

The purpose of these materials is to enable you to consider the Plan and vote to accept or reject the resolution to approve the Plan at the Meeting of Affected Creditors of Sino-Forest Corporation to be held at 10:00 a.m. on ●, 2012 (or such other date as may be set and announced in accordance with the Meeting Order) at the offices of Bennett Jones LLP, 3400 One First Canadian Place, Toronto, Ontario (the "**Meeting**").

PROXIES

Ordinary Affected Creditors who wish to vote at the Meeting must complete the enclosed Ordinary Affected Creditors' Proxy and provide it to the Monitor, using the enclosed envelope, or by sending it to the Monitor by facsimile transmission at the fax number noted below or by email (in PDF format) at the email address below, so that it is received by the Monitor no later than 5:00 p.m. (Toronto time) on the third Business Day before the Meeting (or any adjournment thereof). Any Ordinary Affected Creditor must provide the Ordinary Affected Creditors' Proxy to the Monitor by this deadline to vote at the Meeting of Affected Creditors.

FURTHER INFORMATION

If you have any questions regarding the process or any of the enclosed forms, please contact FTI Consulting Canada Inc. at the following address:

FTI Consulting Canada Inc., the 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
Email: sfc@fticonsulting.com
Fax: (416) 649-8101

You can also view copies of documents relating to this process on the following website http://cfcanada.fticonsulting.com/sfc/.

SCHEDULE "D"

<u>INSTRUCTIONS TO REGISTERED NOTEHOLDERS</u>

URGENT – IMMEDIATE ACTION REQUIRED

●, 2012

TO: REGISTERED HOLDERS OF SINO-FOREST CORPORATION'S:

(i) **US$345,000,000 5.00% CONVERTIBLE SENIOR NOTES DUE 2013 (Rule 144A CUSIP No. 82934HAB7/Regulation S CUSIP No. C83912AB8);**

(ii) **US$399,517,000 10.25% GUARANTEED SENIOR NOTES DUE 2014 (Rule 144A CUSIP No. 82934HAC5/Regulation S CUSIP No. C83912AC6);**

(iii) **US$460,000,000 4.25% CONVERTIBLE SENIOR NOTES DUE 2016 (Rule 144A CUSIP No. 82934HAD3/Regulation S CUSIP No. C83912AD4);** and

(iv) **US$600,000,000 6.25% GUARANTEED SENIOR NOTES DUE 2017 Rule 144A CUSIP No. 82934HAF8/Regulation S CUSIP No. C83912AF9),**

(collectively, the "**Notes**")

Re: Meeting of Affected Creditors of Sino-Forest Corporation to vote on the Plan of Compromise and Reorganization pursuant to the *Companies' Creditors Arrangement Act* (the "Plan")

We enclose in this package the following documents for your review and consideration:

1. Notice to Affected Creditors;

2. the Plan proposed in respect of Sino-Forest Corporation;

3. an Information Circular with respect to Sino-Forest Corporation and the Plan;

4. copy of the Meeting Order of the Ontario Superior Court of Justice dated ● (the "**Meeting Order**");

5. copy of the endorsement of the Ontario Superior Court of Justice made on August 31, 2012 (the "**Endorsement**"); and

6. blank form of Noteholders' Proxy, completion instructions and return envelope.

The purpose of these materials is to provide you with the documents required for dissemination to Beneficial Noteholders to enable Beneficial Noteholders to consider the Plan and to cast their vote to accept or reject the resolution to approve the Plan at the meeting of the Affected Creditors to be held at 10:00 a.m. on ●, 2012 (or such other date as may be set and announced in accordance with the Meeting Order) at the offices of Bennett Jones LLP, 3400 One First Canadian Place, Toronto, Ontario (the "**Meeting**").

IF YOU HOLD NOTES FOR ANOTHER PERSON PROXIES ARE TO BE FILED ONLY BY BENEFICIAL NOTEHOLDERS. IF YOU ARE A TRUST COMPANY, DEPOSITORY, A BROKER, A BOOK ENTRY SYSTEM, AN AGENT, A CUSTODIAN OR ANY OTHER ENTITY WHICH HOLDS NOTES FOR ANOTHER PERSON, PLEASE IMMEDIATELY CONTACT FTI CONSULTING CANADA INC. (THE "MONITOR") AT THE ADDRESS BELOW TO SO ADVISE IT. THE MONITOR WILL THEN SEND YOU THE MATERIALS SET OUT IN SCHEDULE "B" OF THE MEETING ORDER WHICH HAVE BEEN PREPARED TO ADDRESS YOUR SITUATION.

CLAIM

THE TOTAL AMOUNT OF ALL NOTEHOLDER CLAIMS HAS BEEN FILED BY THE NOTE INDENTURE TRUSTEES. THEREFORE YOU DO NOT HAVE TO PROVIDE A PROOF OF CLAIM.

IF YOU ARE A BENEFICIAL NOTEHOLDER

If you are a Beneficial Noteholder (*i.e.*, you own Notes beneficially yourself and do not hold such Notes for the benefit of another person) and you wish to vote at the Meeting, you must

complete the enclosed Noteholders' Proxy and provide it to the Monitor using the enclosed envelope, or by sending it to the Monitor by facsimile transmission at the fax number noted below or by email (in PDF format) at the email address below, so that it is received by the Monitor no later than 5:00 p.m. (Toronto time) on the third Business Day before the Meeting or any adjournment thereof. Beneficial Noteholder must provide the Noteholders' Proxy to the Monitor by this deadline in order to vote at the Meeting of Affected Creditors.

FURTHER INFORMATION

If you have any questions regarding the process or any of the enclosed forms, please contact FTI Consulting Canada Inc. at the following address:

FTI Consulting Canada Inc., the 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
Email: sfc@fticonsulting.com
Fax: (416) 649-8101

You can also view copies of documents relating to this process on the following website http://cfcanada.fticonsulting.com/sfc/.

SCHEDULE "E"

INSTRUCTIONS TO UNREGISTERED NOTEHOLDERS

URGENT – IMMEDIATE ACTION REQUIRED

●, 2012

TO: UNREGISTERED HOLDERS OF SINO-FOREST CORPORATION'S:

(i) **US$345,000,000 5.00% CONVERTIBLE SENIOR NOTES DUE 2013 (Rule 144A CUSIP No. 82934HAB7/Regulation S CUSIP No. C83912AB8)**;

(ii) **US$399,517,000 10.25% GUARANTEED SENIOR NOTES DUE 2014 (Rule 144A CUSIP No. 82934HAC5/Regulation S CUSIP No. C83912AC6)**;

(iii) **US$460,000,000 4.25% CONVERTIBLE SENIOR NOTES DUE 2016 (Rule 144A CUSIP No. 82934HAD3/Regulation S CUSIP No. C83912AD4)**; and

(iv) **US$600,000,000 6.25% GUARANTEED SENIOR NOTES DUE 2017 Rule 144A CUSIP No. 82934HAF8/Regulation S CUSIP No. C83912AF9)**,

(collectively, the "**Notes**")

Re: Meeting of Affected Creditors of Sino-Forest Corporation to vote on the Plan of Compromise and Reorganization pursuant to the *Companies' Creditors Arrangement Act* (the "Plan")

You are considered an Unregistered Noteholder if your Notes are shown by the books and records of the applicable indenture trustee to be held by your broker, DTC or another similar holder (a "**Participant Holder**") on your behalf. If your Notes are held by a Participant Holder, these instructions apply to you.

We enclose in this package the following documents for your review and consideration:

1. Notice to Affected Creditors;

2. the Plan proposed in respect of Sino-Forest Corporation;

3. an Information Circular with respect to Sino-Forest and the Plan;

4. copy of the Meeting Order of the Ontario Superior Court of Justice dated ● (the "**Meeting Order**"), 2012;

5. copy of the endorsement of the Ontario Superior Court of Justice made on August 31, 2012 (the "**Endorsement**"); and

6. blank form of Noteholders' Proxy, completion instructions and return envelope.

The purpose of these materials is to provide you with the documents required to enable you to consider the Plan and to cast your vote to accept or reject the resolution to approve the Plan at the meeting of the Affected Creditors to be held at 10:00 a.m. on ●, 2012 (or such other date as may be set and announced in accordance with the Meeting Order) at the offices of Bennett Jones LLP, 3400 One First Canadian Place, Toronto, Ontario (the "**Meeting**").

CLAIM

THE TOTAL AMOUNT OF ALL THE NOTEHOLDER CLAIMS HAS BEEN FILED BY THE NOTE INDENTURE TRUSTEES. THEREFORE, YOU DO NOT HAVE TO PROVIDE A PROOF OF CLAIM. **HOWEVER IF YOU WISH TO VOTE ON THE PLAN, YOU MUST COMPLETE THE ENCLOSED NOTEHOLDERS' PROXY IN ACCORDANCE WITH THE INSTRUCTIONS SET OUT THEREIN AND RETURN IT TO THE MONITOR PRIOR TO 5:00 P.M. (TORONTO TIME) ON THE THIRD BUSINESS DAY BEFORE THE MEETING OR ANY ADJOURNMENT THEREOF.**

PROXY

The box on page 2 of your proxy should have been completed and signed by your Participant Holder to indicate the principal amount of Notes held by the Participant Holder on your behalf as at the Voting Record Date of ●. If it has not been completed and signed, please contact your Participant Holder immediately to arrange for it to be completed and signed. You must complete your portion of the enclosed Noteholders' Proxy (including paragraph 1 of the proxy) and

provide it to FTI Consulting Canada Inc. (the "**Monitor**"), using the enclosed envelope, or by sending to the Monitor by facsimile transmission at the fax number noted below or by email (in PDF format) at the email address below, so that it is received by the Monitor no later than 5:00 p.m. (Toronto time) on the third Business Day before the Meeting or any adjournment thereof. You must provide the completed proxy to the Monitor by this deadline if you wish to cast your vote at the Meeting of Affected Creditors.

YOU SHOULD NOT SEND THE PROXY TO YOUR PARTICIPANT HOLDER. YOUR PROXY SHOULD BE SENT DIRECTLY TO FTI CONSULTING CANADA INC. IN THE ENVELOPE PROVIDED OR BY FACSIMILE OR EMAIL.

If you have any questions regarding your obligations or the process, or require additional copies of any materials please contact the Monitor at the following address:

The Monitor
FTI Consulting Canada Inc., the 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
Email: sfc@fticonsulting.com
Fax: (416) 649-8101

You can also view copies of documents relating to this process on the following website http://cfcanada.fticonsulting.com/sfc/.

SCHEDULE "F"

NOTEHOLDERS' PROXY

For Use by Beneficial Owners of Sino-Forest Corporation's Notes

MEETING OF AFFECTED CREDITORS OF SINO-FOREST CORPORATION

to be held pursuant to an Order of the Ontario Superior Court of Justice (**the "Meeting Order"**)
in connection with the Plan of Compromise and Reorganization (the "**Plan**")
under the *Companies' Creditors Arrangement Act* (Canada) in respect of
Sino-Forest Corporation ("**Sino-Forest**")
on ●, 2012 at 10:00 a.m.
(or such other date as may be set and announced in accordance with the Meeting Order)
at:
Bennett Jones LLP, 3400 One First Canadian Place
Toronto, Ontario

and at any adjournment thereof.

Before completing this Proxy, please read carefully the instructions accompanying this Proxy for information respecting the proper completion and return of this Proxy.

THIS PROXY MUST BE COMPLETED AND SIGNED BY THE PARTICIPANT HOLDER AND THE UNREGISTERED NOTEHOLDER AND MUST BE PROVIDED TO THE MONITOR, FTI CONSULTING CANADA INC., PRIOR TO 5:00 P.M. TORONTO TIME ON THE THIRD BUSINESS DAY BEFORE THE MEETING (OR ANY ADJOURNMENT THEREOF).

TO BE COMPLETED AND SIGNED BY THE PARTICIPANT HOLDER PRIOR TO SENDING THIS PROXY TO THE BENEFICIAL OWNER OF NOTES

Name of Unregistered Noteholder
(Client or Principal for whom Notes are held): ______________________

Name of Participant Holder for this Unregistered
Noteholder's Notes: ______________________

Account Number: ______________________

Principal Amount of Notes
Held for this Unregistered Noteholder by series: ______________________

Participant Holder Signature: ______________________

(Print Name of Contact at Participant Holder)

Phone Number of Participant Holder: By:

______________________ ______________________

(Signature of authorized signing officer of Participant Holder)

Email Address of Participant Holder:

____

REMAINDER OF PROXY TO BE COMPLETED BY BENEFICIAL OWNER

THE UNDERSIGNED UNREGISTERED NOTEHOLDER hereby revokes all proxies previously given and nominates, constitutes and appoints ______________________________ or, if no person is named, Robert J. Chadwick of Goodmans LLP (or his designee), as nominee of the Unregistered Noteholder, with power of substitution, to attend on behalf of and act for the Unregistered Noteholder at the Meeting of Affected Creditors of Sino-Forest Corporation to be held in connection with the Plan and at any and all adjournments thereof, and to vote the Unregistered Noteholder's claims in respect of the Notes beneficially owned by it as follows:

A. (mark one only)

❑ VOTE FOR approval of the Plan; or

❑ VOTE AGAINST approval of the Plan;

- and -

B. vote at the nominee's discretion and otherwise act for and on behalf of the undersigned Unregistered Noteholder with respect to any amendments or variations to the Plan and to any other matters that may come before the Meeting of the Affected Creditors of Sino-Forest Corporation or any adjournment thereof.

If you do not indicate your vote in part "A" above and Robert J. Chadwick of Goodmans LLP (or his designee) is your nominee, he will vote this proxy FOR approval of the Plan.

Please provide below: (i) the Name of each Participant Holder through which the Unregistered Noteholder holds Notes; (ii) the Unregistered Noteholder's account number with each such Participant Noteholder; and (iii) the principal amount of all Notes held on behalf of the Unregistered Noteholder by each Participant Holder.

NAME AND PHONE # OF PARTICIPANT HOLDER (Please list all Participants Holders through which you hold Notes)	ACCOUNT NUMBER	PRINCIPAL AMOUNT OF NOTES AND SERIES (Please identify the series of Notes)

(If additional space is required, please attach a separate page)

The Unregistered Noteholder hereby authorizes FTI Consulting Canada Inc. to contact any Participant Holder named above to confirm that the information set out above conforms to the information contained in the records of the Participant Holder.

DATED this _______ day of _________________, 2012.

	(Print Name of Unregistered Noteholder)
	(Signature of Unregistered Noteholder or, if the Unregistered Noteholder is a corporation, signature of an authorized signing officer of the corporation and such officer's title)
	Phone Number of Unregistered Noteholder

INSTRUCTIONS FOR COMPLETION OF PROXY

1. Each Unregistered Noteholder has the right to appoint a person (who need not be a Noteholder) to attend, act and vote for and on the Unregistered Noteholder's behalf and such right may be exercised by inserting in the space in paragraph 1 the name of the person to be appointed. An individual Unregistered Noteholder wishing to attend and vote in person at the Meeting of Affected Creditors of Sino-Forest Corporation should insert the Unregistered Noteholder's own name in the space provided. **If no name has been inserted in the space provided, the Unregistered Noteholder will be deemed to have appointed Robert J. Chadwick of Goodmans LLP (or his designee) as the Unregistered Noteholder's proxyholder.**

2. **If Robert J. Chadwick of Goodmans LLP (or his designee) is appointed or deemed to be appointed as proxyholder and the Unregistered Noteholder fails to indicate on this Proxy a vote for or against the approval of the Plan, this Proxy will be voted FOR approval of the Plan.**

3. The Unregistered Noteholder should insert the principal amount of each series of Notes owned by the Unregistered Noteholder, specifying in each case the applicable Participant Holder and the series of Notes, in the space provided on page 4.

4. If this Proxy is not dated in the space provided, it will be deemed to bear the date on which it is received by the Monitor.

5. This Proxy must be signed by the Beneficial Owner of the applicable Notes or by his or her attorney duly authorized in writing or, if the Unregistered Noteholder is a corporation, by a duly authorized officer or attorney of the corporation specifying the title of such officer or attorney.

6. The Participant Holder must complete and sign the applicable portion of the Proxy (in the box on page 2) PRIOR to sending the Proxy to the Beneficial Owner.

7. Valid proxies bearing or deemed to bear a later date will revoke this Proxy. If more than one valid proxy for the same Unregistered Noteholder and bearing or deemed to bear the same date are received with conflicting instructions, such proxies will be treated as disputed proxies and will not be counted.

8. This Proxy must be received by the Monitor by no later than 5:00 p.m. (Toronto time) on the third Business Day before the Meeting or any adjournment thereof, at the address set out below:

FTI Consulting Canada Inc., the 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
Email: sfc@fticonsulting.com
Fax: (416) 649-8101

SCHEDULE "G"

ORDINARY AFFECTED CREDITORS' PROXY

For Use by Ordinary Affected Creditors of Sino-Forest Corporation

MEETING OF AFFECTED CREDITORS OF SINO-FOREST CORPORATION

to be held pursuant to an Order of the Ontario Superior Court of Justice (the "**Meeting Order**")
in connection with the Plan of Compromise and Reorganization (the "**Plan**")
under the *Companies' Creditors Arrangement Act* (Canada) in respect of
Sino-Forest Corporation ("**Sino-Forest**")

on ●, 2012 at 10:00 a.m.
(or such other date as may be set and announced in accordance with the Meeting Order)
at:
Bennett Jones LLP, 3400 One First Canadian Place
Toronto, Ontario

and at any adjournment thereof.

Before completing this Proxy, please read carefully the instructions accompanying this Proxy for information respecting the proper completion and return of this Proxy.

IN ORDER TO VOTE ON THE PLAN, THIS PROXY MUST BE COMPLETED AND SIGNED BY THE ORDINARY AFFECTED CREDITOR AND PROVIDED TO THE MONITOR, FTI CONSULTING CANADA INC., PRIOR TO 5:00 P.M. TORONTO TIME ON THE THIRD BUSINESS DAY BEFORE THE MEETING OR ANY ADJOURNMENT THEREOF.

THE UNDERSIGNED ORDINARY AFFECTED CREDITOR hereby revokes all proxies previously given and nominates, constitutes and appoints ______________________ or, if no person is named, **[insert representative of the Monitor]** (or his/her designee), as nominee of the Ordinary Affected Creditor, with power of substitution, to attend on behalf of and act for the Ordinary Affected Creditor at the Meeting of Affected Creditors of Sino-Forest Corporation to be held in connection with the Plan and at any and all adjournments thereof, and to vote the Ordinary Affected Creditor's Claim as follows:

A. (mark one only)

☐ VOTE FOR approval of the Plan; or

☐ VOTE AGAINST approval of the Plan;

- and -

B. vote at the nominee's discretion and otherwise act for and on behalf of the undersigned Ordinary Affected Creditor with respect to any amendments or variations to the Plan and to any other matters that may come before the Meeting of the Affected Creditors of Sino-Forest Corporation or any adjournment thereof.

If you do not indicate your vote in part "A" above and **[insert representative of the Monitor]** or his/her designee is your nominee, and he/she will vote this proxy FOR approval of the Plan.

Dated this ___________ day of _______________, 2012.

	(Print Name of Ordinary Affected Creditor)
	(Signature of Ordinary Affected Creditor or, if the Voting Affected Creditor is a corporation, signature of an authorized signing officer of the corporation and such officer's name and title)
	Phone Number of Ordinary Affected Creditor

INSTRUCTIONS FOR COMPLETION OF PROXY

1. Each Ordinary Affected Creditor has the right to appoint a person (who need not be a Ordinary Affected Creditor) to attend, act and vote for and on the Ordinary Affected Creditor's behalf and such right may be exercised by inserting in the space provided the name of the person to be appointed. An individual Ordinary Affected Creditor wishing to attend and vote in person at the Meeting of Affected Creditors of Sino-Forest Corporation should insert the Ordinary Affected Creditor's own name in the space provided. **If no name has been inserted in the space provided, the Ordinary Affected Creditor will be deemed to have appointed [insert representative of Monitor] (or his/her designee) as the Ordinary Affected Creditor's proxyholder.**

2. **If [insert representative of Monitor] (or his/her designee) is appointed or deemed to be appointed as proxyholder and the Ordinary Affected Creditor fails to indicate on this Proxy a vote for or against the approval of the Plan, this Proxy will be voted FOR approval of the Plan.**

3. If this Proxy is not dated in the space provided, it will be deemed to bear the date on which it is received by the Monitor.

4. This Proxy must be signed by the Ordinary Affected Creditor or by the Ordinary Affected Creditor's attorney duly authorized in writing or, if the Ordinary Affected Creditor is a corporation, by a duly authorized officer or attorney of the corporation specifying the title of such officer or attorney.

5. Valid proxies bearing or deemed to bear a later date will revoke this Proxy. If more than one valid proxy for the same Ordinary Affected Creditor and bearing or deemed to bear the same date are received with conflicting instructions, such proxies will be treated as disputed proxies and will not be counted.

6. This Proxy must be received by the Monitor by no later than 5:00 p.m. (Toronto time) on the third Business Day before the Meeting or any adjournment thereof, at the address set out below:

FTI Consulting Canada Inc., the 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
Email: sfc@fticonsulting.com
Fax: (416) 649-8101

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

(PROCEEDING COMMENCED IN TORONTO)

PLAN FILING AND MEETING ORDER

BENNETT JONES LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 150
Toronto ON
M5X 1A4

Robert W. Staley (LSUC #27115J)
Kevin Zych (LSUC #33129T)
DerekJ. Bell (LSUC #43420J)
Raj Sahni (LSUC#42942U)
Jonathan Bell (LSUC #55457P)
Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicant

TAB 12

CITATION: Sino-Forest Corporation (Re), 2012 ONSC 5011
COURT FILE NO.: CV-12-9667-00CL
DATE: 20120831

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: **Jennifer Stam, for the Monitor**

HEARD: **AUGUST 31, 2012**

ENDORSEMENT

[1] The parties have reached agreement that the requested relief should focus on the issues relating to Plan Filing and a Meeting Order. This will result in a modified order from that originally contemplated.

[2] The Meeting Order is being made on the basis that there has been no determination of (a) the test for approval of the Plan, including (i) the jurisdiction to approve the Plan in its current form; (ii) whether the Plan complies with the CCAA; and (iii) whether any aspect or term of the Plan is fair and reasonable, (b) the validity or quantum of any claims; and (c) the classification of creditors for voting purposes.

[3] Further, nothing in the Order should be interpreted as preventing or restricting or otherwise limiting the ability of any party to oppose a motion for sanction of the Plan.

[4] Monitor's counsel to attend on Tuesday, September 4, 2012 with a form of Order for my review.

MORAWETZ J.

Date: August 31, 2012

TAB 13

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

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[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,

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[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

[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

---

[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

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[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."

TAB 14

Court File No. 11-CV-431153CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	FRIDAY THE 6th DAY
JUSTICE PERELL	)	OF JANUARY, 2012

BETWEEN:

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA and THE TRUSTEES OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING ENGINEERS IN ONTARIO

Plaintiffs

- and -

SINO-FOREST CORPORATION, ERNST & YOUNG LLP, ALLEN T.Y. CHAN, W. JUDSON MARTIN, KAI KIT POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES P. BOWLAND, JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, GARRY J. WEST, PÖYRY (BEIJING) CONSULTING COMPANY LIMITED, CREDIT SUISSE SECURITIES (CANADA), INC., TD SECURITIES INC., DUNDEE SECURITIES CORPORATION, RBC DOMINION SECURITIES INC., SCOTIA CAPITAL INC., CIBC WORLD MARKETS INC., MERRILL LYNCH CANADA INC., CANACCORD FINANCIAL LTD. and MAISON PLACEMENTS CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AND

Court File No. 11-CV-439400CP

BETWEEN:

DAVID C. GRANT and ROBERT WONG

Plaintiffs

- and -

SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (fka BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON MARTIN, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, PÖYRY (BEIJING) CONSULTING COMPANY LIMITED, CREDIT SUISSE SECURITIES (CANADA), INC., TD SECURITIES INC., DUNDEE SECURITIES CORPORATION, RBC DOMINION SECURITIES INC., SCOTIA CAPITAL INC., CIBC WORLD MARKETS INC., MERRILL LYNCH CANADA INC., CANACCORD FINANCIAL LTD., MAISON PLACEMENTS CANADA INC., CREDIT SUISSE SECURITIES (USA) LLC, and BANC OF AMERICA SECURITIES LLC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AND

Court File No. 11-CV-435826CP

BETWEEN:

NORTHWEST & ETHICAL INVESTMENTS L.P.; COMITÉ SYNDICAL NATIONAL DE RETRAITE BÂTIRENTE INC.

Plaintiffs

and

SINO-FOREST CORPORATION;

ALLEN T.Y. CHAN; W. JUDSON MARTIN; KAI KIT POON; DAVID J. HORSLEY; HUA CHEN; WEI MAO ZHAO; ALFRED C.T. HUNG; ALBERT IP; GEORGE HO; THOMAS M. MARADIN; WILLIAM E. ARDELL; JAMES M.E. HYDE; SIMON MURRAY; GARRY J. WEST; JAMES P. BOWLAND; EDMUND MAK; PETER WANG;
KEE Y. WONG; THE ESTATE OF JOHN LAWRENCE; SIMON YEUNG;

ERNST & YOUNG LLP;

BDO LIMITED;

PÖYRY FOREST INDUSTRY PTE LIMITED;
PÖYRY (BEIJING) CONSULTING COMPANY LIMITED;
JP MANAGEMENT CONSULTING (ASIA-PACIFIC) PTE LTD.;

DUNDEE SECURITIES CORPORATION; UBS SECURITIES CANADA INC.; HAYWOOD SECURITIES INC.; CREDIT SUISSE SECURITIES (CANADA) INC.; TD SECURITIES INC.; RBC DOMINION SECURITIES INC.; SCOTIA CAPITAL INC.; CIBC WORLD MARKETS INC.; MERRILL LYNCH CANADA, INC.;

CANACCORD FINANCIAL LTD.; MAISON PLACEMENTS CANADA INC.; MORGAN STANLEY & CO. INCORPORATED; CREDIT SUISSE SECURITIES (USA), LLC; BANK OF AMERICA MERRILL LYNCH; MERRILL LYNCH, PIERCE, FENNER, & SMITH, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AND

Court File No. 11-CV-428238CP

BETWEEN:

DOUGLAS SMITH and ZHONGJUN GOA

Plaintiffs

- and -

SINO-FOREST CORPORATION, ALLEN T.Y. CHAN, JAMES M.E. HYDE, EDMUND MAK, W. JUDSON MARTIN, SIMON MURRAY, PETER D.H. WANG, DAVID J. HORSLEY, ERNST & YOUNG LLP, BDO LIMITED, CREDIT SUISSE SECURITIES (CANADA), INC., TD SECURITIES INC., DUNDEE SECURITIES CORPORATION, RBC DOMINION SECURITIES INC., SCOTIA CAPITAL INC., CIBC WORLD MARKETS INC., MERRILL LYNCH CANADA INC., CANACCORD FINANCIAL LTD., and MAISON PLACEMENTS CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THESE MOTIONS, made:

a) by the plaintiffs in the action commenced by The Trustees Of The Labourers' Pension Fund Of Central and Eastern Canada and The Trustees Of The International Union of Operating Engineers Local 793 Pension Plan For Operating Engineers in Ontario, being Court File No. 11-CV-431153CP, (the *"Labourers' Action"*) for an order staying the action commenced by Douglas Smith and Zhongjun Goa, being Court File No. 11-CV-428238CP (the "*Smith Action*") and for an order staying the action commenced by Northwest & Ethical Investments L.P. and Comité syndical national de

retraite Bâtirente Inc., being Court File No. 11-CV-435826CP (the "*Northwest Action*") and a declaration that no other actions may be commenced in Ontario without leave of the court in respect of Sino-Forest Corporation ("Sino-Forest") securities without leave of the court;

b) by the plaintiffs in the *Smith Action* for an order for carriage of the class action, an order staying the *Labourers' Action*, the action commenced by David C. Grant and Robert Wong, being Court File No. 11-CV-439400CP (the "*Grant Action*") and the *Northwest Action* as they relate to purchasers of Sino-Forest shares, a declaration that no other proposed class proceeding may be commenced in Ontario on behalf of purchasers of Sino-Forest shares without leave of the court, and an order amending the statement of claim; and,

c) by the plaintiffs in the *Northwest Action* for an order for carriage of the class action, an order staying the *Smith Action* and the *Labourers' Action*, an order appointing Kim Orr Barristers P.C. as plaintiffs' counsel in the class proceeding in respect of the subject matter of this action, a declaration that no other proposed class proceeding may be commenced within Ontario with respect to the subject matter of this action without leave of the Court, an order removing Bank of America Merrill Lynch as a defendant, an order amending the title of proceedings, and an order amending the statement of claim;

were heard together on December 20 and 21, 2011 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON HEARING the submissions of counsel for the plaintiffs in each action, and on reading the material filed,

1. **THIS COURT ORDERS** that the motion for carriage made by the plaintiffs in the *Labourers' Action* be and hereby is granted;

2. **THIS COURT ORDERS** that Koskie Minsky LLP and Siskinds LLP be and hereby are appointed as class counsel in this action;

3. **THIS COURT ORDERS** that the *Smith Action* and the *Northwest Action* be and hereby are stayed;

4. **THIS COURT ORDERS** that no other class actions may be commenced in Ontario in respect of the subject matter of this action without leave of this court;

5. **THIS COURT ORDERS** that Sjunde AP-Fonden, David C. Grant and Robert Wong be and hereby are added as plaintiffs to this action and that the title of proceedings be amended accordingly;

6. **THIS COURT ORDERS** that BDO Limited (formerly known as BDO McCabe Lo Limited), Credit Suisse Securities (USA) LLC and Banc of America Securities LLC be and hereby are added as defendants to this action and that the title of proceedings be amended accordingly;

7. **THIS COURT ORDERS** that the title of proceedings in this action be amended and shall be as follows:

Court File No. 11-CV-431153CP

The Trustees of the Labourers' Pension Fund of Central and Eastern Canada, The Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario, Sjunde AP-Fonden, David Grant and Robert Wong

v.

Sino-Forest Corporation, Ernst & Young LLP, BDO Limited (formerly known as BDO McCabe Lo Limited), Allen T.Y. Chan, W. Judson Martin, Kai Kit Poon, David J. Horsley, William E. Ardell, James P. Bowland, James M.E. Hyde, Edmund Mak, Simon Murray, Peter Wang, Garry J. West, Pöyry (Beijing) Consulting Company Limited, Credit Suisse Securities (Canada), Inc., TD Securities Inc., Dundee Securities Corporation, RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Canaccord Financial Ltd., Maison Placements Canada Inc., Credit Suisse Securities (USA) LLC and Banc of America Securities LLC

8. **THIS COURT ORDERS** that the plaintiffs be and hereby are granted leave to deliver a Fresh As Amended Statement of Claim, substantially in the form attached as Schedule "A", which may include such additional representative plaintiffs and such amendments to the proposed class definition as they may be advised; and,

9. **THIS COURT ORDERS** that there will be no costs for the motions.

Perell J.

PERELL J.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 24 2012

PER / PAR: BB

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

ORDER

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Douglas Smith et al. v. Sino-Forest Corporation et al. Court File No. 11-CV-428238CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

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The Trustees of the Labourers' Pension Fund of Central and Eastern Canada et al. v. Sino-Forest Corporation et al.

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ONTARIO
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TAB 15

CITATION: Smith v Sino-Forest Corporation, 2012 ONSC24
COURT FILE NO.: 11-CV-428238CP
COURT FILE NO.: 11-CV-431153CP
COURT FILE NO.: 11-CV-435826CP
DATE: January 6, 2012

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Douglas Smith and Zhongjun Goa

Plaintiffs

- and -

Sino-Forest Corporation, Allen T.Y. Chan, James M.E. Hyde, Edmund Mak, W. Judson Martin, Simon Murray, Peter D.H. Wang, David J. Horsley, Ernst & Young LLP, BDO Limited, Credit Suisse Securities (Canada), Inc., TD Securities Inc., Dundee Securities Corporation, RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada, Inc., Canaccord Financial Ltd., and Maison Placements Canada Inc.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AND BETWEEN:

The Trustees of the Labourers' Pension Fund of Central and Eastern Canada and the Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario

Plaintiffs

- and -

Sino-Forest Corporation, Ernst & Young LLP, Allen T.Y. Chan, W. Judson Martin, Kai Kit Poon, David J. Horsley, William E. Ardell, Kai Kit Poon, David J. Horsley, James P Bowland, James M.E. Hyde, Edmund Mak, Simon Murray, Peter Wang, Garry J. West, Pöyry (Beijing) Consulting Company Limited, Credit Suisse Securities (Canada), Inc., TD Securities Inc., Dundee Securities Corporation, RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada, Inc. Canaccord Financial Ltd., and Maison Placements Canada Inc.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AND BETWEEN:

Northwest & Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc.

Plaintiffs

- and -

Sino-Forest Corporation, Allen T.Y. Chan, W. Judson Martin, Kai Kit Poon, David J. Horsley, Hua Chen, Wei Mao Zhao, Alfred C.T. Hung, Albert Ip, George Ho, Thomas M. Maradin, William E. Ardell, James M.E. Hyde, Simon Murray, Garry J. West, James P. Bowland, Edmund Mak, Peter Wang, Kee Y. Wong, The Estate of John Lawrence, Simon Yeung, Ernst & Young LLP, BDO Limited, Pöyry Forest Industry PTE Limited, Pöyry (Beijing) Consulting Company Limited, JP Management Consulting (Asia-Pacific) PTE Ltd., Dundee Securities Corporation, UBS Securities Canada Inc., Haywood Securities Inc., Credit Suisse Securities (Canada), Inc., TD Securities Inc., RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada, Inc. Canaccord Financial Ltd., Maison Placements Canada Inc., Morgan Stanley & Co. Incorporated, Credit Suisse Securities (USA), LLC, Merrill Lynch, Pierce, Fenner & Smith, Inc.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

COUNSEL:

- J.P. Rochon, J. Archibald, and S. Tambakos for the Plaintiffs in 11-CV-428238CP
- K.M. Baert, J. Bida, and C.M. Wright for the Plaintiffs in 11-CV-431153CP
- J.C. Orr, V. Paris, N. Mizobuchi, and A. Erfan for the Plaintiffs in 11-CV-435826CP
- M. Eizenga for the defendant Sino-Forest Corporation
- P. Osborne and S. Roy for the defendant Ernst & Young LLP
- E. Cole for the defendant Allen T.Y. Chan
- J. Fabello for the defendant underwriters

HEARING DATES: December 20 and 21, 2011

PERELL, J.

REASONS FOR DECISION

A. INTRODUCTION

[1] This is a carriage motion under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6. In this particular carriage motion, four law firms are rivals for the carriage of a class action against Sino-Forest Corporation. There are currently four proposed Ontario class

actions against Sino-Forest to recover losses alleged to be in the billions of dollars arising from the spectacular crash in value of its shares and notes.

[2] Practically speaking, carriage motions involve two steps. First, the rival law firms that are seeking carriage of a class action extoll their own merits as class counsel and the merits of their client as the representative plaintiff. During this step, the law firms explain their tactical and strategic plans for the class action, and, thus, a carriage motion has aspects of being a casting call or rehearsal for the certification motion.

[3] Second, the rival law firms submit that with their talent and their litigation plan, their class action is the better way to serve the best interests of the class members, and, thus, the court should choose their action as the one to go forward. No doubt to the delight of the defendants and the defendants' lawyers, which have a watching brief, the second step also involves the rivals hardheartedly and toughly reviewing and criticizing each other's work and pointing out flaws, disadvantages, and weaknesses in their rivals' plans for suing the defendants.

[4] The law firms seeking carriage are: Rochon Genova LLP; Koskie Minsky LLP; Siskinds LLP; and Kim Orr Barristers P.C., all competent, experienced, and veteran class action law firms.

[5] For the purposes of deciding the carriage motions, I will assume that all of the rivals have delivered their Statements of Claim as they propose to amend them.

[6] Koskie Minsky and Siskinds propose to act as co-counsel and to consolidate two of the actions. Thus, the competition for carriage is between three proposed class actions; namely:

- *Smith v. Sino-Forest Corp.* (11-CV-428238CP) ("*Smith v. Sino-Forest*") with Rochon Genova as Class Counsel
- *The Trustees of Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.* (11-CV-431153CP) ("*Labourers v. Sino-Forest*") with Koskie Minsky and Siskinds as Class Counsel (This action would be consolidated with "*Grant. v. Sino- Forest*" (CV-11-439400-00CP)
- *Northwest & Ethical Investments L.P. v. Sino-Forest Corp.* (11-CV-435826CP) ("*Northwest v. Sino-Forest*") with Kim Orr as Class Counsel.

[7] It has been a very difficult decision to reach, but for the reasons that follow, I stay *Smith v. Sino-Forest* and *Northwest v. Sino-Forest*, and I grant carriage to Koskie Minsky and Siskinds in *Labourers v. Sino-Forest*.

[8] I also grant leave to the plaintiffs in *Labourers v. Sino-Forest* to deliver a Fresh as Amended Statement of Claim, which may include the joinder of the plaintiffs and the causes of action set out in *Grant v. Sino-Forest, Smith v. Sino-Forest*, and *Northwest v. Sino-Forest*, as the plaintiffs may be advised.

[9] This order is without prejudice to the rights of the Defendants to challenge the Fresh as Amended Statement of Claim as they may be advised. In any event, nothing in

these reasons is intended to make findings of fact or law binding on the Defendants or to be a pre-determination of the certification motion.

B. METHODOLOGY

[10] To explain my reasons, first, I will describe the jurisprudence about carriage motions. Second, I will describe the evidentiary record for the carriage motions. Third, I will describe the factual background to the claims against Sino-Forest, which is the principal but not the only target of the various class actions. Fourth, deferring my ultimate conclusions, I will analyze the rival actions that are competing for carriage under twelve headings and describe the positions and competing arguments of the law firms competing for carriage. Fifth, I will culminate the analysis of the competing actions by explaining the carriage order decision. Sixth and finally, I will finish with a concluding section.

[11] Thus, the organization of these Reasons for Decision is as follows:

- Introduction
- Methodology
- Carriage Orders Jurisprudence
- Evidentiary Background
- Factual Background to the Claims against Sino-Forest
- Analysis of the Competing Class Actions
    - The Attributes of Class Counsel
    - Retainer, Legal and Forensic Resources, and Investigations
    - Proposed Representative Plaintiffs
    - Funding
    - Conflicts of Interest
    - Definition of Class Membership
    - Definition of Class Period
    - Theory of the Case against the Defendants
    - Joinder of Defendants
    - Causes of Action
    - The Plaintiff and the Defendant Correlation
    - Prospects of Certification
- Carriage Order
    - Introduction
    - Neutral or Non-Determinative Factors
    - Determinative Factors
- Conclusion

C. CARRIAGE ORDERS JURISPRUDENCE

[12] There should not be two or more class actions that proceed in respect of the same putative class asserting the same cause(s) of action, and one action must be selected: *Vitapharm Canada Ltd. v. F. Hoffman-Laroche Ltd.*, [2000] O.J. No. 4594

(S.C.J.) at para. 14. See also *Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd.*, [2001] O.J. No. 3682 (S.C.J.), aff'd [2002] O.J. No. 2010 (C.A.). When counsel have not agreed to consolidate and coordinate their actions, the court will usually select one and stay all other actions: *Lau* v. *Bayview Landmark*, [2004] O.J. No. 2788 (S.C.J.) at para. 19.

[13] Where two or more class proceedings are brought with respect to the same subject matter, a proposed representative plaintiff in one action may bring a carriage motion to stay all other present or future class proceedings relating to the same subject matter: *Setterington v. Merck Frosst Canada Ltd.*, [2006] O.J. No. 376 (S.C.J.) at paras. 9-11; *Ricardo v. Air Transat A.T. Inc.*, [2002] O.J. No. 1090 (S.C.J.), leave to appeal dismissed [2002] O.J. No. 2122 (S.C.J.).

[14] The *Class Proceedings Act, 1992,* confers upon the court a broad discretion to manage the proceedings. Section 13 of the Act authorizes the court to "stay any proceeding related to the class proceeding," and s. 12 authorizes the court to "make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination." Section 138 of the *Courts of Justice Act*, R.S.O. 1990, c. 43 directs that "as far as possible, multiplicity of legal proceedings shall be avoided." See: *Setterington v. Merck Frosst Canada Ltd., supra,* at paras. 9-11.

[15] The court also has its normal jurisdiction under the *Rules of Civil Procedure.* Section 35 of the *Class Proceedings Act, 1992,* provides that the rules of court apply to class proceedings. Among the rules that are available is Rule 6, the rule that empowers the court to consolidate two or more proceedings or to order that they be heard together.

[16] In determining carriage of a class proceeding, the court's objective is to make the selection that is in the best interests of class members, while at the same time being fair to the defendants and being consistent with the objectives of the *Class Proceedings Act, 1992*: *Vitapharm Canada Ltd. v. F. Hoffman-La Roche Ltd.*, [2000] O.J. No. 4594 (S.C.J.) at para. 48; *Setterington v. Merck Frosst Canada Ltd., supra,* at para. 13 (S.C.J.); *Sharma v. Timminco Ltd.* (2009), 99 O.R. (3d) 260 (S.C.J.) at para. 14. The objectives of a class proceeding are access to justice, behaviour modification, and judicial economy for the parties and for the administration of justice.

[17] Courts generally consider seven non-exhaustive factors in determining which action should proceed: (1) the nature and scope of the causes of action advanced; (2) the theories advanced by counsel as being supportive of the claims advanced; (3) the state of each class action, including preparation; (4) the number, size and extent of involvement of the proposed representative plaintiffs; (5) the relative priority of the commencement of the class actions; (6) the resources and experience of counsel; and (7) the presence of any conflicts of interest: *Sharma v. Timminco Ltd., supra* at para. 17.

[18] In these reasons, I will examine the above factors under somewhat differently-named beadings and in a different order and combination. And, I will add several more factors that the parties made relevant to the circumstances of the competing actions in the cases at bar, including: (a) funding; (b) definition of class membership; (c) definition of class period; (d) joinder of defendants; (e) the plaintiff and defendant correlation; and, (f) prospects of certification.

[19] In addition to identifying relevant factors, the carriage motion jurisprudence provides guidance about how the court should determine carriage. Although the determination of a carriage motion will decide which counsel will represent the plaintiff, the task of the court is not to choose between different counsel according to their relative resources and expertise; rather, it is to determine which of the competing actions is more, or most, likely to advance the interests of the class: *Tiboni v. Merck Frosst Canada Ltd.*, [2008] O.J. No. 2996 (S.C.J.), sub. nom *Mignacca v. Merck Frosst Canada Ltd.*, leave to appeal granted [2008] O.J. No. 4731 (S.C.J.), aff'd [2009] O.J. No. 821 (Div. Ct.), application for leave to appeal to C.A. ref'd May 15, 2009, application for leave to appeal to S.C.C. ref'd [2009] S.C.C.A. No. 261.

[20] On a carriage motion, it is inappropriate for the court to embark upon an analysis as to which claim is most likely to succeed unless one is "fanciful or frivolous": *Setterington v. Merck Frosst Canada Ltd., supra,* at para. 19.

[21] In analysing whether the prohibition against a multiplicity of proceedings would be offended, it is not necessary that the multiple proceedings be identical or mirror each other in every respect; rather, the court will look at the essence of the proceedings and their similarities: *Setterington v. Merck Frosst Canada Ltd., supra,* at para. 11.

[22] Where there is a competition for carriage of a class proceeding, the circumstance that one competitor joins more defendants is not determinative; rather, what is important is the rationale for the joinder and whether or not it is advantageous for the class to join the additional defendants: *Joel v Menu Foods Gen-Par Limited*, [2007] B.C.J. No. 2159 (B.C.S.C.); *Gentler v. CCI Capital Canada Ltd.*, [2005] O.J. No. 1135 (S.C.J.); *Setterington v. Merck Frosst Canada Ltd., supra.*

[23] In determining which firm should be granted carriage of a class action, the court may consider whether there is any potential conflict of interest if carriage is given to one counsel as opposed to others: *Joel v. Menu Foods Gen-Par Limited, supra* at para. 16; *Vitapharm Canada Ltd. v. F. Hoffman-Laroche Ltd.*, [2000] O.J. No. 4594 (S.C.J.) and [2001] O.J. No. 3673 (S.C.J.).

D. EVIDENTIARY BACKGROUND

Smith v. Sino-Forest

[24] In support of its carriage motion in *Smith v. Sino-Forest,* Rochon Genova delivered affidavits from:

- Ken Froese, who is Senior Managing Director of Froese Forensic Partners Ltd., a forensic accounting firm
- Vincent Genova, who is the managing partner of Rochon Genova
- Douglas Smith, the proposed representative plaintiff

Labourers v. Sino-Forest

[25] In support of their carriage motion in *Labourers v. Sino-Forest,* Koskie Minsky and Siskinds delivered affidavits from:

- Dimitri Lascaris, who is a partner at Siskinds and the leader of its class action team
- Michael Gallagher, who is the Chair of the Board of Trustees of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario ("Operating Engineers Fund"), a proposed representative plaintiff
- David Grant, a proposed representative plaintiff
- Richard Grottheim, who is the Chief Executive Officer of Sjunde AP-Fonden, a proposed representative plaintiff
- Joseph Mancinelli, who is the Chair of the Board of Trustees of The Trustees of the Labourers' Pension Fund of Central and Eastern Canada ("Labourers' Fund"), a proposed representative plaintiff. He also holds senior positions with the Labourers International Union of North America, which has more than 80,000 members in Canada
- Ronald Queck, who is Director of Investments of the Healthcare Employee Benefits Plans of Manitoba ("Healthcare Manitoba"), which would be a prominent class member in the proposed class action
- Frank Torchio, who is a chartered financial analyst and an expert in finance and economics who was retained to opine, among other things, about the damages suffered under various proposed class periods by Sino-Forest shareholders and noteholders under s. 138.5 of the *Ontario Securities Act*
- Robert Wong, who is a proposed representative plaintiff
- Mark Zigler, who is the managing partner of Koskie Minsky

Northwest v. Sino-Forest

[26] In support of its carriage motion in *Northwest v. Sino-Forest*, Kim Orr delivered affidavits from:

- Megan B. McPhee, a principal of the firm
- John Mountain, who is the Senior Vice President, Legal and Human Resources, the Chief Compliance Officer and Corporate Secretary of Northwest Ethical Investments L.P. ("Northwest"), a proposed representative plaintiff
- Zachary Nye, a financial economist who was retained to respond to Mr. Torchio's opinion
- Daniel Simard, who is General Co-Ordinator and a non-voting ex-officio member of the Board of Directors and Committees of Comité syndical national de retraite Bâtirente inc. ("Bâtirente"), a proposed representative plaintiff
- Michael C. Spencer, a lawyer qualified to practice in New York, California, and Ontario, who is counsel to Kim Orr and a partner and member of the executive committee at the American law firm of Milberg LLP

- Brian Thomson, who is Vice-President, Equity Investments for British Columbia Investment Management Corporation ("BC Investment"), a proposed representative plaintiff

E. FACTUAL BACKGROUND TO THE CLAIMS AGAINST SINO-FOREST

[27] The following factual background is largely an amalgam made from the unproven allegations in the Statements of Claim in the three proposed class actions and unproven allegations in the motion material delivered by the parties.

[28] The Defendant, Sino-Forest is a Canadian public company incorporated under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 with its registered office in Mississauga, Ontario, and its head office in Hong Kong. Its shares have traded on the Toronto Stock Exchange ("TSX") since 1995. It is a forestry plantation company with operations centered in the People's Republic of China. Its trading of securities is subject to the regulation of the *Ontario Securities Act*, R.S.O. 1990, c. S.5, under which it is a "reporting issuer" subject to the continuous disclosure provisions of Part XVIII of the Act and a "responsible issuer" subject to civil liability for secondary market misrepresentation under Part XXIII.1 of the Act.

[29] The Defendant, Ernst & Young LLP ("E&Y") has been Sino-Forest's auditor from 1994 to date, except for 1999, when the now-defunct Arthur Andersen LLP did the audit, and 2005 and 2006, when the predecessor of what is now the Defendant, BDO Limited ("BDO") was Sino-Forest's auditor. BDO is the Hong Kong member of BDO International Ltd., a global accounting and audit firm.

[30] E&Y and BDO are "experts" within the meaning of s. 138.1 of the *Ontario Securities Act*.

[31] From 1996 to 2010, in its financial statements, Sino-Forest reported only profits, and it appeared to be an enormously successful enterprise that substantially outperformed its competitors in the forestry industry. Sino-Forest's 2010 Annual Report issued in May 2011 reported that Sino-Forest had net income of $395 million and assets of $5.7 billion. Its year-end market capitalization was $5.7 billion with approximately 246 million common shares outstanding.

[32] It is alleged that Sino-Forest and its auditors E&Y and BDO repeatedly misrepresented that Sino-Forest's financial statements complied with GAAP ("generally accepted accounting principles").

[33] It is alleged that Sino-Forest and its officers and directors made other misrepresentations about the assets, liabilities, and performance of Sino-Forest in various filings required under the *Ontario Securities Act*. It is alleged that these misrepresentations appeared in the documents used for the offerings of shares and bonds in the primary market and again in what are known as Core Documents under securities legislation, which documents are available to provide information to purchasers of shares and bonds in the secondary market. It is also alleged that misrepresentations were made in oral statements and in Non-Core Documents.

[34] The Defendant, Allen T.Y. Chan was Sino-Forest's co-founder, its CEO, and a director until August 2011. He resides in Hong Kong.

[35] The Defendant, Kai Kit Poon, was Sino-Forest's co-founder, a director from 1994 until 2009, and Sino-Forest's President. He resides in Hong Kong.

[36] The Defendant, David J. Horsley was a Sino-Forest director (from 2004 to 2006) and was its CFO. He resides in Ontario.

[37] The Defendants, William E. Ardell (resident of Ontario, director since 2010), James P. Bowland (resident of Ontario, director since 2011), James M.E. Hyde (resident of Ontario, director since 2004), John Lawrence (resident of Ontario, deceased, director 1997 to 2006), Edmund Mak (resident of British Columbia, director since 1994), W. Judson Martin (resident of Hong Kong, director since 2006, CEO since August 2011), Simon Murray (resident of Hong Kong, director since 1999), Peter Wang (resident of Hong Kong, director since 2007) and Garry J. West (resident of Ontario, director since 2011) were members of Sino-Forest's Board of Directors.

[38] The Defendants, Hua Chen (resident of Ontario), George Ho (resident of China), Alfred C.T. Hung (resident of China), Alfred Ip (resident of China), Thomas M. Maradin (resident of Ontario), Simon Yeung (resident of China) and Wei Mao Zhao (resident of Ontario) are vice presidents of Sino-Forest. The defendant Kee Y. Wong was CFO from 1999 to 2005.

[39] Sino-Forest's forestry assets were valued by the Defendant, Pöyry (Beijing) Consulting Company Limited, ("Pöyry"), a consulting firm based in Shanghai, China. Associated with Pöyry are the Defendants, Pöyry Forest Industry PTE Limited ("Pöyry-Forest") and JP Management Consulting (Asia-Pacific) PTE Ltd. ("JP Management"). Each Pöyry Defendant is an expert as defined by s. 138.1 of the *Ontario Securities Act.*

[40] Pöyry prepared technical reports dated March 8, 2006, March 15, 2007, March 14, 2008, April 1, 2009, and April 23, 2010 that were filed with SEDAR (the System of Electronic Document Analysis and Retrieval) and made available on Sino-Forest's website. The reports contained a disclaimer and a limited liability exculpatory provision purporting to protect Pöyry from liability.

[41] In China, the state owns the forests, but the Chinese government grants forestry rights to local farmers, who may sell their lumber rights to forestry companies, like Sino-Forest. Under Chinese law, Sino-Forest was obliged to maintain a 1:1 ratio between lands for forest harvesting and lands for forest replantation.

[42] Sino-Forest's business model involved numerous subsidiaries and the use of authorized intermediaries or "AIs" to assemble forestry rights from local farmers. Sino-Forest also used authorized intermediaries to purchase forestry products. There were numerous AIs, and by 2010, Sino-Forest had over 150 subsidiaries, 58 of which were formed in the British Virgin Islands and at least 40 of which were incorporated in China.

[43] It is alleged that from at least March 2003, Sino-Forest used its business model and non-arm's length AIs to falsify revenues and to facilitate the misappropriation of Sino-Forest's assets.

[44] It is alleged that from at least March 2004, Sino-Forest made false statements about the nature of its business, assets, revenue, profitability, future prospects, and compliance with the laws of Canada and China. It is alleged that Sino-Forest and other Defendants misrepresented that Sino-Forest's financial statements complied with GAPP ("generally accepted accounting principles"). It is alleged that Sino-Forest misrepresented that it was an honest and reputable corporate citizen. It is alleged that Sino-Forest misrepresented and greatly exaggerated the nature and extent of its forestry rights and its compliance with Chinese forestry regulations. It is alleged that Sino-Forest inflated its revenue, had questionable accounting practices, and failed to pay a substantial VAT liability. It is alleged that Sino-Forest and other Defendants misrepresented the role of the AIs and greatly understated the risks of Sino-Forest utilizing them. It is alleged that Sino-Forest materially understated the tax-related risks from the use of AIs in China, where tax evasion penalties are severe and potentially devastating.

[45] Starting in 2004, Sino-Forest began a program of debt and equity financing. It amassed over $2.1 billion from note offerings and over $906 million from share issues.

[46] On May 17, 2004, Sino-Forest filed its Annual Information Form for the 2003 year. It is alleged in *Smith v. Sino-Forest* that the 2003 AIF contains the first misrepresentation in respect of the nature and role of the authorized intermediaries, which allegedly played a foundational role in the misappropriation of Sino-Forest's assets.

[47] In August 2004, Sino-Forest issued an offering memorandum for the distribution of 9.125% guaranteed senior notes ($300 million (U.S.)). The Defendant, Morgan Stanley & Co. Incorporated ("Morgan") was a note distributor that managed the note offering in 2004 and purchased and resold notes.

[48] Under the Sino-Forest note instruments, in the event of default, the trustee may sue to collect payment of the notes. A noteholder, however, may not pursue any remedy with respect to the notes unless, among other things, written notice is given to the trustee by holders of 25% of the outstanding principal asking the trustee to pursue the remedy and the trustee does not comply with the request. The notes provide that no noteholder shall obtain a preference or priority over another noteholder. The notes contain a waiver and release of Sino-Forest's directors, officers, and shareholders from all liability "for the payment of the principal of, or interest on, or other amounts in respect of the notes or for any claim based thereon or otherwise in respect thereof." The notes are all governed by New York law and include non-exclusive attornment clauses to the jurisdiction of New York State and United States federal courts.

[49] On March 19, 2007, Sino-Forest announced its 2006 financial results. The appearance of positive results caused a substantial increase in its share price which moved from $10.10 per share to $13.42 per share ten days later, a 33% increase.

[50] In May 2007, Sino-Forest filed a Management Information Circular that represented that it maintained a high standard of corporate governance. It indicated that its Board of Directors made compliance with high governance standards a top priority.

[51] In June 2007, Sino-Forest made a share prospectus offering of 15.9 million common shares at $12.65 per share ($201 million offering). Chan, Horsley, Martin, and Hyde signed the prospectus. The underwriters (as defined by s. 1. (1) of the *Ontario Securities Act*) were the Defendants, CIBC World Markets Inc. ("CIBC"), Credit Suisse Securities Canada (Inc.) ("Credit Suisse"), Dundee Securities Corporation ("Dundee"), Haywood Securities Inc. ("Haywood"), Merrill Lynch Canada, Inc. ("Merrill") and UBS Securities Canada Inc. ("UBS").

[52] In July 2008, Sino-Forest issued a final offering memorandum for the distribution of 5% convertible notes ($345 million (U.S)) due 2013. The Defendants, Credit Suisse Securities (USA), LLC ("Credit Suisse (USA)"), and Merrill Lynch, Fenner & Smith Inc. ("Merrill-Fenner") were note distributors.

[53] In June 2009, Sino-Forest made a share prospectus offering of 34.5 million common shares at $11.00 per share ($380 million offering). Chan, Horsley, Martin, and Hyde signed the prospectus. The underwriters (as defined by s. 1. (1) of the *Ontario Securities Act*) were Credit Suisse, Dundee, Merrill, the Defendant, Scotia Capital Inc. ("Scotia"), and the Defendant, TD Securities Inc. ("TD").

[54] In June 2009, Sino-Forest issued a final offering memorandum for the exchange of senior notes for new guaranteed senior 10.25% notes ($212 million (U.S.) offering) due 2014. Credit Suisse (USA) was the note distributor.

[55] In December 2009, Sino-Forest made a share prospectus offering of 22 million common shares at $16.80 per share ($367 million offering). Chan, Horsley, Martin, and Hyde signed the prospectus. The underwriters (as defined by s. 1. (1) of the *Ontario Securities Act*) were Credit Suisse, the Defendant, Canaccord Financial Ltd. ("Canaccord"), CIBC, Dundee, the Defendant, Maison Placements Canada Inc. ("Maison"), Merrill, the Defendant, RBC Dominion Securities Inc. ("RBC"), Scotia, and TD.

[56] In December 2009, Sino-Forest issued an offering memorandum for 4.25% convertible senior notes ($460 million (U.S.) offering) due 2016. The note distributors were Credit Suisse (USA), Merrill-Fenner, and TD.

[57] In October 2010, Sino-Forest issued an offering memorandum for 6.25% guaranteed senior notes ($600 million (U.S.) offering) due 2017. The note distributors were Banc of America Securities LLC ("Banc of America") and Credit Suisse USA.

[58] Sino-Forest's per-share market price reached a high of $25.30 on March 31, 2011.

[59] It is alleged that all the financial statements, prospectuses, offering memoranda, MD&As (Management Discussion and Analysis), AIFs (Annual Information Forms) contained misrepresentations and failures to fully, fairly, and plainly disclose all

material facts relating to the securities of Sino-Forest, including misrepresentations about Sino-Forest's assets, its revenues, its business activities, and its liabilities.

[60] On June 2, 2011, Muddy Waters Research, a Hong Kong investment firm that researches Chinese businesses, released a research report about Sino-Forest. Muddy Waters is operated by Carson Block, its sole full-time employee. Mr. Block was a short-seller of Sino-Forest stock. His Report alleged that Sino-Forest massively exaggerates its assets and that it had engaged in extensive related-party transactions since the company's TSX listing in 1995. The Report asserted, among other allegations, that a company-reported sale of $231 million in timber in Yunnan Province was largely fabricated. It asserted that Sino-Forest had overstated its standing timber purchases in Yunnan Province by over $800 million.

[61] The revelations in the Muddy Waters Report had a catastrophic effect on Sino-Forest's share price. Within two days, $3 billion of market capitalization was gone and the market value of Sino-Forest's notes plummeted.

[62] Following the release of the Muddy Waters Report, Sino-Forest and certain of its officers and directors released documents and press releases and made public oral statements in an effort to refute the allegations in the Report. Sino-Forest promised to produce documentation to counter the allegations of misrepresentations. It appointed an Independent Committee of Messrs. Ardell, Bowland and Hyde to investigate the allegations contained in the Muddy Waters Report. After these assurances, Sino-Forest's share price rebounded, trading as high as 60% of its previous day's close, eventually closing on June 6, 2011 at $6.16, approximately 18% higher from its previous close.

[63] On June 7, the Independent Committee announced that it had appointed PricewaterhouseCoopers ("PWC") to assist with the investigation. Several law firms were also hired to assist in the investigation.

[64] However, bad news followed. Reporters from the *Globe and Mail* travelled to China, and on June 18 and 20, 2011, the newspaper published articles that reported that Yunnan Province forestry officials had stated that their records contradicted Sino-Forest's claim that it controlled almost 200,000 hectares in Yunnan Province.

[65] On August 26, 2011, the Ontario Securities Commission ("OSC") issued an order suspending trading in Sino-Forest's securities and stated that: (a) Sino-Forest appears to have engaged in significant non-arm's length transactions that may have been contrary to Ontario securities laws and the public interest; (b) Sino-Forest and certain of its officers and directors appear to have misrepresented in a material respect, some of its revenue and/or exaggerated some of its timber holdings in public filings under the securities laws; and (c) Sino-Forest and certain of its officers and directors, including its CEO, 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.

[66] The OSC named Chan, Ho, Hung, Ip, and Yeung as respondents in the proceedings before the Commission. Sino-Forest placed Messrs. Hung, Ho and Yeung on administrative leave. Mr. Ip may only act on the instructions of the CEO.

[67] Having already downgraded its credit rating for Sino-Forest's securities, Standard & Poor withdrew its rating entirely, and Moody's reduced its rating to "junk" indicating a very high credit risk.

[68] On September 8, 2011, after a hearing, the OSC continued its cease-trading order until January 25, 2012, and the OSC noted the presence of evidence of conduct that may be harmful to investors and the public interest.

[69] On November 10, 2011, articles in the *Globe and Mail* and the *National Post* reported that the RCMP had commenced a criminal investigation into whether executives of Sino-Forest had defrauded Canadian investors.

[70] On November 13, 2011, at a cost of $35 million, Sino-Forest's Independent Committee released its Second Interim Report, which included the work of the committee members, PWC, and three law firms. The Report refuted some of the allegations made in the Muddy Waters Report but indicated that evidence could not be obtained to refute other allegations. The Committee reported that it did not detect widespread fraud, and noted that due to challenges it faced, including resistance from some company insiders, it was not able to reach firm conclusions on many issues.

[71] On December 12, 2011, Sino-Forest announced that it would not file its third-quarter earnings' figures and would default on an upcoming interest payment on outstanding notes. This default may lead to the bankruptcy of Sino-Forest.

[72] The chart attached as Schedule "A" to this judgment shows Sino- Forest's stock price on the TSX from January 1, 2004, to the date that its shares were cease-traded on August 26, 2011.

E. ANALYSIS OF THE COMPETING CLASS ACTIONS

1. The Attributes of Class Counsel

Smith v. Sino-Forest

[73] Rochon Genova is a boutique litigation firm in Toronto focusing primarily on class action litigation, including securities class actions. It is currently class counsel in the CIBC subprime litigation, which seeks billions in damages on behalf of CIBC shareholders for the bank's alleged non-disclosure of its exposure to the U.S. subprime residential mortgage market. It is currently the lawyer of record in *Fischer v. IG Investment Management Ltd* and *Frank v. Farlie Turner,* both securities cases, and it is acting for aggrieved investors in litigation involving two multi-million dollar Ponzi schemes. It acted on behalf of Canadian shareholders in relation to the Nortel securities litigation, as well as, large scale products liability class actions involving Baycol, Prepulsid, and Maple Leaf Foods, among many other cases.

[74] Rochon Genova has a working arrangement with Lieff Cabrasser Heimann & Bernstein, one of the United States' leading class action firms.

[75] Lead lawyers for *Smith v. Sino-Forest* are Joel Rochon and Peter Jervis, both senior lawyers with considerable experience and proficiency in class actions and securities litigation.

Labourers v. Sino-Forest

[76] Koskie Minsky is a Toronto law firm of 43 lawyers with a diverse practice including bankruptcy and insolvency, commercial litigation, corporate and securities, taxation, employment, labour, pension and benefits, professional negligence and insurance litigation.

[77] Koskie Minsky has a well-established and prominent class actions practice, having been counsel in every sort of class proceeding, several of them being landmark cases, including *Hollick v Toronto (City), Cloud v The Attorney General of Canada,* and *Caputo v Imperial Tobacco*. It is currently representative counsel on behalf of all former Canadian employees in the multi-billion dollar Nortel insolvency.

[78] Siskinds is a London and Toronto law firm of 70 lawyers with a diverse practice including bankruptcy and insolvency, business law, and commercial litigation. It has an association with the Québec law firm Siskinds, Desmeules, avocats.

[79] At its London office, Siskinds has a team of 14 lawyers that focus their practice on class actions, in some instances exclusively. The firm has a long and distinguished history at the class actions bar, being class counsel in the first action certified as a class action, *Bendall v. McGhan Medical Corp.* (1993), 14 O.R. (3d) 734, and it has almost a monopoly on securities class actions, having filed approximately 40 of this species of class actions, including 24 that advance claims under Part XXX.1 of the *Ontario Securities Act*.

[80] As mentioned again later, for the purposes of *Labourers' Fund v. Sino-Forest*, Koskie Minsky and Siskinds have a co-operative arrangement with the U.S. law firm, Kessler Topaz Meltzer & Check LLP ("Kessler Topaz"), which is a 113-lawyer law firm specializing in complex litigation with a very high profile and excellent reputation as counsel in securities class action lawsuits in the United States.

[81] Lead lawyers for *Labourers' v. Sino-Forest* are Kirk M. Baert, Jonathan Ptak, Mark Ziegler, and Michael Mazzuca of Koskie Minsky and A. Dimitri Lascaris of Siskinds, all senior lawyers with considerable experience and proficiency in class actions and securities litigation.

Northwest v. Sino-Forest

[82] Kim Orr is a boutique litigation firm in Toronto focusing primarily on class action litigation, including securities class actions. It also has considerable experience on the defence side of defending securities cases.

[83] As I described in *Sharma v. Timminco Ltd., supra*, where I choose Kim Orr in a carriage competition with Siskinds in a securities class action, Kim Orr has a fine pedigree as a class action firm and its senior lawyers have considerable experience and proficiency in all types of class actions. It was comparatively modest in its self-promotional material for the carriage motion, but I am aware that it is currently class

counsel in substantial class actions involving claims of a similar nature to those in the case at bar.

[84] Kim Orr has an association with Milberg, LLP, a prominent class action law firm in the United States. It has 75 attorneys, most of whom devote their practice to representing plaintiffs in complex litigations, including class and derivative actions. It has a large support staff, including investigators, a forensic accountant, financial analysts, legal assistants, litigation support analysts, shareholder services personnel, and information technology specialists.

[85] Michael Spencer, who is a partner at Milberg and called to the bar in Ontario, offers counsel to Kim Orr.

[86] Lead lawyers for *Northwest v. Sino-Forest* are James Orr, Won Kim, and Mr. Spencer.

2. Retainer, Legal and Forensic Resources, and Investigations

Smith v. Sino-Forest

[87] Following the release of the Muddy Waters Report, on June 6, 2011, Mr. Smith contacted Rochon Genova. Mr. Smith, who lost much of his investment fortune, was one of the victims of the wrongs allegedly committed by Sino-Forest. Rochon Genova accepted the retainer, and two days later, a notice of action was issued. The Statement of Claim in *Smith v. Sino-Forest* followed on July 8, 2011.

[88] Following their retainer by Mr. Smith, Rochon Genova hired Mr. X (his name was not disclosed), as a consultant. Mr. X, who has an accounting background, can fluently read, write, and speak English, Cantonese, and Mandarin. He travelled to China from June 19 to July 3, 2011and again from October 31 to November 18, 2011. The purpose of the trips was to gather information about Sino-Forest's subsidiaries, its customers, and its suppliers. While in China, Mr. X secured approximately 20,000 pages of filings by Sino-Forest with the provincial branches of China's State Administration for Industry and Commerce (the "SAIC Files").

[89] In August 2011, Rochon Genova retained Froese Forensic Partners Ltd., a Toronto-based forensic accounting firm, to analyze the SAIC files.

[90] Rochon Genova also retained HAIBU Attorneys at Law, a full service law firm based in Shenzhen, Guangdong Province, China, to provide a preliminary opinion about Sino-Forest's alleged violations of Chinese accounting and taxation laws.

[91] Exclusive of the carriage motion, Rochon Genova has already incurred approximately $350,000 in time and disbursements for the proposed class action.

Labourers v. Sino-Forest

[92] On June 3, 2011, the day after the release of the Muddy Waters Report, Siskinds retained the Dacheng Law Firm in China to begin an investigation of the allegations contained in the report. Dacheng is the largest law firm in China with offices throughout China and Hong Kong and also offices in Los Angeles, New York, Paris, Singapore, and Taiwan.

[93] On June 9, 2011, Guining Liu, a Sino-Forest shareholder, commenced an action in the Québec Superior Court on behalf of persons or entities domiciled in Québec who purchased shares and notes. Siskinds' Québec affiliate office, Siskinds, Desmeules, avocats, is acting as class counsel in that action.

[94] On June 20, 2011, Koskie Minsky, which had a long standing lawyer-client relationship with the Labourers' Fund, was retained by it to recover its losses associated with the plummet in value of its holdings in Sino-Forest shares. Koskie Minsky issued a notice of action in a proposed class action with Labourers' Fund as the proposed representative plaintiffs.

[95] The June action, however, is not being pursued, and in July 2011, Labourers' Fund was advised that Operating Engineers Fund, another pension fund, also had very significant losses, and the two funds decided to retain Koskie Minsky and Siskinds to commence a new action, which followed on July 20, 2011, by notice of action. The Statement of Claim in *Labourers v. Sino-Forest* was served in August, 2011.

[96] Before commencing the new action, Koskie Minsky and Siskinds retained private investigators in Southeast Asia and received reports from them, along with information received from the Dacheng Law Firm. Koskie Minsky and Siskinds also received information from an unnamed expert in Suriname about the operations of Sino-Forest in Suriname and the role of Greenheart Group Ltd., which is a significant aspect of its Statement of Claim in *Labourers v. Sino-Forest*.

[97] On November 4, 2011, Koskie Minsky and Siskinds served the Defendants in *Labourers v. Sino-Forest* with the notice of motion for an order granting leave to assert the causes of action under Part XXIII.1 of the *Ontario Securities Act*.

[98] On October 26, 2011, Robert Wong, who had lost a very large personal investment in Sino-Forest shares, retained Koskie Minsky and Siskinds to sue Sino-Forest for his losses, and the firms decided that he would become another representative plaintiff.

[99] On November 14, 2011, Koskie Minsky and Siskinds commenced *Grant v. Sino-Forest Corp.*, which, as already noted above, they intend to consolidate with *Labourers v. Sino-Forest*.

[100] *Grant v. Sino-Forest* names the same defendants as in *Labourers v. Sino-Forest*, except for the additional joinder of Messrs. Bowland, Poon, and West, and it also joins as defendants, BDO, and two additional underwriters, Banc of America and Credit Suisse Securities (USA).

[101] Koskie Minsky and Siskinds state that *Grant v. Sino-Forest* was commenced out of an abundance of caution to ensure that certain prospectus and offering memorandum claims under the *Ontario Securities Act*, and under the equivalent legislation of the other Provinces, will not expire as being statute-barred.

[102] Exclusive of the carriage motion, Koskie Minsky has already incurred approximately $350,000 in time and disbursements for the proposed class action, and

exclusive of the carriage motion, Siskinds has already incurred approximately $440,000 in time and disbursements for the proposed class action.

Northwest v. Sino-Forest

[103] Immediately following the release of the Muddy Waters Report, Kim Orr and Milberg together began an investigation to determine whether an investor class action would be warranted. A joint press release on June 7, 2011, announced the investigation.

[104] For the purposes of the carriage motion, apart from saying that their investigation included reviewing all the documents on SEDAR and the System for Electronic Disclosure for Insiders (SEDI), communicating with contacts in the financial industry, and looking into Sino-Forest's officers, directors, auditors, underwriters and valuation experts, Kim Orr did not disclose the details of its investigation. It did indicate that it had hired a Chinese forensic investigator and financial analyst, a market and damage consulting firm, Canadian forensic accountants, and an investment and market analyst and that its investigations discovered valuable information.

[105] Meanwhile, lawyers at Milberg contacted Bâtirente, which was one of its clients and also a Sino-Forest shareholder, and Won Kim of Kim Orr contacted Northwest, another Sino-Forest shareholder. Bâtirente already had a retainer with Milberg to monitor its investment portfolio on an ongoing basis to detect losses due to possible securities violations.

[106] Northwest and Bâtirente agreed to retain Kim Orr to commence a class action, and on September 26, 2011, Kim Orr commenced *Northwest v. Sino-Forest*.

[107] In October 2011, BC Investments contacted Kim Orr about the possibility of it becoming a plaintiff in the class proceeding commenced by Northwest and Bâtirente, and BC Investments decided to retain the firm and the plan is that BC Investments is to become another representative plaintiff.

[108] Exclusive of the carriage motion, Kim Orr and Milberg have already incurred approximately $1,070,000 in time and disbursement for the proposed class action.

3. Proposed Representative Plaintiffs

Smith v. Sino-Forest

[109] In *Smith v. Sino-Forest*, the proposed representative plaintiffs are Douglas Smith and Frederick Collins.

[110] Douglas Smith is a resident of Ontario, who acquired approximately 9,000 shares of Sino-Forest during the proposed class period. He is married, 48 years of age, and employed as a director of sales. He describes himself as a moderately sophisticated investor that invested in Sino-Forest based on his review of the publicly available information, including public reports and filings, press releases, and statements released by or on behalf of Sino-Forest. He lost $75,345, which was half of his investment fortune.

[111] Frederick Collins is a resident of Nanaimo, British Columbia. He purchased shares in the primary market. His willingness to act as a representative plaintiff was

announced during the reply argument of the second day of the carriage motion, and nothing was discussed about his background other than he is similar to Mr. Smith in being an individual investor. He was introduced to address a possible *Ragoonanan* problem in *Smith v. Sino-Forest;* namely, the absence of a plaintiff who purchased in the primary market, of which alleged problem I will have more to say about below.

Labourers v. Sino-Forest

[112] In *Labourers v. Sino-Forest,* the proposed representative plaintiffs are: David Grant, Robert Wong, The Trustees of the Labourers' Pension Fund of Central and Eastern Canada ("Labourers' Fund"), the Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario ("Operating Engineers Fund"), and Sjunde AP-Fonden.

[113] David Grant is a resident of Alberta. On October 21, 2010, he purchased 100 Guaranteed Senior Notes of Sino-Forest at a price of $101.50 ($U.S.), which he continues to hold.

[114] Robert Wong, a resident of Ontario, is an electrical engineer. He was born in China, and in addition to speaking English, he speaks fluent Cantonese. He was a substantial shareholder of Sino-Forest from July 2002 to June 2011. Before making his investment, he reviewed Sino-Forest's Core Documents, and he also made his own investigations, including visiting Sino-Forest's plantations in China in 2005, where he met a Sino-Forest vice-president.

[115] Mr. Wong's investment in Sino-Forest comprised much of his net worth. In September 2008, he owned 1.4 million Sino-Forest shares with a value of approximately $26.1 million. He purchased more shares in the December 2009 prospectus offering. Around the end of May 2011, he owned 518,700 shares, which, after the publication of the Muddy Waters Report, he sold on June 3, 2011 and June 10, 2011, for $2.8 million.

[116] The Labourers' Fund is a multi-employer pension fund for employees in the construction industry. It is registered with the Financial Services Commission in Ontario and has 52,100 members in Ontario, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador. It is a long-time client of Koskie Minsky.

[117] Labourers' Fund manages more than $2.5 billion in assets. It has a fiduciary and statutory responsibility to invest pension monies on behalf of thousands of employees and pensioners in Ontario and in other provinces.

[118] Labourer's Fund acted as representative plaintiff in a U.S. class actions against Fortis, Pitney Bowes Inc., Synovus Financial Corp., and Medea Health Solutions, Inc. Those actions involved allegations of misrepresentation in the statements and filings of public issuers.

[119] The Labourers' Fund purchased Sino-Forest shares on the TSX during the class period, including 32,300 shares in a trade placed by Credit Suisse under a prospectus. Most of its purchases of Sino-Forest shares were made in the secondary market.

[120] On June 1, 2011, the Labourers' Fund held a total of 128,700 Sino-Forest shares with a market value of $2.3 million, and it also had an interest in pooled funds that had $1.4 million invested in Sino-Forest shares. On June 2 and 3, 2011, the Labourers' Fund sold its holdings in Sino-Forest for a net recovery of $695,993.96. By June 30, 2011, the value of the Sino-Forest shares in the pooled funds was $291,811.

[121] The Operating Engineers Fund is a multi-employer pension fund for employed operating engineers and apprentices in the construction industry. It is registered with the Financial Services Commission in Ontario, and it has 20,867 members. It is a long-time client of Koskie Minsky.

[122] The Operating Engineers Fund manages $1.5 billion in assets. It has a fiduciary and statutory responsibility to invest pension monies on behalf of thousands of employees and pensions in Ontario and in other provinces.

[123] The Operating Engineers Fund acquired shares of Sino-Forest on the TSX during the class period. The Operating Engineers Fund invested in Sino-Forest shares through four asset managers of a segregated fund. One of the managers purchased 42,000 Sino-Forest shares between February 1, 2011, and May 24, 2011, which had a market value of $764,820 at the close of trading on June 1, 2011. These shares were sold on June 21, 2011 for net $77,170.80. Another manager purchased 181,700 Sino-Forest shares between January 20, 2011 and June 1, 2011, which had a market value of $3.3 million at the close of trading on June 1, 2011. These shares were sold and the Operating Engineers Fund recovered $1.5 million. Another asset manager purchased 100,400 Sino-Forest shares between July 5, 2007 and May 26, 2011, which had a market value of $1.8 million at the close of trading on June 1, 2011. Many of these shares were sold in July and August, 2011, but the Operating Engineers Fund continues to hold approximately 37,350 shares. Between June 15, 2007 and June 9, 2011, the Operating Engineers Fund also purchased units of a pooled fund managed by TD that held Sino-Forest shares, and it continues to hold these units. The Operating Engineers Fund has incurred losses in excess of $5 million with respect to its investment in Sino-Forest shares.

[124] Sjunde AP-Fonden is the Swedish Nation Pension Fund, and part of Sweden's national pension system. It manages $15.3 billion in assets. It has acted as lead plaintiff in a large securities class action and a large stockholder class action in the United States.

[125] In addition to retaining Koskie Minsky and Siskinds, Sjunde AP-Fonden also retained the American law firm Kessler Topaz to provide assistance, if necessary, to Koskie Minsky and Siskinds.

[126] Sjunde AP-Fonden purchased Sino-Forest shares on the TSX from outside Canada between April 2010 and January 2011. It was holding 139,398 shares with a value of $2.5 million at the close of trading on June 1, 2011. It sold 43,095 shares for $188,829.36 in August 2011 and holds 93,303 shares.

[127] Sjunde AP-Fonden is prepared to be representative plaintiff for a sub-class of non-Canadian purchasers of Sino-Forest shares who purchased shares in Canada from outside of Canada.

[128] Messrs. Mancinelli, Gallagher, and Grottheim each deposed that Labourers' Fund, the Operating Engineers Fund, and Sjunde AP-Fonden respectively sued because of their losses and because of their concerns that public markets remain healthy and transparent.

[129] Although it does not seek to be a representative plaintiff, the Healthcare Employee Benefits Plans of Manitoba ("Healthcare Manitoba") is a major class member that supports carriage being granted to Koskie Minsky and Siskinds, and its presence should also be mentioned here because it actively supports the appointment of the proposed representative plaintiffs in *Labourers v. Sino-Forest.*

[130] Healthcare Manitoba provides pensions and other benefits to eligible healthcare employees and their families throughout Manitoba. It has 65,000 members. It is a long-time client of Koskie Minsky. It manages more than $3.9 billion in assets.

[131] Healthcare Manitoba, invested in Sino-Forest shares that were purchased by one of its asset managers in the TSX secondary market. Between February and May, 2011, it purchased 305,200 shares with a book value of $6.7 million. On June 24, 2011, the shares were sold for net proceeds of $560,775.48.

Northwest v. Sino-Forest

[132] In *Northwest v. Sino-Forest*, the proposed representative plaintiffs are: British Columbia Investment Management Corporation ("BC Investment"); Comité syndical national de retraite Bâtirente inc. ("Bâtirente") and Northwest & Ethical Investments L.P. ("Northwest").

[133] BC Investment, which is incorporated under the British Columbia *Public Sector Pension Plans Act*, is owned by and is an agent of the Government of British Columbia. It manages $86.9 billion in assets. Its investment activities help to finance the retirement benefits of more than 475,000 residents of British Columbia, including public service employees, healthcare workers, university teachers, and staff. Its investment activities also help to finance the WorkSafeBC insurance fund that covers approximately 2.3 million workers and over 200,000 employers in B.C., as well as, insurance funds for public service long term disability and credit union deposits.

[134] BC Investment, through the funds it managed, owned 334,900 shares of Sino-Forest at the start of the Class Period, purchased 6.6 million shares during the Class Period, including 50,200 shares in the June 2009 offering and 54,800 shares in the December 2009 offering; sold 5 million shares during the Class Period; disposed of 371,628 shares after the end of the Class Period; and presently holds 1.5 million shares.

[135] Bâtirente is a non-profit financial services firm initiated by the Confederation of National Trade Unions to establish and promote a workplace retirement system for affiliated unions and other organizations. It is registered as a financial services firm regulated in Quebec by the Autorité des marchés financiers under *the Act Respecting the Distribution of Financial Products and Services*, R.S.Q., chapter D-9.2. It has assets of about $850 million.

[136] Bâtirente, through the funds it managed, did not own any shares of Sino-Forest before the class period, purchased 69,500 shares during the class period, sold 57,625 shares during the class period, and disposed of the rest of its shares after the end of the class period.

[137] Northwest is an Ontario limited partnership, owned 50% by the Provincial Credit Unions Central and 50% by Federation des caisses Desjardin du Québec. It is registered with the British Columbia Securities Commission as a portfolio manager, and it is registered with the OSC as a portfolio manager and as an investment funds manager. It manages about $5 billion in assets.

[138] Northwest, through the funds it managed, did not own any shares of Sino-Forest before the class period, purchased 714,075 shares during the class period, including 245,400 shares in the December 2009 offering, sold 207,600 shares during the class period, and disposed of the rest of its shares after the end of the class period.

[139] Kim Orr touts BC Investment, Bâtirente, and Northwest as candidates for representative plaintiff because they are sophisticated "activist shareholders" that are committed to ethical investing. There is evidence that they have all raised governance issues with Sino-Forest as well as other companies. Mr. Mountain of Northwest and Mr. Simard of Bâtirente are eager to be actively involved in the litigation against Sino-Forest.

4. Funding

[140] Koskie Minsky and Siskinds have approached Claims Funding International, and subject to court approval, Claims Funding International has agreed to indemnify the plaintiffs for an adverse costs award in return for a percentage of any recovery from the class action.

[141] Koskie Minsky and Siskinds state that if the funding arrangement with Claims Funding International is refused, they will, in any event, proceed with the litigation and will indemnify the plaintiffs for any adverse costs award.

[142] Similarly, Kim Orr has approached Bridgepoint Financial Services, which subject to court approval, has agreed to indemnify the plaintiffs for an adverse costs award in return for a percentage of any recovery in the class action. If this arrangement is not approved, Kim Orr intends to apply to the Class Proceedings Fund, which would be a more expensive approach to financing the class action.

[143] Kim Orr states that if these funding arrangements are refused, it will, in any event, proceed with the litigation and it will indemnify the plaintiffs for any adverse costs award.

[144] Rochon Genova did not mention in its factum whether it intends to apply to the Class Proceedings Fund on behalf of Messrs. Smith and Collins, but for the purposes of the discussion later about the carriage order, I will assume that this may be the case. I will also assume that Rochon Genova has agreed to indemnify Messrs. Smith and Collins for any adverse costs award should funding not be granted by the Fund.

5. **Conflicts of Interest**

[145] One of the qualifications for being a representative plaintiff is that the candidate does not have a conflict of interest in representing the class members and in bringing an action on their behalf. All of the candidates for representative plaintiff in the competing class actions depose that they have no conflicts of interest. Their opponents disagree.

[146] Rochon Genova submits that there are inherent conflicts of interests in both *Labourers v. Sino-Forest* and in *Northwest v. Sino-Forest* because the representative plaintiffs bring actions on behalf of both shareholders and noteholders. Rochon Genova submits that these conflicts are exacerbated by the prospect of a Sino-Forest bankruptcy.

[147] Relying on *Casurina Ltd. Partnership v. Rio Algom Ltd.* [2004] O.J. No. 177 (C.A.) at paras. 35-36, aff'g [2002] O.J. No. 3229 (S.C.J.), leave to appeal to the S.C.C. denied, [2004] S.C.C.A. No. 105 and *Amaranth LLC. v. Counsel Corp.*, [2003] O.J. No. 4674 (S.C.J.), Rochon Genova submits that a class action by the bondholders is precluded by the pre-conditions in the bond instruments, but if it were to proceed, it might not be in the best interests of the bondholders, who might prefer to have Sino-Forest capable of carrying on business. Further still, Rochon Genova submits that, in any event, an action by the bondholders' trustee may be the preferable way for the noteholders to sue on their notes. Further, Rochon Genova submits that if there is a bankruptcy, the bondholders may prefer to settle their claims in the context of the bankruptcy rather than being connected in a class action to the shareholder's claims over which they would have priority in a bankruptcy.

[148] Further still, Rochon Genova submits that a bankruptcy would bring another conflict of interest between bondholders and shareholders because under s. 50(14) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, and 5.1(2) of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 the claims of creditors against directors that are based on misrepresentation or oppression may not be compromised through a plan or proposal. In contrast, *Allen-Vanguard Corp., Re*, 2011 ONSC 5017 (S.C.J.) at paras. 48-52 is authority that shareholders are not similarly protected, and, therefore, Rochon Genova submits that the noteholders would have a great deal more leverage in resolving claims against directors than would the shareholder members of the class in a class action.

[149] Kim Orr denies that there is a conflict in the representative plaintiffs acting on behalf of both shareholders and bondholders. It submits that while boldholders may have an additional claim in contract against Sino-Forest for repayment of the debt outside of the class action, both shareholders and bondholders share a misrepresentation claim against Sino-Forest and there is no conflict in advancing the misrepresentation claim independent of the debt repayment claim.

[150] Koskie Minsky and Siskinds also deny that there is any conflict in advancing claims by both bondholders and shareholders. They say that the class members are on common ground in advancing misrepresentation, tort, and the various statutory causes of action. Koskie Minsky and Siskinds add that if there was a conflict, then it is manageable because they have a representative plaintiff who was a bondholder, which is not the case for the representative plaintiffs in *Northwest v. Sino-Forest*. It submits

that, if necessary, subclasses can be established to manage any conflicts of interest among class members.

[151] Leaving the submitted shareholder and bondholder conflicts of interest, Rochon Genova submits that Labourers' Fund has a conflict of interest because BDO Canada is its auditor. Rochon Genova submits that Koskie Minsky also has a conflict of interest because it and BDO Canada have worked together on a committee providing liaison between multi-employer pension plans and the Financial Services Commission of Ontario and have respectively provided services as auditor and legal counsel to the Union Benefits Alliance of Construction Trade Unions. Rochon Genova submits that it is telling that these conflicts were not disclosed and that BDO, which is an entity that is an international associate with BDO Canada was a late arrival as a defendant in *Labourers v. Sino-Forest*, although this can be explained by changes in the duration of the class period.

[152] For their part, Koskie Minsky and Siskinds raise a different set of conflicts of interest. They submit that Northwest, Bâtirente, and BC Investments have a conflict of interest with the other class members who purchased Sino-Forest securities because of their role as investment managers.

[153] Koskie Minsky and Siskinds' argument is that as third party financial service providers, BC Investment, Bâtirente, and Northwest did not suffer losses themselves but rather passed the losses on to their clients. Further, Koskie Minsky and Siskinds submit that, in contrast to BC Investment, Bâtirente, and Northwest, their clients, Labourers' Fund and Operating Engineers Fund, are acting as fiduciaries to recover losses that will affect their members' retirements. This arguably makes Koskie Minsky and Siskinds better representative plaintiffs.

[154] Further still, Koskie Minsky and Siskinds submit that the class members in *Northwest v. Sino-Forest* may question whether Northwest, Bâtirente, and BC Investments failed to properly evaluate the risks of investing in Sino-Forest. Koskie Minsky and Siskinds point out that the Superior Court of Québec in *Comité syndical national de retraite Bâtirente inc. c. Société financière Manuvie*, 2011 QCCS 3446 at paras. 111-119 disqualified Bâtirente as a representative plaintiff because there might be an issue about Bâtirente's investment decisions. Thus, Koskie, Minsky and Siskinds attempt to change Northwest, Bâtirente, and BC Investments' involvement in encouraging good corporate governance at Sino-Forest from a positive attribute into the failure to be aware of ongoing wrongdoing at Sino-Forest and a negative attribute for a proposed representative plaintiff.

6. Definition of Class Membership

<u>*Smith v. Sino-Forest*</u>

[155] In *Smith v. Sino-Forest*, the proposed class action is: (a) on behalf of all persons who purchased shares of Sino-Forest from May 17, 2004 to August 26, 2011 on the TSX or other secondary market; and (b) on behalf of all persons who acquired shares of Sino-Forest during the offering distribution period relating to Sino-Forest's share prospectus offerings on June 1, 2009 and December 10, 2009 excluding the Defendants,

members of the immediate families of the Individual Defendants, or the directors, officers, subsidiaries and affiliates of the corporate Defendants.

[156] Both Koskie Minsky and Siskinds and Kim Orr challenge this class membership as inadequate for failing to include the bondholders who were allegedly harmed by the same misconduct that harmed the shareholders.

Labourers v. Sino-Forest

[157] In *Labourers v. Sino-Forest*, the proposed class action is on behalf of all persons and entities wherever they may reside who acquired securities of Sino-Forest during the period from and including March 19, 2007 to and including June 2, 2011 either by primary distribution in Canada or an acquisition on the TSX or other secondary markets in Canada, other than the defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is an immediate member of the family of an individual defendant.

[158] The class membership definition in *Labourers v. Sino-Forest* includes non-Canadians who purchased shares or notes in Canada but excludes non-Canadians who purchased in a foreign marketplace.

[159] Challenging this definition, Kim Orr submits that it is wrong in principle to exclude persons whose claims will involve the same facts as other class members and for whom it is arguable that Canadian courts may exercise jurisdiction and provide access to justice.

Northwest v. Sino-Forest.

[160] In *Northwest v. Sino-Forest*, the proposed class action is on behalf of purchasers of shares or notes of Sino-Forest during the period from August 17, 2004 through June 2, 2011, except: Sino-Forest's past and present subsidiaries and affiliates; the past and present officers and directors of Sino-Forest and its subsidiaries and affiliates; members of the immediate family of any excluded person; the legal representatives, heirs, successors, and assigns of any excluded person or entity; and any entity in which any excluded person or entity has or had a controlling interest.

[161] Challenging this definition, Koskie Minsky and Siskinds submit that the proposed class in *Northwest* has no geographical limits and, therefore, will face jurisdictional and choice of law challenges that do not withstand a cost benefit analysis. It submits that Sino-Forest predominantly raised capital in Canadian capital markets and the vast majority of its securities were either acquired in Canada or on a Canadian market, and, in this context, including in the class non-residents who purchased securities outside of Canada risks undermining and delaying the claims of the great majority of proposed class members whose claims do not face such jurisdictional obstacles.

7. Definition of Class Period

Smith v. Sino-Forest

[162] In *Smith v. Sino-Forest,* the class period is May 17, 2004 to August 26, 2011. This class period starts with the release of Sino-Forest's release of its 2003 Annual Information Form, which indicated the use of authorized intermediaries, and it ends on the day of the OSC's cease-trade order.

[163] For comparison purposes, it should be noted that this class period has the earliest start date and the latest finish date. *Labourers v. Sino-Smith* and *Northwest v. Sino-Forest* both use the end date of the release of the Muddy Waters Report.

[164] In making comparisons, it is helpful to look at the chart found at Schedule A of this judgment.

[165] Rochon Genova justifies its extended end date based on the argument that the Muddy Waters Report was a revelation of Sino-Forest's misrepresentation but not a corrective statement that would end the causation of injuries because Sino-Forest and its officers denied the truth of the Muddy Waters Report.

[166] Kim Orr's criticizes the class definition in *Smith v. Sino-Forest* and submits that purchasers of shares or notes after the Muddy Waters Report was published do not have viable claims and ought not be included as class members.

[167] Koskie Minsky and Siskinds' submission is similar, and they regard the extended end date as problematic in raising the issues of whether there were corrective disclosures and of how Part XXIII.1 of the *Ontario Securities Act* should be interpreted.

Labourers v. Sino-Forest

[168] In *Labourers v. Sino-Forest*, the class period is March 19, 2007 to June 2, 2011.

[169] This class period starts with the date Sino-Forest's 2006 financial results were announced, and it ends on the date of the publication of the Muddy Waters Report.

[170] The March 19, 2007, commencement date was determined using a complex mathematical formula known as the "multi-trader trading model." Using this model, Mr. Torchio estimates that 99.5% of Sino-Forest's shares retained after June 2, 2011, had been purchased after the March 19, 2007 commencement date. Thus, practically speaking, there is almost nothing to be gained by an earlier start date for the class period.

[171] The proposed class period covers two share offerings (June 2009 and December 2009). This class period does not include time before the coming into force of Part XXIII.1 of the *Ontario Securities Act* (December 31, 2005), and, thus, Koskie Minsky and Siskinds submit that this aspect of their definition avoids problems about the retroactive application, if any, of Part XXIII.1 of the Act.

[172] For comparison purposes, the *Labourers* class period has the latest start date and shares the finish date used in the *Northwest v. Sino-Forest* action, which is sooner than the later date used in *Smith v. Sino-Forest*. It is the most compressed of the three definitions of a class period.

[173] Based on Mr. Torchio's opinion, Koskie Minsky and Siskinds submit that there are likely no damages arising from purchases made during a substantial portion of the class periods in *Smith v. Sino-Forest* and in *Northwest v. Sino-Forest*. Koskie Minsky and Siskinds submit that given that the average price of Sino's shares was approximately $4.49 in the ten trading days after the Muddy Waters report, it is likely that any shareholder that acquired Sino-Forest shares for less than $4.49 suffered no damages, particularly under Part XXIII.1 of the *Ontario Securities Act*.

[174] In part as a matter of principle, Kim Orr submits that Koskie Minsky and Siskinds' approach to defining the class period is unsound because it excludes class members who, despite the mathematical modelling, may have genuine claims and are being denied any opportunity for access to justice. Kim Orr submits it is wrong in principle to abandon these potential class members.

[175] Rochon Genova also submits that Koskie Minsky and Siskinds' approach to defining the class period is wrong. It argues that Koskie Minsky and Siskinds' reliance on a complex mathematical model to define class membership is arbitrary and unfair to share purchasers with similar claims to those claimants to be included as class members. Rochon Genova criticizes Koskie Minsky and Siskinds' approach as being the condemned merits based approach to class definitions and for being the sin of excluding class members because they may ultimately not succeed after a successful common issues trial.

[176] Relying on what I wrote in *Fischer v. IG Investment Management Ltd.*, 2010 ONSC 296 at para. 157, Rochon Genova submits that the possible failure of an individual class member to establish an individual element of his or her claim such as causation or damages is not a reason to initially exclude him or her as a class member. Rochon Genova submits that the end date employed in *Labourers v. Sino-Forest* and *Northwest v. Sino-Forest* is wrong.

<u>Northwest v. Sino-Forest</u>

[177] In *Northwest v. Sino-Forest*, the class period is August 17, 2004 to June 2, 2011.

[178] This class period starts from the day Sino-Forest closed its public offering of long-term notes that were still outstanding at the end of the class period and ends on the date of the Muddy Waters Research Report. This period covers three share offerings (June 2007, June 2009, and December 2009) and six note offerings (August 2004, July 2008, July 2009, December 2009, February 2010, and October 2010).

[179] For comparison purposes, the *Northwest v. Sino-Forest* class period begins 3 months later and ends three months sooner than the class period in *Smith v. Sino-Forest*. The *Northwest v. Sino-Forest* class period begins approximately two-and-a-half years earlier and ends at the same time as the class period in *Labourers v. Sino-Forest*.

[180] Kim Orr submits that its start date of August 17, 2004 is satisfactory, because on that date, Sino-Forest shares were trading at $2.85, which is below the closing price of Sino-Forest shares on the TSX for the ten days after June 3, 2011 ($4.49), which indicates that share purchasers before August 2004 would not likely be able to claim loss or damages based on the public disclosures on June 2, 2011.

[181] However, Koskie Minsky and Siskinds point out that Kim Orr's submission actually provides partial support for the theory for a later start date (March 19, 2007) because, there is no logical reason to include in the class persons who purchased Sino-Forest shares between May 17, 2004, the start date of the *Smith Action* and December 1, 2005, because with the exception of one trading day (January 24, 2005), Sino-Forest's shares never traded above $4.49 during that period.

8. Theory of the Case against the Defendants

Smith v. Sino-Forest

[182] In *Smith v. Sino-Forest*, the theory of the case rests on the alleged non-arms' length transfers between Sino-Forest and its subsidiaries and authorized intermediaries, that purported to be suppliers and customers. Rochon Genova's investigations and analysis suggest that there are numerous non-arms length inter-company transfers by which Sino-Forest misappropriated investors' funds, exaggerated Sino-Forest's assets and revenues, and engaged in improper tax and accounting practices.

[183] Mr. Smith alleges that Sino-Forest's quarterly interim financial statements, audited annual financial statements, and management's discussion and analysis reports, which are Core Documents as defined under the *Ontario Securities Act*, misrepresented its revenues, the nature and scope of its business and operations, and the value and composition of its forestry holdings. He alleges that the Core Documents failed to disclose an unlawful scheme of fabricated sales transactions and the avoidance of tax and an unlawful scheme through which hundreds of millions of dollars in investors' funds were misappropriated or vanished.

[184] Mr. Smith submits that these misrepresentations and failures to disclose were also made in press releases and in public oral statements. He submits that Chan, Hyde, Horsley, Mak, Martin, Murray, and Wang authorized, permitted or acquiesced in the release of Core Documents and that Chan, Horsley, Martin, and Murray made the misrepresentations in public oral statements.

[185] In *Smith v. Sino-Forest*, Mr. Smith (and Mr. Collins) brings different claims against different combinations of Defendants; visualize:

- misrepresentation in a prospectus under Part XXIII of the *Ontario Securities Act*, against all the Defendants
- subject to leave being granted, misrepresentation in secondary market disclosure under Part XXIII.1 of the Ontario *Securities Act* as against the defendants: Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Wang, BDO and E&Y
- negligent, reckless, or fraudulent misrepresentation against Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, and Wang. This claim would appear to cover sales of shares in both the primary and secondary markets.

[186] It is to be noted that *Smith v. Sino-Forest* does not make a claim on behalf of noteholders, and, as described and explained below, it joins the fewest number of defendants.

[187] *Smith* also does not advance a claim on behalf of purchasers of shares through Sino-Forest's prospectus offering of June 5, 2007, because of limitation period concerns associated with the absolute limitation period found in 138.14 of the *Ontario Securities Act*. See: *Coulson v. Citigroup Global Markets Canada Inc.*, 2010 ONSC 1596 at paras. 98-100.

Labourers v. Sino-Forest

[188] The theory of *Labourers v. Sino-Forest* is that Sino-Forest, along with its officers, directors, and certain of its professional advisors, falsely represented that its financial statements complied with GAAP, materially overstated the size and value of its forestry assets, and made false and incomplete representations regarding its tax liabilities, revenue recognition, and related party transactions.

[189] The claims in *Labourers v. Sino-Forest* are largely limited to alleged misrepresentations in Core Documents as defined in the *Ontario Securities Act* and other Canadian securities legislation. Core Documents include prospectuses, annual information forms, information circulars, financial statements, management discussion & analysis, and material change reports.

[190] The representative plaintiffs advance statutory claims and also common law claims that certain defendants breached a duty of care and committed the torts of negligent misrepresentation and negligence. There are unjust enrichment, conspiracy, and oppression remedy claims advanced against certain defendants.

[191] In *Labourers v. Sino-Forest*, different combinations of representative plaintiffs advance different claims against different combinations of defendants; visualize:

- Labourers' Fund and Mr. Wong, purchasers of shares in a primary market distribution, advance a statutory claim under Part XXIII of the *Ontario Securities Act* against Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, E&Y, BDO, CIBC, Canaccord, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, TD and Pöyry

- Labourers' Fund and Mr. Wong, purchasers of shares in a primary market distribution, advance a common law negligent misrepresentation claim against Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, E&Y, BDO, CIBC, Canaccord, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, and TD based on the common misrepresentation that Sino-Forest's financial statements complied with GAPP

- Labourers' Fund and Mr. Wong, purchasers of shares in a primary market distribution, advance a common law negligence claim against Sino-Forest, Chan, Hyde, Horsley, Mak, Martin, Murray, Poon, Wang, E&Y, BDO, CIBC, Canaccord, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, TD and Pöyry

- Grant, who purchased bonds in a primary market distribution, advances a statutory claim under Part XXIII of the *Ontario Securities Act* against Sino-Forest

- Grant, who purchased bonds in a primary market distribution, advances a common law negligent misrepresentation claim against Sino-Forest, E&Y and BDO based on the common misrepresentation that Sino-Forest's financial statements complied with GAPP
- Grant, who purchased bonds in a primary market distribution, advances a common law negligence claim against Sino-Forest, E&Y, BDO, Banc of America, Credit Suisse USA, and TD
- All the representative plaintiffs, subject to leave being granted, advance claims of misrepresentation in secondary market disclosure under Part XXIII.1 of the *Ontario Securities Act* and, if necessary, equivalent provincial legislation. This claim is against Sino-Forest, Ardell, Bowland, Chan, Hyde, Horsley, Mak, Martin, Murray, Poon, Wang, West, E &Y, BDO, and Pöyry
- All of the representative plaintiffs, who purchased Sino-Forest securities in the secondary market, advance a common law negligent misrepresentation claim against all of the Defendants except the underwriters based on the common misrepresentation contained in the Core Documents that Sino-Forest's financial statements complied with GAAP
- All the representative plaintiffs sue Sino-Forest, Chan, Horsley, and Poon for conspiracy. It is alleged that Sino-Forest, Chan, Horsley, and Poon conspired to inflate the price of Sino-Forest's shares and bonds and to profit by their wrongful acts to enrich themselves by, among other things, issuing stock options in which the price was impermissibly low
- While it is not entirely clear from the Statement of Claim, it seems that all the representative plaintiffs sue Chan, Horsley, Mak, Martin, Murray, and Poon for unjust enrichment in selling shares to class members at artificially inflated prices
- While it is not entirely clear from the Statement of Claim, it seems that all the representative plaintiffs sue Sino-Forest for unjust enrichment for selling shares at artificially inflated prices
- While it is not entirely clear from the Statement of Claim, it seems that all the representative plaintiffs sue Banc of America, Canaccord, CIBC, Credit Suisse, Credit Suisse USA, Dundee, Maison, Merrill, RBC, Scotia, and TD for unjustly enriching themselves from their underwriters fees
- All the representative plaintiffs sue Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, and Wang for an oppression remedy under the *Canada Business Corporations Act*

[192] Koskie Minsky and Siskinds submit that *Labourers v. Sino-Forest* is more focused than *Smith* and *Northwest* because: (a) its class definition covers a shorter time period and is limited to securities acquired by Canadian residents or in Canadian markets; (b) the material documents are limited to Core Documents under securities legislation; (c) the named individual defendants are limited to directors and officers with statutory obligations to certify the accuracy of Sino-Forest's public filings; and (d) the

causes of action are tailored to distinguish between the claims of primary market purchasers and secondary market purchasers and so are less susceptible to motions to strike.

[193] Koskie Minsky and Siskinds submit that save for background and context, little is gained in the rival actions by including claims based on non-Core Documents, which confront a higher threshold to establish liability under Part XXIII.1 of the *Ontario Securities Act*.

Northwest v. Sino-Forest

[194] The *Northwest v. Sino-Forest* Statement of Claim focuses on an "Integrity Representation," which is defined as: "the representation in substance that Sino-Forest's overall reporting of its business operations and financial statements was fair, complete, accurate, and in conformity with international standards and the requirements of the *Ontario Securities Act* and National Instrument 51-102, and that its accounts of its growth and success could be trusted."

[195] The *Northwest v. Sino-Forest* Statement of Claim alleges that all Defendants made the Integrity Representation and that it was a false, misleading, or deceptive statement or omission. It is alleged that the false Integrity Representation caused the market decline following the June 2, 2011, disclosures, regardless of the truth or falsity of the particular allegations contained in the Muddy Waters Report.

[196] In *Northwest v. Sino-Forest*, the representative plaintiffs advance statutory claims under Parts XXIII and XXIII.1 of the *Ontario Securities Act* and a collection of common law tort claims. Kim Orr submits that to the extent, if any, that the statutory claims do not provide complete remedies to class members, whether due to limitation periods, liability caps, or other limitations, the common law claims may provide coverage.

[197] In *Northwest v. Sino-Forest*, the plaintiffs advance different claims against different combinations of defendants; visualize:

- With respect to the June 2009 and December 2009 prospectus, a cause of action for violation of Part XXIII of the *Ontario Securities Act* against Sino-Forest, the underwriter Defendants, the director Defendants, the Defendants who consented to disclosure in the prospectus and the Defendants who signed the prospectus
- Negligent misrepresentation against all of the Defendants for disseminating material misrepresentations about Sino-Forest in breach of a duty to exercise appropriate care and diligence to ensure that the documents and statements disseminated to the public about Sino-Forest were complete, truthful, and accurate.
- Fraudulent misrepresentation against all of the Defendants for acting knowingly and deliberately or with reckless disregard for the truth making misrepresentations in documents, statements, financial statements, prospectus,

offering memoranda, and filings issued and disseminated to the investing public including Class Members.

- Negligence against all the Defendants for a breach of a duty of care to ensure that Sino-Forest implemented and maintained adequate internal controls, procedures and policies to ensure that the company's assets were protected and its activities conformed to all legal developments.
- Negligence against the underwriter Defendants, the note distributor Defendants, the auditor Defendants, and the Pöyry Defendants for breach of a duty to the purchasers of Sino-Forest securities to perform their professional responsibilities in connection with Sino-Forest with appropriate care and diligence.
- Subject to leave being granted, a cause of action for violation of Part XXIII.1 of the *Ontario Securities Act* against Sino-Forest, the auditor Defendants, the individual Defendants who were directors and officers of Sino-Forest at the time one or more of the pleaded material misrepresentations was made, and the Pöyry Defendants.

[198] Kim Orr submits that *Northwest v. Sino-Forest* is more comprehensive than its rivals and does not avoid asserting claims on the grounds that they may take time to litigate, may not be assured of success, or may involve a small portion of the total potential class. It submits that its conception of Sino-Forest's wrongdoing better accords with the factual reality and makes for a more viable claim than does Koskie Minsky and Siskinds' focus on GAAP violations and Rochon Genova's focus on the misrepresentations associated with the use of authorized intermediaries. It denies Koskie Minsky and Siskinds' argument that it has pleaded overbroad tort claims.

[199] Koskie Minsky and Siskinds submit that its conspiracy claim against a few defendants is focused and narrow, and it criticizes the broad fraud claim advanced in *Northwest v. Sino-Forest* against all the defendants as speculative, provocative, and unproductive.

[200] Relying on *McKenna v. Gammon Gold Inc.*, 2010 ONSC 1591 at para. 49; *Corfax Benefits Systems Ltd. v. Fiducie Desjardins Inc.*, [1997] O.J. No. 5005 (Gen. Div.) at paras. 28-36; *Hughes v. Sunbeam Corp. (Canada)*, [2000] O.J. No. 4595 (S.C.J.) at paras. 25 and 38; and *Toronto-Dominion Bank v. Leigh Instruments Ltd. (Trustee of)*, [1998] O.J. No. 2637 (Gen. Div.) at para. 477, Koskie Minsky and Siskinds submit that the speculative fraud action in *Northwest v. Sino-Forest* is improper and would not advance the interests of class members. Further, the task of proving that each of some twenty defendants had a fraudulent intent, which will be vehemently denied by the defendants, and the costs sanction imposed for pleading and not providing fraud make the fraud claim a negative and not a positive feature of *Northwest v. Sino-Forest*.

9. **Joinder of Defendants**

Smith v. Sino-Forest

[201] In *Smith v. Sino-Forest*, the Defendants are: Sino-Forest; seven of its directors and officers; namely: Chan, Horsley, Hyde, Mak, Martin, Murray, and Wang; nine underwriters; namely, Canaccord, CIBC, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, and TD; and Sino-Forest's two auditors during the Class Period, E &Y and BDO.

[202] The *Smith v. Sino-Forest* Statement of Claim does not join Pöyry because Rochon Genova is of the view that the disclaimer clause in Pöyry's reports likely insulates it from liability, and Rochon Genova believes that its joinder would be of marginal utility and an unnecessary complication. It submits that joining Pöyry would add unnecessary expense and delay to the litigation with little corresponding benefit because of its jurisdiction and its potential defences.

Labourers v. Sino-Forest

[203] In *Labourers v. Sino-Forest*, the Defendants are the same as in *Smith v. Sino-Forest* with the additional joinder of Ardell, Bowland, Poon, West, Banc of America, Credit Suisse (USA), and Pöyry.

[204] The *Labourers v. Sino-Forest* action does not join Chen, Ho, Hung, Ip, Maradin, Wong, Yeung, Zhao, Credit Suisse (USA), Haywood, Merrill-Fenner, Morgan and UBS, which are parties to *Northwest v. Sino-Forest*.

[205] Koskie Minsky and Siskinds' explanation for these non-joinders is that the activities of the underwriters added to *Northwest v. Sino-Forest* occurred outside of the class period in *Labourers v. Sino-Forest* and neither Lawrence nor Wong held a position with Sino-Forest during the proposed class period and the action against Lawrence's Estate is probably statute-barred. (See *Waschkowski v. Hopkinson Estate*, [2000] O.J. No. 470 (C.A.).)

[206] Wong left Sino-Forest before Part XXIII.1 of the *Ontario Securities Act* came into force, and Koskie Minsky and Siskinds submit that proving causation against Wong will be difficult in light of the numerous alleged misrepresentations since his departure. Moreover, the claim against him is likely statute-barred.

[207] Koskie Minsky and Siskinds submit that Chen, Maradin, and Zhao did not have statutory duties and allegations that they owed common law duties will just lead to motions to strike that hinder the progress of an action.

[208] Further, Koskie Minsky and Siskinds submit that it is not advisable to assert claims of fraud against all defendants, which pleading may raise issues for insurers that potentially put available coverage and thus collection for plaintiffs at risk.

[209] Kim Orr submits that it is a mistake in *Labourers v. Sino-Forest*, which is connected to the late start date for the class period, which Kim Orr also regards as a mistake, that those underwriters that may be liable and who may have insurance to indemnify them for their liability, have been left out of *Labourers v. Sino-Forest*.

Northwest v. Sino-Forest

[210] In *Northwest v. Sino-Forest,* with one exception, the defendants are the same as in *Labourers v. Sino-Forest* with the additional joinder of various officers of Sino-Forest; namely: Chen, Ho, Hung, Ip, The Estate of John Lawrence, Maradin, Wong, Yeung, and Zhao; the joinder of Pöyry Forest and JP Management; and the joinder of more underwriters; namely: Haywood, Merrill- Fenner, Morgan, and UBS.

[211] The one exception where *Northwest v. Sino-Forest* does not join a defendant found in *Labourers v. Sino-Forest* is Banc of America.

[212] Kim Orr's submits that its joinder of all defendants who might arguably bear some responsibility for the loss is a positive feature of its proposed class action because the precarious financial situation of Sino-Forest makes it in the best interests of the class members that they be provided access to all appropriate routes to compensation. It strongly denies Koskie Minsky and Siskinds' allegation that *Northwest v. Sino-Forest* takes a "shot-gun" and injudicious approach by joining defendants that will just complicate matters and increase costs and delay.

[213] Kim Orr submits that Rochon Genova has no good reason for not adding Pöyry, Pöyry Forest, and JP Management as defendants to *Smith v. Sino-Forest* and that Koskie Minsky and Siskinds have no good reason in *Labourers v. Sino-Forest* for suing Pöyry but not also suing its associated companies, all of whom are exposed to liability and may be sources of compensation for class members.

[214] While not putting it in my blunt terms, Kim Orr submits, in effect, that Koskie Minsky and Siskinds' omission of the additional defendants is just laziness under the guise of feigning a concern for avoiding delay and unnecessarily complicating an already complex proceeding.

10. Causes of Action

Smith v. Sino-Forest

[215] In *Smith v. Sino-Forest,* the causes of action advanced by Mr. Smith on behalf of the class members are:

- misrepresentation in a prospectus under Part XXIII of the *Ontario Securities Act*
- negligent, reckless, or fraudulent misrepresentation
- subject to leave being granted, misrepresentation in secondary market disclosure under Part XXIII.1 of the *Ontario Securities Act* and, if necessary, equivalent provincial legislation

Labourers v. Sino-Forest

[216] In *Labourers v. Sino-Forest,* the causes of action advanced by various combinations of plaintiffs against various combinations of defendants are:

- misrepresentation in a prospectus under Part XXIII of the *Ontario Securities Act*
- negligent misrepresentation

- negligence
- subject to leave being granted misrepresentation in secondary market disclosure under Part XXIII.1 of the *Ontario Securities Act* and, if necessary, equivalent provincial legislation
- conspiracy
- unjust enrichment
- oppression remedy.

[217] Kim Orr submits that the unjust enrichment claims and oppression remedy claims seemed to be based on and add little to the misrepresentation causes of action. It concedes that the conspiracy action may be a tenable claim but submits that its connection to the disclosure issues that comprise the nucleus of the litigation is unclear.

Northwest v. Sino-Forest

[218] In *Northwest v. Sino-Forest*, the causes of action are:

- misrepresentation in a prospectus in violation of Part XXIII the *Ontario Securities Act*
- misrepresentation in an offering memorandum in violation of Part XXIII the *Ontario Securities Act*
- negligent misrepresentation
- fraudulent misrepresentation
- negligence
- subject to leave being granted misrepresentation in secondary market disclosure under Part XXIII.1 of the *Ontario Securities Act* and, if necessary, equivalent provincial legislation

[219] The following chart is helpful in comparing and contrasting the joinder of various causes of action and the joinder of defendants in *Smith v. Sino-Forest*, *Labourers v. Sino-Forest* and *Northwest v. Sino-Forest*.

Cause of Action	*Smith v. Sino-Forest,*	*Labourers v. Sino-Forest,*	*Northwest v. Sino-Forest,*
Part XXIII of the *Ontario Securities Act* – primary market shares	Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Wang, Canaccord, CIBC, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, TD, E&Y, BDO	Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, Canaccord, CIBC, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, TD, E&Y, BDO, Pöyry	Sino-Forest, Ardell, Bowland, Chan Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Canaccord, CIBC Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner Morgan, RBC,Scotia, TD, UBS; E&Y, BDO, Pöyry, Pöyry Forest, JP Management [for June 2009 and Dec. 2009 prospectus]
Part XXIII of the *Ontario Securities Act* – primary		Sino-Forest [two bond issues]	Sino-Forest [six bond issues]

market bonds			
Negligent misrepresentation – primary market shares	Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Wang, E&Y, BDO	Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murrey, Poon, Wang, Canaccord, CIBC, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, TD, E&Y, BDO, Pöyry	Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management,
Negligent misrepresentation – primary market bonds		Sino-Forest, E&Y, BDO	Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Negligence – primary market shares		Sino-Forest, Chan, Hyde, Horsley, Mak, Martin, Murray, Poon, Wang, E &Y, BDO, CIBC, Canaccord, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia,TD, Pöyry,	[see negligence, professional negligence]
Negligence – primary market bonds		Sino-Forest, E&Y, BDO, Banc of America, Credit Suisse USA, TD	[See negligence, professional negligence]
Negligence			Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Professional Negligence			Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management

Part XXIII.1 of the *Ontario Securities Act* – secondary market shares	Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Wang, E&Y, BDO	Sino-Forest, Ardell, Bowland, Chan, Hyde, Horsley, Mak, Martin, Murray, Poon, Wang, West, E &Y, BDO, Pöyry	Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC,Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Part XXIII.1 of the *Ontario Securities Act* – secondary market bonds		Sino-Forest, Ardell, Bowland, Chan, Hyde, Horsley, Mak, Martin, Murray, Poon, Wang, West, E &Y, BDO, Pöyry	Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Negligent misrepresentation – secondary market shares	Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Wang, E&Y, BDO	Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, E&Y, BDO, Pöyry	Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Negligent misrepresentation – secondary market bonds		Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, E&Y, BDO, Poyry	Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Negligence - secondary market shares		Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, Canaccord, CIBC,	[see negligence, professional negligence]

		Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, TD, E&Y, BDO, Pöyry	
Conspiracy		Sino-Forest, Chan, Horsley, Poon,	
Fraudulent Misrepresentation - Bonds, shares			Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD,UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Unjust Enrichment		Chan, Horsley, Mak, Martin, Murray, Poon,	
Unjust Enrichment		Sino-Forest,	
Unjust Enrichment		Banc of America, Canaccord, CIBC, Credit Suisse, Credit Suisse USA, Dundee, Maison, Merrill, RBC, Scotia, TD	
Oppression Remedy		Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang	

11. The Plaintiff and Defendant Correlation

[220] In class actions in Ontario, for every named defendant there must be a named plaintiff with a cause of action against that defendant: *Ragoonanan v. Imperial Tobacco Canada Ltd.*, [2000] O.J. No. 4597 (S.C.J.) at para. 55 (S.C.J.); *Hughes v. Sunbeam Corp. (Canada)* (2002), 61 O.R. (3d) 433 (C.A.) at para. 18.

[221] As an application of the *Ragoonanan* rule, a purchaser in the secondary market cannot be the representative plaintiff for a class member who purchased in the primary market: *Menegon v. Philip Services Corp.*, [2001] O.J. No. 5547 (S.C.J.) at paras. 28-30 aff'd [2003] O.J. No. 8 (C.A.).

[222] Where the class includes non-resident class members, they must be represented by a representative plaintiff that is a non-resident: *McKenna v. Gammon Gold Inc.*, 2010 ONSC 1591 at paras. 109, 117 and 184; *Currie v. McDonald's Restaurants of Canada Ltd.* (2005), 74 O.R. (3d) 321 at para. 30 (C.A.).

[223] Koskie Minsky and Siskinds submit that *Labourers v. Sino-Forest* has no *Ragoonanan* problems. However, they submit that the other actions have problems. For example, until Mr. Collins volunteered, there was no representative plaintiff in *Smith v. Sino-Forest* who had purchased shares in the primary market, and at this juncture, it is not clear that Mr. Collins purchased in all of the primary market distributions. Mr. Smith and Mr. Collins may have timing-of-purchase issues. Mr. Smith made purchases

during periods when some of the Defendants were not involved; viz. BDO, Canaccord CIBC, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, and TD.

[224] Koskie Minsky and Siskinds submit that none of the representative plaintiffs in *Northwest v. Sino-Forest* purchased notes in the primary market for the 2007 prospectus offering and that the plaintiffs in *Northwest* may have timing issues with respect to their claims against Wong, Lawrence, JP Management, UBS, Haywood and Morgan.

[225] Rochon Genova's and Kim Orr's response is that there are no *Ragoonanan* problems or no irremediable *Ragoonanan* problems.

12. Prospects of Certification

[226] Koskie Minsky and Siskinds framed part of their argument in favour of their being selected for carriage in terms of the comparative prospects of certification of the rival actions. They submitted that *Labourers v. Sino-Forest* was carefully designed to avoid the typical road blocks placed by defendants on the route to certification and to avoid inefficiencies and unproductive claims or claims that on a cost-benefit analysis would not be in the interests of the class to pursue. One of the typical roadblocks that they referred to was challenges to the jurisdiction of the Ontario Court over foreign class members and foreign defendants who have not attorned to the Ontario Superior Court of Justice's territorial jurisdiction.

[227] Koskie Minsky and Siskinds submitted that their representative plaintiffs focus their claims on a single misrepresentation to avoid the pitfalls of seeking to certify a negligent misrepresentation claim with multiple misrepresentations over a long period of time. Such a claim apparently falls into a pit because it is often not certified. Koskie Minsky and Siskinds say it is better to craft a claim that has higher prospects of certification and leave some claims behind. They submit that the Supreme Court of Canada accepted that a representative plaintiff is entitled to restrict their causes of action to make their claims more amenable to class proceedings: *Rumley v. British Columbia*, [2001] 3 S.C.R. 184 at para. 30.

[228] Although *Smith v. Sino-Forest* is even more focused that *Labourers v. Sino-Forest,* Koskie Minsky and Siskinds still submit that their approach is better because *Smith v. Sino-Forest* goes too far in cutting out the bondholders' claims and then loses focus by extending its claims beyond the release of the Muddy Waters Report.

[229] In any event, Koskie Minsky and Siskinds submit that *Labourers v. Sino-Forest* is better because the named plaintiffs are able to advance statutory and common law claims against all of the named defendants, which arguably is not the case for the plaintiffs in the other actions, who may have *Ragoonanan* problems or no tenable claims against some of the named defendants. Further, *Labourers* arguably is better because of a more focussed approach to maximize class recovery while avoiding the costs and delays inevitably linked with motions to strike.

[230] Kim Orr submits that its more comprehensive approach, where there are more defendant parties and expansive tort claims, is preferable to *Labourers v. Sino-Forest* and *Smith v. Sino-Forest.* Kim Orr submits that it does not shirk asserting claims

because they may be difficult to litigate and it does not abandon class members who may not be assured of success or who comprise a small portion of the class.

[231] Kim Orr submits that *Northwest v. Sino-Forest* is comprehensive and also cohesive and corresponds to the factual reality. It submits that the theories of the competing actions do not capture the wrongdoing at Sino-Forest for which many are culpable and who should be held responsible. It submits that its approach will meet the challenges of certification and yield an optimum recovery for the class.

[232] Rochon Genova submits that *Smith v. Sino-Forest* is much more cohesive that the other actions. It submits that the more expansive class definitions and causes of action in *Labourers v. Sino-Forest* and *Northwest v. Sino-Forest* will present serious difficulties relating to manageability, preferability, and potential conflicts of interest amongst class members that are not present in *Smith v. Sino-Forest*. Rochon Genova submits that it has developed a solid, straightforward theory of the case and made a great deal of progress in unearthing proof of Sino-Forest's wrongdoing.

G. CARRIAGE ORDER

1. Introduction

[233] With the explanation that follows, I stay *Smith v. Sino-Forest* and *Northwest v. Sino-Forest*, and I award carriage to Koskie Minsky and Siskinds in *Labourers v. Sino-Forest*. In the race for carriage of an action against *Sino-Forest*, I would have ranked Rochon Genova second and Kim Orr third.

[234] This is not an easy decision to make because class members would probably be well served by any of the rival law firms. Success in a carriage motion does not determine which is the best law firm, it determines that having regard to the interests of the plaintiffs and class members, to what is fair to the defendants, and to the policies that underlie the class actions regime, there is a constellation of factors that favours selecting one firm or group of firms as the best choice for a particular class action.

[235] Having regard to the constellation of factors, in the circumstances of this case, several factors are neutral or non-determinative of the choice for carriage. In this group are: (a) attributes of class counsel; (b) retainer, legal, and forensic resources; (c) funding; (d) conflicts of interest; and (e) the plaintiff and defendant correlation.

[236] In the case at bar, the determinative factors are: definition of class membership, definition of class period, theory of the case, causes of action, joinder of defendants, and prospects of certification.

[237] Of the determinative factors, the attributes of the representative plaintiffs is a standalone factor. The other determinative factors are interrelated and concern the rival conceptualizations of what kind of class action would best serve the class members' need for access to justice and the policies of fairness to defendants, behaviour modification, and judicial economy.

[238] Below, I will first discuss the neutral or non-determinative factors. Then, I will discuss the determinative factors. After discussing the attributes of the representative plaintiffs, I will discuss the related factors in two groups. One group of related factors is about class membership, and the second group of factors is about the claims against the defendants.

2. Neutral or Non-Determinative Factors

(a) Attributes of Class Counsel

[239] In the circumstances of the cases at bar, the attributes of the competing law firms along with their associations with prestigious and prominent American class action firms is not determinative of carriage, since there is little difference among the rivals about their suitability for bringing a proposed class action against Sino-Forest.

[240] With respect to the attributes of the law firms, although one might have thought that Mr. Spencer's call to the bar would diminish the risk, Koskie and Minsky and Siskinds, particularly Siskinds, raised a question about whether Milberg might cross the line of what legal services a foreign law firm may provide to the Ontario lawyers who are the lawyers of record, and Siskinds alluded to the spectre of violations of the rules of professional conduct and perhaps the evil of champerty and maintenance. It suggested that it was unfair to class members to have to bear this risk associated with the involvement of Milberg.

[241] However, at this juncture, I have no reason to believe that any of the competing law firms, all of which have associations with notable American class action firms, will shirk their responsibilities to control the litigation and not to condone breaches of the rules of professional conduct or tortious conduct.

(b) Retainer, Legal, and Forensic Resources

[242] The circumstances of the retainers and the initiative shown by the law firms and their efforts and resources expended by them are also not determinative factors in deciding the carriage motions in the case at bar, although it is an enormous shame that it may not be possible to share the fruits of these efforts once carriage is granted to one action and not the others.

[243] As I have already noted above, the aggregate expenditure to develop the tactical and strategic plans for litigation not including the costs of preparing for the carriage motion are approximately $2 million. It seems that this effort by the respective law firms has been fruitful and productive. All of the law firms claim that their respective efforts have yielded valuable information to advance a claim against Sino-Forest and others.

[244] All of the law firms were quickly out of the starting blocks to initiate investigations about the prospects and merits of a class action against Sino-Forest. For different reasonable reasons, the statements of claim were filed at different times.

[245] In the case at bar, I do not regard the priority of the commencement of the actions as a meaningful factor, given that from the publication of the Muddy Waters Report, all the firms responded immediately to explore the merits of a class action and given that all the firms plan to amend their original pleadings that commenced the actions. In any event, I do not think that a carriage motion should be regarded as some sort of take home exam where the competing law firms have a deadline for delivering a statement of claim, else marks be deducted.

(c) Funding

[246] In my opinion, another non-determinative factor is the circumstances that: (a) the representative plaintiffs in *Labourers v. Sino-Forest* may apply for court approval for third-party funding; (b) the plaintiffs in *Northwest v. Sino-Forest* may apply for court approval for third-party funding or they may apply to the Class Proceedings Fund to be protected from an adverse costs award; (c) Messrs. Smith and Collins in *Smith v. Sino-Forest* may apply to the Class Proceedings Fund to be protected from an adverse costs award; and (d) each of the law firms have respectively undertaken with their respective clients to indemnify them from an adverse costs award.

[247] In the future, the court or the Ontario Law Foundation may have to deal with the funding requests, but for present purposes, I do not see how these prospects should make a difference to deciding carriage, although I will have something more to say below about the significance of the state of affairs that clients with the resources of Labourers' Fund, Operating Engineers Fund, Sjunde AP-Fonden, BC Investment, Bâtirente, and Northwest would seek an indemnity from their respective class counsel.

[248] In any event, in my opinion, standing alone, the funding situation is not a determinative factor to carriage, although it may be relevant to other factors that are discussed below.

(d) Conflicts of Interest

[249] In the circumstances of the case at bar, I also do not regard conflicts of interest as a determinative factor.

[250] I do not see how the fact that Northwest, Bâtirente, and BC Investments made their investments on behalf of others and allegedly suffered no losses themselves creates a conflict of interest. It appears to me that they have the same fiduciary responsibilities to their members as do Labourers' Fund, Operating Engineers Fund, Sjunde AP-Fonden, and Healthcare Manitoba.

[251] Northwest, Bâtirente, and BC Investments were the investors in the securities of Sino-Forest and although there may be equitable or beneficial owners, under the common law, they suffered the losses, just like the other investors in Sino-Forest securities suffered losses. The fact that Northwest, Bâtirente, and BC Investments held the investments in trust for their members does not change the reality that they suffered the losses.

[252] It is alleged that Northwest, Bâtirente, and BC Investments, who were involved in corporate governance matters associated with Sino-Forest, failed to properly evaluate the risks of investing in Sino-Forest. Based on these allegations, it is submitted that they have a conflict of interest. I disagree.

[253] Having regard to the main allegation being that Sino-Forest was engaged in a corporate shell game that deceived everyone, it strikes me that it is almost a spuriously speculative allegation to blame another victim as being at fault. However, even if the allegation is true, the other class members have no claim against Northwest, Bâtirente, and BC Investments. If there were a claim, it would be by the members of Northwest, Bâtirente, and BC Investments, who are not members of the class suing Sino-Forest. The actual class members have no claim against Northwest, Bâtirente, and BC Investments but have a common interest in pursuing Sino-Forest and the other defendants.

[254] Further, it is arguable that Koskie Minsky and Siskinds are incorrect in suggesting that in *Comité syndical national de retraite Bâtirente inc. c. Société financière Manuvie*, 2011 QCCS 3446, the Superior Court of Québec disqualified Bâtirente as a representative plaintiff because there might be an issue about Bâtirente's investment decisions.

[255] It appears to me that Justice Soldevida did not appoint Bâtirente as a representative plaintiff for a different reason. The action in Québec was a class action. There were some similarities to the case at bar, insofar as it was an action against a corporation, Manulife, and its officers and directors for misrepresentations and failure to fulfill disclosure obligations under securities law. In that action, the personal knowledge of the investors was a factor in their claims against Manulife, and Justice Soldevida felt that sophisticated investors, like Bâtirente, could not be treated on the same footing as the average investor. It was in that context that she concluded that there was an appearance of a conflict of interest between Bâtirente and the class members.

[256] In the case at bar, however, particularly for the statutory claims where reliance is presumed, there is no reason to differentiate the average investors from the sophisticated ones. I also do not see how the difference between sophisticated and average investors would matter except perhaps at individual issues trials, where reasonable reliance might be an issue, if the matter ever gets that far.

[257] Another alleged conflict concerns the facts that BDO Canada, which is not a defendant, is the auditor of Labourers' Fund, and Koskie Minsky and BDO Canada have worked together on several matters. These circumstances are not conflicts of interest. There is no reason to think that Labourers' Fund and Koskie Minsky are going to pull their punches against BDO or would have any reason to do so.

[258] Finally, turning to the major alleged conflict between the bondholders and the shareholders, speaking generally, the alleged conflicts of interest between the bondholders that invested in Sino-Forest and the shareholders that invested in Sino-Forest arise because the bondholders have a cause of action in debt in addition to their causes of action based in tort or statutory misrepresentation claims, while, in contrast,

the shareholders have only statutory and common law claims based in misrepresentation.

[259] There is, however, within the context of the class action, no conflict of interest. In the class action, only the misrepresentation claims are being advanced, and there is no conflict between the bondholders and the shareholders in advancing these claims. Both the bondholders and the shareholders seek to prove that they were deceived in purchasing or holding on to their Sino-Forest securities. That the Defendants may have defences associated with the terms of the bonds is a problem for the bondholders but it does not place them in a conflict with shareholders not confronted with those special defences.

[260] Assuming that the bondholders and shareholders succeed or are offered a settlement, there might be a disagreement between them about how the judgment or settlement proceeds should be distributed, but that conflict, which at this juncture is speculative, can be addressed now or later by constituting the bondholders as a subclass and by the court's supervisory role in approving settlements under the *Class Proceedings Act, 1992.*

[261] If there are bondholders that wish only to pursue their debt claims or who wish not to pursue any claim against Sino-Force or who wish to have the bond trustee pursue only the debt claims, these bondholders may opt out of the class proceeding assuming it is certified.

[262] If there is a bankruptcy of Sino-Forest, then in the bankruptcy, the position of the shareholders as owners of equity is different than the position of the bondholders as secured creditors, but that is a natural course of a bankruptcy. That there are creditors' priorities, outside of the class action, does not mean that, within the class action, where the bondholders and the shareholders both claim damages, i.e., unsecured claims, there is a conflict of interest.

[263] The alleged conflict in the case at bar is different from the genuine conflict of interest that was identified in *Settington v. Merck Frost Canada Ltd.*, [2006] O.J. No. 379 (S.C.J.), where, for several reasons, the Merchant Law Firm was not granted carriage or permitted to be part of the consortium granted carriage in a pharmaceutical products liability class action against Merck.

[264] In *Settington,* one ground for disqualification was that the Merchant Law firm was counsel in a securities class action for different plaintiffs suing Merck for an unsecured claim. If the securities class action claim was successful, then the prospects of an unsecured recovery in the products liability class action might be imperiled. In the case at bar, however, within the class action, the bondholders are not pursuing a different cause of action from the shareholders; both are unsecured creditors for the purposes of their damages' claims arising from misrepresentation. If, in other proceedings, the bondholders or their trustee successfully pursue recovery in debt, then the threat to the prospects of recovery by the shareholders arises in the normal way that debt instruments have priority over equity instruments, which is a normal risk for shareholders.

[265] Put shortly, although the analysis may not be easy, there are no conflicts of interest between the bondholders and the shareholders within the class action that cannot be handled by establishing a subclass for bondholders at the time of certification or at the time a settlement is contemplated.

(e) <u>The Plaintiff and Defendant Correlation</u>

[266] In *Ragoonanan v. Imperial Tobacco Canada Ltd.*, (2000), 51 O.R. (3d) 603 (S.C.J.), in a proposed products liability class action, Mr. Ragoonanan sued Imperial Tobacco, Rothmans, and JTI-MacDonald, all cigarette manufacturers. He alleged that the manufacturers had negligently designed their cigarettes by failing to make them "fire safe." Mr. Ragoonanan's particular claim was against Imperial Tobacco, which was the manufacturer of the cigarette that allegedly caused harm to him when it was the cause of a fire at Mr. Ragoonanan's home. Mr. Ragoonanan did not have a claim against Rothmans or JTI-MacDonald.

[267] In *Ragoonanan*, Justice Cumming established the principle in Ontario class action law that there cannot be a cause of action against a defendant without a plaintiff who has that cause of action. Rather, there must be for every named defendant, a named plaintiff with a cause of action against that defendant. The *Ragoonanan* principle was expressly endorsed by the Court of Appeal in *Hughes v. Sunbeam Corp. (Canada) Ltd.* (2002), 61 O.R. (3de) 433 (C.A.) at paras. 13-18, leave to appeal to S.C.C. ref'd (2003), 224 D.L.R. (4th) vii.

[268] It should be noted, however, that in *Ragoonanan*, Justice Cumming did not say that there must be for every separate cause of action against a named defendant, a named plaintiff. In other words, he did not say that if some class members had cause of action A against defendant X and other class members had cause of action B against defendant X that it was necessary that there be a named representative plaintiff for both the cause of action A v. X and for the cause of action B v. X. It was arguable that if the representative plaintiff had a claim against X, then he or she could represent others with the same or different claims against X.

[269] Thus, there is room for a debate about the scope of the *Ragoonanan* principle, and, indeed, it has been applied in the narrow way, just suggested. Provided that the representative plaintiff has his or her own cause of action, the representative plaintiff can assert a cause of action against a defendant on behalf of other class members that he or she does not assert personally, provided that the causes of action all share a common issue of law or of fact: *Boulanger v. Johnson & Johnson Corp.*, [2002] O.J. No. 1075 (S.C.J.) at para. 22, leave to appeal granted, [2002] O.J. No. 2135 (S.C.J.), varied (2003), 64 O.R. (3d) 208 (Div. Ct.) at paras. 41, 48, varied [2003] O.J. No. 2218 (C.A.); *Healey v. Lakeridge Health Corp.*, [2006] O.J. No. 4277 (S.C.J.); *Matoni v. C.B.S. Interactive Multimedia Inc.*, [2008] O.J. No. 197 (S.C.J.) at paras. 71-77; *Voutour v. Pfizer Canada Inc.*, [2008] O.J. No. 3070 (S.C.J.); *Dobbie v. Arctic Glacier Income Fund*, 2011 ONSC 25 at para. 37. Thus, a representative plaintiff with damages for personal injury can claim in respect of dependents with derivative claims provided that

the statutes that create the derivative causes of action are properly pleaded: *Voutour v. Pfizer Canada Inc., supra*; *Boulanger v. Johnson & Johnson Corp., supra*.

[270] As noted above, in the case at bar, Koskie Minsky and Siskinds submit that *Labourers v. Sino-Forest* has no problem with the *Ragoonanan* principle and that *Smith v. Sino-Forest* and especially the more elaborate *Northwest v. Sino-Forest* confront *Ragoonanan* problems.

[271] For the purposes of this carriage motion, I do not feel it is necessary to do an analysis about the extent to which any of the rival actions are compliant with *Ragoonanan*.

[272] The *Ragoonanan* problem is often easy to fix. The emergence of Mr. Collins in *Smith v. Sino-Forest* to sue for the primary market shareholders is an example, assuming that Mr. Smith's own claims against the defendants do not satisfy the *Ragoonanan* principle. Therefore, I do not regard the plaintiff and defendant correlation as a determinative factor in determining carriage.

[273] It is also convenient here to add that I do not see the spectre of challenges to the Superior Court's jurisdiction over foreign class members or over the foreign defendants are a determinative factor to picking one action over another. It may be that *Northwest v. Sino-Forest* has the potential to attract more jurisdictional challenges but standing alone that potential is not a reason for disqualifying *Northwest v. Sino-Forest*.

3. Determinative Factors

(a) Attributes of the Proposed Representative Plaintiffs

[274] I turn now to the determinative factors that lead me to the conclusion that carriage should be granted to Koskie Minsky and Siskinds in *Labourers v. Sino-Forest*.

[275] The one determinative factor that stands alone is the characteristics of the candidates for representative plaintiff. In the case at bar, this is a troublesome and maybe a profound determinative factor.

[276] Kim Orr extolled the virtues of having its clients, Northwest, Bâtirente and BC Investments, which collectively manage $92 billion in assets, as candidates to be representative plaintiffs.

[277] Similarly, Koskie Minsky and Siskinds extolled the virtues of having Labourers' Fund, Operating Engineers Fund, and Sjunde AP-Fonden as candidates for representative plaintiff, along with the support of major class member Healthcare Manitoba. Together, these parties to *Labourers v. Sino-Forest* collectively manage $23.2 billion in assets. As noted above, Koskie Minsky and Siskinds submitted that their clients were not tainted by involving themselves in the governance oversight of Sino-Forest, which had been lauded as a positive factor by Kim Orr.

[278] As I have already discussed above in the context of the discussion about conflicts of interest, I do not regard Bâtirente's, and Northwest's interest in corporate governance generally or its particular efforts to oversee Sino-Forest as a negative factor.

[279] However, what may be a negative factor and what is the signature attribute of all of these candidates for representative plaintiff is that it is hard to believe that given their financial heft, they need the *Class Proceedings Act, 1992* for access to justice or to level the litigation playing field or that they need an indemnity to protect them from exposure to an adverse costs award.

[280] Although these candidates for representative plaintiff would seem to have adequate resources to litigate, they seem to be seeking to use a class action as a means to secure an indemnity from class counsel or a third-party funder for any exposure to costs. If they are genuinely serious about pursuing the defendants to obtain compensation for their respective members, they would also seem to be prime candidates to opt out of the class proceeding if they are not selected as a representative plaintiff.

[281] Mr. Rochon neatly argued that the class proceedings regime was designed for litigants like Mr. Smith not litigants like Labourers Trust or Northwest. He referred to the *Private Securities Litigation Reform Act of 1995*, legislation in the United States that was designed to encourage large institutions to participate in securities class actions by awarding them leadership of securities actions under what is known as a "leadership order". He told me that the policy behind this legislation was to discourage what are known as "strike suits;" namely, meritless securities class actions brought by opportunistic entrepreneurial attorneys to obtain very remunerative nuisance value payments from the defendants to settle non-meritorious claims.

[282] I was told that the American legislators thought that appointing a lead plaintiff on the basis of financial interest would ensure that institutional plaintiffs with expertise in the securities market and real financial interests in the integrity of the market would control the litigation, not lawyers. See: *LaSala v. Bordier et CIE*, 519 F.3d 121 (U.S. Ct App (3rd Cir)) (2008) at p. 128; *Taft v. Ackermans*, (2003), F.Supp.2d, 2003 WL 402789 at 1,2, D.H. Webber, "The Plight of the Individual Investor in Securities Class Actions" (2010) NYU Law and Economics Working Papers, para. 216 at p. 7.

[283] Mr. Rochon pointed out that the litigation environment is different in Canada and Ontario and that the provinces have taken a different approach to controlling strike suits. Control is established generally by requiring that a proposed class action go through a certification process and by requiring a fairness hearing for any settlements, and in the securities field, control is established by requiring leave for claims under Part XXIII.1 of the *Ontario Securities Act*. See *Ainslie v. CV Technologies Inc.* (2008) 93 O.R. (3d) 200 (S.C.J.) at paras. 7, 10-13.

[284] In his factum, Mr. Rochon eloquently argued that individual investors victimized by securities fraud should have a voice in directing class actions. Mr. Smith lost approximately half of his investment fortune; and according to Mr. Rochon, Mr. Smith is an individual investor who is highly motivated, wants an active role, and wants to have a voice in the proceeding.

[285] While I was impressed by Mr. Rochon's argument, it did not take me to the conclusions that the attributes of the institutional candidates for representative plaintiff in *Labourers v. Sino-Forest* and in *Northwest v. Sino-Forest* when compared to the

attributes of Mr. Smith should disqualify the institutional candidates from being representative plaintiffs or be a determinative factor to grant carriage to a more typical representative plaintiff like Mr. Smith or Mr. Collins.

[286] I think that it would be a mistake to have a categorical rule that an institutional plaintiff with the resources to bring individual proceedings or the means to opt-out of class proceedings and go it alone should be disqualified or discouraged from being a representative plaintiff. In the case at bar, the expertise and participation of the institutional investors in the securities marketplace could contribute to the successful prosecution of the lawsuit on behalf of the class members.

[287] Although Mr. Smith and Mr. Collins might lose their voice, they might in the circumstances of this case not be best voice for their fellow class members, who at the end of the day want results not empathy from their representative plaintiff and class counsel.

[288] Access to justice is one of the policy goals of the *Class Proceedings Act, 1992* and although it may be the case that the institutional representative plaintiffs want but do not need the access to justice provided by the Act, they are pursuing access to justice in a way that ultimately benefits Mr. Smith and other class members should their actions be certified as a class proceeding.

[289] On these matters, I agree with what Justice Rady said in *McCann v. CP Ships Ltd.*, [2009] O.J. No. 5182 (S.C.J.) at paras. 104-105:

> 104. I recognize that access to justice concerns may not be engaged when a class is comprised of large institutions with large claims. Authority for this proposition is found in *Abdool v. Anaheim Management Ltd.* (1995), 21 O.R. (3d) 453 (Div. Ct.). Moldaver J. made the following observation at p. 473:
>
> > As a rule, certification should have as its root a number of individual claims which would otherwise be economically unfeasible to pursue. While not necessarily fatal to an order for certification, the absence of this important underpinning will certainly weigh in the balance against certification.
>
> 105. Nevertheless, I am satisfied on the basis of the record before me that the individual claims and those of small corporations would likely be economically unfeasible to pursue. Further, there is no good principled reason that a large corporation should not be able to avail itself of the class proceeding mechanism where the other objectives are met.

[290] Another goal of the *Class Proceedings Act, 1992* is judicial economy, and the avoidance of a multiplicity of actions. However, the Act envisions a multiplicity of actions by permitting class members to opt-out and bring their own action against the defendants. However, there is an exception. The only class member that cannot opt out is the representative plaintiff, and in the circumstances of the case at bar, one advantage of granting carriage to one of the institutional plaintiffs is that they cannot opt out, and this, in and of itself, advances judicial economy.

[291] Another advantage of keeping the institutional plaintiffs in the case at bar in a class action is that the institutional plaintiffs are already to a large extent representative plaintiffs. They are already, practically speaking, suing on behalf of their own members, who number in the hundreds of thousands. Their members suffered losses by the

investments made on their behalf by BC Investments, Bâtirente, Northwest, Labourers' Fund, Operating Engineers Fund, Sjunde AP-Fonden, and Healthcare Manitoba. These pseudo-class members are probably better served by the court case managing the class action, assuming it is certified and by the judicial oversight of the approval process for any settlements.

[292] These thoughts lead me to the conclusion that in the circumstances of the case at bar, a determinative factor that favours *Labourers v. Sino-Forest* and *Northwest v. Sino-Forest* is the attributes of their candidates for representative plaintiff. In this regard, *Labourers v. Sino-Forest* has the further advantage that it also has Mr. Grant and Mr. Wong, who are individual investors and who can give voice to the interests of similarly situated class members.

(b) Definition of Class Membership and Definition of Class Period

[293] The first group of interrelated determinative factors is: definition of class membership and definition of class period. These factors concern who, among the investors in Sino-Forest shares and bonds, is to be given a ticket to a class action litigation train that is designed to take them to the court of justice.

[294] *Smith v. Sino-Forest* offers no tickets to bondholders because it is submitted that (a) the bondholders will fight with the shareholders about sharing the spoils of the litigation, especially because the bondholders have priority over the shareholders and secured and protected claims in a bankruptcy; (b) the bondholders will fight among themselves about a variety of matters including whether it would be preferable to leave it to their bond trustee to sue on their collective behalf to collect the debt rather than prosecute a class action for an unsecured claim for damages for misrepresentation; and (c) a misrepresentation action by the bondholders against some or all of the defendants may be precluded by the terms of the bonds.

[295] In my opinion, the bondholders should be included as class members, if necessary, with their own subclass, and, thus, *Smith v. Sino-Forest* does not fare well under this group of interrelated factors. As I explained above, I do not regard the membership of both shareholders and bondholders in the class as raising insurmountable conflicts of interest. The bondholders have essentially the same misrepresentation claims as do the shareholders, and it makes sense, particularly as a matter of judicial economy, to have their claims litigated in the same proceeding as the shareholders' claims.

[296] Pragmatically, if the bondholders are denied a ticket to one of the class actions now at the Osgoode Hall station because of a conflict of interest, then they could bring another class action in which they would be the only class members. That class action by the bondholders would raise the same issues of fact and law about the affairs of Sino-Forest. Thus, denying the bondholders a ticket on one of the two class actions that has made room for them would just encourage a multiplicity of litigation. It is preferable to keep the bondholders on board sharing the train with any conflicts being managed by the appointment of separate class counsel for the bondholders, who can form a subclass at certification or later assuming that certification is granted.

[297] As already noted above, for those bondholders who do not want to get on the litigation train, they can opt-out of the class action assuming it is certified. That the defendants may have defences to the misrepresentation claims of the bondholders is just a problem that the bondholders will have to confront, and it is not a reason to deny them a ticket to try to obtain access to justice.

[298] In *Caputo v. Imperial Tobacco Ltd.*, [2004] O.J. No. 299 (S.C.J.), Justice Winkler, as he then was, noted at para. 39 that there is a difference between restricting the joinder of causes of action in order to make an action more amenable to certification and restricting the number of class members in an action for which certification is being sought. He stated:

> Although *Rumley v. British Columbia*, [2001] 3 S.C.R. 184 holds that the plaintiffs can arbitrarily restrict the causes of action asserted in order to make a proceeding more amenable to certification (at 201), the same does not hold true with respect to the proposed class. Here the plaintiffs have not chosen to restrict the causes of action asserted but rather attempt to make the action more amenable to certification by suggesting arbitrary exclusions from the proposed class. This is diametrically opposite to the approach taken by the plaintiffs in *Rumley*, and one which has been expressly disapproved by the Supreme Court in *Hollick v. Toronto (City)*, [2001] 3 S.C.R. 158. There, McLachlin C.J. made it clear that the onus falls on the putative representative to show that the "class is defined sufficiently narrowly" but without resort to arbitrary exclusion to achieve that result.....

[299] For shareholders, *Smith v. Sino-Forest* is more accommodating; indeed, it is the most accommodating, in offering tickets to shareholders to board the class action train. Without prejudice to the arguments of the defendants, who may impugn any of the class period or class membership definitions, and assuming that the bondholders are also included, the best of the class periods for shareholders is that found in *Smith v. Sino-Forest*.

[300] To be blunt, I found the rationales for shorter class periods in *Labourers v. Sino-Forest* and *Northwest v. Sino-Forest* somewhat paranoid, as if the plaintiffs were afraid that the defendants will attack their definitions for over-inclusiveness or for making the class proceeding unmanageable. Those attacks may come, but I see no reason for the plaintiffs in *Labourers* and *Sino-Forest* to leave at the station without tickets some shareholders who may have arguable claims.

[301] If Mr. Torchio is correct that almost all of the shareholders would be covered by the shortest class period that is found in *Labourers v. Sino-Forest*, then the defendants may think the fight to shorten the class period may not be worth it. If they are inclined to challenge the class definition on grounds of unmanageability or the class action as not being the preferable procedure, the longer class period definition will likely be peripheral to the main contest.

[302] I do not see the extension of the class period beyond June 2, 2011, when the Muddy Waters Report became public, as a problem. Put shortly, at this juncture, and subject to what the defendants may later have to say, I agree with Rochon Genova's arguments about the appropriate class period end date for the shareholders.

[303] If I am correct in this analysis so far, where it takes me is only to the conclusion that the best class period definition for shareholders is found in *Smith v. Sino-Forest*. It,

however, does not take me to the conclusion that carriage should be granted to *Smith v. Sino-Forest*. Subject to what the defendants may have to say, the class definitions and class period in *Labourers v. Sino-Forest* and in *Northwest v. Sino-Forest* appear to be adequate, reasonable, certifiable, and likely consistent with the common issues that will be forthcoming.

[304] Since for other reasons, I would grant carriage to *Labourers v. Sino-Forest*, the question I ask myself is whether the class definition in *Labourers*, which favourably includes bondholders, but which is not as good a definition as found in *Smith v. Sino-Forest* or in *Northwest v. Sino-Forest* should be a reason not to grant carriage to *Labourers*. My answer to my own question is no, especially since it is still possible to amend the class definition so that it is not under-inclusive.

(c) Theory of the Case, Causes of Action, Joinder of Defendants, and Prospects of Certification

[305] The second group of interrelated determinative factors is: theory of the case, causes of action, joinder of defendants, and prospects of certification. Taken together, it is my opinion, that these factors, which are about what is in the best interests of the putative class members, favour staying *Smith v. Sino-Forest* and *Northwest v. Sino-Forest* and granting carriage to *Labourers v. Sino-Forest*.

[306] In applying the above factors, I begin here with the obvious point that it would not be in the interests of the putative class members, let alone not in their best interests to grant carriage to an action that is unlikely to be certified or that, if certified, is unlikely to succeed. It also seems obvious that it would be in the best interests of class members to grant carriage to the action that is most likely to be certified and ultimately successful at obtaining access to justice for the injured or, in this case, financially harmed class members. And it also seems obvious that all other things being equal, it would be in the best interests of class members and fair to the defendants and most consistent with the policies of the *Class Proceedings Act, 1992* to grant carriage to the action that, to borrow from rule 1.04 or the *Rules of Civil Procedure* secures the just, most expeditious and least expensive determination of the dispute on its merits.

[307] While these points seem obvious, there is, however, a major problem in applying them, because the court should not and cannot go very far in determining the matters that would be most determinative of carriage. A carriage motion is not the time to determine whether an action will satisfy the criteria for certification or whether it will ultimately provide redress to the class members or whether it would be the preferable procedure or the most expeditious and least expensive procedure to resolve the dispute.

[308] Keeping this caution in mind, in my opinion, certain aspects of *Northwest v. Sino-Forest* make the other actions preferable. In this regard, I find the joinder of some defendants to *Northwest v. Sino-Forest* mildly troublesome.

[309] More serious, in *Northwest v. Sino-Forest*, I find the employment and reliance on the tort action of fraudulent misrepresentation less desirable than the causes of action utilized to provide procedural and substantive justice to the class members in *Smith v.*

Sino-Forest and *Labourers v. Sino-Forest*. In my opinion, the fraudulent misrepresentation action adds needless complexity and costs.

[310] While the finger-pointing of the OSC at Ho, Hung, Ip, and Yeung supports their joinder, the joinder of Chen, Lawrence Estate, Maradin, Wong, and Zhao is mildly troublesome. The joinder of defendants should be based on something more substantive than their opportunity to be a wrongdoer, and at this juncture it is not clear why Chen, Lawrence Estate, Maradin, Wong, and Zhao have been joined to *Northwest v. Sino-Forest* and not to the other proposed class actions. Their joinder, however, is only mildly troublesome, because the plaintiffs in *Northwest v. Sino-Forest* may have particulars of wrongdoing and have simply failed to plead them.

[311] Turning to the pleading of fraudulent misrepresentation, when it is far easier to prove a claim in negligent misrepresentation or negligence, the claim for fraudulent misrepresentation seems a needless provocation that will just fuel the defendants' fervour to defend and to not settle the class action. Fraud is a very serious allegation because of the moral and not just legal turpitude of it, and the allegation of fraud also imperils insurance coverage that might be the source of a recovery for class members.

[312] Kim Orr has understated the difficulties the plaintiffs in *Northwest v. Sino-Forest* will confront in impugning the integrity of Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management.

[313] Fraud must be proved individually. In order to establish that a corporate defendant committed fraud, it must be proven that a natural person for whose conduct the corporation is responsible acted with a fraudulent intent. See: *Hughes v. Sunbeam Corp. (Canada)*, [2000] O.J. No. 4595 (S.C.J.) at para. 26; *Toronto-Dominion Bank v. Leigh Instruments Ltd. (Trustee of)*, [1998] O.J. No. 2637 (Gen. Div.) at paras. 477-479.

[314] A claim for deceit or fraudulent misrepresentation typically breaks down into five elements: (1) a false statement; (2) the defendant knowing that the statement is false or being indifferent to its truth or falsity; (3) the defendant having an intent to deceive the plaintiff; (4) the false statement being material and the plaintiff being induced to act; and (5) the defendant suffering damages: *Derry* v. *Peek* (1889), 14 App. Cas. 337 (H.L.); *Graham* v. *Saville*, [1945] O.R. 301 (C.A.); *Francis* v. *Dingman* (1983), 2 D.L.R. (4th) 244 (Ont. C.A.). The fraud elements are the second and third in this list.

[315] In the famous case of *Derry* v. *Peek*, the general issue was what counts as a fraudulent misrepresentation. More particularly, the issue was whether a careless or negligent misrepresentation without more could count as a fraudulent misrepresentation. In the case, the defendants were responsible for a false statement in a prospectus. The prospectus, which was for the sale of shares in a tramway company, stated that the company was permitted to use steam power to work a tram line. The statement was false because the directors had omitted the qualification that the use of steam power required the consent of the Board of Trade. As it happened, the consent was not given, the tram line would have to be driven by horses, and the company was wound-up. The Law

Lords reviewed the evidence of the defendants individually and concluded that although the defendants had all been careless in their use of language, they had honestly believed what they had said in the prospectus.

[316] In the lead judgment, Lord Herschell reviewed the case law, and at p. 374, he stated in the most famous passage from the case:

> I think the authorities establish the following propositions. First, in order to sustain an action for deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless, whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must, I think be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false has obviously no such honest belief. Thirdly, if fraud is proved, the motive of the person guilty is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.

[317] Lord Herschell's third situation is the one that was at the heart of *Derry* v. *Peek*, and the Law Lords struggled to articulate that relationship between belief and carelessness in speaking. Before the above passage, Lord Herschell stated at p. 361:

> To make a statement careless whether it be true or false, and therefore without any real belief in its truth, appears to me to be an essentially different thing from making, through want of care, a false statement, which is nevertheless honestly believed to be true. And it is surely conceivable that a man may believe that what he states is the fact, though he has been so wanting in care that the Court may think that there were no sufficient grounds to warrant his belief.

[318] Lord Herschell is saying that carelessness in making a statement does not necessarily entail that a person does not believe what he or she is saying. However, later in his judgment, he emphasizes that carelessness is relevant and could be sufficient to show that a person did not believe what he or she was saying. Thus, carelessness may prove fraud, but it is not itself fraud. Lord Herschell's famous quotation, where he states that fraud is proven when it is shown that a false statement was made recklessly, careless whether it be true or false, states only awkwardly the role of carelessness and must be read in the context of the whole judgment.

[319] In *Angus* v. *Clifford*, [1891] 2 Ch. 449 (C.A.) at p. 471, Bowen, L.J. discussed the role of carelessness or recklessness in establishing fraud; he stated:

> Not caring, in that context [i.e., in the context of an allegation of fraud], did not mean taking care, it meant indifference to the truth, the moral obliquity which consists of wilful disregard of the importance of truth, and unless you keep it clear that that is the true meaning of the term, you are constantly in danger of confusing the evidence from which the inference of dishonesty in the mind may be drawn - evidence which consists in a great many cases of gross want of caution - with the inference of fraud, or of dishonesty itself, which has to be drawn after you have weighed all the evidence.

[320] Bowen, L.J.'s statement alludes to the second element of what makes a statement fraudulent. Deceit or fraudulent misrepresentation requires that the defendant

have "a wicked mind:" *Le Lievre* v. *Gould*, [1893] 1 Q.B. 491 at p. 498. Fraud involves intentional dishonesty, the intent being to deceive. If the plaintiff fails to prove this mental element, then, as was the case in *Derry* v. *Peek*, the claim is dismissed. To succeed in an action for deceit or for fraudulent misrepresentation, the plaintiff must show not only that the defendant spoke falsely and contrary to belief but that the defendant had the intent to deceive, which is to say he or she had the aim of inducing the plaintiff to act mistakenly: *BG Checo International Ltd. v. British Columbia Hydro and Power Authority* (1993), 99 D.L.R. (4th) 577 (S.C.C.).

[321] The defendant's reason for deceiving the plaintiff, however, need not be evil. In the passage above from *Derry* v. *Peek*, Lord Herschell notes that the person's motive for saying something that he or she does not believe is irrelevant. A person may have a benign reason for defrauding another person, but the fraud remains because of the discordance between words and belief combined with the intent to mislead the plaintiff: *Smith* v. *Chadwick* (1854), 9 App. Cas. 187 at p. 201; *Bradford Building Society* v. *Borders*, [1941] 2 All E.R. 205 at p. 211; *Beckman* v. *Wallace* (1913), 29 O.L.R. 96 (C.A.) at p. 101.

[322] In promoting its fraudulent misrepresentation claim, Kim Orr relied on *Gregory v. Jolley* (2001), 54 O.R. (3d) 481 (C.A.), which was a case where a trial judge erred by not applying the third branch of the test articulated in *Derry v. Peek*. Justice Sharpe discussed the trial judge's failure to consider whether the appellant had made out a case of fraud based on recklessness and stated at para. 20:

> With respect to the law, the trial judge's reasons show that he failed to consider whether the appellant had made out a case of fraud on the basis of recklessness. While he referred to a case that in turn referred to the test from *Derry v. Peek*, the reasons for judgment demonstrate to my satisfaction that the trial judge simply did not take into account the possibility that fraud could be made out if the respondent made misrepresentations of material fact without regard to their truth. The trial judge's reasons speak only of an intention to defraud or of statements calculated to mislead or misrepresent. He makes no reference to recklessness or to statements made without an honest belief in their truth. As *Derry v. Peek* holds, that state of mind is sufficient proof of the mental element required for civil fraud, whatever the motive of the party making the representation. In another leading case on civil fraud, *Edgington v. Fitzmaurice*, (1885), 29 Ch. D.459 at 481-82 (C.A.), Bowen L.J. stated: "[I]t is immaterial whether they made the statement knowing it to be untrue, or recklessly, without caring whether it was true or not, because to make a statement recklessly for the purpose of influencing another person is dishonest." The failure to give adequate consideration to the contention that the respondent had been reckless with the truth in regard to the income figures he gave in order to obtain disability insurance constitutes an error of law justifying the intervention of this court.

[323] From this passage, Kim Orr extracts the notion that there is a viable fraudulent misrepresentation against forty defendants all of whom individually can be shown to be reckless as opposed to careless. That seems unlikely, but more to the point, recklessness is only half the battle. The overall motive may not matter, but the defendant still must have had the intent to deceive, which in *Gregory v. Jolley* was the intent to obtain disability insurance to which he was not qualified to receive.

[324] Recklessness alone is not enough to constitute fraudulent misrepresentation, as Justice Cumming notes at para. 25 of his judgment in *Hughes v. Sunbeam Corp. (Canada)*, [2000] O.J. No. 4595 (S.C.J.), where he states:

> The representation must have been made with knowledge of its falsehood or recklessness without belief in its truth. The representation must have been made by the representor with the intention that it should be acted upon by the representee and the representee must in fact have acted upon it.

[325] I conclude that the fraudulent misrepresentation action is a substantial weakness in *Northwest v. Sino-Forest*. In fairness, I should add that I think that the unjust enrichment causes of action and oppression remedy claims in *Labourers v. Sino-Forest* add little.

[326] The unjust enrichment claims in *Labourers* seem superfluous. If Sino-Forest, Chan, Horsley, Mak, Martin, Murray, Poon, Banc of America, Canaccord, CIBC, Credit Suisse, Credit Suisse USA, Dundee, Maison, Merrill, RBC, Scotia and TD, are found to be liable for misrepresentation or negligence, then the damages they will have to pay will far exceed the disgorgement of any unjust enrichment. If they are found not to have committed any wrong, then there will be no basis for an unjust enrichment claim for recapture of the gains they made on share transactions or from their remuneration for services rendered. In other words, the claims for unjust enrichment are unnecessary for victory and they will not snatch victory if the other claims are defeated. Much the same can be said about the oppression remedy claim. That said, these claims in *Labourers v. Sino-Forest* will not strain the forensic resources of the plaintiffs in the same way as taking on a massive fraudulent misrepresentation cause of action would do in *Northwest v. Sino-Forest*.

[327] For the purposes of this carriage motion, I have little to say about the "Integrity Representation" approach to the misrepresentation claims that are at the heart of the claims against the defendants in *Northwest v. Sino-Forest* or of the "GAAP" misrepresentation employed in *Labourers v. Sino-Forest*, or the focus on the authorized intermediaries in *Smith v. Sino-Forest*. Short of deciding the motion for certification, there is no way of deciding which approach is more likely to lead to certification or which approach the defendants will attack as deficient. For present purposes, I am simply satisfied that the class members are best served by the approach in *Labourers v. Sino-Forest*.

[328] The cohesive, yet adequately comprehensive, approach used in *Smith v. Sino-Forest* appears to me close to *Labourers v. Sino-Forest*, but in my opinion, *Smith v. Sino-Forest* wants for the inclusion of the bondholders, and, as noted above, there are other factors which favour *Labourers v. Sino-Forest* over *Smith v. Sino-Forest*. That said, it was a close call for me to choose *Labourers v. Sino-Forest* and not *Smith v. Sino-Forest*.

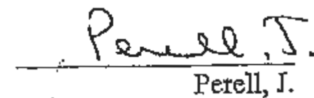
H. CONCLUSION

[329] For the above Reasons, I grant carriage to Koskie Minsky and Siskinds with leave to the plaintiffs in *Labourers v. Sino-Forest* to deliver a Fresh as Amended Statement of Claim.

[330] In granting leave, I grant leave generally and the plaintiffs are not limited to the amendments sought as a part of this carriage motion. It will be for the plaintiffs to decide whether some amendments are in order to respond to the lessons learned from this carriage motion, and it is not too late to have more representative plaintiffs.

[331] I repeat that a carriage motion is without prejudice to the defendants' rights to challenge the pleadings and whether any particular cause of action is legally tenable.

[332] I make no order as to costs, which is in the usual course in carriage motions.



Perell, J.

Released: January 6, 2012

SCHEDULE "A"

CITATION: Smith v Sino-Forest Corporation, 2012 ONSC24
COURT FILE NO.: 11-CV-428238CP
COURT FILE NO.: 11-CV-431153CP
COURT FILE NO.: 11-CV-435826CP
DATE: January 6, 2012

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Douglas Smith and Zhongjun Goa

Plaintiff

- and -

Sino-Forest Corporation et al.

Defendants

AND BETWEEN:

The Trustees of the Labourers' Pension Fund of Central and Eastern Canada and the Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario

Plaintiff

- and -

Sino-Forest Corporation et al.

Defendants

AND BETWEEN:

Northwest & Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc.

Plaintiff

- and -

Sino-Forest Corporation et al.

Defendants

REASONS FOR DECISION

Perell, J.

Released: January 6, 2012.

TAB 16

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

AFFIDAVIT OF W. JUDSON MARTIN
(Sworn November 29, 2012)

I, W. Judson Martin, of the City of Hong Kong, Special Administrative Region, People's Republic of China, **MAKE OATH AND SAY:**

1. I am the Vice-Chairman and Chief Executive Officer of Sino-Forest Corporation ("SFC"). I therefore have personal knowledge of the matters set out below, except where otherwise stated. Where I do not possess personal knowledge, I have stated the source of my information and I believe such information to be true. Where I indicate that I have been advised by counsel, that advice has been provided by Bennett Jones LLP, counsel for SFC in this proceeding.

2. Capitalized terms not defined in this affidavit are as defined in my affidavit sworn March 30, 2012 (the "Initial Order Affidavit") and the Thirteenth Report of the Monitor dated November 22, 2012 (the "Monitor's Thirteenth Report"). A copy of my Initial Order Affidavit (without exhibits) is attached as Exhibit "A".

3. All currency references in this affidavit refer to U.S. Dollars unless otherwise indicated.

4. This affidavit is sworn in support of a motion by SFC for an order (the "Sanction Order") under section 6(1) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") sanctioning an amended plan of compromise and reorganization (the "Plan") between SFC and its creditors. I understand that a draft of the form of Sanction Order being sought was included in the Plan Supplement filed by SFC on November 21, 2012, and any further changes to the form of Sanction Order will be filed prior to the hearing.

5. This affidavit identifies a number of affidavits I have previously sworn along with Monitor's reports and other materials that SFC is relying on in support of the Sanction Order motion. Such materials will be filed in a separate brief prior to the hearing.

6. I am advised by counsel that if the Plan is approved, SFC and Newco (defined below) intend to rely on the Sanction Order for the purposes of relying on the exemption from the registration requirements of the United States Securities Act of 1933, as amended, pursuant to section 3(a)(10) thereof for the issuance of the Newco Shares, Newco Notes, and to the extent they may be deemed to be securities, the Litigation Trust Interest, and any other securities to be issued pursuant to the Plan.

I. BACKGROUND

7. As I explained in greater detail in the Initial Order Affidavit, SFC is an integrated forest plantation operator and forest products company, with most of its assets and the majority of its business operations located in the southern and eastern regions of the People's Republic of China

(the "PRC"). SFC's registered office is in Toronto and its principal business office is in Hong Kong.

A. Muddy Waters and SFC's Independent Committee

8. As a result of a report issued by short-seller Muddy Waters LLC ("Muddy Waters") on June 2, 2011, which alleged that SFC was a "near total fraud" and a "Ponzi scheme", SFC found itself embroiled in multiple class actions across Canada and in the U.S., investigations and regulatory proceedings with the Ontario Securities Commission (the "OSC"), the Hong Kong Securities and Futures Commission and the RCMP.

9. As I have described in prior affidavits filed with the Court and above, immediately after the allegations were made by Muddy Waters, the Board appointed an independent committee (the "IC") of the Board, which in turn engaged professionals in Ontario, Hong Kong and in the PRC to assist in investigating the allegations. The IC retained Osler Hoskin & Harcourt LLP in Canada, Mallesons (an international law firm with offices in Beijing, Shanghai and Hong Kong) and Jun He Law Offices (a PRC law firm). The IC also appointed PricewaterhouseCoopers to assist with the investigations.

10. The Board also retained new company counsel, Bennett Jones LLP, to assist and work with the IC and the IC's advisors, to assist management, to respond to class action claims against SFC and to respond on behalf of SFC to inquiries and demands from securities regulators.

11. The IC was active and met frequently to supervise professionals and receive reports about their progress.

12. The IC and its advisors worked to compile and analyze the vast amount of data required for their review of Sino-Forest's operations and business, the relationships between Sino-Forest and other entities, and Sino-Forest's ownership of assets. The IC supervised the investigation and preparation of three reports that addressed those aspects, described the extensive work of the IC and its advisors and the conclusions that could be reached from the work undertaken by them. Redacted versions of the IC reports were publicly disclosed.

13. The IC set out to address the issues raised by Muddy Waters in three core areas: (i) the verification of timber assets reported by Sino-Forest, (ii) the value of the timber assets held by Sino-Forest, and (iii) revenue recognition. In addition, in its First Interim Report, the IC's accounting advisors confirmed SFC's cash balances in specific account as at June 13, 2011, for accounts located inside and outside of the PRC. The results of the IC's efforts are described in greater detail in my Initial Order Affidavit.

B. Efforts to Obtain Audit Opinions

14. In late August 2011 the IC's efforts uncovered information that raised conduct issues about certain members of former management of Sino-Forest. This information was shared by the IC with staff of the OSC. This information resulted in the OSC imposing a temporary cease trade order (the "TCTO") on the securities of SFC on August 26, 2011, which order was later continued and continues in force.

15. Arising from these developments, certain former members of management were placed on administrative leave. The Board appointed me as Chief Executive Officer of SFC after Allen Chan resigned as Chairman, CEO and a Director, on August 28, 2011.

16. Following the events of late August, 2011, the IC continued its investigative work. From late August 2011 onward, under the Board's oversight, considerable effort was directed at determining if the issues identified by Muddy Waters and by investigative work to date could be resolved with sufficient time to allow SFC to become current in its financial reporting, and to obtain an audit opinion for 2011. Failure to issue quarterly results or to issue audited annual financial results could lead to the possible acceleration and enforcement of approximately $1.8 billion in notes issued by SFC and guaranteed by many of its Subsidiaries.

17. Notwithstanding cousiderable efforts by the Board, the IC, management and advisors, in mid-November 2011, SFC's Audit Committee recommended, and the Board agreed, that SFC should defer the release of SFC's third quarter 2011 financial statements until certain conduct issues could be resolved to the satisfaction of the Board and SFC's external auditor.

18. By December 2011, it appeared that it would not be possible to obtain an audit opinion for 2011 in sufficient time to avoid defaults under SFC's Note Indentures, nor would it be possible to issue third quarter 2011 financial results.

19. On December 16, 2011, the Board established a Special Restructuring Committee ("RC") of the Board, comprised exclusively of directors independent of management of SFC, for the purpose of supervising, analyzing and managing the strategic options available to SFC. Subsequent to its appointment, the RC has been fully engaged and active in supervising and supporting SFC's restructuring efforts.

C. Defaults under the Indentures and the Support Agreement

20. SFC's inability to file its third quarter 2011 financial statements ultimately resulted in a default under its note indentures. After extensive discussions with an ad hoc committee of Noteholders (the "Ad Hoc Noteholders"), Noteholders representing a majority in principal amount of SFC's senior notes agreed to waive the default arising from the failure to release the SFC 2011 third quarter results. While the waiver agreements prevented an acceleration of the note indebtedness as a result of SFC's failure to file its 2011 third quarter results, the waiver agreements would have expired on April 30, 2012 (or any earlier termination of the waiver agreements in accordance with their terms). In addition, SFC's pending failure to file its audited financial statements for its fiscal year ended December 31, 2011 by March 30, 2012, would have caused another potential acceleration and enforcement event, creating additional uncertainty around SFC's business.

21. Following extensive arm's length negotiations between SFC and the Ad Hoc Noteholders, the parties agreed on a framework for a consensual resolution of SFC's defaults under its note indentures and the restructuring of its business, and entered into a restructuring support agreement (the "Support Agreement") on March 30, 2012, which was initially executed by holders of SFC's Notes holding approximately 40% of the aggregate principal amount of the Notes.

22. As further discussed below, additional Consenting Noteholders subsequently executed joinder agreements to the Support Agreement, resulting in Noteholders representing more than 72% of the aggregate principal amount of the Notes agreeing to support the restructuring contemplated by the Support Agreement.

23. Throughout this process, the Board and certain members of SFC management engaged with the Ad Hoc Noteholders, both through counsel and directly on a principal-to-principal basis, to assist them in understanding the restructuring challenges faced by SFC and its stakeholders, and to provide information to the Ad Hoc Noteholders in connection with their due diligence efforts.

24. From a commercial perspective, the restructuring contemplated by the Support Agreement was intended to separate Sino-Forest's business operations from the problems facing the parent holding company outside of the PRC, with the intention of saving and preserving the value of SFC's underlying business. To this end, two possible transactions were contemplated:

(a) First, a court-supervised Sale Process being undertaken to determine if any person or group of persons would purchase SFC's business operations for an amount in excess of a threshold amount of consideration (which was set at 85% of the amount outstanding under the Notes at the CCAA filing date), with the potential for excess above such threshold amount being directed to stakeholders subordinate to the Noteholders. The Sale Process was intended to ensure that SFC pursued all avenues available to it to maximize value for its stakeholders;

(b) Second, if the Sale Process was not successful, a transfer of the six immediate holding companies that own SFC's business to the Affected Creditors in compromise of their claims against SFC and the creation of a litigation trust (including funding) that would enable SFC's litigation claims against any Person not otherwise released within the CCAA proceedings to be preserved and pursued

for the benefit of SFC's stakeholders in accordance with the Support Agreement (the "Restructuring Transaction").

25. The decision to enter into the Support Agreement was given careful consideration by the Board of SFC. But for the negotiation and execution of the Support Agreement, SFC would have been unable to prevent the acceleration and enforcement of the rights of the Noteholders as soon as April 30, 2012, in which case SFC and Sino-Forest would have been unable to continue as a going concern.

26. The Support Agreement provided that SFC would make an application under the CCAA in order to implement the Sale Process and, failing receipt of a qualified bid, to implement the Restructuring Transaction.

27. Quite apart from the provisions of the Support Agreement, the circumstances facing SFC and its Subsidiaries (as described above and in the Initial Order Affidavit) necessitated the commencement of these CCAA proceedings in order to attempt to separate the business operations of Sino-Forest from the challenges facing the holding company parent in order to allow the business to be saved.

28. SFC applied to this Honourable Court and obtained an Initial Order under the CCAA on March 30, 2012 (the "Initial Order"), pursuant to which a limited stay of proceedings was also granted in respect of the Subsidiaries. The stay of proceedings provided for in the Initial Order was subsequently extended by Orders dated May 31, September 28, October 10, and November 23, 2012, and unless further extended by the Court, will expire on February 1, 2013.

II. THE NATURE OF SFC'S ASSETS AND SFC'S EFFORTS TO MARKET THEM

A. SFC's Assets

29. As described in the Initial Order Affidavit, SFC is a holding company with six direct subsidiaries of SFC (the place of incorporation is indicated in parentheses): Sino-Panel Holdings Limited (BVI); Sino-Global Holdings Inc. (BVI); Sino-Panel Corporation (Canada); Sino-Wood Partners Limited (Hong Kong); Sino-Capital Global Inc. (BVI) and Sino-Forest International (Barbados) Corporation (Barbados) (collectively, the "Direct Subsidiaries"). SFC also holds all of the preference shares of Sino-Forest Resources Inc. (BVI).

30. In addition, SFC holds an indirect majority interest in Greenheart Group Limited (Bermuda), an investment holding company whose shares are listed on the Hong Kong Stock Exchange. Together with its subsidiaries, Greenheart owns certain rights and manages hardwood forest concessions in the Republic of Suriname and a radiata pine plantation on freehold land in New Zealand. Greenheart has its own distinct operations and financing arrangements and is not party to or a guarantor of the notes issued by SFC. Greenheart and SFC operate out of separate office buildings in Hong Kong.

31. Including SFC, Sino-Forest Resources Inc. and the Direct Subsidiaries, there are 137 entities that make up the Sino-Forest companies: 67 companies incorporated in the PRC (with 11 branch companies), 58 BVI incorporated entities, 7 Hong Kong incorporated entities, 2 Canadian entities and 3 entities incorporated in other jurisdictions. Greenheart and its subsidiaries are not included in the foregoing. A list of all of the SFC subsidiaries (the "Subsidiaries") is attached as Exhibit "B" (which does not include subsidiaries of Greenheart, but does contain SFC branch companies). The term "Sino-Forest" is used herein to refer to the global enterprise as a whole.

32. I understand that in addition to claims against SFC, numerous stakeholders have asserted claims against the Subsidiaries in respect of their claims against SFC. As has been apparent from the outset of these proceedings, in order to achieve the commercial objective of separating the Sino-Forest business from the parent holding company, any successful resolution to these proceedings must provide a "clean break" between SFC and the Subsidiaries. Accordingly, as further described below, the Plan provides for the transfer of SFC's assets, including the Direct Subsidiaries, to Newco for the benefit of all of SFC's Affected Creditors as well as a release of the Subsidiaries in respect of such claims.

B. The Sale Process

33. As discussed above, the Support Agreement contemplated the sale of the assets of SFC (i.e. its Subsidiaries) through a court-supervised sale process in which the assets of SFC were offered for an amount of consideration equal to a minimum required threshold as set out in the Support Agreement, which was set at 85% of the outstanding amount of the Notes as of the CCAA filing date.

34. SFC applied for and obtained an order from this Court on March 30, 2012 (the "Sale Process Order") approving the sale process procedures (the "Sale Process Procedures") and authorizing and directing SFC, the Monitor, and SFC's financial advisor, Houlihan Lokey ("Houlihan"), to do all things reasonably necessary to perform each of their obligations under the Sale Process Order.

35. Pursuant to the Sale Process Procedures, SFC, through Houlihan sought out potential qualified strategic and financial purchasers (including existing shareholders and noteholders) of

SFC's assets on a global basis and attempted to engage such potential purchasers in the Sale Process.

36. The Sale Process Procedures approved in the Sale Process Order were carried out by the applicable parties. In particular, as described in the Fourth Report of the Monitor:

(a) a notice was published in the Globe & Mail and the Wall Street Journal with respect to the Sale Process;

(b) a teaser letter was sent to 85 potentially interested parties; and

(c) fourteen confidentiality agreements were negotiated with parties who indicated an interest in the business.

37. The Sale Process Procedures provided SFC with up to 90 days from the day of the Sale Process Order to solicit letters of intent and, if qualified letters of intent were received within the required time period, a further 90 days to solicit qualified bids. As set out in the Sale Process Order, to constitute a Qualified Letter of Intent, the letter of intent must have, among other things, indicated that the bidder was offering to acquire SFC's assets for consideration not less than the Qualified Consideration. Qualified Consideration was defined in the Sale Process Procedures as:

> "Qualified Consideration" means cash consideration payable to SFC (or such other form of consideration as may be acceptable to SFC and the Initial Consenting Noteholders) in an amount equal to 85% of the aggregate principal amount of the Notes, plus all accrued and unpaid interest on Notes, at the regular rates provided therefor pursuant to the Note indentures, up to and including March 30, 2012.

38. A number of letters of intent were received by SFC on or about the June 28, 2012 deadline set out in the Sale Process Procedures. However, in accordance with the Sale Process Order, SFC, Houlihan and the Monitor determined that none of the letters of intent constituted a Qualified Letter of Intent, because none of them offered to acquire the assets of SFC for the Qualified Consideration. As such, on July 10, 2012, SFC announced the termination of the Sale Process and SFC's intention to proceed with the Restructuring Transaction.

III. SINO-FOREST'S STAKEHOLDERS

39. In order to move forward with its restructuring efforts in a timely manner, it was critical for SFC to ascertain all claims against SFC, its Subsidiaries and its directors and officers in order to assess what impact such claims may have with respect to its restructuring. Accordingly, SFC, in consultation with the Monitor, developed a claims process, which was approved by Order of this Honourable Court on May 14, 2012 (the "Claims Process Order"). The Claims Process Order was not appealed.

40. Under the Claims Process Order, Proofs of Claim and D&O Proofs of Claim were required to be filed with the Monitor on or before the Claims Bar Date (June 20, 2012), while Restructuring Claims were required to be filed on or before the Restructuring Claims Bar Date (the later of the Claims Bar Date and 30 days after a Person is deemed to receive a Proof of Claim Document Package). D&O Indemnity Proofs of Claim were also required to be filed with the Monitor on a date that was relative to when the director or officer received notice of a D&O Proof of Claim.

41. In order to identify the nature and extent of claims asserted against the Subsidiaries, the Claims Process Order required any claimant that had or intended to assert a right or claim against

one or more Subsidiaries relating to a purported claim made against SFC to so indicate on their Proof of Claim.

42. In its Thirteenth Report, the Monitor described the claims submitted pursuant to the Claims Process Order, certain of which are also discussed below.

A. The Noteholders

43. As indicated, at the date of filing, Sino-Forest had approximately $1.8 billion of principal amount of debt owing under the Notes, plus accrued and unpaid interest. There are four series of Notes issued and outstanding, as follows:

(a) *2017 Senior Notes:* There are $600 million in principal amount of guaranteed senior notes that were issued on October 21, 2010, bearing interest at a rate of 6.25% per annum, payable semi-annually (the "2017 Senior Notes"). These are supported by guarantees from 60 Subsidiaries and share pledges from ten of those same Subsidiaries.

(b) *2016 Convertible Notes:* There are $460 million in principal amount of convertible guaranteed notes that were issued on December 17, 2009, bearing interest at a rate of 4.25% payable semi-annually (the "2016 Convertible Notes"). These notes are supported by guarantees from 64 Subsidiaries.

(c) *2014 Senior Notes:* There are $399,517,000 in principal amount of senior notes that were issued on July 27, 2009, bearing interest at a rate of 10.25% per annum, payable semi-annually (the "2014 Senior Notes"). These notes are supported by

supported by guarantees from 60 Subsidiaries and share pledges from ten of those same Subsidiaries.

(d) *2013 Convertible Notes:* There are $345 million in principal amount of convertible guaranteed notes that were issued on July 23, 2008, bearing interest at a rate of 5% per annum, payable semi-annually (the "2013 Convertible Notes"). These notes are supported by guarantees from 64 Subsidiaries.

The 2017 Senior Notes, 2016 Convertible Notes, 2014 Senior Notes and 2013 Convertible Notes are collectively referred to herein as the "Notes" and holders of the Notes, the "Noteholders".

44. As of the date of the Support Agreement, the Initial Consenting Noteholders held approximately 40% of the aggregate principal amount of the four series of Notes. Pursuant to certain notice provisions established in the Initial Order, SFC continued to solicit additional Noteholder support and all Noteholders who wished to become Consenting Noteholders and participate in the Early Consent Consideration, (each as defined in the Support Agreement and described below) were given the opportunity to do so by the early consent deadline of May 15, 2012. As of May 15, 2012, Noteholders (including the Initial Consenting Noteholders) holding in aggregate approximately 72% of the principal amount of the Notes, and representing more than 66.67% of the principal amount of each of the four series of Notes, agreed to support the Plan.

B. Shareholders / Former Noteholders

45. As I explained in the Initial Order Affidavit, SFC and certain of its officers, directors and employees, along with SFC's former auditors, technical consultants and the Underwriters

(defined below) involved in prior equity and debt offerings, have been named as defendants in eight class action lawsuits.

46. Five of these class action lawsuits, commenced by three separate groups of counsel, were filed in the Ontario Superior Court of Justice on June 8, 2011, June 20, 2011, July 20, 2011, September 26, 2011 and November 14, 2011. A carriage motion in relation to these actions was heard on December 20 and 21, 2011, and by Order dated January 6, 2012, Justice Perell appointed Koskie Minsky LLP and Siskinds LLP as class counsel. As a result, Koskie Minsky LLP and Siskinds LLP discontinued their earliest action, and their other two actions have been consolidated and will move forward as one proceeding. The other two Ontario actions, commenced by other counsel, have been stayed.

47. Pursuant to Justice Perell's January 6, 2012 Order, Koskie Minsky LLP and Siskinds LLP have filed a fresh as amended Statement of Claim in the consolidated proceeding. A copy of that amended Statement of Claim is attached as Exhibit "C". The plaintiffs in the Ontario Class Action (the "Ontario Class Action Plaintiffs"), on behalf of current and former shareholders of SFC, seek damages against SFC and the other defendants in the Ontario Class Action in the amount of $6.5 billion for general damages, $174.8 million in connection with a prospectus issued in June 2007, $330 million in relation to a prospectus issued in June 2009, and $319.2 million in relation to a prospectus issued in December 2009. The market cap for SFC during the times of the alleged misrepresentations ranged from $546.5 million to $6.15 billion.

48. The Ontario Class Action Plaintiffs also assert claims on behalf of former holders of SFC's Notes in the amounts of $345 million for the 2013 Convertible Notes, $400 million for the 2014 Senior Notes, $460 million for the 2016 Convertible Notes, and $600 million for the 2017 Senior

Notes, for a total claim of approximately $1.8 billion. The first class action claim that asserted any claims on behalf of Noteholders was issued on September 26, 2011. The Noteholder component of this claim asserts, among other things, damages for loss of value in the Notes. In the months following the Muddy Waters report, the relevant Notes traded at a range of $53 to $64 per $100 amount of principal owing.

49. A similar class action was filed in Quebec. Attached as Exhibit "D" is a copy of the Quebec pleading. A third class action was filed in Saskatchewan. Attached as Exhibit "E" is a copy of the Saskatchewan Statement of Claim. While a Proof of Claim was filed by the plaintiffs in the Quebec class action, no Proof of Claim was filed by the plaintiffs in the Saskatchewan class action.

50. Additionally, on January 27, 2012, a class action was commenced against SFC and other defendants in the Supreme Court of the State of New York, U.S.A. The complaint alleges that the action is brought on behalf of persons who purchased SFC shares on the over-the-counter market and on behalf of non-Canadian purchasers of SFC debt securities. The quantum of damages sought is not specified in the complaint. Attached as Exhibit "F" is a copy of the most recent version of the Complaint in the New York proceeding. The plaintiffs in the New York proceeding have filed a Proof of Claim in this proceeding.

51. In this proceeding, an "Ad Hoc Committee of Purchasers of the Applicant's Securities" (the "Ad Hoc Securities Purchasers Committee") has appeared to represent the interests of shareholders and noteholders who have asserted class action claims against SFC and others. The Ad Hoc Securities Purchasers Committee is represented in this proceeding by Siskinds LLP, Koskie Minsky, and Paliare Roland Rosenberg Rothstein LLP. As indicated above, two of these

firms won the right to represent the plaintiffs in the Ontario class action, and the Siskind firm is plaintiff counsel in the Quebec class action.

52. On June 26, 2012, SFC brought a motion for an order directing that claims against SFC that arise in connection with the ownership, purchase or sale of an equity interest in SFC and related indemnity claims are "equity claims" as defined in section 2 of the CCAA, including the claims by or on behalf of current or former shareholders asserted in class action proceedings commenced against SFC. The equity claims motion did not purport to deal with the component of the class action proceedings that relate to debt claims.

53. The Ad Hoc Securities Purchasers Committee did not oppose the relief requested. The relief was opposed only by SFC's former auditors and the Underwriters.

54. In reasons released on July 27, 2012, a copy of which is attached as Exhibit "G", this Honourable Court granted the relief sought by SFC (the "Equity Claims Decision"), finding at paragraph 77 that "the claims advanced in the Shareholder Claims are clearly equity claims."

55. The Ad Hoc Securities Purchasers Committee did not appeal this decision. I am advised by counsel that none of the parties who later appealed the decision suggested that the Court's determination on the characterization of the shareholder claims against SFC was incorrect. As further discussed below, the Equity Claims Decision was affirmed by the Court of Appeal for Ontario on November 23, 2012.

56. Consistent with the Equity Claims Decision, shareholder claims against SFC are subordinated and not entitled to vote or receive distributions under the Plan.

57. On October 26, 2012, the Ad Hoc Securities Purchasers Committee stated that they would not directly or indirectly oppose the Plan, so long as no amendment is made to the Plan that in the opinion of the Ad Hoc Securities Purchasers Committee, in the good faith exercise of its discretion, would be materially prejudicial to the interests of the Ad Hoc Securities Purchasers Committee.

58. The Ad Hoc Securities Purchasers Committee will not oppose a Plan which provides that: (i) all shareholder claims against SFC will be subordinated as "Equity Claims" and released without consideration under the Plan; (ii) all former noteholder claims against SFC will be released without consideration under the Plan (other than a 25% interest in the Litigation Trust); and (iii) the quantum of the "Indemnified Noteholder Class Action Limit" in the Plan (as further discussed below) will be set at $150 million.

59. As discussed below, the Plan preserves all of the aforementioned claims against defendants to the Class Action Claims (present or future) other than SFC, the Subsidiaries, the Named Directors and Officers or the Trustees under the Notes (the "Third Party Defendants"), subject in the case of any Indemnified Noteholder Class Action Claims to the Indemnified Noteholder Class Action Limit.

60. SFC's existing shares will be cancelled pursuant to the Plan and the Plan Sanction Order.

C. Auditors

61. Since 2000 SFC has had two auditors: Ernst & Young LLP ("E&Y"), who acted as auditor from 2000 to 2004 and 2007 to 2012, and BDO Limited ("BDO"), who acted as auditor from 2005 to 2006.

62. I understand from counsel to SFC that the auditors have asserted claims against SFC for contribution and indemnity for any amounts paid or payable in respect of the shareholder class actions, with each of the auditors having asserted claims in excess of $6.5 billion. In addition the auditors have asserted claims for payment of professional fees associated with SFC after the release of the Muddy Waters report, and generalized claims for damage to reputation. A summary extract from E&Y's Proof of Claim is attached as Exhibit "H". A summary extract from BDO's Proof of Claim is attached as Exhibit "I".

63. In the Equity Claims Decision, the Court stated at paragraph 84 that "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."

64. The auditors and Underwriters appealed the decision to the Court of Appeal for Ontario. The hearing of that appeal was held on November 13, 2012. On November 23, 2012, the Court of Appeal dismissed the appeal. Attached as Exhibit "J" is a copy of the reasons of the Court of Appeal.

65. Consistent with the Equity Claims Decision and the Court of Appeal's dismissal of the appeal, the claims of the auditors for indemnity in respect of the shareholder class action claims are subordinated and are not entitled to vote or receive any distributions under the Plan. The auditors' claims for defence costs relating to the defence of shareholder class actions (which have not yet been determined to be equity or debt claims) are treated as Unresolved Claims under the Plan.

66. The auditors have also asserted indemnification claims in respect of the class action claims against them by the former Noteholders. As these indemnification claims have not been determined to be "equity claims", the Plan provides for these claims by placing Plan consideration in respect of the amount of these claims into the Unresolved Claims Reserve, to be distributed to the defendants if any of these claims become non-contingent Proven Claims. The amount of these potential indemnification claims has been limited to a global limit of $150 million by operation of the "Indemnified Noteholder Class Action Claim Limit" under the Plan, which limits the amount of the Indemnified Noteholder Class Action Claims against the Third Party Defendants to $150 million in the first instance. The Plan preserves the right to contest these indemnity claims, including the right to seek an order of the CCAA Court that these indemnification claims in respect of claims by former noteholders should be subordinated in the same manner as the indemnification claims in respect of the shareholders actions have been.

67. The auditors have also asserted claims against the Subsidiaries for, among other things, indemnification in connection with the shareholder class actions. Those claims have tended to treat SFC and the Subsidiaries interchangeably or as one collective entity. These claims are released under the Plan in the same manner as the Noteholders' guarantee claims against the Subsidiaries are released under the Plan.

D. Underwriters

68. In each instance where SFC has had a debt or equity public offering, such offering has been underwritten. The following firms have acted as SFC's underwriters and also have been named as defendants in the Ontario Class Action: Credit Suisse Securities (Canada) Inc., Credit Suisse Securities (USA) LLC, TD Securities Inc., Dundee Securities Corporation, RBC

Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Merill Lynch, Pierce, Fenner & Smith Incorporated, Cannacord Financial Ltd and Maison Placements Canada Inc. (the "Underwriters"). Certain of the Underwriters also are defendants in the New York class action.

69. Like the auditors, the Underwriters have filed claims against SFC seeking contribution and indemnity for the shareholder class actions. A copy of a representative sample of a proof of claim filed by one of the Underwriters is attached as Exhibit "**K**".

70. The Equity Claims Decision discussed above, upheld by the Court of Appeal for Ontario, applies equally to the Underwriters as it does to the auditors. Accordingly, the Underwriters' indemnity claims in respect of shareholder claims have been subordinated and are not entitled to vote or receive any distributions under the Plan. The Underwriters' claims for defence costs relating to the defence of shareholder class action, together with such claims of the auditors, are treated as Unresolved Claims under the Plan.

71. The Underwriters have also asserted indemnification claims in respect of the class action claims against them by the former Noteholders. For the same reasons and subject to the same terms as described above with respect to the auditors' indemnification claims, the Plan provides for these claims by placing Plan consideration in respect of the amount of these claims into the Unresolved Claims Reserve, limited to a global limit of $150 million by operation of the Plan.

72. Certain of the Underwriters have also asserted claims against the Subsidiaries in connection with the four Note offerings. Like all other SFC-related claims against the Subsidiaries, these claims are released under the Plan.

80. By letter dated September 13, 2012, a copy of which is attached as Exhibit "N", counsel for OSC staff advised that OSC staff would not be seeking any monetary sanctions against SFC, and that they would not seek monetary sanctions against any of the directors and officers of SFC in excess of CAD$100 million. This amount was later reduced to CAD$84 million, as set out in a further letter dated October 25, 2012, a copy of which is attached as Exhibit "O".

F. Trade Creditors and Other Creditors

81. As SFC is a holding company whose business is substantially carried out through its subsidiaries in the PRC and Hong Kong, SFC has very few trade creditors. The Monitor's Thirteenth Report explains that only three trade claims have been filed pursuant to the Claims Process Order. Other than a claim filed by the former Chief Financial Officer of SFC arising from the termination of his employment, I am not aware of any other creditors of significance that have filed claims pursuant to the Claims Process Order.

IV. EFFORTS AND ACHIEVEMENTS IN ARRIVING AT A NEGOTIATED RESOLUTION

82. The fundamental component of SFC's proposed restructuring, being a complete separation of the Subsidiaries and the Sino-Forest business from SFC in compromise of the claims asserted against SFC, has not changed since the commencement of these proceedings.

83. As indicated above, SFC obtained the support of 72% of the Noteholders to its proposed restructuring at an early stage of this proceeding. On October 26, 2012, SFC also obtained the non-objection to the Plan of the Ad Hoc Securities Purchasers Committee. Significant efforts have been made to arrive at a consensual resolution with the other stakeholders described above.

84. On July 25, 2012, this Honourable Court issued a mediation order (the "Mediation Order"), on the consent of all parties, directing that a mediation take place on September 4 and 5, 2012.

85. In advance of the mediation, SFC established a confidential data room, as contemplated by the Mediation Order. That data room made available to those parties to the mediation who signed non-disclosure agreements with SFC approximately 18,000 documents that had been assembled in order to potentially make them available to participants in the Sale Process and additional documents that were requested by the Ad Hoc Securities Purchasers Committee.

86. The mediation took place on September 4 and 5, 2012. Justice Newbould acted as the mediator. While the mediation did not result in a global resolution, it is my understanding from counsel that all parties appeared to participate in good faith with a view to arriving at a consensual resolution. I am advised by counsel that there have been further discussions continuing among certain of the parties since the conclusion of the mediation, but those discussions have not resulted in a further settlement as at the date of the swearing of this affidavit. I am not aware of the specifics of the matters which may have been discussed by other parties to the mediation.

87. Following the mediation, SFC conducted extensive negotiations with the Ad Hoc Noteholders, with the participation of the Monitor and its counsel, to produce the draft plan that was filed with the Court on October 19, 2012 (the "October 19 Draft Plan"). On October 26, 2012, the Ad Hoc Securities Purchasers Committee confirmed that they would not object to the October 19 Draft Plan.

88. As discussed above, SFC's main creditors consist of (i) the Noteholders and (ii) the Third Party Defendants who claim indemnity from SFC and its subsidiaries on a contingent basis, the

contingency being whether or not they are ultimately found to be liable in the shareholder and noteholder class actions that are pending against them.

89. As a result of the Equity Claims Decision, the Third Party Defendants' indemnity claims in respect of shareholder class action claims are subordinated equity claims (leaving aside that they are contingent and contested in any event). With respect to the Third Party Defendants' indemnity claims in respect of the noteholder class action claims against them, these claims have now been limited to $150 million, collectively and in the aggregate for all Third Party Defendants, by operation of the Indemnified Noteholder Class Action Limit, which has limited the underlying claims by former noteholders against the Third Party Defendants to $150 million. As discussed, the Plan provides for these contingent, unresolved claims through the creation of the Unresolved Claims Reserve.

V. THE PLAN

A. Background and Overview

90. On August 28, 2012, SFC brought a motion for an order approving the filing of the Plan (the "Plan Filing and Meeting Order") and for calling a meeting of creditors to vote on the Plan. I swore an affidavit in connection with that motion, a copy of which is attached without exhibits as Exhibit "P".

91. On August 31, 2012, this Honourable Court issued the Plan Filing and Meeting Order as well as an endorsement stating that the Plan Filing and Meeting Order was made without any determination of (a) the test for approval of the Plan; (b) the validity or quantum of any claims; and (c) the classification of creditors for voting purposes. The endorsement also stated that the

Plan Filing and Meeting Order did not prevent or restrict any party from opposing the Sanction Order now being sought. A copy of the endorsement is attached as Exhibit "**Q**".

92. The Plan sets out to achieve the following purposes:

(a) to effect a full, final and irrevocable compromise, release, discharge, cancellation and bar of all Affected Claims;

(b) to effect the distribution of the consideration provided for herein in respect of Proven Claims;

(c) to transfer ownership of the Sino-Forest business to Newco and then to Newco II, in each case free and clear of all claims against SFC and certain related claims against the Subsidiaries, so as to enable the SFC Business to continue on a viable, going concern basis for the benefit of the Affected Creditors; and

(d) to allow Affected Creditors and Noteholder Class Action Claimants to benefit from contingent value that may be derived from litigation claims to be advanced by the Litigation Trustee.

93. SFC believes that the Plan represents the best available outcome in the circumstances and that those with an economic interest in SFC, when considered as a whole, will derive a greater benefit from the implementation of the Plan and the continuation of the business of Sino-Forest as a going concern than would result from a bankruptcy or liquidation of SFC and Sino-Forest. SFC also believes that the Plan reasonably takes into account the interests of the Third Party Defendants, who seek indemnity and contribution from SFC and its Subsidiaries on a contingent basis, in the event that they are found to be liable to SFC's stakeholders.

94. Given that the Sale Process was not successful, the Plan contemplates that a new company and a further subsidiary ("Newco" and "Newco II", respectively) will be incorporated and SFC will transfer substantially all of its assets to Newco in compromise and satisfaction of all claims made against it. The result will be that Newco will own, directly or indirectly, all of SFC's Subsidiaries and SFC's interest in Greenheart and its subsidiaries as well as any intercompany debts owed by the Subsidiaries to SFC. Pursuant to the Plan, as explained in further detail below, the shares of Newco will be distributed to the Affected Creditors.

95. The terms of the October 19 Draft Plan were described in greater detail in the Monitor's Thirteenth Report. This Plan was amended on November 28, 2012. Attached as Exhibit "R" is a copy of the Plan, as amended. Attached as Exhibit "S" is a blackline comparison of the Plan to the October 19 Draft Plan filed with the Court. Attached as Exhibit "T" is a copy of the Plan Supplement dated November 21, 2012 (the "Plan Supplement").

B. Distributions Under the Plan

96. The Plan contemplates the distribution of (1) Newco Shares, (2) Newco Notes, and (3) Litigation Trust Interests, each as further described below.

1. Newco Shares

97. Pursuant to the terms of the Plan, Affected Creditors with Proven Claims are entitled to their pro-rata share of 92.5% of the Newco Shares and Early Consenting Noteholders also entitled to their pro-rata share of 7.5% of the Newco Shares.

98. As set out in Exhibit C to the Plan Supplement, Newco will be incorporated as an exempt company under the laws of the Cayman Islands pursuant to the Plan. It will have a single class of voting shares, being the Newco Shares. Newco is not, and there is no current intention for

Newco to become, a reporting issuer in any jurisdiction of Canada or elsewhere and the Newco Shares will not be listed on any stock exchange or quotation service on the Plan Implementation Date. The board of directors of Newco will initially consist of up to five directors that will be satisfactory to the Initial Consenting Noteholders. Thereafter, directors will be elected by shareholders on an annual basis at Newco's annual general meeting. Certain shareholders holding large blocks of shares will be entitled to elect directors.

99. As set out in Exhibit C to the Plan Supplement, prior to the Plan Implementation Date, it is intended that Newco will organize Newco II as a wholly-owned subsidiary and an exempt company under the laws of the Cayman Islands, for the purpose of acquiring from Newco the SFC assets to be transferred by SFC to Newco on the implementation of the Plan. The purpose of this step is to organize Newco (namely, Newco II) in a tax and jurisdictionally efficient manner for purposes of any subsequent sale of all or substantially all of Newco's assets (for example, Newco II will own all of the Direct Subsidiaries in a single jurisdiction, rather than in four separate jurisdictions).

100. Newco will be named Evergreen China Holdings Ltd. and Newco II will be named Evergreen China Holdings II Ltd.

2. Newco Notes

101. Pursuant to the terms of the Plan, Affected Creditors with Proven Claims are entitled to their pro-rata share of the Newco Notes.

102. As set out in Exhibit D to the Plan Supplement (which defines the capitalized terms used in this paragraph), Newco Notes in the aggregate principal amount of US$300 million will be issued under an Indenture. They will be guaranteed by the Subsidiary Guarantors and secured by

pledges, mortgages and/or charges of the Collateral as described in Exhibit D to the Plan Supplement. Interest may be paid in cash or in PIK notes at rates prescribed in the Indenture and described in Exhibit D to the Plan Supplement. The Newco Notes will mature seven (7) years after the Original Issue Date, unless earlier redeemed pursuant to the terms thereof and the Indenture.

3. Litigation Trust Interests

103. Pursuant to the terms of the Plan, Affected Creditors with Proven Claims are entitled to their pro-rata share of 75% of the Litigation Trust Interests and the Noteholder Class Action Claimants are entitled to their pro-rata share of 25% of the Litigation Trust Interests.

104. The Litigation Trust will hold the Litigation Trust Claims (each as defined in the Plan), which include all claims and actions that have been or may be asserted by or on behalf of (i) SFC against any and all third parties, and (ii) the Note Indenture Trustees (on behalf of the Noteholders) against any and all persons in connection with the Notes; provided that Litigation Trust Claims will not include claims released under the Plan or claims advanced in the Class Actions.

105. The Litigation Trust will be governed by a Litigation Trust Agreement, a draft form of which was attached as Exhibit B to the Plan Supplement. The Litigation Trust will be funded by SFC with the Litigation Funding Amount, $1 million. Pursuant to the Plan, Newco may subsequently elect to advance additional funding to the Litigation Trust. The Litigation Trustee (who has not yet been selected) will be charged with the responsibility to preserve and enhance the value of the Litigation Trust Assets (as defined in the Litigation Trust Agreement), through the prosecution, compromise and settlement, abandonment or dismissal of all claims held by the

Litigation Trust. In addition, the Plan contemplates that, prior to the Plan Implementation Date, SFC and the Initial Consenting Noteholders may agree to exclude one or more claims from being transferred to the Litigation Trust in which case such claims will be released on the Plan Implementation Date.

106. I am advised by counsel that the Litigation Trust Claims will be transferred to the Litigation Trust subject to the equities, limitation defences and other defences that otherwise may be asserted against SFC, and none of those equities, litigation defences and other defences are purported to be compromised by the Plan.

107. SFC will also be transferring all respective rights, title and interests in and to any lawyer-client privilege, work product privilege or other privilege or immunity attaching to any documents or communications associated with the Litigation Trust Claims to the Litigation Trust for the benefit of the beneficiaries of the Litigation Trust.

C. Reserves Established Under the Plan

108. The Plan contemplates the establishment of the Administration Charge Reserve, the Unaffected Claims Reserve, the Unresolved Claims Reserve, and the Monitor's Post-Implementation Reserve. Notwithstanding that the Initial Order created a Directors' Charge of $3.2 million, the Named Directors and Officers have agreed to stand back from making any claims against the Directors' Charge as part of the comprehensive arrangements inherent in the Plan agreed to by the Initial Consenting Noteholders such that the Plan no longer provides for a Directors' Charge Reserve. The Monitor's Thirteenth Report also describes the purpose of each of these Reserves.

109. The amount of the Administration Charge Reserve is $500,000 or such other amount as may be agreed to by the Monitor and the Initial Consenting Noteholders. The amount of the Unaffected Claims Reserve will be established on the Plan Implementation Date and is estimated to be $1,800,000. The amount of the Monitor's Post-Implementation Reserve will initially be $5,000,000 or such other amount as may be agreed by SFC, the Monitor and the Initial Consenting Noteholders.

110. Any funds remaining in the Administration Charge Reserve or the Unaffected Claims Reserve will be transferred to the Monitor's Post-Implementation Reserve. The Monitor may, in its discretion, release excess cash from the Monitor's Post-Implementation Reserve to Newco. Once the Monitor determines that the cash remaining in the Monitor's Post-Implementation Reserve is no longer necessary for administering SFC, the Monitor shall transfer the remaining funds to Newco.

111. The Unresolved Claims Reserve will contain Newco Shares, Newco Notes, and Litigation Trust Interests in respect of any Unresolved Claims. It is expected that the Unresolved Claims as at the Plan Implementation Date will consist primarily of the contingent and unresolved indemnity claims against SFC by the Third Party Defendants in respect of (a) Class Action Indemnity Claims relating to the Indemnified Noteholder Class Action Claims, which have been limited to $150 million collectively and in the aggregate by operation of the consensual Indemnified Noteholder Class Action Limit; (b) $30 million in respect of unresolved claims for reimbursement of Defence Claim Costs; and (c) $500,000 in respect of unresolved claims filed by certain trade and other creditors, some of which have been accepted for voting purposes but not yet for distribution purposes.

112. Pursuant to the Plan and the Sanction Order, each of SFC, the Monitor, and the Initial Consenting Noteholders have reserved all rights to seek or obtain an Order at any time directing that any Unresolved Claims shonld be disallowed in whole or in part or should receive the same treatment as Equity Claims. The Plan and the Sanction Order provide that all parties with Unresolved Claims will have standing in respect of any proceeding to determine whether or not an Unresolved Claim constitutes a Proven Claim (in whole or in part) entitled to consideration under the Plan.

113. The Plan Supplement also describes the establishment of SFC Escrow Co., which will act as the Unresolved Claims Escrow Agent. Subject to the terms of the Plan, SFC Escrow Co. will hold distributions in respect of any Unresolved Claim in existence at the Plan Implementation Date in escrow until settlement or final determination of the Unresolved Claim in accordance with the Claims Process Order, the Meeting order, the Plan or otherwise, as applicable.

I. Indemnified Noteholder Class Action Claims

114. As I discussed above, there is a component of the class action claims that relates to the deht issuances and, in some respect, some of the class action plaintiffs are former noteholders. Section 4.4(a) of the Plan makes clear that those claims, as against SFC, the Subsidiaries or the Named Directors and Officers (other than those claims that are Section 5.1(2) D&O Claims, Conspiracy Claims or Non-Released D&O Claims) are fully, finally, irrevocably and forever compromised and released. However, these Noteholder Class Action Claims against Third Party Defendants are not compromised or released and may continue to proceed against the Third Party Defendants, provided that the Class Action Plaintiffs have agreed that the aggregate amount of such claims that may be asserted against Third Party Defendants in respect of

Indemnified Noteholder Class Action Claims shall not exceed the Indemnified Noteholder Class Action Limit, which has been established at a global amount of $150 million in the aggregate for all Third Party Defendants.

115. The Indemnified Noteholder Class Action Limit was established after extensive and difficult negotiations and discussion spanning many months among the Ad Hoc Securities Purchasers Committee, the Ad Hoc Noteholders and SFC. As a result of the limit, the maximum exposure of the Third Party Defendants with respect to Indemnified Noteholder Class Action Claims is, in the aggregate, $150 million. Accordingly, the maximum potential indemnity claims of such Third Party Defendants against SFC are likewise limited to $150 million in the aggregate. Such contingent indemnity claims are treated as Unresolved Claims under the Plan, and the potential Plan consideration that could be distributed in respect of any such indemnity claims that could become Proven Claims will be held in escrow in the Unresolved Claims Reserve.

2. Defence Costs

116. The Equity Claims Decision, as affirmed by the Court of Appeal, did not determine whether Defence Cost Claims of the auditors and Underwriters would be treated in the same manner as their indemnity claims against the company. Accordingly, the Plan treats Defence Cost Claims as Unresolved Claims, with the potential Plan consideration that could be distributed in respect of any such claims that could become Proven Claims to be held in the Unresolved Claims Reserve.

D. Releases Under the Plan

117. The Plan includes releases for certain parties (the "Released Parties"), including certain current and former directors and officers of SFC (collectively, the "Named Directors and Officers"). The identification of the Named Directors and Officers and the scope of the releases were heavily negotiated among various constituents as part of the negotiation of the Plan and form a fundamental element of the commercial deal embodied in the Plan.

118. There are four main categories of claims against the Named Directors and Officers that will not be released pursuant to the Plan:

(a) Non-Released D&O Claims, being claims for fraud or criminal conduct;

(b) Conspiracy Claims;

(c) Section 5.1(2) D&O Claims; and

(d) Non-monetary remedies of the OSC.

119. The Plan contemplates that recovery in respect of claims against the Named Directors and Officers of SFC in respect of any Section 5.1(2) D&O Claims and any Conspiracy Claims shall be directed to insurance proceeds available from the insurance policies maintained by SFC.

120. SFC maintained director and officer insurance coverage in 2011 providing for a total of $60 million of coverage, which applies to both defence costs and any damages or settlements. The primary policy is provided by ACE INA Insurance with a policy limit of $15 million, with excess layers provided by Chubb, ERIS (Lloyds) and Travelers (collectively, the "2011 Insurance Policies"). Slightly in excess of $10 million of the $60 million limit has been paid out

on account of insured costs incurred by SFC and by other insured persons under the 2012 policies.

121. When the 2011 policies were not renewed after their expiry on December 31, 2011, SFC obtained coverage from other providers totalling $55 million for 2012 (the "2012 Insurance Policies"). The 2012 Insurance Policies contain a "prior acts" exclusion, and therefore are not available to respond to claims arising from the Muddy Waters allegations.

122. Both the 2011 Insurance Policies and 2012 Insurance Policies provide for three types of coverage: (a) director and officer liability; (b) corporate liability for indemnifiable loss; and (c) corporate liability arising from securities claims. The insurance policies are subject to a number of exclusions, and contain coverage and claims limits.

123. In addition to the release of the Named Directors and Officers, and advisors involved in these proceedings, the Plan provides for releases of all claims relating to claims against SFC that may be made against the Subsidiaries. As I explained in my Initial Order Affidavit, while SFC is a holding company, the "business" of SFC is conducted through the Subsidiaries (which are not CCAA applicants).

124. There can be no effective restructuring of SFC's business and separation from its Canadian parent (which SFC has said from the outset was the objective of the commencement of these proceedings) if the claims asserted against the Subsidiaries arising out of or connected to claims against SFC remain outstanding. Just as the claims of the Noteholders against the Subsidiaries are to be released under the Plan upon implementation, so are the other claims against the Subsidiaries which relate to claims asserted against SFC (as well as any claims that the Subsidiaries have against SFC).

VI. THE MEETING

125. The Plan Filing and Meeting Order sets out the procedure for the calling and conduct of the meeting of creditors to vote in respect of the Plan.

A. Meeting Materials, Notice, and Mailing

126. The Plan Filing and Meeting Order approved the forms of Information Circular, Notice to Affected Creditors, Ordinary Affected Creditors' Proxy, Noteholders' Proxy, Instructions to Ordinary Affected Creditors, Instructions to Registered Noteholders, Instructions to Unregistered Noteholders and Instructions to Participant Holders (collectively, the "Meeting Materials"). A copy of the Meeting Materials is attached as Exhibit "U".

127. The Mailing Date set out in the Plan Filing and Meeting Order was to be no later than September 20, 2012, provided that such date could be extended by the Monitor with the consent of SFC and the Initial Consenting Noteholders. The Mailing Date was ultimately set as October 24, 2012.

128. A separate order was obtained by the Monitor on October 24, 2012 (the "Revised Noteholder Mailing Process Order") to effect a more efficient process for the mailing of the Meeting Materials to the Noteholders. A copy of the Revised Noteholder Mailing Process Order is attached as Exhibit "V".

129. The Monitor has set out in its Thirteenth Report how the Plan Filing and Meeting Order was complied with and how notice was effected as required.

130. The Plan Filing and Meeting Order permits SFC, with the consent of the Monitor to amend, restate, modify and/or supplement any of such materials, subject to the terms of the Plan, provided that the Monitor, SFC or the Chair shall communicate the details of any such amendments, restatements, modifications and/or supplements to Affected Creditors present at the Meeting prior to any vote being taken at the meeting, among other things.

131. The Plan Supplement was distributed in accordance with the terms of the Plan Filing and Meeting Order to Affected Creditors. The Plan (as amended on November 28, 2012) was provided to the CCAA service list as well as posted on the Monitor's website on November 28, 2012.

132. Based on information provided to me by counsel and by the Monitor in its Thirteenth Report, I believe that SFC has complied with all requirements in the Plan Filing and Meeting Order with respect to the mailing of the Meeting Materials.

B. The Meeting

133. The Plan Filing and Meeting Order authorized SFC to call the Meeting and to hold and conduct the Meeting on the Meeting Date at the offices of Bennett Jones LLP, 3400 One First Canadian Place, Toronto, Ontario, for the purpose of seeking approval of the Plan by the Affected Creditors with Voting Claims at the Meeting in the manner set forth in the Plan Filing and Meeting Order.

134. The Meeting Date was set to be November 29, 2012, and this was communicated to Affected Creditors in the Meeting Materials. Further changes to the Plan resulted in the Meeting Date being extended to November 30, 2012. SFC issued a press release announcing this

extension, and the Monitor's counsel also communicated the fact of the extension by way of email to the Service List. The location of the Meeting was moved to the offices of Gowling Lafleur Henderson LLP, counsel to the Monitor, at 1 First Canadian Place, 100 King Street West, 16th Floor, Toronto, Ontario.

135. The outcome of the Meeting will be reported in a further report by the Monitor prior to the Sanction Order hearing.

C. Entitlement to Vote and Classification of Creditors

136. The voting process is described in some detail in the Monitor's Thirteenth Report. By way of general overview only, the Plan Filing and Meeting Order provides that the only Persons entitled to vote at the Meeting are the Beneficial Noteholders with Voting Claims that have beneficial ownership of one or more Notes as at the Voting Record Date (August 31, 2012), and Ordinary Affected Creditors with Voting Claims as at the Voting Record Date.

137. The Plan Filing and Meeting Order provides that each Affected Creditor with an Unresolved Claim could also attend the Meeting and is entitled to one vote at the Meeting in respect of such Unresolved Claim. The Monitor is required to keep a separate record of votes cast by Affected Creditors with Unresolved Claims and to report on such vote at the Sanction Hearing.

138. The Plan Filing and Meeting Order provides that each of the Third Party Defendants is entitled to vote as a member of the Affected Creditors Class in respect of any Class Action Indemnity Claim that it has properly filed in respect of the Indemnified Noteholder Class Action Claims, provided that the aggregate value of all such claims shall, for voting purposes, be

deemed to be limited to the amount of the Indemnified Noteholder Class Action Limit. The Monitor is required to keep a separate record of votes cast by the Third Party Defendants in respect of such Class Action Indemnity Claims and to report to the Court with respect thereto at the Sanction Hearing.

139. The Plan Filing and Meeting Order provides that the following Persons do not have the right to vote at the Meeting: Unaffected Creditors; Noteholder Class Action Claimants; Equity Claimants; any Person with a D&O Claim; any Person with a D&O Indemnity Claim (other than a D&O Indemnity Claim in respect of Defence Costs Claims or in respect of the Indemnified Noteholder Class Action Claims); any Person with a Subsidiary Intercompany Claim; and any other Person asserting Claims against SFC whose Claims do not constitute Affected Creditor Claims on the Voting Record Date.

VII. STEPS TAKEN AT THE OSC WITH RESPECT TO PLAN STEPS

140. The mailing of the Meeting Materials, the holding of the Meeting, and the steps contemplated to implement the Plan could have individually or collectively constituted an act in furtherance of a trade, which would have been contrary to the TCTO first made by the OSC on August 26, 2011.

141. To avoid that result, SFC sought and obtained two orders of the OSC to vary the TCTO. First, on September 18, 2012, the OSC issued an order varying the TCTO to permit the distribution of the Meeting Materials as contemplated by the Plan Filing and Meeting Order. A copy of the September 18, 2012 order is attached as Exhibit "W".

142. Second, on October 26, 2012, the OSC issued an order varying the TCTO to permit: (a) the holding of the Meeting; and (b) the CCAA Plan Trades and all acts in furtherance thereof, other than CCAA Plan Trades required to give effect to an Alternative Sale Transaction, provided that the requisite creditor approval is obtained, this Honourable Court issues a sanction order, and SFC has complied and is in compliance with the terms of all CCAA court orders. A copy of the October 26, 2012 order is attached as Exhibit "**X**".

143. As a result, except in the circumstances where an Alternative Sale Transaction was being pursued, there are no further regulatory requirements that relate to the OSC that are needed to effectuate the transactions contemplated in the Plan, other than an order from the OSC and other provincial securities regulators for a decision that SFC is not a reporting issuer effective as of the implementation date of the Plan. If granted, that order would result in SFC and Newco not being reporting issuers in Ontario or any other province in Canada following the implementation date of the Plan.

VIII. PLAN SANCTION

A. SFC Has Complied with the CCAA and the Orders Granted in these Proceedings

144. As I explained in my Initial Order Affidavit and as was found by this Honourable Court in its endorsement on the Initial Order, a copy of which is attached as Exhibit "**Y**", SFC is a "debtor company" under section 2 of the CCAA. It is a "company" continued under the CBCA that has debts far in excess of the CDN $5 million statutory requirement, and is insolvent with liabilities to creditors far exceeding CDN $1,000.

145. Since the commencement of these proceedings, SFC has complied with the provisions of the CCAA, the Initial Order and all subsequent Orders of the Court granted in these proceedings. I am not aware, and I am advised by counsel that they are unaware, of any steps taken by SFC that are not authorized by the CCAA.

146. This Honourable Court has been kept up to date with regular updates provided in affidavits that I have sworn and in reports of the Monitor that have been filed with the Court. In particular, SFC made full and timely disclosure of, among other things: (a) developments occurring at the OSC and with OSC Staff; (b) steps taken by SFC in response to various developments in SFC's business, including a number of departures of senior management personnel at SFC; (c) the efforts to negotiate a global resolution of issues among all stakeholders; (d) the efforts to market the assets of SFC pursuant to the Sale Process Order; and (e) developments in SFC's business, including the difficulties SFC has experienced in realizing npon and recovering receivables from third parties.

147. Accordingly, after consulting with counsel and reviewing the documents described above, I believe that all steps taken by SFC since the inception of this proceeding have been authorized by the CCAA.

B. The Plan is Fair and Reasonable

148. Since the Muddy Waters report was issued on June 2, 2011, SFC has expended considerable efforts and resources examining alternatives to find the best possible resolution to the issues facing the company described above.

149. Prior to filing for the protection under the CCAA, SFC did everything within its power to avoid the defaults that ultimately forced it to commence insolvency proceedings. However, as described above and in my Initial Order Affidavit, SFC was in default under certain of the Notes as a result of being unable to issue 2011 third quarter financial statements. While waivers of such defaults were obtained for a period of time, those waivers were set to expire at the end of April, 2012 and the Noteholders, with the guarantees and share pledges described above, would have been in a position to enforce their rights under the Note Indentures. Any alternative to the commencement of CCAA proceedings would have risked the immediate cessation of the Sino-Forest business resulting in significant detriment to SFC's stakeholders.

150. As previously discussed, following the commencement of these CCAA proceedings, SFC conducted a court supervised Sale Process to determine whether there was a potential purchaser willing to purchase the assets of SFC for the Qualified Consideration. With the assistance of Houlihan, the market was thoroughly canvassed and no such bidder could be found. In accordance with the Sale Process Procedures, SFC terminated the Sale Process and proceeded towards developing the Plan to implement the Restructuring Transaction.

151. The Plan that will ultimately be put to Affected Creditors at the Meeting was the subject of significant and extensive negotiations. In negotiating the Plan, the Board of SFC considered the interests of all stakeholders of SFC. Alternatives were explored throughout the negotiations, and the Plan was the product of such negotiations. I do not believe that there are other viable alternatives that would have been acceptable to SFC and its creditors. The Plan represents the best available alternative remaining in these proceedings, and provides a better result for SFC's creditors than could be achieve through a bankruptcy or liquidation.

152. As discussed above, SFC is a holding company and the Sino-Forest business is held through the Subsidiaries. To recover any value in a bankruptcy or liquidation scenario, creditors would need to realize upon the assets where they are resident. The majority of SFC's business operations are located in the PRC, and the majority of SFC's forest plantations are located in the southern and eastern regions of the PRC, primarily in inland regions suitable for large-scale replanting. Other jurisdictions where bankruptcy or liquidations would need to take place would be in Hong Kong or the British Virgin Islands (the "BVI").

153. Beyond the legal hurdles of effecting any bankruptcy or liquidation in these various jurisdictions, any of SFC's creditors seeking a liquidation in the PRC, Hong Kong or BVI, will be confronted with significant difficulties in collecting receivables as has been detailed by the Monitor in its earlier reports and which I described during my cross-examination on an earlier report and in dealing with the substantial claims that have been asserted against the Subsidiaries as identified in the claims process. Significant efforts have been expended by Sino-Forest over the past several months to recover its receivables, and notwithstanding long-standing relationships with many of the parties owing such amounts, SFC has largely been unsuccessful. The ability of third party creditors of a Canadian parent company (or a liquidator appointed outside of the PRC in respect of the Subsidiaries) to collect such receivables in these various regions is speculative, at best.

154. Any creditors in a bankruptcy or liquidation scenario in these various jurisdictions would also have significant challenges in monetizing any of the assets of the Subsidiaries, given the challenges in establishing title capable of being transferred to a buyer that have been described in the reports of the Independent Committee, my earlier affidavits and certain reports of the Monitor. Even if such assets were successfully monetized, insofar as such assets are located in

the PRC, creditors would be faced with the numerous legal and regulatory issues associated with removing funds from the PRC.

155. Any liquidation or bankruptcy of SFC, through its Subsidiaries, would result in loss of value to the creditors of SFC and its Subsidiaries as a going concern. As I have testified on a number of occasions, significantly greater value can be obtained through the Sino-Forest business continuing as a going concern than could be obtained through piecemeal dismantling of the enterprise through a bankruptcy or liquidation.

156. In developing the Plan, I do not believe that SFC or the Board has acted in a manner that unfairly disregards, or is unfairly prejudicial to, or oppresses the interests of any stakeholders. It is not unfair for shareholders to not receive any distribution under the Plan given that there are insufficient funds to satisfy the claims of SFC's creditors. The treatment of shareholder claims and related indemnity claims is fair and consistent with the Equity Claims Decision, as affirmed by the Court of Appeal. As I have described above, a sizeable majority of the Noteholders have agreed to support the Plan, and the Ad Hoc Securities Purchasers Committee and the Quebec Class Action Plaintiffs have stated that they will not oppose it. To the extent that certain claims are Unresolved Claims at the time of the Plan's implementation, such claims are provided for through the creation of the Unresolved Claims Reserve, which will preserve the potential Plan Consideration in respect of such claims, to the extent that any of them (or any part of any of them) becomes a Proven Claim.

157. SFC has stated from the outset of these proceedings that it is necessary to have a clean break for the Subsidiaries from SFC in order for these proceedings to be successful. The primary purpose of the CCAA proceeding was to extricate the business of Sino-Forest, through the

operation of SFC's Subsidiaries, from the cloud of uncertainty surrounding SFC. Accordingly, there is a clear and rational connection between the release of the Subsidiaries and the Plan and it is difficult to see how any viable plan could be made that does not cleanse the Subsidiaries of the claims made against SFC. The Subsidiaries are effectively contributing their assets to SFC to satisfy SFC's obligations under their guarantees of SFC's Note indebtedness, for the benefit of the Affected Creditors (the Subsidiaries are not asserting against SFC for doing so, and in fact are releasing SFC from any such claims and guaranteeing the Newco Notes).

158. The Plan will enable SFC to achieve a going concern outcome for the business of Sino-Forest that fully and finally deals with debt issues and will extract the business of Sino-Forest from the uncertainties surrounding SFC. The Plan will provide stability for Sino-Forest's employees, suppliers, customers and other stakeholders, and provide a path for recovery of the debt owed to SFC's non-subordinated creditors.

159. The Plan preserves the rights of aggrieved parties, including SFC, to pursue those parties that are alleged to share some or all of the responsibility for the problems that caused SFC to file for CCAA protection in the first place. Releases are not being granted to individuals who have been charged by OSC staff, or to other individuals against whom the Ad Hoc Securities Purchasers Committee wishes to preserve litigation claims.

160. The Named Directors and Officers group consists principally of Board members and members of management who have been important to efforts to avoid note defaults and later to facilitate SFC's restructuring efforts. It also included some individuals formerly associated with SFC who, to SFC's knowledge, are not implicated in any conduct issues. The Named Directors and Officers are Andrew Agnew, William E. Ardell, James Bowland, Leslie Chan, Michael

Cheng, Lawrence Hon, James M.E. Hyde, Richard M. Kimel, R. John (Jack) Lawrence, Jay A. Lefton, Edmund Mak, Tom Maradin, Simon Murray, James F. O'Donnell, William P. Rosenfeld, Peter Donghong Wang, Garry West, Kee Y. Wong, and me.

161. I have described above the steps taken to investigate conduct issues, avoid note defaults and ultimately to facilitate the restructuring efforts. These efforts would not have been possible without the active participation of the Board and members of remaining management.

162. In addition to these positive efforts, the Board also dealt with conduct issues as facts came to light. As described above, certain individuals were placed on administrative leave following late August 2011. As described in prior affidavits, since the commencement of these CCAA proceedings, Allen Chan, Alfred Hung, George Ho, Simon Yeung, Albert Ip, and David Horsley have ceased to be employed by Sino-Forest. Other less senior employees also have ceased to be employed by Sino-Forest.

163. Finally, a release of the Named Directors and Officers is necessary to effect a greater recovery for SFC's creditors, rather than preserve indemnification rights and dilutive participation entitlements for the Named Directors and Officers.

164. For the reasons discussed above, SFC believes that the Plan provides a fair and reasonable balance among its stakeholders while providing the ability for the Sino-Forest to continue as a going concern for the benefit of stakeholders.

165. As I have explained in several prior affidavits, to achieve a going concern outcome for the business of Sino-Forest, SFC cannot remain in CCAA for much longer. There have already been considerable strains on Sino-Forest's business relationships and the company's ability to

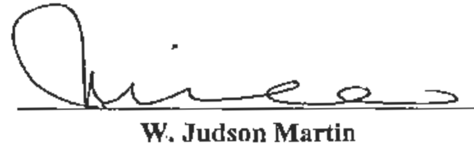
collect very sizable accounts receivable have been significantly constrained by the fact of these insolvency proceedings. Moreover, as indicated by the Monitor's Thirteenth Report and the proposed cash flow forecast in the Monitor's Twelfth Report, while SFC has sufficient cash to exist to February 1, 2013, SFC's cash position is being rapidly depleted and SFC will likely have insufficient funds to continue operating in these CCAA proceedings for any extended period of time beyond February 1, 2013.

166. Subject to obtaining approval of the Plan by the requisite majority of Affected Creditors with Proven Claims at the Meeting, for the reasons stated above, I believe that the Plan is appropriate and should be sanctioned by this Honourable Court.

SWORN BEFORE ME at the City of Hong Kong, Special Administrative Region, People's Republic of China, this 29th day of November, 2012

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

A Commissioner of Oaths



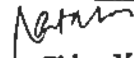
W. Judson Martin

TAB A

THIS IS EXHIBIT "A" TO

THE AFFIDAVIT OF W. JUDSON MARTIN

SWORN NOVEMBER 29, 2012



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

A Commissioner, etc.

Court File No.

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

AFFIDAVIT OF W. JUDSON MARTIN
(Sworn March 30, 2012)

I, W. Judson Martin, of the City of Hong Kong, Special Administrative Region, People's Republic of China, **MAKE OATH AND SAY:**

1. I am the Vice-Chairman and Chief Executive Officer of Sino-Forest Corporation ("SFC"). I therefore have personal knowledge of the matters set out below, except where otherwise stated. Where I do not possess personal knowledge, I have stated the source of my information and I believe such information to be true.

2. This affidavit is sworn in support of an application by SFC for an initial order (the "Initial Order") pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA"), a sale process order (the "Sale Process Order") and other requested relief. In preparing this affidavit, I have consulted with other members of SFC's senior management team and, where necessary, members of the senior management teams of certain of SFC's subsidiaries.

3. All references to dollar amounts contained in this affidavit are to United States Dollars unless otherwise stated.

I. OVERVIEW

4. SFC is a Canadian corporation and is the direct or indirect parent of approximately 140 subsidiaries, the majority of which are incorporated in the People's Republic of China (the "PRC"). The terms "Sino-Forest Companies" and "Sino-Forest" refer to the global enterprise as a whole (but, for greater certainty, do not include the Greenheart Group, defined below).

5. Sino-Forest is a major integrated forest plantation operator and forest products company. Its principal businesses include the ownership and management of plantation forests, the sale of standing timber and wood logs, and the complementary manufacturing of downstream engineered-wood products. The majority of Sino-Forest's plantations are located in the southern and eastern regions of the PRC, primarily in inland regions suitable for large-scale replanting.

6. Sino-Forest's business operations are mainly in the PRC with corporate offices in Hong Kong and Ontario, Canada.

7. On June 2, 2011, Muddy Waters, LLC ("Muddy Waters"), which held a short position on SFC's shares, published a report (the "MW Report") alleging that Sino-Forest, among other things, was a "near total fraud" and a "Ponzi scheme." SFC's board of directors (the "Board") appointed an independent committee (the "IC") to investigate the Muddy Waters allegations.

8. While the IC has been able to address certain of the allegations made by Muddy Waters, the MW Report has had a ripple effect in causing substantial damage to SFC, its business, and future prospects for viability. As part of the fallout from the MW Report, (i) SFC now finds

itself embroiled in multiple class action proceedings across Canada and in the U.S., (ii) SFC is the subject of Ontario Securities Commission ("OSC"), Hong Kong Securities and Futures Commission ("HKSFC"), and Royal Canadian Mounted Police ("RCMP") investigations, and (iii) SFC's Audit Committee recommended, and the Board agreed, that SFC should defer the release of SFC's third quarter 2011 financial statements (the "Q3 Results") until certain issues could be resolved to the satisfaction of the Board and SFC's external auditor

9. Significantly, SFC's inability to file its Q3 Results resulted in a default under its note indentures, which could have resulted in the acceleration and enforcement of approximately $1.8 billion in notes issued by SFC and guaranteed by many of its subsidiaries.

10. Following extensive discussions with an ad hoc committee of noteholders (the "Ad Hoc Noteholders"), holders of a majority in principal amount of SFC's senior notes agreed to waive the default arising from SFC's failure to release the Q3 Results on a timely basis, on certain terms and conditions that were set forth in waiver agreements between certain of the noteholders and SFC, which were made publicly available on January 12, 2012 and are attached as Exhibit "**A**".

11. While the waiver agreements prevented the indenture trustees under the relevant note indentures from accelerating and enforcing the note indebtedness as a result of SFC's failure to file its Q3 Results, those waiver agreements will expire on the earlier of April 30, 2012 and any earlier termination of the waiver agreements in accordance with their terms. In addition, SFC's pending failure to file its audited financial statements for its fiscal year ended December 31, 2011 (the "2011 Results") by March 30, 2012 will again put the indenture trustees in a position

to accelerate and enforce the bond indebtedness, creating additional uncertainty around Sino-Forest's business.

12. SFC has made considerable efforts to address issues identified by SFC's Audit Committee and the IC and by its external auditor, Ernst & Young LLP, as requiring resolution in order for SFC to be in a position to obtain an audit opinion in relation to its 2011 financial statements.

13. However, notwithstanding SFC's best efforts, many of these issues cannot be resolved to the satisfaction of SFC's auditor or cannot be resolved within a timeframe that would protect and preserve the value of the business, and that would allow SFC to comply with its obligations under its note indentures. Therefore, absent a resolution with the noteholders, the indenture trustees would be in a position to enforce their legal rights as early as April 30, 2012.

14. Following extensive arm's length negotiations between SFC and the Ad Hoc Noteholders, the parties agreed on the framework for a consensual resolution of SFC's defaults and the restructuring of its business, and entered into a support agreement (the "Support Agreement") on March 30, 2012, which was executed by holders of SFC's notes holding approximately 40% of the notes. The Support Agreement contemplates, and in fact provides an incentive for, additional noteholders becoming party to the Support Agreement by way of joinder agreements. Accordingly, I fully expect that noteholders holding more than 50% of each series of notes will ultimately sign up to the Support Agreement.

15. The Support Agreement provides that SFC will pursue a plan of arrangement or compromise (the "Plan") on the terms set out in the Support Agreement in order to implement the agreed-upon restructuring transaction as part of this CCAA proceeding which would, among other things, (i) see SFC's business operations conveyed to, and revitalized under, a new entity to

be owned primarily by the noteholders ("SF Newco"), (ii) provide stakeholders of SFC with claims ranking behind the noteholders (the "Junior Constituents") with certain participation rights in SF Newco, and (iii) create (and provide funding for) a framework for the prosecution of certain litigation claims for the benefit of certain of SFC's stakeholders. The agreement also provides that each noteholder that is a signatory thereto (the "Consenting Noteholders") will vote its notes in favour of the Plan at any meeting of creditors.

16. The Support Agreement further provides that SFC will undertake a sale process (the "Sale Process") in accordance with the sale process procedures (the "Sale Process Procedures") which have been developed in consultation with the proposed monitor, and have been accepted by the parties to the Support Agreement.

17. The Sale Process is intended to provide a "market test" by which third parties may propose to acquire Sino-Forest's business operations through a CCAA Plan (in a manner that would under certain scenarios potentially allow Junior Constituents to share in the proceeds of a sale even though the noteholders may not be paid in full) as an alternative to the SF Newco restructuring transaction between SFC and its noteholders, described above.

18. A redacted copy of the Support Agreement (redacted to preserve confidentiality of the parties only) is attached as Exhibit "B" and will be posted on SEDAR and the proposed monitor's website at http://cfcanada.fticonsulting.com/sfc.

19. As described in greater detail below, SFC's business operations are primarily in the PRC and are held by SFC through intermediate holding companies incorporated (for the most part) in either the British Virgin Islands ("BVI") or Hong Kong. Most of these intermediate holding companies are guarantors of SFC's note indebtedness.

20. As further described below, as a result of the uncertainty created by the MW Report, Sino-Forest's business has been severely curtailed, and Sino-Forest's ability to grow its business has been severely reduced. Therefore, SFC now needs to be restructured in order to continue the development of the business and unlock the value of its asset base for the benefit of its stakeholders. Further, although the PRC government has been generally cooperative and encouraging of Sino-Forest to date, it has expressed increasing concern as to the future of Sino-Forest in the PRC. As discussed below, the ongoing support and relationship with the PRC government (on all levels) is crucial to Sino-Forest's operations.

21. Among other things, the Sino-Forest Companies are (i) having a difficult time maintaining existing and obtaining new credit in the PRC to help fund the PRC-based business operation and in Hong Kong for the imported log trading business, (ii) making very few purchases of new timber (and therefore not expanding their asset base), (iii) finding it difficult to collect their accounts receivables, and (iv) receiving increasing demands on their accounts payable. I believe that, if Sino-Forest's business is to be saved in a manner beneficial to SFC's stakeholders, it is imperative that SFC take steps to demonstrate that Sino-Forest's business is being separated from the uncertainty created by the MW Report.

22. Accordingly, and for the reasons set out herein, the commencement of a restructuring and the Sale Process is urgently required and should be pursued to preserve SFC's business as a going concern and thus the inherent value of the enterprise.

23. This application has been authorized by the Board.

II. PERSONAL BACKGROUND

24. I began my career with PricewaterhouseCoopers in 1979. In 1982 I joined Trizec Corporation Ltd. ("Trizec"), a Toronto Stock Exchange ("TSX") listed commercial real estate company then controlled by the Brascan Group. During my 13 years with the group of companies controlled by the Brascan Group, I held several senior positions, including Vice President, Finance and Treasurer of Trizec, Executive Vice President and Chief Financial Officer of Brookfield Development Corporation, and President and CEO of Trilon Securities Corporation.

25. After leaving the Brascan Group, I joined MDC Corporation, where my positions included Senior Executive Vice President, Chief Financial Officer and Chief Operating Officer, and a member of the company's board of directors.

26. In 1999, I was appointed Senior Executive Vice President and Chief Financial Officer of Alliance Atlantis Communications Inc. ("Alliance Atlantis"), then Canada's leading entertainment and broadcasting company that was then listed on the TSX and on the NASDAQ. I ceased to be an executive and employee of Alliance Atlantis in 2005 due to health reasons and thereafter acted as a consultant to Alliance Atlantis until 2007.

27. I have been a director of SFC since 2006. I joined the Board in 2006 as an independent, external director. I was appointed Lead Director in 2007, a position I held until June 2010, when I became an employee of SFC responsible for its acquisition of Greenheart Group Limited (Bermuda) ("Greenheart") and its subsidiaries (collectively, the "Greenheart Group"). At that time I became Executive Vice-Chairman of SFC and, following SFC's acquisition of a majority interest in Greenheart in August 2010, I became the CEO and an Executive Director of

Greenheart and in 2011 was appointed Chairman of Greenheart. On August 26, 2011, I was appointed as CEO of SFC. I have lived and worked out of Hong Kong since becoming an employee of SFC in 2010.

III. SINO-FOREST CORPORATION

A. Overview

28. SFC was formed under the *Business Corporations Act* (Ontario) upon the amalgamation of Mt. Kearsage Minerals Inc. and 1028412 Ontario Inc. pursuant to articles of amalgamation dated March 14, 1994. The articles of amalgamation were amended by articles of amendment filed on July 20, 1995 and May 20, 1999 to effect certain changes in the provisions attaching to SFC's class A subordinate-voting shares and SFC's class B multiple-voting shares.

29. On June 25, 2002, SFC filed articles of continuance to continue under the *Canada Business Corporations Act* (the "CBCA"). On June 22, 2004, SFC filed articles of amendment whereby its class A subordinate-voting shares were reclassified as common shares and its class B multiple-voting shares were eliminated. A copy of the articles of continuance referred to above is attached as Exhibit "C".

30. Subject to paragraph 31 below, copies of all SFC financial statements prepared during the year preceding the application for the Initial Order are attached as Exhibit "D". In considering these financial statements, the Court should be aware that SFC cautioned in a January 10, 2012 press release, a copy of which is attached as Exhibit "E", that its historic financial statements (upon which portions of this affidavit are based) and related audit reports should not be relied upon. The circumstances giving rise to the press release are discussed below.

31. Attached as Exhibit "F" is a copy of the management-prepared unaudited financial statements for the third quarter of 2011. These statements have not been approved by SFC's Audit Committee or the Board and are subject to the limitations described in the January 10, 2012 press release. Moreover, they have not been subject to the same level of internal and external review and analysis as SFC's prior annual audited and quarterly financial statements. These financial unaudited statements have not previously been publicly disclosed.

32. Sino-Forest is a publicly listed major integrated forest plantation operator and forest products company, with assets predominantly in the PRC. Its principal businesses include the sale of standing timber and wood logs, the ownership and management of forest plantation trees, and the complementary manufacturing of downstream engineered-wood products. As at December 31, 2010, Sino-Forest reported approximately 788,700 hectares of forest plantations under management, located primarily in the southern and eastern regions of the PRC.

33. In addition, SFC holds an indirect majority interest in Greenheart, a Hong Kong listed investment holding company, which, together with its subsidiaries, as at March 31, 2011, owned certain rights and managed approximately 312,000 hectares of hardwood forest concessions in the Republic of Suriname ("Suriname") and 11,000 hectares of a radiata pine plantation on 13,000 hectares of freehold land in New Zealand.

34. While Greenheart is an indirect subsidiary of SFC, it has its own distinct operations and financing arrangements and is not party to or a guarantor of the notes issued by SFC. Greenheart Group and SFC operate out of separate office buildings in Hong Kong.

35. Greenheart Group was not implicated in the allegations made against Sino-Forest by Muddy Waters on June 2, 2011, discussed below. As such, the Greenheart Group and matters

relating thereto are not intended to be affected by or included in this proceeding. Greenheart Group has nevertheless been impacted by the allegations made against Sino-Forest. Among other things, Greenheart Group has previously relied on funding from SFC and could be negatively impacted if SFC's business ceases to operate as a going concern. This in turn could negatively impact the value of SFC's investment in Greenheart.

36. Since 1995, SFC has been a publicly listed company on the TSX with its shares traded under the symbol "TRE". SFC's registered office is in Mississauga, Ontario and its principal executive office is in Hong Kong. Two of SFC's senior financial officers reside in Ontario, as do three of its external directors.

37. SFC has issued four series of notes which have a combined principal amount outstanding of approximately $1.8 billion. Two of the series of notes are supported by guarantees from 64 of SFC's subsidiaries (none of which are incorporated in the PRC), and the other two series of notes are supported by guarantees from 60 of those same subsidiaries and share pledges from 10 of those same subsidiaries.

38. Certain other Sino-Forest Companies have their own distinct banking facilities which are not intended to be affected by or included in this proceeding. In particular, none of the subsidiaries incorporated in the PRC are party to or guarantors of SFC's notes and are not intended to be affected by or included in this proceeding.

B. Corporate Structure

39. SFC 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). SFC also holds all of the preference shares of Sino-Forest Resources Inc. (incorporated in the BVI). Some of these subsidiaries have further direct and indirect subsidiaries. A copy of the Sino-Forest corporate organization chart is attached as Exhibit "G" (which includes certain major subsidiaries of Greenheart).

40. 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. A list of all subsidiaries with addresses is attached as Exhibit "H" (which does not include subsidiaries of Greenheart, but does contain Sino-Forest branch companies).

C. Capital Structure

1. Equity

41. The authorized share capital of SFC consists of an unlimited number of common shares and an unlimited number of preference shares issuable in series. Each holder of common shares is entitled to one vote at meetings of shareholders other than meetings of the holders of another class of shares.

42. Each holder of common shares is also entitled to receive dividends if, as and when declared by the Board. Holders of common shares are also entitled to participate in any distribution of net assets upon liquidation, dissolution or winding-up on an equal basis per share. There are no pre-emptive, redemption, retraction, purchase or conversion rights attaching to the common shares.

43. As at June 30, 2011, a total of 246,095,926 common shares were issued and outstanding. No preference shares have been issued.

2. Debt

44. SFC has issued four series of notes which remain outstanding. The four series of notes mature at various times between 2013 and 2017. The note indenture for each series of notes provides that it is governed by New York law. Each note indenture contains a "no suits by holders" clause. Other than the debt outstanding under the notes, SFC does not have any significant levels of normal course payables.

(a) 2017 Senior Notes

45. On October 21, 2010, SFC issued guaranteed senior notes in the principal amount of $600 million. These notes mature on October 21, 2017, and interest is payable semi-annually, on April 21 and October 21, at a rate of 6.25% per annum. These notes are listed on the Singapore Stock Exchange and are supported by guarantees from 60 subsidiaries of SFC and share pledges from 10 of those same subsidiaries. A copy of the relevant indenture is attached as Exhibit "I".

(b) 2016 Convertible Notes

46. On December 17, 2009, SFC issued convertible guaranteed notes in the principal amount of $460 million. These notes mature on December 15, 2016, and interest is payable semi-annually, on June 15 and December 15, at a rate of 4.25% per annum. These notes are supported by guarantees from 64 subsidiaries of SFC. A copy of the relevant indenture is attached as Exhibit "J".

(c) 2014 Senior Notes

47. On July 27, 2009, SFC issued guaranteed senior notes in the principal amount of $399,187,000. These notes mature on July 28, 2014, and interest is payable semi-annually, on January 26 and July 26, at a rate of 10.25% per annum. These notes are listed on the Singapore Stock Exchange and are supported by guarantees from 60 subsidiaries of SFC and share pledges from 10 of those same subsidiaries. A copy of the relevant indenture is attached as Exhibit "**K**".

(d) 2013 Convertible Notes

48. On July 23, 2008, SFC issued convertible guaranteed notes in the principal amount of $345 million. These notes mature on August 1, 2013, and interest is payable semi-annually, on February 1 and August 1, at a rate of 5% per annum. These notes are supported by guarantees from 64 subsidiaries of SFC. A copy of the relevant indenture is attached as Exhibit "**L**".

49. In addition to the four series of notes issued by SFC, many of SFC's subsidiaries (including the Greenheart Group and many of those incorporated in the PRC) have their own distinct banking facilities, including lending facilities, which are not intended to be affected by this proceeding.

D. The Business Model

1. Plantation / Timber Rights in the PRC

50. There are four types of rights associated with plantations in the PRC, namely (i) plantation land ownership, (ii) plantation land use rights, (iii) timber ownership, and (iv) timber use rights. All of these are separate rights and can be separately owned by different parties.

51. Generally, private enterprises cannot own plantation land in the PRC but may hold plantation land use rights for a specified duration (up to 70 years but typically 30 to 50 years), timber ownership and timber use rights. However, foreign enterprises cannot acquire land use rights and can instead only acquire timber ownership or timber use rights.

52. The various rights associated with plantations in the PRC and the limitations on which entities can hold which rights were the driving forces behind Sino-Forest's complex business models discussed below.

53. For its timber business in the PRC, Sino-Forest utilizes two models, one involving BVI entities ("BVIs"), and the other involving subsidiaries incorporated in the PRC as wholly foreign owned enterprises ("WFOEs").

2. The BVI Model

54. Until 2004, due to restrictions on foreign companies carrying on business in the PRC, and foreign ownership restrictions on land ownership and use rights, the BVI structure was the model primarily used by Sino-Forest for its forestry business in the PRC. Sino-Forest has established 58 BVI companies, 55 of which are guarantors of at least certain of SFC's notes. Not all of these BVIs are involved in the BVI model or standing timber business. Of the 58, there are 20 involved in the BVI standing timber business while the remaining BVIs are either holding companies or used in Sino-Forest's log trading business.

55. The Sino-Forest BVI entities involved in the standing timber business acquire standing timber from suppliers. The suppliers are usually aggregators who acquire the standing timber and, typically, land use rights from other suppliers or from original timber owners, such as villagers or collectives, or from smaller aggregators. As non-PRC companies, the BVIs could

not and did not acquire land use rights in the PRC, and instead only acquired the rights to timber in the PRC pursuant to the relevant standing timber purchase contracts.

56. Due to restrictions under PRC laws, foreign companies are not permitted to conduct business in the PRC without business licenses granted by competent governmental authorities. Therefore, the Sino-Forest BVI entities do not sell standing timber directly to customers. Instead, for historical and commercial reasons, they conduct the sale of standing timber through "authorized intermediaries" ("AIs", which are also called "entrusted sales agents" in the BVI model) pursuant to "entrusted sales agreements". The AIs serve as Sino-Forest's customers under the BVI model of its standing timber business.

57. Pursuant to the entrusted sales agreements entered into with the AIs, the AIs are obliged to deduct and remit all of the applicable taxes on behalf of Sino-Forest. Sino-Forest is not, however, in a position to know whether or not the AIs have in fact remitted applicable taxes on behalf of Sino-Forest.

58. As at June 30, 2011, Sino-Forest therefore accumulated and recognized a provision, based on a probability-weighted average of the amounts that the PRC tax authorities might seek to recover under various scenarios, of $204,722,000 in its reported financial results to account for this potential tax liability. The method used to calculate this provision is explained at note 18 of SFC's 2011 second quarter financial statements, which were previously attached. A similar provision was included in SFC's 2010 Audited Financial Statements and was audited by SFC's external auditors.

59. BVIs are not allowed to have bank accounts in the PRC and money flowing in and out of the PRC is strictly controlled through foreign exchange controls. As a result, the Sino-Forest

BVI entities do not directly pay the suppliers or receive payments from the AIs. Instead, they are instructed to make set-off payments under which, pursuant to the instructions of Sino-Forest, AIs directly or indirectly make payments directly or indirectly to Sino-Forest's suppliers for amounts owed by Sino-Forest BVI entities to those suppliers. As a result, no cash actually flows directly through the BVIs. SFC then receives confirmations from the suppliers confirming that payments have been made.

60. The BVI structure is the central driver of asset value, revenue and income for Sino-Forest. As at December 31, 2010, it accounted for $2.476 billion of book value (466,826 hectares of timber assets, representing approximately 59.2% of Sino-Forest's timber holdings by area and 89.2% of its timber holdings by book value), $1.326 billion in revenue (representing approximately 70% of Sino-Forest's revenue), and approximately $622 million of gross profit (representing approximately 92.6% of Sino-Forest's gross profits) for the year then ended.

61. The cashless nature of the BVI model means that Sino-Forest cannot obtain cash from its operations or monetize its assets without engaging in the complicated on-shoring process which is discussed further below. Furthermore, the set-off payment system necessitated by the BVI model impaired the IC's efforts to verify the flow of funds during its investigation.

3. The WFOE Model

62. Commencing in 2004, the PRC's Ministry of Commerce permitted foreign investors to invest in PRC-incorporated trading companies and to participate in most areas of the commodity distribution industry, including the purchase of standing timber and land use rights throughout the PRC. Prior to this time, WFOEs were prohibited from engaging in the commodity distribution industry.

63. Since 2004, almost all of Sino-Forest's new capital invested in timber assets has been employed through the WFOE model (as opposed to the BVI model).

64. Unlike BVIs, WFOEs can acquire land use rights or land leases as well as standing timber rights, and can have bank accounts in the PRC. Because of the WFOEs' direct presence in the PRC, they can also obtain financing from PRC banks to finance their operations. WFOEs can log the timber and sell both logs and standing timber to end customers, which means they do not need (and do not use) AIs. The WFOEs directly pay the suppliers for the standing timber and directly receive payment from end customers instead of utilizing the set-off arrangement used by Sino-Forest's BVI entities in the BVI model.

65. As at December 31, 2010, Sino-Forest's WFOEs held approximately 244,000 hectares of purchased plantations (representing approximately 30.9% of Sino-Forest's timber holdings by area) and 77,700 hectares of planted plantations (representing approximately 9.9% of Sino-Forest's timber holdings by area). Purchased plantations and planted plantations are discussed in further detail below. The WFOE standing timber assets accounted for approximately 10.8% of Sino-Forest's timber holdings by book value, and represented approximately $298.6 million of book value, $74 million in revenue, and $10 million of income for the 2010 year before the allocation of corporate overhead.

66. None of Sino-Forest's WFOEs are guarantors of SFC's notes, nor have their shares been pledged by their BVI parents.

4. On-shoring Plan

67. Given the inherent problems with the BVI structure and the relative advantages of the WFOE structure, Sino-Forest has explored various methods of migrating or "on-shoring" its BVI

timber assets into WFOE structures. The successful transition of assets from a BVI structure to a WFOE structure has many merits including, significantly, providing a foreign parent an ability to have direct access to the cash generated from the sale of BVI timber assets.

68. The on-shoring process is expected to be a multi-year process due to (i) the volume of assets that need to be moved into the WFOE model, (ii) the large number of different locations in which Sino-Forest has timber assets in the PRC, (iii) the likely multiple rounds of negotiations required with the various stakeholders in each location, and (iv) SFC's limited resources.

E. Operations

69. Sino-Forest's operations are comprised of three core business segments. Wood fibre operations and log trading are the primary revenue contributors, while manufacturing and other operations enhance the value of the fibre operations by producing downstream products.

1. Wood Fibre Operations

70. Sino-Forest's wood fibre operations consists of acquiring, cultivating and selling standing timber or logs from purchased and planted plantations in nine provinces across the PRC.

71. Sino-Forest's upstream wood fibre operations generate the majority of its revenue, accounting for 96.4% of total revenue in the year ended December 31, 2010. Most of the standing timber and logs sold by Sino-Forest come from Sino-Forest's tree plantations, located primarily in the southern and eastern regions of the PRC.

72. Sino-Forest operates plantations for the wood fibre operations using two principal business models: purchased and planted, each of which is explained in greater detail below. The purchased plantation model operates through two legal structures: the BVI/AI legal structure

and, to a lesser but growing extent, the WFOE legal structure. The planted plantations model is operated exclusively through the WFOE legal structure, although the WFOEs themselves are typically held indirectly through a BVI holding structure. Many foreign investors, including well known multi-national companies, hold their investments in the PRC in special purpose vehicles established overseas in jurisdictions with a familiar and internationally accepted system of corporate governance. For example, over 75% of blue chip companies listed on the Hong Kong Stock Exchange (Hang Seng Index constituent stocks excluding the Finance Sub-Index) utilize BVI holding structures, including for their investments in the PRC.

(a) Purchased Plantation Model

73. The purchased plantation model under the BVI/AI legal structure involves the purchase of standing timber and sale of standing timber pursuant to standardized timber purchase agreements and "entrusted sale agreements". The standing timber purchased is generally on land owned by collectives or villages, not PRC state-owned land. When conducted through the BVI/AI legal structure, of which 20 BVIs hold all of the BVI timber assets, the timber purchases are arranged through suppliers.

74. The BVI structure does not involve the BVIs concurrently purchasing land use rights or leases with the purchase of standing timber, as the BVIs cannot legally acquire land use rights. However, the BVIs' supply contracts typically contain a right of first refusal for the BVIs to acquire, or nominate an affiliate to acquire, the plantation land use rights after the timber has been harvested. Despite such common contractual provisions, such right has rarely, if ever, been exercised.

75. The BVIs do not sell standing timber directly to customers. They sell under contract to the AI (customer) who usually resells the standing timber to its own customers. The BVIs' timber sales accounts receivables are settled by the AI making payments to suppliers (directly or indirectly to other parties on their behalf) on behalf of Sino-Forest. The AI does not pay the same supplier for the same trees it is selling to its customers. It pays a supplier for trees newly purchased by Sino-Forest from that supplier. These payments made by way of set-off enable the BVIs to acquire further standing timber from suppliers, which is matured and later sold. All BVI purchases are funded through the set-off mechanism using accounts receivable owed to Sino-Forest. This is a recognized legal structure in the PRC.

76. WFOEs are also engaged in the purchase and sale of standing timber. When conducted through a WFOE, purchases of standing timber are sometimes accompanied by concurrently obtaining plantation land use rights or leases (which are purchased plantations). WFOE standing timber transactions do not involve payments by way of set-off. They are conducted on a direct fund transfer basis.

77. In both the BVI and WFOE structure, the purchase price of the trees takes into account a variety of factors such as the trees' species, yield, age, size, quality and location. Other considerations include soil and weather conditions for replanting, log prices, and regional market location and demand. Sino-Forest does not typically need to conduct extensive plantation management work with respect to the trees growing on the purchased plantations, but does take measures to ensure that the trees are protected from pests, disease and theft.

78. SFC's approach is to purchase plantations in remote parts of the PRC that the PRC government has identified in its five year plans as being areas for future development. As a result, physical access to the plantations is often very challenging.

79. As at December 31, 2010, the purchased plantations under Sino-Forest management in the PRC consisted of approximately 711,000 hectares. These plantations consisted of a diverse mix of tree species, predominantly pine, Chinese fir and eucalyptus. Purchasing trees allows Sino-Forest to quickly expand its plantation portfolio geographically, as well as its inventory of harvestable fibre and leasable land.

(b) Planted Plantation Model

80. The planted plantation model is conducted by WFOEs, and involves obtaining plantation land use rights, sometimes with standing timber and sometimes as bare land suitable for planting. Sales from these planted plantations do not utilize the AI model but rather generally involve direct fund transfers to and from the WFOEs' suppliers and customers. As of December 31, 2010, SFC's planted plantations in the PRC operated through WFOEs comprised approximately 77,700 hectares.

81. Sino-Forest leases suitable land on a long-term basis, typically 30 to 50 years, and applies scientifically advanced seedling technology and silviculture techniques to improve tree growth. The mature trees are sold as standing timber or as harvested logs, and then Sino-Forest replants the land with seedlings.

82. Sino-Forest's operating model allows for the sale of fibre either as standing timber or harvested logs, depending on its customers' preferences and market demand.

83. Sino-Forest's planted plantations consist primarily of eucalyptus trees, a fast-growing high yielding species. According to the seventh five-year National Forest Inventory released by the State Forestry Administration (2004 to 2008), it is estimated that the PRC has 195 million hectares of forest resources, with approximately 120 million hectares of natural forest and 62 million hectares of plantation forest. The density of its total forest area was only 70 cubic metres per hectare in the PRC.

84. The PRC government encourages the development of the plantation industry in the PRC. In June 2003, the PRC State Council promulgated "The Notice on the Decision to Speed Up the Development of Plantation Industry". Subsequently, in August 2007, "The Key Elements of the Policies in Forestry Industry" was jointly promulgated by seven ministries including the State Forestry Administration, National Development and Reform Commission, Ministry of Finance, Ministry of Commerce, State Administration of Taxation, China Banking Regulatory Commission and China Securities Regulatory Commission to develop the non-state owned plantation industry, and to encourage the participation of foreign investors in the plantation industry, either solely or jointly with others.

85. The planted plantation model is generally viewed more favourably by the PRC government because it demonstrates a long-term commitment to the forestry business. That long-term commitment is very important from the perspective of the PRC government in light of the fact that demand for wood fibre in the PRC is approximately double that of available supply.

2. Log Trading Operations

86. Sino-Forest's operations in the trading of wood logs includes the sourcing of wood logs and wood-based products from the PRC and globally, and selling them in the domestic PRC market.

87. These wood-based products consist primarily of large diameter logs, sawn timber, veneers and other wood-based products sourced from the PRC, Thailand, Suriname, Papua New Guinea, Brazil, Vietnam, Russia and New Zealand. In these transactions, Sino-Forest purchases wood-based products that correspond to the requirements of wood dealers, and sells directly to these dealers. Sino-Forest's customers in these transactions are primarily wood dealers in the PRC.

3. Manufacturing and Other Operations

88. Sino-Forest currently has manufacturing operations in six provinces in the PRC that produce various wood-based products. In addition, Sino-Forest has greenery and nursery operations based in Jiangsu Province, which were established to source, supply and manage landscaping products for property developers and other organizations.

89. In order to maximize and increase the value of Sino-Forest's forestry products, Sino-Forest has been investing in research and development ("R&D"). On January 12, 2010, Sino-Forest announced its acquisition of HOMIX LIMITED ("HOMIX") in order to enhance its R&D portfolio. HOMIX has an R&D laboratory and two engineered-wood production operations based in Guangdong and Jiangsu provinces, covering eastern and southern PRC wood product markets. HOMIX develops a number of new technologies suitable for domestic plantation logs including poplar and eucalyptus species. HOMIX specializes in curing, drying and dyeing methods for engineered-wood and has the know-how to produce recomposed wood products and laminated veneer lumber. Recomposed wood technology is considered to be environmentally friendly and versatile, as it uses fibre from forest plantations, recycled wood and/or wood residue.

90. The goal of Sino-Forest's R&D efforts has been to improve tree plantation yields and the quality of the trees grown on Sino-Forest's plantations. While performing R&D activities, Sino-Forest from time to time collaborates with, and receives assistance from, research and academic institutions in the PRC. Sino-Forest's R&D efforts are viewed very positively in the PRC as they also demonstrate a long-term commitment to the forestry business in the PRC and can help address the significant shortage of wood fibre in the PRC.

F. Sales

91. Substantially all of Sino-Forest's sales are generated in the PRC. In the year ended December 31, 2010, sales to customers in the PRC were $1.8723 billion and sales to customers located in other countries were $51.3 million. In the year ended December 31, 2010, sales to customers in the PRC of standing timber, logs and other wood-based products accounted for substantially all of Sino-Forest's revenue.

G. Suppliers

92. Logs and wood-based products supplied through Sino-Forest's trading activities are sourced primarily from suppliers outside the PRC. These products are also sourced for Sino-Forest trading activities from overseas, primarily from Thailand, Suriname, Papua New Guinea, Brazil, Vietnam, Russia and New Zealand. The credit terms granted by suppliers of these products generally range from one to three months on open account and by letters of credit. Standing timber is sourced primarily from local suppliers in the PRC.

93. As discussed above, the PRC based suppliers are usually aggregators who acquire standing timber and/or land use rights from other suppliers or from original timber owners such as villagers or collectives who have certified title to the land.

H. Employees

94. SFC currently has 3 employees. Collectively, the Sino-Forest Companies employ a total of approximately 3553 employees, with approximately 3460 located in the PRC and approximately 90 located in Hong Kong. The Greenheart Group employs an additional approximately 273 employees.

I. Assets & Liabilities

95. The unconsolidated book values of SFC's assets and liabilities as at June 30, 2011 are listed below.[1] However, given that, as described below, SFC is in default under the notes and the indenture trustees would be in a position to accelerate and enforce on the notes but for the waiver agreements (subject to sending the appropriate notices and the cure period expiring), I have categorized the full amount of the notes (including the non-current portion and the derivative financial instrument, as opposed to just the current portion) as a current liability below.

Current Assets		Current Liabilities	
Cash and cash equivalents[2]	$5,676,040	Notes (current portion)	$87,670,000
Prepayments[3]	$1,173,553	Notes[4] (non-current)	$1,541,744,429
Other Receivables[5]	$188,575	Notes Derivative Financial Instrument	$31,858,210
Due from Intercompany[6]	$109,813,620	Trade Payable	$2,202
		Others Payable	$231,723
		Accrued Liabilities	$39,687,268
		Due to Intercompany	$1,818,313
Total Current Assets	**$116,851,788**	**Total Current Liabilities**	**$1,703,012,145**

[1] The chart only reflects the assets and liabilities of SFC, and therefore does not accord with the consolidated quarterly financial results for the second quarter ended June 30, 2011.
[2] Mainly represents cash on hand, cash at bank and short-term deposits with a maturity of three months or less.
[3] Mainly represents prepaid legal and professional fees and insurance.
[4] The Notes (current portion), Notes (non-current) and Notes Derivative Financial Instrument do not equate on this balance sheet to approximately $1.8 billion (the face value of the notes) due to the accounting treatment of financing costs and the carrying value of the convertible notes.
[5] Mainly represents HST receivables, staff advances and deposits.
[6] Non-interest bearing with no fixed date of repayment.

Non-Current Assets		Non-Current Liabilities	
Property, Plant & Equipment[7]	$1,166		
Investment in Subsidiaries[8]	$1,589,153,984	Intercompany Loans	$235,000,000
Intercompany Loans[9]	$1,582,781,672		
Total Non-Current Assets	$3,171,936,822	**Total Non-Current Liabilities**	$235,000,000
Total Assets	$3,288,518,610	**Total Liabilities**	$1,938,012,145

96. With respect to the assets, while they reflect an accurate implementation of the relevant accounting policies, I do not believe that the book values of the assets reflect the realizable value of those assets for a number of reasons, including the complexities associated with the business, the significant amount of intercompany loans owing to SFC, and the costs and potential PRC tax liabilities that may be payable if the assets were realized on. SFC is not able to simply monetize its assets in the short term in order to satisfy its obligations under the notes as a result of, among other things, the hard to quantify potential PRC tax liability previously discussed at paragraph 58 above and the stringent currency exchange controls in the PRC.

97. As discussed above, Sino-Forest is not in a position to know whether or not the AIs have in fact remitted applicable taxes on behalf of Sino-Forest. Although Sino-Forest recognized a provision as at June 30, 2011 of $204,722,000 in its reported financial results to account for this potential tax liability, I am advised by SFC's counsel in the PRC, Ching Wo Ng at King & Wood Mallesons, that the amount of the tax liabilities under PRC law arising from the operation of the BVIs could be significantly higher if responsible tax authorities take different views than that of management in respect of a number of tax issues, including, without limitation, whether by their

[7] Mainly represents office equipment.
[8] Historical cost for interests in subsidiaries.
[9] Interest bearing with defined terms of repayment date.

operation the BVIs have formed an establishment in the PRC, whether value added tax is payable, the likelihood and severity of a tax penalty, the applicable default interests on late payments, the numbers of years to "look back", whether certain tax preferential treatments apply to foreign companies such as BVI entities, and other relevant matters. The views on these issues may also differ from locality to locality.

98. In addition, as a result of the currency exchange controls in the PRC, all cash to be repatriated from the PRC is subject to approval from the State Administration of Foreign Exchange (the "SAFE"). I am advised by SFC's counsel in the PRC, Ching Wo Ng at King & Wood Mallesons, that for normal and regular foreign exchange transactions in the PRC which require the approval of SAFE, the applications for such approvals can normally be processed within the time limits prescribed by law. However, the transactions undertaken by the BVIs in respect of their forestry assets in the PRC are very dissimilar to those contemplated by the relevant rules and regulations of the PRC. Therefore, there is no assurance that any application to SAFE for repatriation of funds by the BVIs can be processed within the time limits prescribed by law, or within a reasonable time thereafter.

99. As a result of Sino-Forest, among other things, operating in a critical natural resource sector with insufficient supply in the PRC, investing in research and development initiatives in the PRC, and employing a significant number of people in the PRC, it has generally enjoyed positive working relationships with all levels of government in the PRC. However, I believe that if Sino-Forest were to cease operating under a business strategy that is consistent with and supportive of PRC government policy, including its policy on sustainable forestry, for example, investing in research and development or employing a significant number of people in the PRC, Sino-Forest would enjoy much less favourable treatment from PRC government officials, and

would likely have greater difficulties resolving the issues discussed above relating to tax liabilities and repatriation of cash. This is particularly true in respect of the BVI structure where, among other things, the ability to access cash is further impaired and Sino-Forest is not in a position to know whether or not the AIs have remitted applicable taxes on behalf of Sino-Forest.

J. Importance of Relationships to Doing Business in the PRC

100. From my time with SFC I have come to understand the importance of relationships to doing business in the PRC. This is particularly true in relation to those doing business in the forestry sector.

101. The PRC has extensive resource needs, including in the forestry sector. Historically, forestry resources in the PRC have been collectively owned at a local level. Forestry resources have largely been managed without the resources necessary to increase yields and allow for harvesting at a commercial level from a western forestry perspective.

102. Part of Sino-Forest's success has been attributable to its ability to acquire forestry resources from local sources of supply, at a good price, and to resell them at a good profit. In relation to Sino-Forest's planted plantation model, Sino-Forest also has benefited from the application of advanced silviculture techniques to those resources. Based on my interactions with PRC government officials, I understand that the PRC government recognizes that for the industry to mature, become efficient, and improve yields to reduce the fiber deficit, forest asset management has to be consolidated.

103. A good relationship with the various levels of PRC government is important to doing business successfully in the PRC. Historically, Sino-Forest's relationships with these governments have been important to Sino-Forest's success in the PRC. Loss of their support

could, correspondingly, have significant negative consequences for Sino-Forest, for its ability to continue to do business in the PRC, and its ability to continue to control its PRC-based assets for the benefit of its stakeholders.

104. Sino-Forest's most important relationships have been and continue to be through Allen Chan ("Chan"). From my observations and experience, Chan has established significant relationships in the PRC, and my understanding is that this is a direct result of his long-standing personal contribution to the development of the forestry sector both through Sino-Forest and in a personal capacity as an informal advisor to various relevant industry bodies.

105. Following the MW Report, Chan was requested to meet with officials in the PRC State Forestry Administration ("SFA") and other senior officials on multiple occasions in Beijing. I have been introduced to some officials and attended some of these meetings.

106. My observation from my personal involvement in these discussions and meetings is that Chan continues to be consulted and respected within the PRC government as an expert in the forestry industry. I therefore believe his continued participation will be extremely helpful in allowing SFC to unlock value in the PRC for the benefit of its stakeholders.

107. Notwithstanding the allegations in the MW Report (which have received widespread coverage in the PRC and in Hong Kong), Chan has continued to be honoured within the PRC. In November 2011, at the 2nd China Forestry Expo, Chan was presented an "Outstanding Achievement" award from the China National Forestry Industry Federation (the "CNFIF"). In recognition of his contribution to the forestry industry in the PRC, Chan was the first keynote speaker following the Minister of the SFA at the China Forestry Expo.

108. Chan was also appointed Vice President of the CNFIF in 2010. The CNFIF is an affiliate of the SFA and is chaired by the Minister of the SFA or the Director of the SFA. The SFA is the PRC government ministry responsible for its forests and forest management.

109. In 2007, Chan was appointed an Honourable Director of Renmin University (also known as the People's University of China), one of the most prestigious universities in the PRC with a distinct focus on humanities and social sciences, and highly regarded by top leaders in the PRC. In addition, Chan is a member of the Jiangxi Committee of the Chinese People's Political Consultative Conference.

110. In February 2012, Chan was presented with the "2011 China Forestry Persons of the Year" award by the CNFIF.

111. Many of the PRC's commercially attractive forestry resources are in areas of sensitivity within the PRC, including areas that are sensitive from a military perspective. Private air travel is prohibited or strictly controlled in many of the areas in which Sino-Forest does business.

112. The strategic significance attaching to Sino-Forest's forestry assets in the PRC increases the importance to SFC of maintaining positive relationships with authorities in the PRC. If Sino-Forest is to monetize its PRC based assets for the benefit of stakeholders, I strongly believe that the outcome of this process must be acceptable to relevant authorities in the PRC.

113. In the course of its 18 years of operations, Sino-Forest has been viewed by the Minister of the SFA positively and as a model for privately owned enterprises carrying on business in the PRC and promoting PRC policies. For that reason, Sino-Forest has enjoyed a positive relationship with the PRC. Even since June of last year, the Minister of the SFA has remained

cooperative and encouraging of a solution for Sino-Forest. However, recently, the government has expressed increasing concern and interest as to what the solution is for Sino-Forest. As a result, not only do I believe that any solution needs to be acceptable to the authorities in the PRC, such solution needs to be presented in the very near future.

IV. THE MUDDY WATERS ALLEGATIONS: CHRONOLOGY AND RESPONSES

114. On June 2, 2011, Muddy Waters, which admitted to holding a short position on SFC's shares, published the MW Report alleging, among other things, that Sino-Forest is a "near total fraud" and a "Ponzi scheme."

115. While the allegations contained in the MW Report are diverse and far-reaching, the IC set out to address the issues raised in three core areas: (i) the verification of timber assets reported by Sino-Forest, (ii) the value of the timber assets held by Sino-Forest, and (iii) revenue recognition.

116. Among other things, the MW Report alleged that Sino-Forest does not hold the full amount of timber assets that it reports, that the timber assets actually held by Sino-Forest have been overstated, and that Sino-Forest overstated its revenue. In addition, the MW Report alleged that Sino-Forest has engaged in unreported related-party transactions. A copy of the MW Report is attached as Exhibit "M". Two subsequent reports by Muddy Waters relating to Sino-Forest are attached as Exhibit "N". These reports are attached to provide context to the Court and definitely not because I agree with their contents.

A. The IC, OSC, RCMP and HKSFC Investigations

117. On June 2, 2011, the same day that the MW Report was released, the Board appointed the IC, a Board committee consisting exclusively of independent directors, which in turn retained

independent legal and financial advisors in Canada, Hong Kong and the PRC, to investigate the allegations set out in the MW Report.

118. On June 8, 2011, the OSC publicly announced that it was investigating matters related to SFC. That investigation has been active and is ongoing.

119. Later in June 2011, the HKSFC commenced an investigation into Greenheart Group. As a company listed on the Hong Kong Stock Exchange and headquartered in Hong Kong, the HKSFC is Greenheart's primary securities regulator. I believe that the HKSFC's investigation was largely reactive to the allegations against Sino-Forest, SFC's control position in relation to Greenheart Group, and to the fact that the principal offices of Sino-Forest and Greenheart Group are located in Hong Kong. As indicated above, SFC had acquired a majority interest in Greenheart Group less than a year earlier, and had separate management and premises.

120. In addition to its investigation of Greenheart Group, the HKSFC has been assisting the OSC with its investigation. I am advised by Gary Solway of Bennett Jones LLP, counsel to SFC, that the HKSFC has a mutual-assistance treaty with the OSC. The OSC has conducted witness interviews in Hong Kong with the assistance of and out of the premises of the HKSFC.

121. Sino-Forest believes that it has attempted to cooperate with the OSC, HKSFC and RCMP investigations. Sino-Forest has made extensive production of documents, in particular to the OSC, including documents sourced from jurisdictions outside of the OSC's power to compel production.

122. Sino-Forest also has facilitated interviews by the OSC with Sino-Forest personnel. In circumstances where OSC staff sought to examine Sino-Forest personnel resident in the PRC

(where neither the OSC nor the HKSFC had the ability to compel their attendance at interviews), Sino-Forest arranged to bring individuals to Hong Kong to be examined.

123. Sino-Forest has responded to extensive inquiries, the most far-reaching coming from the OSC, and has provided periodic oral briefings to OSC staff. The IC reports were provided to OSC staff on an unredacted basis, as discussed below.

124. The scope of the IC's review was significant, reflecting the wide range of allegations contained in the MW Report. The IC and its advisors worked to compile and analyze the vast amount of data required for their comprehensive review of Sino-Forest's operations and business, the relationships between Sino-Forest and other entities, and Sino-Forest's ownership of assets.

125. At the beginning of the IC's investigation, the IC informed the Board that the review would likely take at least two to three months to complete. On August 10, 2011, the IC delivered its first interim report to the Board (the "First Interim Report"). A redacted copy of the First Interim Report is attached as Exhibit "O".

126. SFC has publicly disclosed on SEDAR and on its website redacted versions of the First Interim Report and the two subsequent reports of the IC. The three reports have been redacted to protect information that the Board believes is commercially sensitive, the disclosure of which could be harmful to Sino-Forest's business and operations, especially in the PRC. These redactions have not been made to conceal information from regulatory scrutiny. Each of the three reports has been produced without redactions to OSC staff pursuant to a compelled process designed to allow OSC staff to receive information relevant to its investigation, while at the same time protecting SFC's sensitive information.

127. The First Interim Report was the result of the IC and its advisors assembling and organizing significant data from Sino-Forest's records, and reviewing Sino-Forest's cash holdings, revenue and relationships. In the First Interim Report, while the IC did not determine that there was any validity to the allegations in the MW Report, its findings were limited as the investigation was still ongoing.

128. Also in its First Interim Report, the IC's accounting advisors confirmed Sino-Forest's cash balances in specific accounts as at June 13, 2011, for accounts located inside and outside of the PRC. A total of 293 accounts controlled by Sino-Forest in Hong Kong were confirmed, representing 100% of the expected cash position in Hong Kong. However, Sino-Forest had 267 accounts in the PRC, so the logistics and requirements of in-person/in-branch verification in the PRC led the IC advisors to confirm 28 accounts, representing approximately 81% of the expected cash position in the PRC. The IC was satisfied based on this verification that Sino-Forest's expected cash position in the PRC existed as at the date of confirmation.

129. The First Interim Report was delivered to the Board shortly before the Board was asked to authorize the release of SFC's 2011 quarterly financial results for the second quarter ended June 30, 2011 (the "Q2 Results"). The Q2 Results were released on August 15, 2011.

130. Almost immediately after the Q2 Results were released, the IC's advisors identified and brought to the attention of the IC just under 60 documents, some of which raised potential conduct issues and others of which raised questions as to whether Sino-Forest's relationships with some of its AIs and suppliers were conducted at arm's length.

131. The IC concluded that interviews concerning the documents should be conducted with relevant Sino-Forest personnel. The interviews were conducted from August 24 to 26, 2011 in Hong Kong.

132. As part of its efforts to cooperate with OSC staff, on August 24, 2011, before the documents were shown to relevant Sino-Forest personnel and those personnel were provided with an opportunity to comment, the IC's advisors provided copies of the documents to OSC staff. The IC's advisors and SFC's external counsel also provided oral briefings about the interviews to OSC staff from August 24 to 26, 2011, as the interviews were being conducted.

133. Seen in their proper context, and with the benefit of fuller explanations, I believe that the documents identified by the IC's advisors and provided to OSC staff at that time fall well short of the misconduct alleged in the MW Report.

134. However, as a result of the documents and interviews, Sino-Forest placed three employees on administrative leave, and a fourth senior employee was requested to act solely on my instructions. It was my decision in each case to take this action.

135. SFC's Board met on the morning of Friday August 26, 2011, Toronto time (which was Friday evening Hong Kong time) to hear reports about the interviews and about communications between SFC and OSC staff. The Board was told that Chan had agreed to resign as Chairman, CEO and as a director of SFC pending the completion of the review by the IC of the allegations in the MW Report. He was appointed Founding Chairman Emeritus and I was appointed as CEO.

136. On August 26, 2011, the OSC issued a cease trade order with respect to the securities of SFC and with respect to certain senior management personnel. A copy of the cease trade order dated August 26, 2011 (as corrected by the OSC later that day) is attached as Exhibit "**P**". The Board first learned of the cease trade order during the Board meeting that day, after Chan tendered his resignation.

137. With the consent of SFC, the cease trade order was extended by subsequent orders of the OSC, copies of which are attached as Exhibit "**Q**". The cease trade order continues in force to this date.

138. Based on my review of the IC's second interim report to the Board (the "Second Interim Report", which is discussed below) and discussions I have had with William Ardell, Board Chair and Chair of the IC, I understand that in late August 2011, counsel for the IC received an inquiry from the RCMP requesting cooperation from the IC in connection with an investigation into the allegations in the MW Report. Representatives of the IC met with and provided information to the RCMP from time to time. The RCMP also has made information requests from time to time. It has been SFC's intention to cooperate with the RCMP in connection with its investigation.

139. On November 13, 2011, the IC delivered its Second Interim Report to the Board, a redacted copy of which is attached as Exhibit "**R**".

140. Subject to the limitations described therein, the Second Interim Report confirmed registered title or contractual or other rights to Sino-Forest's stated timber assets, reconciled the book value of the BVI timber assets and Sino-Forest WFOE standing timber assets as set out in the 2010 financial statements to the purchase prices for such assets as set out in the BVI and

WFOE standing timber purchase contracts reviewed by the IC advisors, reconciled reported total revenue to sales contracts, and addressed certain allegations regarding related-party transactions.

141. Subject to the scope limitations described in the Second Interim Report, the IC confirmed 99.3% of Sino-Forest's timber area to its satisfaction and that Sino-Forest had registered title to 100% of its disclosed planted timber holdings by area, and contractual or other rights to approximately 81.3% of its disclosed purchased timber holdings by area. The IC reported that it or its advisors had reviewed originals or copies of purchase contracts for the acquisition by Sino-Forest of virtually all of its disclosed timber holdings as at December 31, 2010.

142. The IC indicated in its Second Interim Report that it viewed its work to be substantially complete and that it expected to deliver its final report prior to the end of 2011.

B. Failure to Release Q3 Results and Default Under the Notes

143. Subsequent to August 26, 2011, the IC's advisors identified additional documents that raised issues meriting comment and explanation from SFC's management. Also, SFC's external counsel, in responding to requests from the OSC, also identified documents of a similar nature. Further documents meriting comment and explanation were identified by SFC's external auditors and in interviews conducted by OSC staff.

144. As SFC reached the November 15, 2011 deadline to release its 2011 third quarter financial statements (the "Q3 Results"), the Audit Committee recommended and the Board agreed that SFC should defer the release of the Q3 Results until certain issues could be resolved to the satisfaction of the Board and SFC's auditor. The issues included (i) determining the nature and scope of the relationships between Sino-Forest and certain of its AIs and suppliers, as discussed in the Second Interim Report, and (ii) the satisfactory explanation and resolution of issues raised

by certain documents identified by the IC's advisors, SFC's counsel, SFC's external auditors, and/or by OSC staff.

145. On November 15, 2011, the date upon which SFC's Q3 Results were due, SFC issued a press release announcing that the IC had delivered its Second Interim Report to the Board. A copy of the November 15, 2011 press release is attached as Exhibit "S". The executive summary to the Second Interim Report is attached as a schedule to the press release.

146. The November 15, 2011 press release also stated that the Board had concluded that, as a result of ongoing work arising from the allegations raised in the MW Report, it was not in a position to authorize the release of the Q3 Results at that time. The release stated that SFC would try to release the Q3 Results within 30 days.

147. SFC's failure to file the Q3 Results and provide a copy of the Q3 Results to the trustee and to its noteholders under its senior and convertible note indentures on or before November 15, 2011 constituted a default under those note indentures. Pursuant to the indentures, an event of default would have occurred if SFC failed to cure that breach within 30 days in the case of the senior notes, and 60 days in the case of the convertible notes, after having received written notice of such default from the relevant indenture trustee or the holders of 25% or more in aggregate principal amount of a given series of notes.

148. While SFC worked diligently to try to resolve the outstanding issues, it became clear that SFC was not going to be able to release the Q3 Results within that timeframe. On December 12, 2011, SFC issued a press release announcing that it would not be able to release the Q3 Results within the 30-day period originally indicated.

149. Moreover, in the press release, SFC announced that, in the circumstances, there was no assurance that it would be able to release the Q3 Results, or, if able, as to when such release would occur. In the December 12, 2011 press release, SFC also announced that the Board had determined not to make the $9.775 million interest payment on SFC's 2016 convertible notes that was due on December 15, 2011. A copy of the December 12, 2011 press release is attached as Exhibit "T".

150. As disclosed in the December 12, 2011 press release, the circumstances that caused SFC to be unable to release the Q3 Results also could impact SFC's historic financial statements and SFC's ability to obtain an audit for its 2011 fiscal year.

151. SFC's failure to make the $9.775 million interest payment on the 2016 convertible notes when due on December 15, 2011 constituted a default under that Indenture. Under the terms of that indenture, SFC had 30 days to cure its default and make the required interest payment in order to prevent an event of default from occurring, which could have resulted in the acceleration and enforcement of the approximately $1.8 billion in notes which have been issued by SFC and guaranteed by many of its subsidiaries outside of the PRC.

152. On December 18, 2011, SFC announced that it had received written notices of default dated December 16, 2011, in respect of its senior notes due 2014 and its senior notes due 2017. The notices, which were sent by the trustees under the senior note indentures, referenced SFC's previously-disclosed failure to release the Q3 Results on a timely basis. SFC reiterated in the December 18, 2011 press release that it did not expect to be able to file the Q3 Results and cure the default within the 30 day cure period. A copy of the December 18, 2011 press release is attached as Exhibit "U".

153. In response to the receipt of the notices of default, among other considerations, on December 16, 2011, the Board established a Special Restructuring Committee of the Board (the "Restructuring Committee") comprised exclusively of directors independent of management of SFC, for the purpose of supervising, analyzing and managing strategic options available to SFC. The members of the Restructuring Committee are William Ardell, Chair of the Board, who is also Chair of the Restructuring Committee and Garry West. James Hyde, Chair of the Audit Committee and an independent director, while not a member of the Restructuring Committee, has attended meetings of the Restructuring Committee and participated fully in its deliberations.

154. Following discussions with its external auditors, on January 10, 2012, SFC issued a press release cautioning that its historic financial statements and related audit reports should not be relied upon. The January 10, 2012 press release is previously attached.

C. The Waiver Agreements

155. On January 12, 2012, SFC announced that following extensive discussions with the Ad Hoc Noteholders, holders of a majority in principal amount of SFC's senior notes due 2014 and its senior notes due 2017 agreed to waive the default arising from SFC's failure to release the Q3 Results on a timely basis. A copy of the January 12, 2012 press release, together with the waiver agreements, is attached as Exhibit "V".

156. Pursuant to the waiver agreements, SFC agreed to, among other things, make the $9.775 million interest payment on its 2016 convertible notes that was due on December 15, 2011, curing that default. That payment was made in accordance with the waiver agreements.

157. While the waiver agreements prevented the indenture trustees under the relevant note indentures from accelerating and enforcing the note indebtedness as a result of SFC's failure to

file its Q3 Results, those waiver agreements expire on the earlier of April 30, 2012 and any earlier termination of the waiver agreements in accordance with their terms. In addition, should SFC fail to file its 2011 Results by March 30, 2012 (and upon the necessary notices being sent and cure periods expiring), the indenture trustees would again be in a position to accelerate and enforce.

D. The IC's Final Report and Verification of SFC's Assets

158. On January 31, 2012, SFC publicly released a redacted version of the final report of the IC (the "Final Report"). A copy of the redacted Final Report is attached as Exhibit "W".

159. Following the delivery of the Final Report, and in accordance with the waiver agreements, the Board adopted a resolution instructing the IC to cease its investigative, review and oversight activities. Any issues within the authority of the IC that remained outstanding were referred to SFC's Audit Committee or Restructuring Committee.

160. In its January 31, 2012 press release, attached as Exhibit "X", announcing the release of the Final Report, SFC also disclosed the results of a "proof of concept" exercise undertaken to determine if the standing timber referenced in particular purchase contracts could be located and quantified by an independent forestry expert engaged to undertake the exercise. The exercise was undertaken to address the issue raised in the Second Interim Report regarding the absence of maps in the possession of SFC's BVI subsidiaries to show the precise location of the timber subject to plantation purchase contracts.

161. As disclosed in the January 31, 2012 press release, the proof of concept exercise was confined to two compartments. The selection criteria limited the sample to purchased timber assets located in Yunnan province. The candidate assets were acquired prior to the allegations in

the MW Report. They were listed as being held by BVIs and not by WFOEs. At the IC's request, the consultants selected a shortlist of ten possible compartments covering multiple forestry bureaus and meeting the criteria above, avoiding any prospect that the sampling involved personnel from Sino-Forest. Multiple county forestry bureaus were represented in the shortlist, and the IC made the final selection of compartments to ensure more than one county forestry bureau was represented.

162. As described in the Final Report and the accompanying press release, maps for the two compartments were obtained from the relevant forestry bureaus in the PRC by the contracted survey companies and made available to the consultants. Using the techniques described in the Final Report, compartment boundaries were superimposed on recent high resolution satellite imagery which allowed for the measurement of each compartment's forest cover. The consultants compared the net stocked area of forest cover that they assessed for each compartment with that stated in the Sino-Forest purchase contracts and forest survey reports. The consultants found that the net stocked area of forest cover in each compartment was up to six percent greater than that stated in the relevant purchase contracts and forest survey reports, with the current assessed area for each compartment exceeding the purchase contract area.

163. While the consultant report and press release cautioned against extrapolation of these findings over Sino-Forest's broader forestry assets, I took considerable comfort from these findings. In relation to two randomly-selected contracts held through the BVI structure, the property descriptions and expected forest cover in the contracts matched the boundaries and forest cover on the ground.

164. Subsequent to January 31, 2012, Sino-Forest has taken steps to see the proof of concept process applied over a statistically relevant sampling of Sino-Forest's forest assets. That work is ongoing.

E. **Gating Issues to an Audit**

165. SFC has worked diligently to address issues identified by SFC's Audit Committee, the IC and by its external auditor, Ernst & Young LLP, as requiring resolution in order for SFC to be in a position to obtain an audit opinion in relation to the 2011 Results. Many of the same issues also impact SFC's ability to release the Q3 Results.

166. As SFC has publicly disclosed in its press releases, the gating issues to the release of the Q3 Results and to obtaining an audit of the 2011 Results include (i) determining the nature and scope of the relationships between Sino-Forest and certain of its AIs and suppliers, and (ii) the satisfactory explanation and resolution of issues raised by certain documents identified by the IC's advisors, SFC's counsel, SFC's auditors, and/or by OSC staff.

167. The "relationship issues" described above are discussed extensively in the Second Interim Report and in the Final Report of the IC. Relationship issues were prominent in the approximately 60 documents provided to OSC staff on August 24, 2011, and relationships continue to be an issue that SFC has been unable to resolve.

168. As part of the IC's investigative process a significant amount of electronic data was extracted and reviewed by the IC and its advisors. The same data also has been reviewed by counsel for SFC and SFC's advisors. Over one million electronic records have been reviewed.

169. The search of electronic records and other inquiries have not produced evidence to support the allegations made in the MW Report that Sino-Forest is a near total fraud or Ponzi scheme. The searches and inquiries have produced some evidence of possible lesser improper conduct that SFC has been making efforts to investigate, address and quantify.

170. There is no single theme among the documents and issues that SFC has been taking steps to address. In some cases, the documents speak to efforts to deal with foreign currency exchange restrictions applicable to the PRC. The documents suggest that in some cases SFC personnel may have received personal benefits at Sino-Forest's expense and may have appropriated some of Sino-Forest's assets. They also show that, in a few cases, whistleblower complaints in some subsidiaries alleging misconduct by certain personnel in those subsidiaries appear not to have been adequately investigated and addressed.

171. The record-keeping of SFC's subsidiaries in the PRC appeared to be adequate prior to the recent heightened scrutiny being focused on companies with significant operations in the PRC. The nature of SFC's books and records, combined with the inability to compel disclosure and participation by third party PRC companies, primarily SFC's customers (AIs) and suppliers, and the unwillingness of these companies to become involved in an investigation, makes it difficult to definitively assess some of the explanations offered by Sino-Forest personnel.

172. In light of this heightened scrutiny, SFC's subsidiaries in the PRC do not have the scope of books and records that might be used to definitively address some issues raised by potentially problematic email communications. The nature of SFC's BVI structure, and the absence of contractual rights to examine the books and records of customers and suppliers, deprives SFC of

access to information that may be necessary to allow SFC to determine whether some of the documents and issues identified are material from a financial reporting perspective.

173. Notwithstanding SFC's best efforts, many of these issues may not be capable of resolution, and certainly not within a timeframe that would allow SFC to comply with its obligations under its note indentures and securities laws. Consequently, absent a resolution with the noteholders, the indenture trustees would be in a position to enforce their legal rights as early as April 30, 2012.

174. However extensive and challenging the work done to respond to the MW Report has been, the simple fact is that the uncertainty it has created has caused Sino-Forest's business to deteriorate. Repairing the damage to the business simply cannot wait any longer. Without decisive action in the immediate term, I fear that the ability to save the business for the benefit of SFC and its stakeholders will be irreparably lost.

175. As described in greater detail herein, even though the allegations set out in the MW Report and the OSC cease trade orders are unproven, the allegations have had a catastrophic negative impact on Sino-Forest's business activities and have created substantial uncertainty regarding the future of Sino-Forest's business in the minds of the Sino-Forest Companies' stakeholders in the PRC, including its lenders, customers, suppliers, employees, and governmental officials. The allegations made against SFC have resulted in a substantial erosion of Sino-Forest's business. The business in the PRC continues to deteriorate with every passing day and it has become clear to SFC that the Sino-Forest business needs to be separated from the cloud that continues to hang over SFC if there is any future for that business (and thus value for SFC's stakeholders) to be preserved.

V. IMPACT OF MUDDY WATERS ALLEGATIONS ON SINO-FOREST

A. Class Action Lawsuits

176. SFC and certain of its officers, directors and employees, along with SFC's current and former auditors, technical consultants and various underwriters involved in prior equity and debt offerings, have been named as defendants in eight class action lawsuits.

177. Five of these class action lawsuits, commenced by three separate groups of counsel, were filed in the Ontario Superior Court of Justice on June 8, 2011, June 20, 2011, July 20, 2011, September 26, 2011 and November 14, 2011. A carriage motion in relation to these actions was heard on December 20 and 21, 2011, and by Order dated January 6, 2012, Justice Perell appointed Koskie Minsky LLP and Siskinds LLP as class counsel. As a result, Koskie Minsky LLP and Siskinds LLP discontinued their earliest action, and their other two actions have been consolidated and will move forward as one proceeding. The other two Ontario actions, commenced by other counsel, have been stayed. Pursuant to Justice Perell's January 6, 2012 Order, Koskie Minsky LLP and Siskinds LLP have filed a fresh as amended Statement of Claim in the consolidated proceeding. A copy of this Statement of Claim is attached as Exhibit "Y".

178. The action purports to be brought on behalf of noteholders. The plaintiffs and plaintiff law firms have not complied with the prerequisites to bringing suit in the relevant note indentures, which each contain a "no suits by holders" clause.

179. Parallel class actions have been filed in Quebec and Saskatchewan. Copies of the originating documents in those actions are attached as Exhibit "Z".

180. Additionally, on January 27, 2012, a class action was commenced against SFC and other defendants in the Supreme Court of the State of New York, U.S.A. The complaint alleges that

the action is brought on behalf of persons who purchased SFC shares on the over-the-counter market and on behalf of non-Canadian purchasers of SFC debt securities. The quantum of damages sought is not specified in the complaint. A copy of the complaint in this action is attached as Exhibit "AA".

181. Additional law firms in both the United States and Canada have announced that they are investigating SFC and certain directors and officers thereof with respect to potential additional class action lawsuits.

B. Effects of MW Report and Related Events

182. The allegations set forth in the MW Report, despite being denied by SFC, have had catastrophic negative effects on the reputation and business of Sino-Forest. As a result, Sino-Forest's ability to conduct its operations in the normal course of business has been materially affected. For example: creditors are increasing legal demands with respect to accounts payable; at the same time, collections of accounts receivables is increasingly difficult due to a widespread belief that Sino-Forest will not survive; sales in the WFOE model have also slowed substantially in response to views on accounts receivable payments; cash flow issues have resulted in a cessation of any expansion or modernization; the inability to fund purchases of raw materials has caused a slowdown in production or, in many cases, a shutdown; certain timber assets have been frozen as Sino-Forest has been unable to keep current with payments; deposits put down on standing timber purchases by WFOEs, of approximately $27 million, may be unrealizable due to an inability to generate cash to pay off outstanding payables under those contracts; offshore banking facilities have been repaid and frozen or cancelled, leading to substantial damage in Sino-Forest's trading business; relationships with local governments and plantation land owners have become strained; Sino-Forest is unable to complete various projects, contracts and

acquisitions; and the PRC government is expressing increased concern over SFC and is becoming less inclined to be supportive of Sino-Forest, making the ability to obtain legal documents for Sino-Forest's operations increasingly difficult.

1. Diversion of Operational Resources & Effects on Operations

183. The investigations being conducted by the OSC, the HKSFC and the RCMP, the examination by the IC (and now the Audit Committee and Restructuring Committee), and the class action lawsuits have required, and will continue to require, significant resources to be expended by the directors, officers and employees of Sino-Forest. As a result, the diversion of such resources has affected Sino-Forest's ability to conduct its operations in the normal course of business. Sino-Forest's timber and trading businesses have effectively been frozen and have ground to a halt.

184. Since the MW Report was released, in order to conserve cash, Sino-Forest has only completed cash purchases which were previously committed to and has not made any new commitments (i.e. in the WFOE structure), despite having been presented with some attractive buying opportunities. Sino-Forest has therefore not grown its asset base as it would have but for the MW Report.

185. Also, the Sino-Forest Companies have had an extremely difficult time collecting outstanding receivables as a result of the perceived uncertainty surrounding them in the PRC. The total amount of outstanding receivables in the WFOE structure was approximately $130.5 million as at February 29, 2012, with more than 83.5% of those receivables being over 90 days. Sino-Forest's counsel in the PRC, KaiTong Law Firm, has sent legal demand letters to 12 BVI trading companies for accounts receivable totaling approximately $126 million and five WFOE

companies totaling approximately RMB 224.5 million. Additional legal demand letters for smaller accounts are also in process, and other accounts receivable are being negotiated.

186. At the same time that the Sino-Forest Companies are having a difficult time collecting outstanding receivables, they are receiving increased demands on their payables. Certain of Sino-Forest's creditors in the PRC have taken aggressive collection tactics in the PRC, including filing court claims in an effort to be paid amounts owed to them by Sino-Forest. If the uncertainty related to SFC is allowed to continue to affect Sino-Forest's business operations, Sino-Forest expects increasing legal actions from other creditors.

187. Sino-Forest has not been able to secure or renew certain existing onshore banking facilities and has been unable to obtain offshore letters of credit to facilitate Sino-Forest's trading business. All offshore banking facilities have been repaid and frozen, or cancelled. Since June 2, 2011, all Hong Kong banks have asked for voluntary repayment of outstanding loans. Banking facilities with a total credit amount of $67.9 million were terminated by four banks between June 10, 2011 and August 29, 2011. Facilities of $152.3 million were frozen upon full repayment. In the PRC, facilities totaling RMB 159.6 million were asking for voluntary repayments. For the PRC banks providing facilities, Sino-Forest was requested to increase its cash deposits so as to demonstrate financial strength. This has lead to substantial damage in Sino-Forest's operations, and affects Sino-Forest's ability to complete obligations under existing contracts, resulting in losses potentially in excess of $100 million.

188. Various projects and contracts, such as nursery projects in certain provinces with a contract value of approximately RMB 1 billion, have been stopped or are unable to be fulfilled.

189. Due to the allegations in the MW Report, the PRC government is expressing increased concern over SFC and is becoming less inclined to be supportive of Sino-Forest, making the ability to obtain legal documents more difficult. For example, the PRC government has withheld cutting licenses resulting in lower harvesting volumes. Relationships with local government and local plantation suppliers have also become strained, resulting in many difficulties and obstacles in Sino-Forest's operations including an inability to complete certain acquisitions of plantations. For example, in the Anqing, Anhui area in the PRC, the local government no longer showed support to Sino-Forest and the plantation land owner refused to honour the plantation purchase contracts.

2. Fees and Expenses

190. SFC has and will continue to incur a substantial amount of fees and expenses in connection with the examination by the IC (and now the Audit Committee and Restructuring Committee), the investigations by the OSC and the RCMP, and the class action lawsuits. Further, pursuant to indemnification agreements between SFC and its directors and certain officers as well as with auditors, underwriters and other parties, SFC may be obligated to indemnify such individuals for additional legal and other expenses pursuant to such proceedings. The aggregate of such fees and expenses is substantial and has had an extremely negative effect on Sino-Forest's operating results.

3. Value of Common Shares and Credit Rating

191. Prior to the release of the MW Report on June 2, 2011, SFC's common shares had a 20-day volume weighted average price of CDN $19.58 for a total market capitalization of approximately CDN $4.8 billion. In the weeks that followed the release of the MW Report, the value of SFC's common shares plunged to a low of CDN $1.29 for a total market capitalization of

approximately CDN $300 million. As at August 25, 2011, the day prior to the OSC cease trading SFC's common shares, its shares were trading at CDN $4.81 for a total market capitalization of approximately CDN $1.2 billion.

192. The allegations set forth in the MW Report have resulted in a material decline in the market value of SFC's common shares and notes. On June 30, 2011, Standard & Poor's Ratings Services lowered its long-term corporate credit rating on SFC to 'B+' from 'BB', lowered the issue ratings on SFC's outstanding senior notes and convertible notes to 'B+', and lowered the Greater China scale credit ratings on SFC and its notes to 'cnBB' from 'cnBBB-'. On August 29, 2011, Standard & Poor downgraded to 'CCC-', then withdrew its ratings. Fitch Ratings withdrew its Foreign Currency Issuer Default Rating and senior debt rating of 'BB-' on July 14, 2011, after placing SFC on Negative Watch on June 20, 2011. On July 19, 2011, Moody's Investors Service downgraded the corporate family and senior unsecured debt ratings of SFC to 'B1' from 'Ba2'. On August 29, 2011, Moody's downgraded to 'Caa1' from 'B1', and on December 14, 2011, Moody's downgraded to 'Ca1' and withdrew its rating.

193. Sino-Forest's primary sources of funding have been short-term and long-term borrowings, equity offerings and cash generated by operating activities. However, as a result of the reputational damage that the MW Report inflicted on SFC, I believe that SFC has no ability to access the capital markets at the present time, including to refinance its notes.

VI. CLAIM AGAINST MUDDY WATERS

194. On March 29, 2012, SFC commenced a claim in the Ontario Superior Court of Justice against Muddy Waters, its principal, and persons who traded with prior knowledge of the MW Report. A copy of SFC's claim against Muddy Waters *et al* is attached as Exhibit "BB".

195. In this action, SFC seeks total damages in the sum of CDN $4 billion in relation to harm caused to SFC as a result of the allegations made by Muddy Waters. If SFC is successfully restructured as contemplated, it is anticipated that the action will be funded by the litigation trust provided for in the Support Agreement described below, and the benefits of the action will be shared as contemplated by the Support Agreement.

VII. PROPOSED RESTRUCTURING TRANSACTIONS

196. Following extensive arm's length negotiations between SFC and the Ad Hoc Noteholders, the parties entered into the Support Agreement. The Support Agreement contains, among other things, the summary terms and conditions of a going concern restructuring of SFC (the "Restructuring Transaction"). A copy of the Support Agreement is previously attached.

197. The Support Agreement provides that SFC will file the Plan in order to implement the Restructuring Transaction as part of this CCAA proceeding, and that the Consenting Noteholders will vote their notes in favour of the Plan at any meeting of creditors, each subject to certain conditions.

198. From a commercial perspective, the Restructuring Transaction contemplated by the Support Agreement is intended to accomplish the following objectives:

(a) the separation of Sino-Forest's business operations from the problems facing SFC outside of the PRC by transferring the intermediate holding companies which own "the business" and SFC's intercompany claims against its subsidiaries (which include the entire substantive operations of the Sino-Forest Companies) to the noteholders in compromise of their claims against SFC (if the Sale Process does not generate a superior transaction, as described below);

(b) the Sale Process being undertaken to determine if any person or group of persons will purchase Sino-Forest's business operations pursuant to the Plan for an amount of consideration acceptable to SFC and the noteholders, with the potential for excess above such amount being directed to Junior Constituents. The Sale Process is intended to ensure that SFC is pursuing all avenues to maximize value for its stakeholders;

(c) a structure (including funding) that will enable litigation claims to be pursued for the benefit of SFC's stakeholders in accordance with the Support Agreement against a number of potential defendants (including Muddy Waters, its principal, and any persons who benefited from the allegations made by Muddy Waters in a coordinated way); and

(d) if the Sale Process does not result in a sale, the Junior Constituents recovering some "upside" in the form of a profit participation if Sino-Forest's business operations acquired by the noteholders are monetized within seven years from the date of the implementation of the Plan at a profit, as further described in the Support Agreement.

199. The decision to enter into the Support Agreement was given careful consideration by SFC and the Board and was not taken lightly. However, the inability to obtain an audit creates a default under the note indentures which simply cannot be cured within a reasonable timeframe, if at all.

200. More significantly, it has become clear that the problems facing SFC outside of the PRC are causing Sino-Forest's business operations in the PRC to deteriorate and that, unless decisive

steps are taken to restructure Sino-Forest, the PRC business operations will continue to deteriorate to the point that they will cease to be capable of being turned around, which will further diminish the value that can be realized for SFC and its stakeholders. While there remains substantial work ahead in the PRC to turn the business around and convince stakeholders in the PRC (including customers, suppliers, employees and PRC governmental officials of all levels) that the Sino-Forest business built up over the past 18 years is here to stay, I firmly believe that the transactions which SFC proposes to initiate pursuant to the CCAA will show a path out of the uncertainty which it has faced since last June.

201. The Support Agreement provides that SFC will make an application under the CCAA in order to implement the Plan. The Consenting Noteholders executed the Support Agreement on the basis that a restructuring of SFC as proposed would be undertaken pursuant to the CCAA.

202. But for the negotiation and execution of the Support Agreement, SFC would be unable to prevent the acceleration and enforcement of the rights of the noteholders as soon as April 30, 2012, in which case SFC would be unable to continue as a going concern, and is thus insolvent. Accordingly, and for the reasons set out herein, a restructuring is urgently required and should be pursued to preserve its enterprise value.

203. SFC has reached an agreement on a consensual restructuring transaction with the Ad Hoc Noteholders. SFC is seeking a stay of proceedings under the CCAA in order to allow it time to proceed to develop the Plan which, if approved by the creditors and this Honourable Court, would, among other things, allow for a going concern emergence of Sino-Forest's business.

VIII. THE SALE PROCESS

204. Under the Sale Process, SFC, through its financial advisor, Houlihan Lokey ("Houlihan"), and with the oversight of the monitor, will seek qualified purchasers (including existing shareholders and noteholders) of SFC's assets on a global basis and attempt to engage them in the Sale Process. The Sale Process Procedures, which were agreed to by the parties to the Support Agreement in consultation with the proposed monitor, provide that SFC will have up to 90 days to solicit letters of intent, and if qualified letters of intent are received, a further 90 days to solicit qualified bids. A copy of the Sale Process Procedures is attached as Schedule D to the Support Agreement.

205. I believe it is critically important that the Sale Process Order be granted at this time for a variety of reasons. First and most importantly, it is very important that SFC conclude a restructuring by the end of the third fiscal quarter. The business of the Sino-Forest Companies is seasonal, and the vast majority of transactions (both purchases and sales) typically occur in the third and fourth quarters. All stakeholders will therefore be prejudiced if SFC cannot complete a restructuring by the end of the third quarter, or soon thereafter, as the business will continue to be frozen through the critical fourth quarter.

206. With that target end date in mind, the process must begin immediately. I understand that in other insolvency filings in Canada, sale processes have been done on much shorter timetables than what SFC is proposing; however, I believe the proposed timetable is necessary and appropriate in light of the specific circumstances. In fact, given the critical timing of this process, I am aware that Houlihan has already been in contact with parties who may be interested parties in this Sale Process.

207. The assets being sold, especially given the allegations in the MW Report, are extremely complex and are being offered for sale without current audited financial statements. Potential buyers therefore need to be afforded sufficient time to do due diligence.

208. In addition, there are limited potential buyers for these assets. I believe that potential buyers will need to have, in addition to the significant capital to complete a transaction of this size, an in-depth and intimate knowledge of the PRC market. I do not expect that the ultimate buyer for these assets, if any, will be a typical buyer of distressed assets in an insolvency proceeding.

209. Accordingly, given that a transaction must be implemented as soon as possible, and given the complexity of the assets and the fact that there is a limited universe of potential buyers, I believe it is necessary that the Sale Process Order be granted at this time, and that the Sale Process provides the best potential for recovery for SFC's stakeholders.

210. I have no reason to believe that any creditors have a *bona fide* reason to object to the Sale Process.

IX. SFC MEETS CCAA STATUTORY REQUIREMENTS

211. I am advised by Gary Solway of Bennett Jones LLP, counsel to SFC, that the CCAA applies in respect of a "debtor company" if the claims against the debtor company or affiliated debtor companies total more than CDN $5 million. I am further advised by Gary Solway that a "debtor company" is a company incorporated under an Act of Parliament or the legislature of a province which has, among other things, become bankrupt or insolvent.

A. SFC is a "Company" Under the CCAA

212. SFC is a "company" to which the CCAA applies as it is a company continued under the CBCA. A copy of SFC's articles of continuance was previously attached.

B. SFC has Claims Against it in Excess of $5 Million

213. As discussed above, SFC has debts against it far in excess of the CDN $5 million statutory requirement.

C. SFC is Insolvent

214. I am advised by Gary Solway of Bennett Jones LLP, counsel to SFC, that under section 2 of the *Bankruptcy and Insolvency Act* (and a similar definition exists under sections 192(2) and 208 of the CBCA), an insolvent person is one whose liabilities to creditors exceeds CDN $1,000 and (i) is for any reason unable to meet his obligations as they generally become due, (ii) has ceased paying his current obligations in the ordinary course of business as they generally become due, or (iii) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

215. As discussed herein, the holders of SFC's senior notes entered into waiver agreements wherein they agreed not to have the indenture trustees demand immediate payment of the principal amount of the senior notes. Such waiver agreements expire on the earlier of April 30, 2012 and any earlier termination of the waiver agreements in accordance with their terms. Moreover, in addition to the default dealt with pursuant to the waiver agreements in respect of the Q3 Results, SFC will be in further default on April 30, 2012 as a result of the fact that it will

fail to file its audited 2011 Results. As discussed in greater detail herein, SFC will be unable to cure such default in the immediate to near term (if ever).

216. But for the execution of the Support Agreement and the standstill provided for therein, the indenture trustees under the notes could be entitled to accelerate and enforce the rights of the noteholders as soon as April 30, 2012. Without the liquidity provided by the waiver agreements, SFC would be unable to meet its obligations as they come due or continue as a going concern and is thus insolvent.

X. RELIEF SOUGHT

A. Stay of Proceedings

217. SFC needs a stay of proceedings to pursue and implement the Restructuring Transaction in an attempt to complete a going concern restructuring of its businesses. In the interim, the class actions lawsuits, as well as any other potential actions, need to be stayed so that the Restructuring Committee can focus on formulating the Plan.

B. Appointment of Monitor

218. FTI Consulting Canada Inc. ("FTI") has consented to act as the monitor of SFC (the "Monitor") in the CCAA proceedings, and I believe that FTI is qualified and competent to so act.

219. FTI will be filing a pre-filing report with the Court as prospective monitor in conjunction with SFC's request for relief under the CCAA.

C. Payments During CCAA Proceeding

220. During the course of this CCAA proceeding, SFC intends to make payments for goods and services supplied post-filing as set out in the cash flow projections described below and as permitted by the draft Initial Order.

D. Administration Charge

221. It is contemplated that the Monitor, counsel to the Monitor, counsel to SFC, counsel to the Board, Houlihan, FTI Consulting (Hong Kong) Limited, counsel to the Ad Hoc Noteholders and the financial advisor to the Ad Hoc Noteholders would be granted a first priority Court-ordered charge on the assets, property and undertakings of SFC, other than SFC's assets which are subject to *Personal Property Security Act* registrations (the "SFC Property") in priority to all other charges (the "Administration Charge") up to the maximum amount of CDN $15 million in respect of their respective fees and disbursements, incurred at standard rates and charges. SFC believes the Administration Charge is fair and reasonable in the circumstances.

222. The nature of the Sino-Forest Companies' business requires the expertise, knowledge and continuing participation of the proposed beneficiaries of the Administration Charge in order to complete a successful restructuring. I believe this Administration Charge is necessary to ensure their continued participation.

223. I do not believe that there is any unwarranted duplication of roles between the proposed beneficiaries of the Administration Charge.

E. Directors' Charge

224. A successful restructuring of SFC will only be possible with the continued participation of the Board. These personnel are essential to the viability of the continuing business of Sino-Forest. SFC's Board members have specialized expertise and relationships with Sino-Forest's suppliers, employees and other stakeholders, as well as knowledge gained throughout the IC process that cannot be replicated or replaced.

225. The directors of SFC have indicated that due to the potential for significant personal liability, they cannot continue their service in this restructuring unless the Initial Order grants a charge on the SFC Property in priority to all other charges except the Administration Charge, as security for SFC's indemnification obligations for the potential obligations and liabilities they may incur after the commencement of these proceedings. It is proposed that the directors of SFC be granted a directors' charge in the amount of CDN $3.2 million (the "Directors' Charge") over the SFC Property. SFC believes the Directors' Charge is fair and reasonable in the circumstances.

226. SFC, for itself and its subsidiaries, currently has primary insurance coverage of $10 million and five separate excess insurance policies collectively providing CDN $45 million (the "2012 Insurance Policies"), for a total of CDN $55 million of coverage in place to attempt to protect SFC and its directors and officers. The 2012 Insurance Policies were put in place and became effective after prior policies of insurance were not renewed following their expiry on December 31, 2011, by the insurers who had issued the policies (the "2011 Insurance Policies"). Although coverage is being provided to SFC and certain of its directors and officers under the 2011 Insurance Policies for claims that were advanced or threatened prior to the expiry of the 2011 Insurance Policies on December 31, 2011, those policies provide no coverage or protection to SFC or its officers and directors for new claims that are made after December 31, 2011 which are based on new events or allegations unrelated to the subject matter of the claims that have already been advanced or threatened.

227. As was the case with the 2011 Insurance Policies, the 2012 Insurance Policies provide for three types of coverage: (i) director and officer liability, (ii) corporate liability for indemnifiable loss, and (iii) corporate liability arising from securities claims. The 2012 Insurance Policies expire on December 31, 2012 and exclude coverage for directors' liabilities for wages. There are

also other exclusions and limitations of coverage which may leave SFC's directors and officers without coverage under the 2012 Insurance Policies. Depending on the circumstances of any particular claim, the insurers which have issued the 2012 Insurance Policies may deny coverage on the basis that the 2012 Insurance Policies exclude such other claims, that coverage limits have been exhausted by claims made against the 2012 Insurance Policies, or that the matters reported fall within the coverage provided by the 2011 Insurance Policies (which are already responding to a number of significant claims that have the potential to exhaust or exceed the applicable limits). Finally, there is no guarantee that SFC will be able to renew the 2012 Insurance Policies when they expire at the end of the year.

228. Contractual indemnities have been provided by SFC to its directors. SFC does not have sufficient funds to satisfy those indemnities should the directors of SFC incur obligations and liabilities in that regard after the commencement of these proceedings.

229. The Directors' Charge is necessary so that SFC may benefit from its directors' experience, knowledge and ability to guide SFC's restructuring efforts. It is critical to the restructuring efforts that SFC's directors remain with SFC in order to assist SFC in achieving the Restructuring Transaction to benefit SFC's stakeholders.

230. As such, it is proposed that the priorities of the Administration Charge and the Directors' Charge be as follows:

(a) First – Administration Charge; and

(b) Second – Directors' Charge.

231. Based on the books and records of SFC, and to the best of my knowledge, there are no secured creditors who are likely to be affected by the Administration Charge or the Directors' Charge.

F. Postponement of Annual Shareholders' Meeting

232. As previously mentioned, SFC is a public company under the CBCA. I am advised by Gary Solway of Bennett Jones LLP, counsel to SFC, that, as such, SFC is required, pursuant to paragraph 133(1)(b) of the CBCA, to call an annual meeting of its shareholders by no later than June 30, 2012, being six months after the end of its preceding financial year which ended on December 31, 2011. Accordingly, SFC is required to call its annual general meeting no later than June 30, 2012. SFC's annual general meeting has typically been held in the month of May.

233. However, the management of SFC and other Sino-Forest Companies are presently devoting their efforts to stabilizing the business with a view to implementing the Restructuring Transaction in accordance with the terms of the Support Agreement.

234. Preparing the proxy materials required for an annual meeting of shareholders (which must be prepared well in advance of any meeting so that they can be mailed to shareholders in advance of the meeting) and holding the annual meeting of shareholders would divert the attention of senior management of the Sino-Forest Companies away from implementing the Restructuring Transaction, would require significant financial resources, and could impede SFC's ability to achieve a restructuring under the CCAA.

235. In addition, pursuant to section 155 of the CBCA, SFC is required to place before the annual meeting financial statements of SFC for a period ended not more than six months prior to

the date of the annual meeting. SFC has been unable to complete its financial statements for the reasons already discussed.

236. I am advised by Gary Solway of Bennett Jones LLP, counsel to SFC, that, under subsection 106(6) of the CBCA, if directors are not elected at an annual meeting, the incumbent directors will continue to hold office until their successors are elected.

237. Certain financial and other information is and will continue to be available to the public through SFC's court filing which will be easily accessible on the proposed Monitor's website (http://cfcanada.fticonsulting.com/sfc). Consequently, the failure to hold an annual general meeting within the time prescribed by the CBCA will not deprive shareholders of access to the financial information of SFC that is publicly available from SFC.

238. Under the circumstances, I believe it is impractical for SFC to call and hold an annual meeting of shareholders during this CCAA proceeding.

G. Foreign Proceedings

239. SFC is seeking in the Initial Order to have the Monitor authorized, as the foreign representative of SFC, to apply for recognition of these proceedings, as necessary, in any jurisdiction outside of Canada, including as "Foreign Main Proceedings" in the United States pursuant to Chapter 15 of the *U.S. Bankruptcy Code* (the "Chapter 15 Proceedings"). The initial effect of the Chapter 15 Proceedings would be to give effect to the Initial Order in the United States.

H. Financial Advisor Agreement

240. It became clear to SFC at the beginning of September 2011, that it would greatly benefit from the expertise of a financial advisor. Accordingly, SFC invited four reputable global financial advisory firms to make presentations for the role on or about September 14, 2011. Houlihan was selected as SFC's first choice as a result of, among others, its significant experience in debt restructurings, its strong presence and reputation in both the North American and Asian markets, and its strong standing with the global noteholders community, especially those event driven funds which customarily play a leadership role in these situations.

241. On or about September 26, 2011, Bennett Jones LLP, as counsel to SFC, entered into an agreement with Houlihan relating to Houlihan's provision of financial advisory and investment banking services to SFC. That agreement was amended and replaced by an agreement dated as of December 22, 2011 (the "Financial Advisor Agreement"). A copy of the Financial Advisor Agreement is attached as Exhibit "CC".

242. The Financial Advisor Agreement provides, among other things, that if SFC commences any proceedings under the CCAA or similar legislation or statute, SFC will promptly seek to have the Court approve (i) the Financial Advisor Agreement, and (ii) Houlihan's retention by SFC under the terms of the Financial Advisor Agreement, including the payment to be made to Houlihan thereunder. As such, the draft Initial Order provides for such approvals.

243. It is my belief that Houlihan's significant restructuring experience and expertise in the area of debt restructuring has greatly benefited SFC. The proposed Restructuring Transaction would not have been achievable without the advice and assistance of Houlihan. Houlihan was also instrumental in assisting SFC in obtaining the waiver agreements described herein.

244. Houlihan has spent approximately seven months working closely with senior management of SFC and its other advisors. Houlihan has greatly assisted SFC in its restructuring efforts to date and has gained a thorough and intimate understanding of the Sino-Forest business. If SFC was deprived of the benefit of Houlihan's continued advice and assistance and was required to retain a new financial advisor, it would likely take a significant period of time for such a financial advisor to acquire a similar working knowledge of the business and would make it extremely difficult, if not impossible, to implement the Restructuring Transaction in the currently contemplated time frame. Thus, I believe that the continued involvement of Houlihan is essential to the completion of the Restructuring Transaction.

245. It is also my belief that the quantum and nature of the remuneration provided for in the Financial Advisor Agreement is fair and reasonable. Specifically, the restructuring fees payable to Houlihan are only payable if a restructuring transaction is completed and the quantum of those fees is dependent on various factors intended to measure the success of the restructuring.

XI. 13 WEEK CASH FLOW FORECAST

246. As set out in the cash flow forecast attached as Exhibit "DD", SFC's principal uses of cash during the next 13 weeks will consist of the payment of ongoing day-to-day operational expenses, the costs associated with the ongoing investigation into the MW Report, the costs associated with responding to demands from the OSC, HKSFC and RCMP for information, and professional fees and disbursements in connection with these CCAA proceedings.

247. As at March 29, 2012, SFC had approximately $67.8 million available cash on hand. SFC's cash flow forecast projects that, subject to obtaining the relief outlined herein, it will have sufficient cash to fund its projected operating costs for the next 13 weeks.

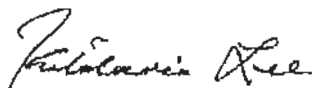
XII. CONCLUSION

248. I am confident that granting the Initial Order and Sale Process Order sought by SFC is in the best interests of SFC and its stakeholders. SFC requires the stay of proceedings to pursue and implement the Restructuring Transaction in an attempt to complete a going concern restructuring of its businesses. The Ad Hoc Noteholders support this application and SFC's pursuit of the Plan in this CCAA proceeding.

249. Without the stay of proceedings and the opportunity to effect the Restructuring Transaction (including the Sale Process), Sino-Forest faces a possible cessation of going concern operations, the liquidation of its assets, and the loss of employment for a significant number of employees worldwide. The granting of the requested stay of proceedings will assist an orderly restructuring of SFC.

SWORN BEFORE ME at the City of Hong Kong, Special Administrative Region, People's Republic of China, this 30th day of March, 2012

W. Judson Martin



LEE HONG KIU KILDARIA

Solicitor, Hong Kong SAR

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 OR COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

AFFIDAVIT OF W. JUDSON MARTIN
(Sworn March 30, 2012)

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Lawyers for the Applicant

TAB B

THIS IS EXHIBIT "B" TO

THE AFFIDAVIT OF W. JUDSON MARTIN

SWORN NOVEMBER 29, 2012

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

A Commissioner, etc.

Schedule "A"

1. Sino-Panel Holdings Limited (BVI)
2. Sino-Global Holdings Inc. (BVI)
3. Sino-Wood Partners, Limited (HK)
4. Grandeur Winway Limited (BVI)
5. Sinowin Investments Limited (BVI)
6. Sinowood Limited (Cayman Islands)
7. Sino-Forest Bio-Science Limited (BVI)
8. Sino-Forest Resources Inc. (BVI)
9. Sino-Plantation Limited (HK)
10. Suri-Wood Inc. (BVI)
11. Sino-Forest Investments Limited (BVI)
12. Sino-Wood (Guangxi) Limited (HK)
13. Sino-Wood (Jiangxi) Limited (HK)
14. Sino-Wood (Guangdong) Limited (HK)
15. Sino-Wood (Fujian) Limited (HK)
16. Sino-Panel (Asia) Inc. (BVI)
17. Sino-Panel (Guangxi) Limited (BVI)
18. Sino-Panel (Yunnan) Limited (BVI)
19. Sino-Panel (North East China) Limited (BVI)
20. Sino-Panel [Xiangxi] Limited (BVI)
21. Sino-Panel [Hunan] Limited (BVI)
22. SFR (China) Inc. (BVI)
23. Sino-Panel [Suzhou] Limited (BVI)
24. Sino-Panel (Gaoyao) Ltd. (BVI)
25. Sino-Panel (Guangzhou) Limited (BVI)
26. Sino-Panel (North Sea) Limited (BVI)
27. Sino-Panel (Guizhou) Limited (BVI)
28. Sino-Panel (Huaihua) Limited (BVI)
29. Sino-Panel (Qinzhou) Limited (BVI)
30. Sino-Panel (Yongzhou) Limited (BVI)
31. Sino-Panel (Fujian) Limited (BVI)
32. Sino-Panel (Shaoyang) Limited (BVI)
33. Amplemax Worldwide Limited (BVI)
34. Ace Supreme International Limited (BVI)
35. Express Point Holdings Limited (BVI)
36. Glory Billion International Limited (BVI)
37. Smart Sure Enterprises Limited (BVI)
38. Expert Bonus Investment Limited (BVI)
39. Dynamic Profit Holdings Limited (BVI)
40. Alliance Max Limited (BVI)
41. Brain Force Limited (BVI)
42. General Excel Limited (BVI)
43. Poly Market Limited (BVI)
44. Prime Kinetic Limited (BVI)
45. Trillion Edge Limited (BVI)
46. Sino-Panel (China) Nursery Limited (BVI)

47. Sino-Wood Trading Limited (BVI)
48. Homix Limited (BVI)
49. Sino-Panel Trading Limited (BVI)
50. Sino-Panel (Russia) Limited (BVI)
51. Sino-Global Management Consulting Inc. (BVI)
52. Value quest International Limited (BVI)
53. Well Keen Worldwide Limited (BVI)
54. Harvest Wonder Worldwide Limited (BVI)
55. Cheer Gold Worldwide Limited (BVI)
56. Regal Win Capital Limited (BVI)
57. Rich Choice Worldwide Limited (BVI)
58. Sino-Forest International (Barbados) Corporation
59. Mandra Forestry Holdings Limited (BVI)
60. Mandra Forestry Finance Limited (BVI)
61. Mandra Forestry Anhui Limited (BVI)
62. Mandra Forestry Hubei Limited (BVI)
63. Sino-Capital Global Inc. (BVI)
64. Elite Legacy Limited (BVI)