

**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**

MOTION RECORD

(Motion Returnable August 28, 2012)

August 23, 2012

**PALIARE ROLAND ROSENBERG
ROTHSTEIN LLP**
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1
Ken Rosenberg (LSUC No. 21102H)
Massimo Starnino (LSUC No. 41048G)
Tel: 416.646.4300 / Fax: 416.646.4301
Email: ken.rosenberg@paliareroland.com
Email: max.starnino@paliareroland.com

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3
Kirk Baert
Jonathan Bida
Tel: 416.977.8353 / Fax: 416.977.3316
Email: kbaert@kmlaw.ca
Email: jbida@kmlaw.ca

SISKINDS LLP
680 Waterloo Street
London, ON N6A 3V8
A. Dimitri Lascaris
Charles M. Wright
Tel: 519.672.2121 / Fax: 519.672.6065
Email: dimitri.lascaris@siskinds.com
Email: charles.wright@siskinds.com

**Lawyers for an Ad Hoc Committee of
Purchasers of the Applicant's Securities,
including the Representative Plaintiffs in
the Ontario Class Action and the Quebec
Class Action against the Applicant**

TO: THE ATTACHED SERVICE LIST

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

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 PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT OF SINO-FOREST CORPORATION**

**SERVICE LIST
(as at July 20, 2012)**

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

Robert W. Staley
Tel: 416.777.4857
Fax: 416.863.1716
Email: staleyr@bennettjones.com

Kevin Zych
Tel: 416.777.5738
Email: zychk@bennettjones.com

Derek J. Bell
Tel: 416.777.4638
Email: belld@bennettjones.com

Raj S. Sahnir
Tel: 416.777.4804
Email: sahnir@bennettjones.com

Jonathan Bell
Tel: 416.777.6511
Email: bellj@bennettjones.com

Sean Zweig
Tel: 416.777.6254
Email: zweigs@bennettjones.com

Lawyers for the Applicant, Sino-Forest
Corporation

AND GOWLING LAFLEUR HENDERSON LLP
TO: 1 First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario M5X 1G5

Derrick Tay
Tel: 416.369.7330
Fax: 416.862.7661
Email: derrick.tay@gowlings.com

Clifton Prophet
Tel: 416.862.3509
Email: Clifton.prophet@gowlings.com

Jennifer Stam
Tel: 416.862.5697
Email: Jennifer.stam@gowlings.com

Jason McMurtrie
Tel: 416.862.5627
Email: Jason.mcmurtrie@gowlings.com

Lawyers for the Monitor

AND FTI CONSULTING CANADA INC.
TO: T-D Waterhouse Tower
79 Wellington Street West
Toronto-Dominion Centre, Suite 2010,
P.O. Box 104
Toronto, Ontario M5K 1G8

Greg Watson
Tel: 416.649.8100
Fax: 416.649.8101
Email: greg.watson@fticonsulting.com

Jodi Porepa
Tel: 416.649.8070
Email: Jodi.porepa@fticonsulting.com

Monitor

AND BAKER MCKENZIE LLP
TO: Brookfield Place
2100-181 Bay Street
Toronto, Ontario M5J 2T3

John Pirie
Tel: 416.865.2325
Fax: 416.863.6275
Email: john.pirie@bakermckenzie.com

David Gadsden
Tel: 416.865.6983
Email: david.gadsden@bakermckenzie.com

Lawyers for Poyry (Beijing) Consulting
Company Limited

AND AFFLECK GREENE MCMURTY LLP
TO: 365 Bay Street, Suite 200
Toronto, Ontario M5H 2V1

Peter Greene
Tel: 416.360.2800
Fax: 416.360.8767
Email: pgreene@agmlawyers.com

Kenneth Dekker
Tel: 416.360.6902
Fax: 416.360.5960
Email: kdekker@agmlawyers.com

Michelle E. Booth
Tel: 416.360.1175
Fax: 416.360.5960
Email: mbooth@agmlawyers.com

Lawyers for BDO

AND TORYS LLP
TO: 79 Wellington Street West
Suite 3000, Box 270
Toronto-Dominion Centre
Toronto, Ontario M5K 1N2

John Fabello
Tel: 416.865.8228
Fax: 416.865.7380
Email: jfabello@torys.com

David Bish
Tel: 416.865.7353
Email: dbish@torys.com

Andrew Gray
Tel: 416.865.7630
Email: agray@torys.com

Lawyers for the Underwriters named in Class
Actions

AND LENCZNER SLAGHT ROYCE SMITH
TO: GRIFFIN LLP
Suite 2600, 130 Adelaide Street West
Toronto, Ontario M5H 3P5

Peter H. Griffin
Tel: 416.865.9500
Fax: 416.865.3558
Email: pgriffin@litigate.com

Peter J. Osborne
Tel: 416.865.3094
Fax: 416.865.3974
Email: posborne@litigate.com

Linda L. Fuerst
Tel: 416.865.3091
Fax: 416.865.2869
Email: lfuerst@litigate.com

Shara Roy
Tel: 416.865.2942
Fax: 416.865.3973
Email: sroy@litigate.com

Lawyers for Ernst & Young

AND MERCHANT LAW GROUP LLP
TO: Saskatchewan Drive Plaza
100-2401 Saskatchewan Drive
Regina, Saskatchewan S4P 4H8

E.F. Anthony Merchant, Q.C.
Tel: 306.359.7777
Fax: 306.522.3299
tmerchant@merchantlaw.com

Lawyers for the Plaintiffs re Saskatchewan
action

AND GOODMAN LLP
TO: 333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Benjamin Zarnett
Tel: 416.597.4204
Fax: 416.979.1234
Email: bzarnett@goodmans.ca

Robert Chadwick
Tel: 416.597.4285
Email: rchadwick@goodmans.ca

Brendan O'Neill
Tel: 416.979.2211
Email: boneill@goodmans.ca

Caroline Descours
Tel: 416.597.6275
Email: cdescours@goodmans.ca

Lawyers for Ad Hoc Committee of Bondholders

AND ONTARIO SECURITIES COMMISSION
TO: Suite 1900, 20 Queen Street West
Toronto, Ontario M5H 3S8

Hugh Craig
Senior Litigation Counsel
Tel: 416.593.8259
Email: hcraig@osc.gov.on.ca

AND OSLER, HOSKIN & HARCOURT LLP

TO: 1 First Canadian Place
100 King Street West
Suite 6100, P.O. Box 50
Toronto, Ontario M5X 1B8

Larry Lowenstein
Tel: 416.862.6454
Fax: 416.862.6666
Email: llowenstein@osler.com

Edward Sellers
Tel: 416.862.5959
Email: esellers@osler.com

Geoffrey Grove
Tel: (416) 862-4264
Email: ggrove@osler.com

Lawyers for the Board of Directors of Sino-
Forest Corporation

AND SISKINDS LLP

TO: 680 Waterloo Street
P.O. Box 2520
London, Ontario N6A 3V8

A. Dimitri Lascaris
Tel: 519.660.7844
Fax: 519.672.6065
Email: dimitri.lascaris@siskinds.com

Charles M. Wright
Tel: 519.660.7753
Email: Charles.wright@siskinds.com

Lawyers for an Ad Hoc Committee of
Purchasers of the Applicant's Securities,
including the Representative Plaintiffs in the
Ontario Class Action against the Applicant

AND COHEN MILSTEIN SELLERS & TOLL PLC

TO: 1100 New York, Ave., N.W.
West Tower, Suite 500
Washington, D.C. 20005

Steven J. Toll
Tel: 202.408.4600
Fax: 202.408.4699
Email: stoll@cohenmilstein.com

Matthew B. Kaplan
Tel: 202.408.4600
Email: mkaplan@cohenmilstein.com

Attorneys for the Plaintiff and the Proposed Class
re New York action

AND KOSKIE MINSKY LLP

TO: 20 Queen Street West, Suite 900
Toronto, Ontario M5H 3R3

Kirk M. Baert
Tel: 416.595.2117
Fax: 416.204.2899
Email: kbaert@kmlaw.ca

Jonathan Ptak
Tel: 416.595.2149
Fax: 416.204.2903
Email: jptak@kmlaw.ca

Jonathan Bida
Tel: 416.595.2072
Fax: 416.204.2907
Email: jbida@kmlaw.ca

Lawyers for an Ad Hoc Committee of Purchasers
of the Applicant's Securities, including the
Representative Plaintiffs in the Ontario Class
Action against the Applicant

AND COHEN MILSTEIN SELLERS & TOLL
TO: PLC
88 Pine Street, 14th Floor
New York, NY 10005

Richard S. Speirs
Tel: 212.838.7797
Fax: 212.838.7745
Email: rspeirs@cohenmilstein.com

Stefanie Ramirez
Tel: 202.408.4600
Email: sramirez@cohenmilstein.com

Attorneys for the Plaintiff and the Proposed
Class re New York action

AND THOMPSON HINE LLP
TO: 335 Madison Avenue – 12th Floor
New York, New York 10017-4611

Yesenia D. Batista
Tel: 212.908.3912
Fax: 212.344.6101
Email: yesenia.batista@thompsonhine.com

Irving Apar
Tel: 212.908.3964
Email: irving.apar@thompsonhine.com

Curtis L. Tuggle
3900 Key Center, 127 Public Square
Cleveland, Ohio 44114
Tel: 216.566.5904
Fax: 216.566.5800
Email: Curtis.tuggle@thompsonhine.com

Lawyers for Senior Note Indenture Trustee

AND LAW DEBENTURE TRUST COMPANY OF
TO: NEW YORK
400 Madison Avenue – 4th Floor
New York, New York 10017

Anthony A. Bocchino, Jr.
Tel: 646-747-1255
Fax: 212.750.1361
Email: anthony.bocchino@lawdeb.com

Senior Note Indenture Trustee

AND THE BANK OF NEW YORK MELLON
TO: Global Corporate Trust
101 Barclay Street – 4th Floor East
New York, New York 10286

David M. Kerr, Vice President
Tel: 212.815.5650
Fax: 732.667.9322
Email: david.m.kerr@bnymellon.com

Convertible Note Indenture Trustee

AND THE BANK OF NEW YORK MELLON
TO: 320 Bay Street, 11th Floor
Toronto, Ontario M5H 4A6

George Bragg
Tel: 416.933.8505
Fax: 416.360.1711 / 416.360.1737
Email: George.bragg@bnymellon.com

Convertible Note Indenture Trustee

AND THE BANK OF NEW YORK MELLON
TO: 12/F Three Pacific Place
1 Queen's Road East, Hong Kong

Marelize Coetzee, Vice President
Relationship Manager, Default Administration
Group – APAC
Tel: 852.2840.6626
Mobile: 852.9538.5010
Email: marelize.coetzee@bnymellon.com

Tin Wan Chung
Tel: 852.2840.6617
Fax: 852.2295-3283
Email: tin.chung@bnymellon.com

Grace Lau
Email: grace.lau@bnymellon.com

Convertible Note Indenture Trustee

AND WARDLE DALEY BERNSTEIN LLP
TO: 2104 - 401 Bay Street, P.O. Box 21
Toronto Ontario M5H 2Y4

Peter Wardle
Tel: 416.351.2771
Fax: 416.351.9196
Email: pwardle@wdblaw.ca

Simon Bieber
Tel: : 416.351.2781
Email: sbieber@wdblaw.ca

Lawyers for David Horsley

AND LINKLATERS LLP
TO: 10th Floor, Alexandra House
18 Chater Road
Hong Kong China

Melvin Sng
Tel: 852 2901 5234
Fax: 852 2810 8133
Email: Melvin.Sng@linklaters.com

Lawyers for Sino-Forest Corporation (Hong Kong)

AND LINKLATERS LLP
TO: 10th Floor, Alexandra House
18 Chater Road
Hong Kong China

Hyung Ahn
Tel: 852 2842 4199
Fax: 852 2810 8133
Email: hyung.ahn@linklaters.com

Samantha Kim
Tel: 852.2842 4197
Email: Samantha.Kim@Linklaters.com

Jon Gray
Tel: 852.2842.4188
Email: Jon.Gray@linklaters.com

Lawyers for Sino-Forest Corporation (U.S.)

AND KING AND WOOD MALLESONS
TO: 9th Floor, Hutchison House
Central, Hong Kong Island
Hong Kong (SAR)

Edward Xu
Tel: 852.2848.4848
Fax: 852.2845.2995
Email: Edward.Xu@hk.kwm.com

Helena Huang
Tel: 852.2848.4848
Email: Helena.huang@kingandwood.com

Tata Sun
Tel: 852.2848.4848
Email: tata.sun@kingandwood.com

Lawyers for Sino-Forest Corporation (PRC)

AND APPLEBY GLOBAL
TO: Jayla Place, Wickham's Cay 1
P.O. Box 3190, Road Town
Tortola VG1110 BVI

Eliot Simpson
Tel: 284.852.5321
Fax: 284.494.7279
Email: esimpson@applebyglobal.com

Andrew Willins
Tel: 284 852 5323
Email: awillins@applebyglobal.com

Andrew Jowett
Tel: 284 852 5316
Email: ajowett@applebyglobal.com

Lawyers for Sino-Forest Corporation (BVI)

AND THORNTON GROUT FINNEGAN LLP
TO: Suite 3200, 100 Wellington Street West
P. O. Box 329, Toronto-Dominion Centre
Toronto, Ontario M5K 1K7

James H. Grout
Tel: 416.304.0557
Fax: 416.304.1313
Email: jgrout@tgf.ca

Kyle Plunkett
Tel: 416-304-7981
Fax: 416.304.1313
Email: kplunkett@tgf.ca

Lawyers for the Ontario Securities Commission

AND McCARTHY TETRAULT LLP
TO: Suite 2500, 1000 De La Gauchetiere St.
West
Montreal, Québec, H3B 0A2

Alain N. Tardif
Tel: 514.397.4274
Fax : 514.875.6246
Email: atardif@mccarthy.ca

Mason Poplaw
Tel: 514.397.4155
Email: mpoplaw@mccarthy.ca

Céline Legendre
Tel: 514.397.7848
Email: clegendre@mccarthy.ca

Lawyers for Ernst & Young

AND CHAITONS LLP
TO: 5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Harvey G. Chaiton
Tel: 416.218.1129
Fax: 416.218.1849
Email: Harvey@chaitons.com

Lawyers for the Law Debenture Trust
Company of New York

AND MILLER THOMSON LLP
TO: Scotia Plaza, 40 King Street West
Suite 5800
Toronto, Ontario M5H 3S1

Emily Cole
Tel: 416.595.8640
Email: ecole@millerthomson.com

Joseph Marin
Tel: 416.595.8579
Email: jmarin@millerthomson.com

Lawyers for Allen Chan

AND PALIARE ROLAND ROSENBERG
TO: ROTHSTEIN LLP
250 University Ave, Suite 501
Toronto, Ontario M5H 3E5

Ken Rosenberg
Tel: 416.646.4304
Fax: 416.646.4301
Email: ken.rosenberg@paliareroland.com

Massimo (Max) Starnino
Tel: 416.646.7431
Email: max.starnino@paliareroland.com

Lawyers for an Ad Hoc Committee of Purchasers
of the Applicant's Securities, including the
Representative Plaintiffs in the Ontario Class
Action against the Applicant

AND DEPARTMENT OF JUSTICE
TO: 130 King Street West
Toronto, Ontario M5X 1K6

Diane Winters, General Counsel
Tel: 416.973.3172
Fax: 416.973.0810
Email: diane.winters@justice.gc.ca

Lawyers for Canada Revenue Agency

AND FASKEN MARTINEAU LLP
TO: 333 Bay Street, Suite 2400,
Bay-Adelaide Centre, Box 20
Toronto, Ontario M5H 2T6

Stuart Brotman
Tel: 416.865.5419
Fax: 416.364.7813
Email: sbrotman@fasken.com

Conor O'Neill
Tel: 416 865 4517
Email: coneill@fasken.com

Canadian Lawyers for the Convertible Note
Indenture Trustee (The Bank of New York
Mellon)

AND EMMET, MARVIN & MARTIN, LLP
TO: 120 Broadway, 32nd Floor
New York, NY 10271

Margery A. Colloff
Tel: 212.238.3068 or 212.653.1746
Fax: 212.238.3100
Email: mcolloff@emmetmarvin.com

U.S. Lawyers for the Convertible Note
Indenture Trustee (The Bank of New York
Mellon)

AND FRASER MILNER CASGRAIN LLP
TO: 77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto Ontario M5K 0A1

Neil S. Rabinovitch
Tel: 416.863.4656
Fax: 416 863 4592
Email: neil.rabinovitch@fmc-law.com

Jane Dietrich
Tel: 416.863.4467
Email: jane.dietrich@fmc-law.com

Lawyers for Contrarian Capital
Management, LLC

AND LAPOINTE ROSENSTEIN MARCHAND
TO: MELANÇON, S.E.N.C.R.L.
1250, boul. René-Lévesque Ouest, bureau 1400
Montréal (Québec) Canada H3B 5E9

Bernard Gravel
Tel: 514.925.6382
Fax: 514.925.5082
Email: bernard.gravel@lrmm.com

Bruno Floriani
Tel: 514.925.6310
Email: bruno.floriani@lrmm.com

Québec counsel for Pöyry (Beijing) Consulting
Company Ltd.

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TAB 1

**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**

NOTICE OF CROSS-MOTION and RETURN OF MOTION

TAKE NOTICE that the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the plaintiffs in the action commenced against Sino-Forest Corporation ("SFC" or the "Applicant") in the Ontario Superior Court of Justice, bearing (Toronto) Court File No. CV-11-431153-00CP (the "Ontario Plaintiffs" and the "Ontario Class Action", respectively) and the plaintiff in the action commenced against the Applicant in the Quebec Superior Court bearing Court File No. 200-06-000132-111, Siskinds Desmeules SENC (the "Quebec Plaintiff" and the "Quebec Class Action", respectively) (together, the "Class Action Plaintiffs"), will make a motion to a Judge of the Commercial List on August 28, 2012, at 2:00 p.m., 330 University Avenue, 8th Floor, Toronto, Ontario, or at such other time and place as the Court may direct, returning the relief sought by paragraph 3 of the relief requested in their motion originally returnable in this proceeding on April 13, 2012 (that is, for a representation order in this proceeding), as well as the additional relief stated below.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An order, if necessary, validating and abridging the time for service and filing of this notice of motion and motion record, and dispensing with any further service thereof;
2. An order appointing the Class Action Plaintiffs as representatives of the members of the classes proposed in the Class Actions (the "Class"), for the purposes of any related or ensuing receivership, bankruptcy or other insolvency proceeding that has or may be brought before this Court, substantially in accordance with the draft representation order appended hereto as Schedule "A";
3. An order, if necessary, granting the members of the Class leave to vote on the Applicant's Plan of Compromise and Reorganization dated August 14, 2012 (the "Plan"); and
4. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. The Class members have an economic interest in the Plan insofar as it purports to compromise:
 - a. Class members' claims against the Applicant's directors and officers; and
 - b. Class members' recourse to the Applicant's insurance.
2. A representation order will further the objectives of the CCAA by expediting the process for consideration of the Plan and enable the Applicant to focus on its

- restructuring efforts rather than identifying and contacting individual Class members;
3. The Ontario Plaintiffs were awarded carriage of the Ontario Class Action to the exclusion of other claims commenced in Ontario by order of the Honourable Mr. Justice Perell dated January 6, 2012;
 4. Koskie Minsky LLP and Siskinds LLP were selected to represent the Ontario Plaintiffs;
 5. Class members have already received various communications, including with respect to the claims procedure and the Pöyry settlement, indicating that the plaintiffs in the Class Actions were representing the interests of the Class members, with Siskinds LLP (and its affiliated law firm in Quebec), Koskie Minsky LLP and/or Paliare Roland Rosenberg Rothstein LLP as their counsel.
 6. Dealing with Class members individually at this late stage of these proceedings will result in confusion, delay, and additional expense on the part of the Applicant and individual Class members.
 7. Conversely, the proposed Representation Order will serve to:
 - a. ensure that a vulnerable group is properly represented in any meetings or negotiations respecting the plan;
 - b. facilitate the administration of the proceedings, negotiation and compromise;
 - c. increase efficiency and avoid a multiplicity of legal retainers.
 8. Sections 6, 11 and 22.1 of the *Companies' Creditors Arrangement Act*;
 9. Rules 3.02, 10, 16.08 and 37 of the *Rules of Civil Procedure*; and

10. Such further grounds as counsel may advise and this Honourable Court may consider.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used on the hearing of the motion:

1. the affidavit of Daniel E. H. Bach, sworn April 11, 2012;
2. the affidavit of Jonathan Bida, affirmed June 7, 2012;
3. the affidavit of Daniel Bach, sworn July 11, 2012;
4. the Monitor's Reports filed in these proceedings;
5. the other pleadings and proceedings herein; and
6. such further or other material as counsel may advise and this Honourable Court permit.

August 23, 2012

**PALIARE ROLAND ROSENBERG ROTHSTEIN
LLP**

155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Ken Rosenberg (LSUC No. 21102H)

Massimo Starnino (LSUC No. 41048G)

Tel: 416.646.4300 / Fax: 416.646.4301

Email: ken.rosenberg@paliareroland.com

Email: max.starnino@paliareroland.com

KOSKIE MINSKY LLP

20 Queen Street West, Suite 900
Toronto, ON M5H 3R3

Kirk Baert

Jonathan Bida

Tel: 416.977.8353 / Fax: 416.977.3316

Email: kbaert@kmlaw.ca

Email: jbida@kmlaw.ca

SISKINDS LLP

680 Waterloo Street
London, ON N6A 3V8

A. Dimitri Lascaris

Charles M. Wright

Tel: 519.672.2121 / Fax: 519.672.6065

Email: dimitri.lascaris@siskinds.com

Email: charles.wright@siskinds.com

**Lawyers for an Ad Hoc Committee of
Purchasers of the Applicant's Securities,
including the Representative Plaintiffs in the
Ontario Class Action and the Quebec Class
Action against the Applicant**

TO: THE ATTACHED SERVICE LIST

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**SCHEDULE "A" TO NOTICE OF MOTION:
DRAFT REPRESENTATION ORDER**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	TUESDAY, THE 28th
)	
JUSTICE MORAWETZ)	DAY OF 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**

REPRESENTATION ORDER

THIS MOTION made by the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the plaintiffs in the action commenced against Sino-Forest Corporation ("SFC" or the "Applicant") in the Ontario Superior Court of Justice, bearing (Toronto) Court File No. CV-11-431153-00CP (the "Ontario Plaintiffs" and the "Ontario Class Action", respectively) and the plaintiff in the action commenced against the Applicant in the Quebec Superior Court bearing Court File No. 200-06-000132-111 (the "Quebec Plaintiff" and the "Quebec Class Action", respectively) (together, the "Class Action Plaintiffs"), for an order appointing the Ontario Plaintiffs as representatives of those persons described in Appendix A hereto (collectively, the "Class Members"), for the purposes of these proceedings and any related or ensuing receivership, bankruptcy or other insolvency proceeding that has or may be brought before this Court in respect of the Applicant (the "Insolvency Proceedings"), was heard this day, on the Commercial List at the courthouse at 330 University Avenue, Toronto, Ontario,

ON READING the Motion Record of the Class Action Plaintiffs and on hearing the submissions of counsel for the Class Action Plaintiffs, Sino-Forest Corporation, the Monitor and other parties,

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 was properly returnable August 28, 2012.
2. **THIS COURT ORDERS** that Class Action Plaintiffs are hereby appointed as representatives of Class Members in the Insolvency Proceedings, including, without limitation, for the purpose of voting on any Plan of Compromise or Arrangement, and settling or compromising claims by the Class Members in the Insolvency Proceedings.
3. **THIS COURT ORDERS** that Koskie Minsky LLP, Siskinds LLP and Paliare Roland Rosenberg Rothstein LLP are hereby appointed as counsel for the Class Members in the Insolvency Proceedings for any issues affecting the Class Members in the Insolvency Proceedings.
4. **THIS COURT ORDERS** that all reasonable legal, financial expert and advisory fees and all other incidental fees and disbursements, as may have been or shall be incurred by the Class Action Plaintiffs and their counsel, shall be paid out of any recovery made by the Class Action Plaintiffs and their counsel on behalf of the Class Members, whether as part of these proceedings or as part of the Ontario Class Action or Quebec Class Action, in accordance with the applicable retainer agreements and as may be approved by this court, either as part of these proceedings or as part of the Ontario Class Action or Quebec Class Action.
5. **THIS COURT ORDERS** that notice of the granting of this Order be provided to the Class Members, forthwith, by advertisement in the national edition of the Globe and Mail, the Wall Street Journal, and La Presse, at the expense of the Applicant, and under such other terms and conditions as to be agreed upon by the Class Action Plaintiffs, the Applicant and the Monitor.
6. **THIS COURT ORDERS** that the Class Action Plaintiffs, or their counsel on their behalf, are authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body and other

government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

7. **THIS COURT ORDERS** that any individual Class Member who does not wish to be bound by this Order and all other related Orders which may subsequently be made in these proceedings shall, within 30 days of publication of notice of this Order, notify the Monitor, in writing, by facsimile, mail or delivery, and substantially in the form attached as Appendix B hereto and shall thereafter not be bound and shall be represented themselves as an independent individual party to the extent they wish to appear in the Insolvency Proceedings, or vote on any Plan. The Monitor shall immediately provide a copy of any such notices to the counsel for the Class Action Plaintiffs.
 8. **THIS COURT ORDERS** that the Class Members bound by this Order specifically exclude the Excluded Persons as described in Appendix A.
 9. **THIS COURT ORDERS** that the Representatives shall be at liberty and are authorized at any time to apply to this Honourable Court for advice and directions in the discharge or variation of their powers and duties.
-

APPENDIX A TO REPRESENTATION ORDER
DEFINITION OF CLASS MEMBERS

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 includes securities 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 the acquisition, except the **Excluded Persons**.

For the purposes of the foregoing:

"Sino" means Sino Forest Corporation, its affiliates and subsidiaries.

"Securities" means Sino's common shares, notes or other securities defined in the *Securities Act*, R.S.O. 1990, c. S.5, as amended.

"Class Period" means the period from and including March 19, 2007 to and including June 2, 2011.

"Excluded Persons" means any defendant to the action commenced in Ontario Superior Court of Justice bearing (Toronto) Court File No. 11-CV-431153CP, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives. Heirs, predecessors, successors and assigns, and any individual who is a member of the immediate family of the following persons: Allen T.Y. Chan a.k.a Tak Yuen 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 and Garry J. West.

APPENDIX "B" TO REPRESENTATION ORDER

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****OPT-OUT LETTER**

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

Attention: Greg Watson
Tel: 416.649.8100
Fax: 416.649.8101
Email: greg.watson@fticonsulting.com

I, _____, am a Class Member, as defined in the Representation Order of Mr. Justice Morawetz dated August 28, 2012 (the "Order").

Under Paragraph 8 of that Order, Class Members who do not wish to be represented by the Ontario Plaintiffs and/or to have Koskie Minsky LLP, Siskinds LLP and Paliare Roland Rosenberg Rothstein LLP act as their representative counsel may opt out.

I hereby notify the Monitor that I do not wish to be bound by the Order and will be separately represented to the extent I wish to appear in these proceedings.

Date

Name:

**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**

NOTICE OF MOTION

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto ON M5V 3H1
Ken Rosenberg / Massimo Starnino
Tel: 416.646.4300 / Fax: 416.646.4301

Koskie Minsky LLP
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3
Kirk Baert / Jonathan Bida
Tel: 416.977.8353 / Fax: 416.977.3316
Siskinds LLP

680 Waterloo Street
London, ON N6A 3V8
A. Dimitri Lascaris / Charles M. Wright
Tel: 519.672.2121 / Fax: 519.672.6065

Lawyers for the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the Representative Plaintiffs in the Ontario Class Action and the Quebec Class Action against the Applicant

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE PERELL) FRIDAY THE 6th DAY
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

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.

SCHEDULE "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

Plaintiffs

- and -

**SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly known
as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON MARTIN, KAI KIT
POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES P. BOWLAND, JAMES M.E.
HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, GARRY J. WEST,
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

FRESH AS AMENDED STATEMENT OF CLAIM

(NOTICE OF ACTION ISSUED JULY 20, 2011)

TO: Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: David Horsley
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: Allen Chan
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: William Ardell
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: James Bowland
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: James Hyde
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: Edmund Mak
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: W. Judson Martin
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: Simon Murray
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

- AND TO: Kai Kit Poon**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3
- AND TO: Peter Wang**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3
- AND TO: Garry West**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3
- AND TO: Ernst & Young LLP**
222 Bay Street
Toronto, ON M5K 1J7
- AND TO: BDO Limited**
25th Floor, Wing On Centre
111 Connaught Road Central
Hong Kong
- AND TO: Pöyry (Beijing) Consulting Company Limited**
2208-2210 Cloud 9 Plaza
No. 1118 West Yan'an Road
Shanghai 200052
PR CHINA
- AND TO: Credit Suisse Securities (Canada), Inc.**
1 First Canadian Place
100 King Street West, Suite 2900
Toronto, Ontario M5X 1C9
- AND TO: TD Securities Inc.**
66 Wellington Street West
P.O. Box 1, TD Bank Tower
Toronto, Ontario M5K 1A2
- AND TO: Dundee Securities Corporation**
1 Adelaide Street East
Toronto, ON M5C 2V9

- AND TO: RBC Dominion Securities Inc.**
155 Wellington Street West, 17th Floor
Toronto, Ontario M5V 3K7

- AND TO: Scotia Capital Inc.**
40 King Street West, Scotia Plaza
P.O. Box 4085, Station A
Toronto, Ontario M5W 2X6

- AND TO: CIBC World Markets Inc.**
161 Bay Street, Brookfield Place
P.O. Box 500
Toronto, Ontario M5J 2S8

- AND TO: Merrill Lynch Canada Inc.**
BCE Place, Wellington Tower
181 Bay Street, 4th and 5th Floors
Toronto, Ontario M5J 2V8

- AND TO: Canaccord Financial Ltd.**
161 Bay Street, Suite 2900
P.O. Box 516
Toronto, Ontario M5J 2S1

- AND TO: Maison Placements Canada Inc.**
130 Adelaide Street West, Suite 906
Toronto, Ontario M5H 3P5

- AND TO: Credit Suisse Securities (USA) LLC**
Eleven Madison Avenue
New York, NY 10010

- AND TO: Banc of America Securities LLC**
100 N. Tryon St., Ste. 220
Charlotte, NC 28255

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DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) "AI" means Authorized Intermediary;
- (b) "AIF" means Annual Information Form;
- (c) "Ardell" means the defendant William E. Ardell;
- (d) "Banc of America" means the defendant Banc of America Securities LLC;
- (e) "BDO" means the defendant BDO Limited;
- (f) "Bowland" means the defendant James P. Bowland;
- (g) "Canaccord" means the defendant Canaccord Financial Ltd.;
- (h) "CBCA" means the *Canada Business Corporations Act*, RSC 1985, c. C-44, as amended;
- (i) "Chan" means the defendant Allen T.Y. Chan also known as "Tak Yuen Chan";
- (j) "CIBC" means the defendant CIBC World Markets Inc.;
- (k) "CJA" means the Ontario *Courts of Justice Act*, RSO 1990, c C-43, as amended;
- (l) "Class" and "Class Members" mean 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 includes securities 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, except the Excluded Persons;

- (m) “**Class Period**” means the period from and including March 19, 2007 to and including June 2, 2011;
- (n) “**Code**” means Sino’s Code of Business Conduct;
- (o) “**CPA**” means the Ontario *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
- (p) “**Credit Suisse**” means the defendant Credit Suisse Securities (Canada), Inc.;
- (q) “**Credit Suisse USA**” means the defendant Credit Suisse Securities (USA) LLC;
- (r) “**Defendants**” means Sino, the Individual Defendants, Pöyry, BDO, E&Y and the Underwriters;
- (s) “**December 2009 Offering Memorandum**” means Sino’s Final Offering Memorandum, dated December 10, 2009, relating to the distribution of Sino’s 4.25% Convertible Senior Notes due 2016, which Sino filed on SEDAR on December 11, 2009;
- (t) “**December 2009 Prospectus**” means Sino’s Final Short Form Prospectus, dated December 10, 2009, which Sino filed on SEDAR on December 11, 2009;
- (u) “**Dundee**” means the defendant Dundee Securities Corporation;
- (v) “**E&Y**” means the defendant, Ernst and Young LLP;
- (w) “**Excluded Persons**” means 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 a member of the immediate family of an Individual Defendant;
- (x) “**GAAP**” means Canadian generally accepted accounting principles;
- (y) “**Horsley**” means the defendant David J. Horsley;
- (z) “**Hyde**” means the defendant James M.E. Hyde;

(aa) **“Impugned Documents”** mean the 2005 Annual Consolidated Financial Statements (filed on SEDAR on March 31, 2006), Q1 2006 Financial Statements (filed on SEDAR on May 11, 2006), the 2006 Annual Consolidated Financial Statements (filed on SEDAR on March 19, 2007), 2006 AIF (filed on SEDAR on March 30, 2007), 2006 Annual MD&A (filed on SEDAR on March 19, 2007), Management Information Circular dated April 27, 2007 (filed on SEDAR on May 4, 2007), Q1 2007 MD&A (filed on SEDAR on May 14, 2007), Q1 2007 Financial Statements (filed on SEDAR on May 14, 2007), June 2007 Prospectus, Q2 2007 MD&A (filed on SEDAR on August 13, 2007), Q2 2007 Financial Statements (filed on SEDAR on August 13, 2007), Q3 2007 MD&A (filed on SEDAR on November 12, 2007), Q3 2007 Financial Statements (filed on SEDAR on November 12, 2007), 2007 Annual Consolidated Financial Statements (filed on SEDAR on March 18, 2008), 2007 AIF (filed on SEDAR on March 28, 2008), 2007 Annual MD&A (filed on SEDAR on March 18, 2008), Amended 2007 Annual MD&A (filed on SEDAR on March 28, 2008), Management Information Circular dated April 28, 2008 (filed on SEDAR on May 6, 2008), Q1 2008 MD&A (filed on SEDAR on May 13, 2008), Q1 2008 Financial Statements (filed on SEDAR on May 13, 2008), July 2008 Offering Memorandum, Q2 2008 MD&A (filed on SEDAR on August 12, 2008), Q2 2008 Financial Statements (filed on SEDAR on August 12, 2008), Q3 2008 MD&A (filed on SEDAR on November 13, 2008), Q3 2008 Financial Statements (filed on SEDAR on November 13, 2008), 2008 Annual Consolidated Financial Statements (filed on SEDAR on March 31, 2009), 2008 Annual MD&A (filed on SEDAR on March 16, 2009), Amended 2008 Annual MD&A (filed on SEDAR on March 17, 2009), 2008 AIF (filed on SEDAR on March 31, 2009), Management Information Circular dated April 28, 2009 (filed on SEDAR on May 4, 2009), Q1 2009 MD&A (filed on SEDAR on May 11, 2009), Q1 2009 Financial Statements (filed on SEDAR on May 11, 2009), June 2009 Prospectus, June 2009 Offering Memorandum, Q2 2009 MD&A (filed on SEDAR on August 10, 2009), Q2 2009 Financial Statements (filed on SEDAR on August 10, 2009), Q3 2009 MD&A (filed on SEDAR on November 12, 2009),

Q3 2009 Financial Statements (filed on SEDAR on November 12, 2009), December 2009 Prospectus, December 2009 Offering Memorandum, 2009 Annual MD&A (filed on SEDAR on March 16, 2010), 2009 Audited Annual Financial Statements (filed on SEDAR on March 16, 2010), 2009 AIF (filed on SEDAR on March 31, 2010), Management Information Circular dated May 4, 2010 (filed on SEDAR on May 11, 2010), Q1 2010 MD&A (filed on SEDAR on May 12, 2010), Q1 2010 Financial Statements (filed on SEDAR on May 12, 2010), Q2 2010 MD&A (filed on SEDAR on August 10, 2010), Q2 2010 Financial Statements (filed on SEDAR on August 10, 2010), October 2010 Offering Memorandum, Q3 2010 MD&A (filed on SEDAR on November 20, 2010), Q3 2010 Financial Statements (filed on SEDAR on November 20, 2010), 2010 Annual MD&A (March 15, 2011), 2010 Audited Annual Financial Statements (filed on SEDAR on March 15, 2011), 2010 AIF (filed on SEDAR on March 31, 2011), and Management Information Circular dated May 2, 2011 (filed on SEDAR on May 10, 2011);

- (bb) **“Individual Defendants”** means Chan, Martin, Poon, Horsley, Ardell, Bowland, Hyde, Mak, Murray, Wang, and West, collectively;
- (cc) **“July 2008 Offering Memorandum”** means the Final Offering Memorandum dated July 17, 2008, relating to the distribution of Sino’s 5% Convertible Senior Notes due 2013, which Sino filed on SEDAR as a schedule to a material change report on July 25, 2008;
- (dd) **“June 2007 Prospectus”** means Sino’s Short Form Prospectus, dated June 5, 2007, which Sino filed on SEDAR on June 5, 2007;
- (ee) **“June 2009 Offering Memorandum”** means Sino’s Exchange Offer Memorandum dated June 24, 2009, relating to an offer to exchange Sino’s Guaranteed Senior Notes due 2011 for new 10.25% Guaranteed Senior Notes due 2014, which Sino filed on SEDAR as a schedule to a material change report on June 25, 2009;

- (ff) **“June 2009 Prospectus”** means Sino’s Final Short Form Prospectus, dated June 1, 2009, which Sino filed on SEDAR on June 1, 2009;
- (gg) **“Maison”** means the defendant Maison Placements Canada Inc.;
- (hh) **“Martin”** means the defendant W. Judson Martin;
- (ii) **“Mak”** means the defendant Edmund Mak;
- (ij) **“MD&A”** means Management’s Discussion and Analysis;
- (kk) **“Merrill”** means the defendant Merrill Lynch Canada Inc.;
- (ll) **“Muddy Waters”** means Muddy Waters LLC;
- (mm) **“Murray”** means the defendant Simon Murray;
- (nn) **“October 2010 Offering Memorandum”** means the Final Offering Memorandum dated October 14, 2010, relating to the distribution of Sino’s 6.25% Guaranteed Senior Notes due 2017;
- (oo) **“Offering”** or **“Offerings”** means the primary distributions in Canada of Sino’s Securities that occurred during the **Class Period** including the public offerings of Sino’s common shares pursuant to the **June 2007, June 2009 and December 2009 Prospectuses**, as well as the offerings of Sino’s notes pursuant to the **July 2008, June 2009, December 2009, and October 2010 Offering Memoranda**, collectively;
- (pp) **“OSA”** means the *Securities Act*, RSO 1990 c S.5, as amended;
- (qq) **“OSC”** means the Ontario Securities Commission;
- (rr) **“Plaintiffs”** means the plaintiffs, the Trustees of the Labourers’ Pension Fund of Central and Eastern Canada (**“Labourers”**), the Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in

Ontario (“**Operating Engineers**”) and Sjunde AP-Fonden (“**AP7**”), David C. Grant (“**Grant**”), and Robert Wong (“**Wong**”), collectively;

- (ss) “**Poon**” means the defendant Kai Kit Poon;
- (tt) “**Pöyry**” means the defendant, Pöyry (Beijing) Consulting Company Limited;
- (uu) “**PRC**” means the People’s Republic of China;
- (vv) “**Representation**” means the statement that Sino’s financial statements complied with GAAP;
- (ww) “**RBC**” means the defendant RBC Dominion Securities Inc.;
- (xx) “**Scotia**” means the defendant Scotia Capital Inc.;
- (yy) “**Securities**” means Sino’s common shares, notes or other securities, as defined in the *OSA*;
- (zz) “**SEDAR**” means the system for electronic document analysis and retrieval of the Canadian Securities Administrators;
- (aaa) “**Securities Legislation**” means, collectively, the *OSA*, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; the *Securities Act, 1988*, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;
- (bbb) “**Sino**” means, as the context requires, either the defendant Sino-Forest Corporation, or Sino-Forest Corporation and its affiliates and subsidiaries, collectively;

- (ccc) "TD" means the defendant TD Securities Inc.;
- (ddd) "TSX" means the Toronto Stock Exchange;
- (eee) "Underwriters" means Banc of America, Canaccord, CIBC, Credit Suisse, Credit Suisse USA, Dundee, Maison, Merrill, RBC, Scotia, and TD, collectively;
- (fff) "Wang" means the defendant Peter Wang;
- (ggg) "West" means the defendant Garry J. West; and
- (hhh) "WFOE" means wholly foreign owned enterprise or an enterprise established in China in accordance with the relevant PRC laws, with capital provided solely by foreign investors.

CLAIM

2. The Plaintiffs claim:

- (a) An order certifying this action as a class proceeding and appointing the Plaintiffs as representative plaintiffs for the Class, or such other class as may be certified by the Court;
- (b) A declaration that the Impugned Documents contained, either explicitly or implicitly, the Representation, and that, when made, the Representation was a misrepresentation, both at law and within the meaning of the Securities Legislation;
- (c) A declaration that the Impugned Documents contained one or more of the other misrepresentations alleged herein;
- (d) A declaration that Sino is vicariously liable for the acts and/or omissions of the Individual Defendants and of its other officers, directors and employees;

- (e) A declaration that the Underwriters, E&Y, BDO and Pöyry are each vicariously liable for the acts and/or omissions of their respective officers, directors, partners and employees;
- (f) On behalf of all of the Class Members who purchased Sino's Securities in the secondary market during the Class Period, and as against all of the Defendants other than the Underwriters, general damages in the sum of \$6.5 billion;
- (g) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which the June 2007 Prospectus related, and as against Sino, Chan, Poon, Horsley, Martin, Mak, Murray, Hyde, Pöyry, BDO, Dundee, CIBC, Merrill and Credit Suisse general damages in the sum of \$175,835,000;
- (h) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which the June 2009 Prospectus related, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, E&Y, Dundee, Merrill, Credit Suisse, Scotia and TD, general damages in the sum of \$330,000,000;
- (i) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which the December 2009 Prospectus related, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD, general damages in the sum of \$319,200,000;
- (j) On behalf of all the Class Members who purchased Sino's 5% Convertible Senior Notes due 2013 pursuant to the July 2008 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y and Credit Suisse USA, general damages in the sum of US\$345 million;
- (k) On behalf of all the Class Members who purchased Sino's 10.25% Guaranteed Senior Notes due 2014 pursuant to the June 2009 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry,

BDO, E&Y and Credit Suisse USA, general damages in the sum of US\$400 million;

- (l) On behalf of all the Class Members who purchased Sino's 4.25% Convertible Senior Notes due 2016 pursuant to the December 2009 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y, Credit Suisse USA and TD, general damages in the sum of US\$460 million;
- (m) On behalf of all the Class Members who purchased Sino's 6.25% Guaranteed Senior Notes due 2017 pursuant to the October 2010 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Mak, Murray, Hyde, Ardell, Pöyry, E&Y, Credit Suisse USA and Banc of America, general damages in the sum of US\$600 million;
- (n) On behalf of all of the Class Members, and as against Sino, Chan, Poon and Horsley, punitive damages, in respect of the conspiracy pled below, in the sum of \$50 million;
- (o) A declaration that Sino, Chan, Poon, Horsley, Martin, Mak, Murray and the Underwriters were unjustly enriched;
- (p) A constructive trust, accounting or such other equitable remedy as may be available as against Sino, Chan, Poon, Horsley, Martin, Mak, Murray and the Underwriters;
- (q) A declaration that the acts and omissions of Sino have effected a result, the business or affairs of Sino have been carried on or conducted in a manner, or the powers of the directors of Sino have been exercised in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the Plaintiffs and the Class Members, pursuant to s. 241 of the *CBCA*;
- (r) An order directing a reference or giving such other directions as may be necessary to determine the issues, if any, not determined at the trial of the common issues;

- (s) Leave to amend this pleading to assert the causes of action set out in Part XXIII.1 of the *OSA* and, if necessary, the equivalent sections of the Securities Legislation other than the *OSA*;
- (t) Prejudgment and post judgment interest;
- (u) Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus, pursuant to s 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and
- (v) Such further and other relief as to this Honourable Court may seem just.

OVERVIEW

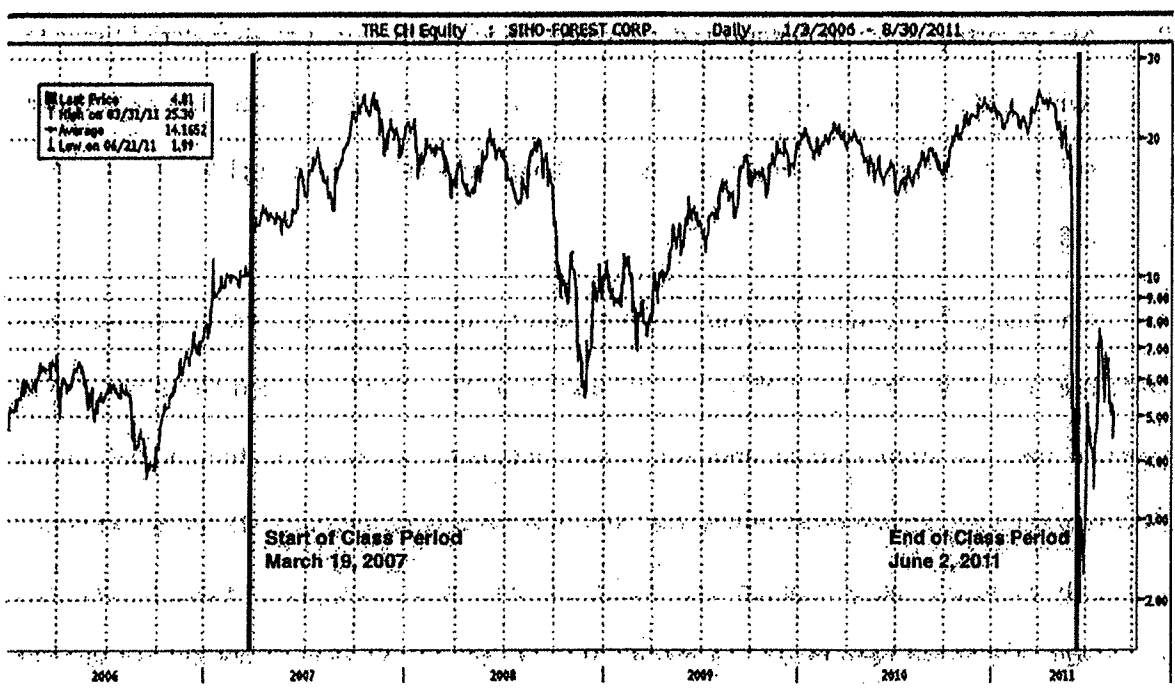
3. From the time of its establishment in 1994, Sino has claimed to be a legitimate business operating in the commercial forestry industry in the PRC and elsewhere. Throughout that period, Sino has also claimed to have experienced breathtaking growth.

4. From 1994 to 2010, Sino's reported annual revenues increased from US\$20.5 million to US\$1.9 billion, or 9,291%, and its year-over-year reported revenues decreased only *once*, in 2000. During that same period, Sino's reported net income increased from US\$3.0 million to US\$395.4 million, or 13,037%, and its year-over-year reported net annual income decreased only twice, in 2000 and 2001. Finally, from 1994 to 2010, Sino's reported total assets as at year-end increased from US\$30.6 million to US\$5.7 billion, or 18,616%. During that period, Sino's year-over-year reported assets *never* decreased.

5. Compared to forestry companies identified by Sino as its peers, and indeed by any rational measure, Sino's growth and reported results have been simply unnatural.

6. For *none* of the sixty quarters comprising the years 1996 to 2010 did Sino report a net loss; rather, for *100%* of all such quarters, Sino reported significant net income. Sino's reported financial results were far superior to those of its peers during comparable periods.

7. Beguiled by Sino's reported results, and by Sino's constant refrain that China constituted an extraordinary growth opportunity, investors drove Sino's stock price dramatically higher, as seen in the following chart:



8. The Defendants profited handsomely from the market's resulting appetite for Sino's securities. Certain of the Individual Defendants sold Sino shares at lofty prices, and thereby reaped millions of dollars of gains. Sino's senior management also used Sino's illusory success to justify their lavish salaries, bonuses and other perks. For certain of the Individual Defendants, these outsized gains were not enough. Namely, Sino stock options granted to Chan, Horsley and

other insiders were backdated or otherwise mispriced, prior to and during the Class Period, in violation of the TSX Rules, GAAP and the Securities Legislation.

9. Sino itself raised in excess of \$2.7 billion¹ in the capital markets during this period. Meanwhile, the Underwriters were paid lucrative underwriting commissions, and BDO, E&Y and Pöyry garnered millions of dollars in fees to bless Sino's reported results and assets. To their great detriment, the Class Members relied upon these supposed gatekeepers.

10. As a reporting issuer in Ontario and elsewhere, Sino was required at all material times to comply with GAAP. Indeed, Sino, BDO and E&Y, Sino's auditors during the Class Period and previously, repeatedly misrepresented that Sino's financial statements complied with GAAP. This was false.

11. On June 2, 2011, Muddy Waters, a short seller and research firm with extensive PRC experience, issued its first research report in relation to Sino, and unveiled the scale of the deception that had been worked upon the Class Members. Muddy Waters' initial report effectively revealed, among other things, that Sino had materially misstated its financial results, had falsely claimed to have acquired trees that it did not own, had reported sales that had not been made, or that had been made in a manner that did not permit Sino to book those sales as revenue under GAAP, and had concealed numerous related party transactions. These revelations had a catastrophic effect on Sino's stock price.

12. On June 1, 2011, prior to the publication of Muddy Waters' report, Sino's common shares closed at \$18.21. After the Muddy Waters report became public, Sino shares fell to \$14.46 on the TSX (a decline of 20.6%), at which point trading was halted. When trading resumed the next day, Sino's shares fell to a close of \$5.23 (a decline of 71.3% from June 1).

¹ Dollar figures are in Canadian dollars (unless otherwise indicated) and are rounded for convenience.

13. This action is now brought to recover the Class Members' losses from those who caused them: the Defendants.

THE PARTIES

The Plaintiffs

14. Labourers are the trustees of the Labourers' Pension Fund of Central and Eastern Canada, a multi-employer pension plan providing benefits for employees working in the construction industry. The fund is a union-negotiated, collectively-bargained defined benefit pension plan established on February 23, 1972 and currently has approximately \$2 billion in assets, over 39,000 members and over 13,000 pensioners and beneficiaries and approximately 2,000 participating employers. A board of trustees representing members of the plan governs the fund. The plan is registered under the *Pension Benefits Act*, RSO 1990, c P.8 and the *Income Tax Act*, RSC 1985, 5th Supp, c.1. Labourers purchased Sino's common shares over the TSX during the Class Period and continued to hold shares at the end of the Class Period. In addition, Labourers purchased Sino common shares offered by the December 2009 Prospectus and in the distribution to which that Prospectus related.

15. Operating Engineers are the trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario, a multi-employer pension plan providing pension benefits for operating engineers in Ontario. The pension plan is a union-negotiated, collectively-bargained defined benefit pension plan established on November 1, 1973 and currently has approximately \$1.5 billion in assets, over 9,000 members and pensioners and beneficiaries. The fund is governed by a board of trustees representing members of the plan. The plan is registered under the *Pension Benefits Act*, RSO 1990, c P.8 and the *Income Tax Act*, RSC 1985, 5th Supp, c.1. Operating Engineers purchased Sino's common shares over the TSX during the Class Period, and continued to hold shares at the end of the Class Period.

16. AP7 is the Swedish National Pension Fund. As of June 30, 2011, AP7 had approximately \$15.3 billion in assets under management. AP7 purchased Sino's common shares through funds it manages over the TSX during the Class Period and continued to hold those common shares at the end of the Class Period.

17. Grant is an individual residing in Calgary, Alberta. He purchased 100 of the Sino 6.25% Guaranteed Senior Notes due 2017 that were offered by the October 2010 Offering Memorandum and in the distribution to which that Offering Memorandum related. Grant continued to hold those Notes at the end of the Class Period.

18. Wong is an individual residing in Kincardine, Ontario. During the Class Period, Wong purchased Sino's common shares over the TSX and continued to hold some or all of such shares at the end of the Class Period. In addition, Wong purchased Sino common shares offered by the December 2009 Prospectus and in the distribution to which that Prospectus related, and continued to own those shares at the end of the Class Period.

The Defendants

19. Sino purports to be a commercial forest plantation operator in the PRC and elsewhere. Sino is a corporation formed under the *CBCA*.

20. At the material times, Sino was a reporting issuer in all provinces of Canada, and had its registered office located in Mississauga, Ontario. At the material times, Sino's shares were listed for trading on the TSX under the ticker symbol "TRE," on the Berlin exchange as "SFJ GR," on the over-the-counter market in the United States as "SNOFF" and on the Tradedgate market as "SFJ TH." Sino securities are also listed on alternative trading venues in Canada and elsewhere including, without limitation, AlphaToronto and PureTrading. Sino has various debt instruments, derivatives and other securities that are traded in Canada and elsewhere.

21. As a reporting issuer in Ontario, Sino was required throughout the Class Period to issue and file with SEDAR:

- (a) within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with GAAP that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;
- (b) within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with GAAP, including comparative financial statements relating to the period covered by the preceding financial year;
- (c) contemporaneously with each of the above, a MD&A of each of the above financial statements; and
- (d) within 90 days of the end of the fiscal year, an AIF, including material information about the company and its business at a point in time in the context of its historical and possible future development.

22. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in future.

23. AIFs are an annual disclosure document intended to provide material information about the company and its business at a point in time in the context of its historical and future development. The AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically.

24. Chan is a co-founder of Sino, and was the Chairman, Chief Executive Officer and a director of the company from 1994 until his resignation from those positions on or about August

25, 2011. As Sino's CEO, Chan signed and certified the company's disclosure documents during the Class Period. Chan, along with Hyde, signed each of the 2006-2010 Annual Consolidated Financial Statements on behalf of Sino's board. Chan resides in Hong Kong.

25. Since Sino was established, Chan has received lavish compensation from Sino. For example, for 2006 to 2010, Chan's total compensation (other than share-based compensation) was, respectively, US\$3.0 million, US\$3.8 million, US\$5.0 million, US\$7.6 million and US\$9.3 million.

26. As at May 1, 1995, shortly after Sino became a reporting issuer, Chan held 18.3% of Sino's outstanding common shares and 37.5% of its preference shares. As of April 29, 2011 he held 2.7% of Sino's common shares (the company no longer has preference shares outstanding). Chan has made in excess of \$10 million through the sale of Sino shares.

27. Horsley is Sino's chief financial officer, and has held this position since October 2005. In his position as Sino's CFO, Horsley has signed and certified the company's disclosure documents during the Class Period. Horsley resides in Ontario. Horsley has made in excess of \$11 million through the sale of Sino shares.

28. Since becoming Sino's CFO, Horsley has also received lavish compensation from Sino. For 2006 to 2010, Horsley's total compensation (other than share-based compensation) was, respectively, US\$1.1 million, US\$1.4 million, US\$1.7 million, US\$2.5 million, and US\$3.1 million.

29. Poon is a co-founder of Sino, and has been the President of the company since 1994. He was a director of Sino from 1994 to May 2009, and he continues to serve as Sino's President. Poon resides in Hong Kong.

30. As at May 1, 1995, shortly after Sino became a reporting issuer, Poon held 18.3% of Sino's outstanding common shares and 37.5% of its preference shares. As of April 29, 2011 he held 0.42% of Sino's common shares. Poon has made in excess of \$34.4 million through the sale of Sino shares.

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

32. Wang is a director of Sino, and has held this position since August 2007. Wang resides in Hong Kong.

33. Martin has been a director of Sino since 2006 and was appointed vice-chairman in 2010. On or about August 25, 2011, Martin replaced Chan as Chief Executive Officer of Sino. Martin was a member of Sino's audit committee prior to early 2011. Martin has made in excess of \$474,000 through the sale of Sino shares. He resides in Hong Kong.

34. Mak is a director of Sino, and has held this position since 1994. Mak was a member of Sino's audit committee prior to early 2011. Mak and persons connected with Mak have made in excess of \$6.4 million through sales of Sino shares. Mak resides in British Columbia.

35. Murray is a director of Sino, and has held this position since 1999. Murray has made in excess of \$9.9 million through sales of Sino shares. Murray resides in Hong Kong.

36. Since becoming a director, Murray has rarely attended board and board committee meetings. From the beginning of 2006 to the close of 2010, Murray attended 14 of 64 board meetings, or less than 22% of board meetings held during that period. During that same period, Murray attended 2 out of 13, or 15%, of the meetings held by the Board's Compensation and Nominating Committee, and attended *none* of the 11 meetings of that Committee held from the beginning of 2007 to the close of 2010.
37. Hyde is a director of Sino, and has held this position since 2004. Hyde was previously a partner of E&Y. Hyde is the chairman of Sino's Audit Committee. Hyde, along with Chan, signed each of the 2007-2010 Annual Consolidated Financial Statements on behalf of Sino's board. Hyde is also member of the Compensation and Nominating Committee. Hyde has made in excess of \$2.4 million through the sale of Sino shares. Hyde resides in Ontario.
38. Ardell is a director of Sino, and has held this position since January 2010. Ardell is a member of Sino's audit committee. Ardell resides in Ontario.
39. Bowland was a director of Sino from February 2011 until his resignation from the Board of Sino in November 2011. While on Sino's Board, Bowland was a member of Sino's Audit Committee. He was formerly an employee of a predecessor to E&Y. Bowland resides in Ontario.
40. West is a director of Sino, and has held this position since February 2011. West was previously a partner at E&Y. West is a member of Sino's Audit Committee. West resides in Ontario.

41. At all material times, Sino maintained the Code, which governed Sino's employees, officers and directors, including the Individual Defendants. The Code stated that the members of senior management "are expected to lead according to high standards of ethical conduct, in both words and actions..." The Code further required that Sino representatives act in the best interests of shareholders, corporate opportunities not be used for personal gain, no one trade in Sino securities based on undisclosed knowledge stemming from their position or employment with Sino, the company's books and records be honest and accurate, conflicts of interest be avoided, and any violations or suspected violations of the Code, and any concerns regarding accounting, financial statement disclosure, internal accounting or disclosure controls or auditing matters, be reported.

42. E&Y has been engaged as Sino's auditor since August 13, 2007. E&Y was also engaged as Sino's auditor from Sino's creation through February 19, 1999, when E&Y abruptly resigned during audit season and was replaced by the now-defunct Arthur Andersen LLP. E&Y was also Sino's auditor from 2000 to 2004, when it was replaced by the auditing firm BDO McCabe ("BDO"). E&Y is an expert of Sino within the meaning of the Securities Legislation.

43. E&Y, in providing what it purported to be "audit" services to Sino, made statements that it knowingly intended to be, and which were, disseminated to Sino's current and prospective security holders. At all material times, E&Y was aware of that class of persons, intended to and did communicate with them, and intended that that class of persons would rely on E&Y's statements relating to Sino, which they did to their detriment.

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

audit reports on Sino's Annual Financial Statements for various years, as discussed in further details below in paragraph 58.

45. BDO is the successor of BDO McCabe Lo Limited, the Hong Kong based auditing firm that was engaged as Sino's auditor during the period of March 21, 2005 through August 12, 2007, when they resigned at Sino's request, and were replaced by E&Y. BDO is an expert of Sino within the meaning of the Securities Legislation.

46. During the term of its service as Sino's auditor, BDO provided what it purported to be "audit" services to Sino, and in the course thereof made statements that it knowingly intended to be, and which were, disseminated to Sino's current or prospective security holders. At all material times, BDO was aware of that class of persons, intended to and did communicate with them, and intended that that class of persons rely on BDO's statements relating to Sino, which they did to their detriment.

47. BDO consented to the inclusion in each of the June 2007 and December 2009 Prospectuses and the July 2008, June 2009 and December 2009 Offering Memoranda, of its audit reports on Sino's Audited Annual Financial Statements for 2005 and 2006.

48. Pöyry is an international forestry consulting firm which purported to provide certain forestry consultation services to Sino. Pöyry is an expert of Sino within the meaning of the Securities Legislation.

49. Pöyry, in providing (or claiming to provide) "forestry consulting" services to Sino, made statements that it knowingly intended to be, and which were, disseminated to Sino's current and prospective security holders. At all material times, Pöyry was aware of that class of persons,

intended to and did communicate with them, and intended that that class of persons would rely on Pöyry's statements relating to Sino, which they did to their detriment.

50. Pöyry consented to the inclusion in the June 2007, June 2009 and December 2009 Prospectuses, as well as the July 2008, June 2009, December 2009 and October 2010 Offering Memoranda, of its various reports, as detailed below in paragraph 53.

51. The Underwriters are various financial institutions who served as underwriters in one or more of the Offerings.

52. In connection with the distributions conducted pursuant to the June 2007, June 2009 and December 2009 Prospectuses, the Underwriters who underwrote those distributions were paid, respectively, an aggregate of approximately \$7.5 million, \$14.0 million and \$14.4 million in underwriting commissions. In connection with the offerings of Sino's notes in July 2008, December 2009, and October 2010, the Underwriters who underwrote those offerings were paid, respectively, an aggregate of approximately US\$2.2 million, US\$8.5 million and \$US6 million. Those commissions were paid in substantial part as consideration for the Underwriters' purported due diligence examination of Sino's business and affairs.

THE OFFERINGS

53. Through the Offerings Sino raised in aggregate in excess of \$2.7 billion from investors during the Class Period. In particular:

- (a) On June 5, 2007, Sino issued and filed with SEDAR the June 2007 Prospectus pursuant to which Sino distributed to the public 15,900,000 common shares at a price of \$12.65 per share for gross proceeds of \$201,135,000. The June 2007 Prospectus incorporated by reference Sino's: (1) 2006 AIF; (2) 2006 Audited Annual Financial Statements; (3) 2006 Annual MD&A; (4) Management

Information Circular dated April 27, 2007; (5) Q1 2007 Financial Statements; and (6) Q1 2007 MD&A;

- (b) On July 17, 2008, Sino issued the July 2008 Offering Memorandum pursuant to which Sino sold through private placement US\$345 million in aggregate principal amount of convertible senior notes due 2013. The July 2008 Offering Memorandum included: (1) Sino's Consolidated Annual Financial Statements for 2005, 2006 and 2007; (2) Sino's unaudited interim financial statements for the three-month periods ended March 31, 2007 and 2008; (3) the section of the 2007 AIF entitled "Audit Committee" and the charter of the Audit Committee attached as an appendix to the 2007 AIF; and (4) the Pöyry report entitled "Sino-Forest Corporation Valuation of China Forest Assets Report" dated March 14, 2008;
- (c) On June 1, 2009, Sino issued and filed with SEDAR the June 2009 Prospectus pursuant to which Sino distributed to the public 34,500,000 common shares at a price of \$11.00 per share for gross proceeds of \$379,500,000. The June 2009 Prospectus incorporated by reference Sino's: (1) 2008 AIF; (2) 2007 and 2008 Annual Consolidated Financial Statements; (3) Amended 2008 Annual MD&A; (4) Q1 2009 MD&A; (5) Q1 2008 and 2009 Financial Statements; (6) Q1 2009 MD&A; (7) Management Information Circular dated April 28, 2009; and (8) the Pöyry report titled "Valuation of China Forest Corp Assets As at 31 December 2008;"
- (d) On June 24, 2009, Sino issued the June 2009 Offering Memorandum for exchange of certain of its then outstanding senior notes due 2011 with new notes, pursuant to which Sino issued US\$212,330,000 in aggregate principal amount of 10.25% Guaranteed Senior Notes due 2014. The June 2009 Offering Memorandum incorporated by reference: (1) Sino's 2005, 2006 and 2007 Consolidated Annual Financial Statements; (2) the auditors' report of BDO dated March 19, 2007 with respect to Sino's Consolidated Annual Financial Statements for 2005 and 2006; (3) the auditors' report of E&Y dated March 12, 2008 with respect to Sino's Consolidated Annual Financial Statements for 2007 except as to notes 2, 18 and 23; (4) Sino's Consolidated Annual Financial Statements for 2007 and 2008 and

the auditors' report of E&Y dated March 13, 2009; (5) the section entitled "Audit Committee" in the 2008 AIF, and the charter of the Audit Committee attached as an appendix to the 2008 AIF; and (6) the unaudited interim financial statements for the three-month periods ended March 31, 2008 and 2009;

- (e) On December 10, 2009, Sino issued the December 2009 Offering Memorandum pursuant to which Sino sold through private placement US\$460,000,000 in aggregate principal amount of 4.25% convertible senior notes due 2016. This Offering Memorandum incorporated by reference: (1) Sino's Consolidated Annual Financial Statements for 2005, 2006, 2007; (2) the auditors' report of BDO dated March 19, 2007 with respect to Sino's Annual Financial Statements for 2005 and 2006; (3) the auditors' report of E&Y dated March 12, 2008 with respect to Sino's Consolidated Annual Financial Statements for 2007, except as to notes 2, 18 and 23; (4) Sino's Consolidated Annual Financial Statements for 2007 and 2008 and the auditors' report of E&Y dated March 13, 2009; (5) the unaudited interim consolidated financial statements for the nine-month periods ended September 30, 2008 and 2009; (6) the section entitled "Audit Committee" in the 2008 AIF, and the charter of the Audit Committee attached to the 2008 AIF; (7) the Pöyry report entitled "Sino-Forest Corporation Valuation of China Forest Assets as at 31 December 2007"; and (8) the Pöyry report entitled "Sino-Forest Corporation Valuation of China Forest Corp Assets as at 31 December 2008";
- (f) On December 10, 2009, Sino issued and filed with SEDAR the December 2009 Prospectus (together with the June 2007 Prospectus and the June 2009 Prospectus, the "Prospectuses") pursuant to which Sino distributed to the public 21,850,000 common shares at a price of \$16.80 per share for gross proceeds of \$367,080,000. The December 2009 Prospectus incorporated by reference Sino's: (1) 2008 AIF; (2) 2007 and 2008 Annual Consolidated Financial Statements; (3) Amended 2008 Annual MD&A; (4) Q3 2008 and 2009 Financial Statements; (5) Q3 2009 MD&A; (6) Management Information Circular dated April 28, 2009; and (7) the

Pöyry report titled "Valuation of China Forest Corp Assets As at 31 December 2008;"

(g) On February 8, 2010, Sino closed the acquisition of substantially all of the outstanding common shares of Mandra Forestry Holdings Limited. Concurrent with this acquisition, Sino completed an exchange with holders of 99.7% of the USD\$195 million notes issued by Mandra Forestry Finance Limited and 96.7% of the warrants issued by Mandra Forestry Holdings Limited, for new 10.25% guaranteed senior notes issued by Sino in the aggregate principal amount of USD\$187,177,375 with a maturity date of July 28, 2014. On February 11, 2010, Sino exchanged the new 2014 Senior Notes for an additional issue of USD\$187,187,000 in aggregate principal amount of Sino's existing 2014 Senior Notes, issued pursuant to the June 2009 Offering Memorandum; and

(h) On October 14, 2010, Sino issued the October 2010 Offering Memorandum pursuant to which Sino sold through private placement US\$600,000,000 in aggregate principal amount of 6.25% guaranteed senior notes due 2017. The October 2010 Offering Memorandum incorporated by reference: (1) Sino's Consolidated Annual Financial Statements for 2006, 2007, 2008 and 2009; (2) the auditors' report of E&Y dated March 15, 2010 with respect to Sino's Annual Financial Statements for 2008 and 2009; (3) Sino's unaudited interim financial statements for the six-month periods ended June 30, 2009 and 2010; (4) the section entitled "Audit Committee" in the 2009 AIF, and the charter of Audit Committee attached to the 2009 AIF; and (5) the Pöyry report entitled "Sino-Forest Corporation Valuation of China Forest Corp Assets as of 31 December 2009."

54. The offering documents referenced in the preceding paragraph included, or incorporated other documents by reference that included, the Representation and the other misrepresentations in such documents that are particularized elsewhere herein. Had the truth in regard to Sino's

management, business and affairs been timely disclosed, securities regulators likely would not have receipted the Prospectuses, nor would any of the Offerings have occurred.

55. Each of Chan, Horsley, Martin and Hyde signed the June 2007 Prospectus, and therein falsely certified that that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. Each of Dundee, CIBC, Merrill and Credit Suisse also signed the June 2007 Prospectus, and therein falsely certified that, to the best of its knowledge, information and belief, that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby.

56. Each of Chan, Horsley, Martin and Hyde signed the June 2009 Prospectus, and therein falsely certified that that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. Each of Dundee, Merrill, Credit Suisse, Scotia and TD also signed the June 2009 Prospectus, and therein falsely certified that, to the best of its knowledge, information and belief, that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby.

57. Each of Chan, Horsley, Martin and Hyde signed the December 2009 Prospectus, and therein falsely certified that that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. Each of Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD also signed the December 2009 Prospectus, and therein falsely certified that, to the best of its knowledge, information and belief, that prospectus, together with the documents

incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby.

58. E&Y consented to the inclusion in: (1) the June 2009 Prospectus, of its audit reports on Sino's Audited Annual Financial Statements for 2007 and 2008; (2) the December 2009 Prospectus, of its audit reports on Sino's Audited Annual Financial Statements for 2007 and 2008; (3) the July 2008 Offering Memorandum, of its audit reports on Sino's Audited Annual Financial Statements for 2007, and its adjustments to Sino's Audited Annual Financial Statements for 2005 and 2006; (4) the December 2009 Offering Memorandum, of its audit reports on Sino's Audited Annual Financial Statements for 2007 and 2008; and (5) the October 2010 Offering Memoranda, of its audit reports on Sino's Audited Annual Financial Statements for 2008 and 2009.

59. BDO consented to the inclusion in each of the June 2007 and December 2009 Prospectuses and the July 2008, June 2009 and December 2009 Offering Memoranda of its audit reports on Sino's Audited Annual Financial Statements for 2006 and 2005.

SINO'S ORIGINS

60. At the time of its establishment, Sino purported to be in the business of acquiring forestry land rights and processing and selling wood chips in the PRC, both directly and through various joint ventures.

61. Sino's reported revenues, income and assets thereafter grew rapidly as it transacted earlier and earlier in the overall business cycle, and as Sino became increasingly complex. By the early 2000s, Sino business structure had changed to include wholly-owned subsidiaries and so-called authorized intermediaries ("AIs").

62. In its Initial Proxy Circular, Sino purported to operate through six joint ventures formed in the PRC. By 2011, Sino had over 150 subsidiaries, 58 of which were formed in the British Virgin Islands (“BVI”), and at least 40 of which were formed in the PRC.

63. Sino’s complicated and constantly changing structure, the appearance of arm’s-length intermediaries and its carefully crafted purchase and sale agreements combined with the effect that consistently high profit margins could be reported, auditor sign-offs could be achieved, certain taxes could be minimized or not paid, and asset valuations could be obtained from experts claimed to be independent.

64. Thus, the now legitimized and rapidly growing business could be packaged to raise roughly \$1 billion in equity and \$1.8 billion in debt financing, while insiders were enriched through the exercise of stock options (including mispriced stock options), salaries and benefits, consulting fees and other means.

65. This scheme occurred in the backdrop of related party, taxation and revenue recognition disclosures that were false and incomplete, and violated GAAP.

66. Sino’s entrance into Canada’s capital markets was effected by means of a “reverse takeover.” In a reverse takeover, a public shell company acquires a private company that is seeking to become public. The private company (Sino, in this case) becomes public without the scrutiny of an IPO.

67. The defendants Chan (identified as Tak Yuen Chan), Poon and Mak (along with John Thompson and James Francis O’Donnell) were the directors of Sino promptly following the reverse takeover. Chan was Chairman of the Board and CEO and Poon was President of the company. E&Y was appointed Sino’s initial auditor.

68. The Hong Kong office of E&Y audited the 1993 Audited Financial Statements of Sino-Wood Partners, Limited, which were included in the February 11, 1994 Proxy Circular. Chan signed those financial statements. E&Y (Hong Kong) also "reviewed, as to compilation only" certain pro-forma statements of various Sino equity joint ventures, also included in that proxy circular. E&Y (Toronto) "reviewed, as to compilation only" the 1993 pro-forma consolidated balance sheet of Sino, also included in that circular.

Sino Overstates the Value of, and the Revenues Generated by, the Leizhou Joint Venture

69. Initially, Sino's business was conducted primarily through an equity joint venture with the Leizhou Forestry Bureau, which was situated in Guangdong Province in the south of the PRC. The name of the venture was Zhanjiang Leizhou Eucalyptus Resources Development Co. Ltd. ("Leizhou"). The stated purpose of Leizhou, established in 1994, was:

Managing forests, wood processing, the production of wood products and wood chemical products, and establishing a production facility with an annual production capacity of 50,000 m³ of Micro Density Fiber Board (MDF), managing a base of 120,000 mu (8,000 ha) of which the forest annual utilization would be 8,000 m³.

70. There are two types of joint ventures in the PRC relevant to Sino: equity joint ventures ("EJV") and cooperating joint ventures ("CJV"). In an EJV, profits and assets are distributed in proportion to the parties' equity holdings upon winding up. In a CJV, the parties may contract to divide profits and assets disproportionately to their equity interests.

71. According to a Sino prospectus issued in January 1997, Leizhou, an EJV, was responsible for 20,000 hectares of the 30,000 hectares that Sino claimed to have "phased-in." Leizhou was thus the key driver of Sino's purported early growth.

72. Sino claimed to hold 53% of the equity in Leizhou, which was to total US\$10 million, and Sino further claimed that the Leizhou Forestry Bureau was to contribute 20,000 ha of

forestry land. In reality, however, the terms of the EJV required the Leizhou Forestry Bureau to contribute a mere 3,533 ha.

73. What was also unknown to investors was that Leizhou did not generate the sales claimed by Sino. More particularly, in 1994, 1995 and 1996, respectively, Sino claimed to have generated US\$11.3 million, US\$23.9 million and US\$23.1 million in sales from Leizhou. In reality, however, these sales did not occur, or were materially overstated.

74. Indeed, in an undisclosed letter from Leizhou Forestry Bureau to Zhanjiang City Foreign and Economic Relations and Trade Commission, dated February 27, 1998, the Bureau complained:

The Joint Venture is not capable of operation

According to the contract and charter, the main purposes of setting up the Joint Venture are, on the one hand, to invest and construct a project producing 50,000 cubic meter Medium Density Fiberboard (MDF) a year; on the other hand, to create a forest base of 120,000 mu, with which to produce 80,000 cubic meter of timber as raw material for the production of medium density fiberboard. The contract and charter also prescribed that the funding required for the MDF board project should be paid by the foreign party in cash; our side should pay in-kind the proportion of the fund prescribed by the contract. After paying 1 million USD, ***the foreign party [Sino] not only failed to fully fund the company***, but also approved in their own name the gradual withdrew of funds in the amount of RMB 4,141,045.02 RMB [approximately \$500,000], from the paid in capital provided by their company for the Joint Venture, among which \$270,000 USD was paid out to the Huadu Baixing Wood Products Factory, which has had no business relationship with the joint venture at all. This amount of money equals 47.6% of the money [Sino] paid in capital. Although our side has almost paid off the subscribed capital (only short 0.9% of the total committed), because of the limited contribution from the foreign party, and withdrew a huge amount of money from among those funds originally contributed by the foreign party, ***it is impossible to put into practice the project that the joint venture aimed to construct or set up and the intended production and business operation activities. This is all because the funds have been insufficient and the foreign party did not pay in the majority of the subscribed capital. The joint venture therefore is merely a shell, existing in name only.***

Additionally, after the establishment of the Joint Venture, ***the internal operations have been extremely abnormal***, for example, annual board meetings have not

been held as scheduled; annual reports on the status and results of annual finance auditing are missing; the huge amount of funds withdrawn by the foreign party were not discussed in the board meeting, etc. It is hard to list all the improper operations here.

[Translation; emphasis added.]

75. In its 1996 Annual Financial Statements, Sino stated:

The \$14,992,000 due from the LFB represents cash collected from the sale of wood chips on behalf of the Leizhou EJV. As originally agreed to by Sino-Wood, the cash was being retained by the LFB to fund the ongoing plantation costs of the Leizhou EJV incurred by the LFB. Sino-Wood and LFB have agreed that the amount due to the Leizhou EJV, after reduction for plantation costs incurred, will be settled in 1997 concurrent with the settlement of capital contributions due to the Leizhou EJV by Sino-Wood.

76. These statements were false, inasmuch as Leizhou never generated such sales. Leizhou was wound-up in 1998.

Sino's Fictitious Investment in SJXT

77. In Sino's audited financial statements for the year ended December 31, 1997, filed on SEDAR on May 20, 1998 (the "1997 Financial Statements"), Sino stated that, in order to establish strategic partnerships with key local wood product suppliers and to build a strong distribution for the wood-based product and contract supply businesses, it had acquired a 20% equity interest in "Shanghai Jin Xiang Timber Ltd." ("SJXT"). Sino then described SJXT as an EJV that had been formed in 1997 by the Ministry of Forestry in China, and declared that its function was to organize and manage the first and only official market for timber and log trading in Eastern China. It further stated that the investment in SJXT was expected to provide the Company with good accessibility to a large base of potential customers and companies in the timber and log businesses in Eastern China.

78. According to the 1997 Financial Statements, the total investment of SJXT was estimated to be US\$9.7 million, of which Sino would be required to contribute approximately US\$1.9

million for a 20% equity interest. The 1997 Financial Statements stated that, as at December 31, 1997, Sino had made capital contributions to SJXT in the amount of US\$1.0 million. In Sino's balance sheet as at December 31, 1997, the SXJT investment was shown as an asset of \$1.0 million.

79. In October 1998, Sino announced an Agency Agreement with SJXT. At that time, Sino stated that it would provide 130,000 m³ of various wood products to SJXT over an 18 month period, and that, based on then-current market prices, it expected this contract to generate "significant revenue" for Sino-Forest amounting to approximately \$40 million. The revenues that were purportedly anticipated from the SJXT contract were highly material to Sino. Indeed, Sino's total reported revenues in 1998 were \$92.7 million.

80. In Sino's audited financial statements for the year ended December 31, 1998, which statements were filed on SEDAR on May 18, 1999 (the "1998 Financial Statements"), Sino again stated that, in 1997, it had acquired a 20% equity interest in SJXT, that the total investment in SJXT was estimated to be US\$9.7 million, of which Sino would be required to contribute approximately \$1.9 million, representing 20% of the registered capital, and that, as at December 31, 1997 and 1998, Sino had made contributions in the amount of US\$1.0 million to SJXT. In Sino's balance sheet as at December 31, 1998, the SXJT investment was again shown as an asset of US\$1.0 million.

81. Sino also stated in the 1998 Financial Statements that, during 1998, the sale of logs and lumber to SJXT amounted to approximately US\$537,000. These sales were identified in the notes to the 1998 Financial Statements as related party transactions.

82. In Sino's Annual Report for 1998, Chan stated that lumber and wood products trading constituted a "promising new opportunity." Chan explained that:

SJXT represents a very significant development for our lumber and wood products trading business. The market is prospering and continues to look very promising. Phase I, consisting of 100 shops, is completed. Phases II and III are expected to be completed by the year 2000. This expansion would triple the size of the Shanghai Timber Market.

The Shanghai Timber Market is important to Sino-Forest as a generator of significant new revenue. In addition to supplying various forest products to the market from our own operations, our direct participation in SJXT increases our activities in sourcing a wide range of other wood products both from inside China and internationally.

The Shanghai Timber Market is also very beneficial to the development of the forest products industry in China because it is the first forest products national sub-market in the eastern region of the country.

[...]

The market also greatly facilitates Sino-Forest's networking activities, enabling us to build new industry relationships and add to our market intelligence, all of which increasingly leverage our ability to act as principal in our dealings.

[Emphasis added.]

83. Chan also stated in the 1998 Annual Report that the "Agency Agreement with SJXT [is] expected to generate approximately \$40 million over 18 months."

84. In Sino's Annual Report for 1999, Sino stated:

There are also promising growth opportunities as Sino-Forest's investment in Shanghai Jin Xiang Timber Ltd. (SJXT or the Shanghai Timber Market), develops. The Company also continues to explore opportunities to establish and reinforce ties with other international forestry companies and to bring our e-commerce technology into operation.

Sino-Forest's investment in the Shanghai Timber Market — the first national forest products submarket in eastern China — has provided a strong foundation for the Company's lumber and wood products trading business.

[Emphasis added.]

85. In Sino's MD&A for the year ended December 31, 1999, Sino also stated that:

Sales from lumber and wood products trading increased 264% to \$34.2 million compared to \$9.4 million in 1998. The increase in lumber and wood products trading is attributable largely to the increase in new business generated from

our investment in Shanghai Jin Xiang Timber Ltd. (SJXT) and a larger sales force in 1999. Lumber and wood products trading on an agency basis has increased 35% from \$2.3 million in 1998 to \$3.1 million in 1999. The increase in commission income on lumber and wood products trading is attributable to approximately \$1.8 million of fees earned from a new customer.

[Emphasis added.]

86. In Sino's audited annual financial statements for the year ended December 31, 1999, which statements were filed on SEDAR on May 18, 2000 (the "1999 Financial Statements"),

Sino stated:

During the year, Shanghai Jin Xiang Timber Ltd. ["SJXT"] applied to increase *the original total capital contributions of \$868,000* [Chinese renminbi 7.2 million] to \$1,509,000 [Chinese renminbi 12.5 million]. Sino-Wood is required to *make an additional contribution of \$278,000* as a result of the increase in total capital contributions. The additional capital contribution of \$278,000 was made in 1999 *increasing its equity interest in SJXT from 27.8% to 34.4%*. The principal activity of SJXT is to organize trading of timber and logs in the PRC market.

[Emphasis added.]

87. The statements made in the 1999 Financial Statements contradicted Sino's prior representations in relation to SJXT. Among other things, Sino previously claimed to have made a capital contribution of \$1,037,000 for a 20% equity interest in SJXT.

88. In addition, note 2(b) to the 1999 Financial Statements stated that, "[a]s at December 31, 1999, \$796,000...advances to SJXT remained outstanding. The advances to SJXT were unsecured, non-interest bearing and without a fixed repayment date." Thus, assuming that Sino's contributions to SJXT were actually made, then Sino's prior statements in relation to SJXT were materially misleading, and violated GAAP, inasmuch as those statements failed to disclose that Sino had made to SJXT, a related party, a non-interest bearing loan of \$796,000.

89. In Sino's audited annual financial statements for the year ended December 31, 2000, which statements were filed on SEDAR on May 18, 2000 (the "2000 Financial Statements"), Sino stated:

In 1999, Shanghai Jin Xiang Timber Ltd. ("SJXT") applied to increase the original total capital contributions of \$868,000 [Chinese renminbi 7.2 million] to \$1,509,000 [Chinese renminbi 12.5 million]. Sino-Wood is required to make an additional contribution of \$278,000 as a result of the increase in total capital contributions. The additional capital contribution of \$278,000 was made in 1999 increasing its equity interest in SJXT from 27.8% to 34.4%. The principal activity of SJXT is to organize the trading of timber and logs in the PRC market. During the year, advances to SJXT of \$796,000 were repaid.

90. In Sino's balance sheet as at December 31, 2000, the SJXT investment was shown as an asset of \$519,000, being the sum of Sino's purported SJXT investment of \$1,315,000 as at December 31, 1999, and the \$796,000 of "advances" purportedly repaid to Sino by SJXT during the year ended December 31, 2000.

91. In Sino's Annual Reports (including the audited annual financial statements contained therein) for the years 2001 and beyond, there is no discussion whatsoever of SJXT. Indeed, Sino's "promising" and "very significant" investment in SJXT simply evaporated, without explanation, from Sino's disclosure documents. In fact, and unbeknownst to the public, Sino never invested in a company called "Shanghai Jin Xiang Timber Ltd." Chan and Poon knew, or were reckless in not knowing of, that fact.

Sino's Failure to Disclose the Alkaner Winding-up Petition

92. On December 16, 2003, a BVI corporation, Alkaner Assets Ltd. ("Alkaner"), filed a petition in the High Court of Hong Kong for an order compelling the winding up Sino. Had the petition been granted, then a liquidator would have been appointed, and Sino would have been at risk of a termination of its business activities.

93. The petition was settled on terms unknown to the Plaintiffs. However, given the severity of the consequences of the granting of Alkaner’s petition, the fact that Alkaner had filed such a petition was material, and ought to have been disclosed to Sino’s shareholders. Yet Sino never disclosed the Alkaner petition.

Sino’s Increasing Reliance on Authorized Intermediaries

94. In Sino’s AIF for the year ended December 31, 2003 (“2003 AIF”), Sino first disclosed that, through Sino-Forest Resources, Inc. and Suri-Wood Inc., each an indirect wholly-owned subsidiary formed in the BVI, Sino had been engaging in standing timber and wood chips sales and trading activities with AIs.

95. Although Sino claimed prior to and during the Class Period that its AIs, whose identities Sino largely concealed, possessed the requisite PRC business licenses to engage in trading activities, in fact the AIs were unnecessary from an operational perspective and exposed Sino to extraordinary risks, particularly in relation to Sino’s tax liabilities in the PRC. As alleged more particularly below, the Defendants misrepresented the true purpose of the AIs, and greatly understated the risks arising from Sino’s reliance upon them.

96. According to the 2003 AIF, for the three years ended December 31, 2003, sales transactions with these AIs constituted approximately 56.5%, 57.9% and 51.2%, respectively, of Sino’s revenue. Despite the fact that sales through AIs accounted for a majority of Sino’s revenues in 2002 and 2001, Sino did not disclose its reliance on AIs in those years until the issuance of the 2003 AIF in May 2004.

97. The 2003 AIF further stated:

Our relationships with our authorized intermediaries are governed by master agreements (“Master Agreements”), as supplemented by certain operational procedures relating to the wood chips sales transactions (the “Operational Procedures”). Under the Master

Agreements, as supplemented by the Operational Procedures, we appoint the authorized intermediaries to manage our wood chips trading transactions on our behalf. The authorized intermediaries agree to enter into contracts to purchase timber from suppliers, process the timber into wood chips and deliver wood chips to customers pursuant to sales contracts entered into between the authorized intermediaries and customers. We agree to reimburse the costs of the authorized intermediaries, including the cost of the purchase of raw timber, and to pay both a processing fee and a management fee, all of which are deducted from the sales proceeds of the wood chips [...]

The Operational Procedures delineate our and the authorized intermediaries' rights and obligations with respect to the purchase of raw timber, the processing of raw timber into wood chips and the sale of wood chips. *Under the Operational Procedures, the authorized intermediaries assume the risks and obligations relating to the raw timber from the time the raw timber is purchased until it is delivered to the respective authorized intermediary's premises. We assume all risks and obligations relating to the raw timber once it arrives at the premises of the authorized intermediary until it is processed into wood chips, except for any loss arising as a result of the authorized intermediary's default.* Once the raw timber is processed into wood chips, the authorized intermediary is responsible for selling wood chips to customers and it assumes all rights and obligations relating to the wood chips under its sales contracts with customers. *The Operational Procedures provide that the authorized intermediaries are responsible for selling wood chips to customers within time limits agreed between the relevant authorized intermediary and us, and that they assume all risks and obligations for failing to meet these delivery requirements.*

[...]

Because of the provisions in the Operational Procedures that specify when we and the authorized intermediary assume the risks and obligations relating to the raw timber or wood chips, as the case may be, we treat these transactions for accounting purposes as providing that we take title to the raw timber when it is delivered to the authorized intermediary. Title then passes to the authorized intermediary once the timber is processed into wood chips. *Accordingly, we treat the authorized intermediaries for accounting purposes as being both our suppliers and customers in these transactions.*

[Emphasis added.]

98. Sino made additional disclosure regarding its reliance on AIs in its AIF for the year ended December 31, 2004, wherein it stated:

Two of our British Virgin Islands subsidiaries, Sino-Forest Resources, Inc. and Suri-Wood Inc., have been responsible for the authorized sales in the PRC of standing timber from our purchased tree plantations and the logs, wood chips and wood-based products processed from timber sourced from third party suppliers. They have conducted these sales activities through authorized intermediaries in the PRC. *The amount we receive from these activities is on a net basis after withholding of applicable taxes by the*

authorized intermediaries. Because the authorized intermediaries are responsible for filing the tax returns with, and withholding or paying relevant taxes to, the PRC government in respect of these activities, the two British Virgin Islands subsidiaries generally have not had the necessary documentation to evidence the payment of PRC taxes to the relevant branch of the State Administration for Foreign Exchange.

99. In Sino's AIF for the year ended December 31, 2005, Sino made limited and materially deficient disclosure in relation to the tax risks arising from its use of AIs:

In accordance with Income Tax Laws, foreign companies deriving income from sources in the PRC are subject to corporate income tax as a foreign investment enterprise. Under the terms of the master agreements, relevant sales and purchase contracts and commission agreements made with the AI, the AI are responsible for paying all PRC taxes on behalf of the BVI subsidiaries that arise from the Authorized Sales Activities, including but not limited to, corporate income tax, value-added tax and business tax. Accordingly, the BVI Subsidiaries are not required to and therefore did not directly pay any PRC taxes with respect to the profits earned in the PRC. The relevant income remitted to the Company should have already been taxed and not subject to additional PRC taxes.

If PRC tax authorities were to determine that the AI did not pay applicable PRC taxes as required on the Authorized Sales Activities on behalf of the BVI Subsidiaries, they may attempt to recover the applicable PRC taxes or any shortfall from the BVI Subsidiaries. Since the BVI Subsidiaries are unable to ascertain whether the AI have properly handled such tax settlements and/or able to recover relevant PRC taxes required to be paid by the BVI Subsidiaries from the AI, a provision for the corporate income tax at an amount representing management's best estimate of the amount the PRC tax authorities might seek to recover, is recognized in the financial statements each year. The yearly provision is reversed to the income statement after a period of three years based on management's best estimate of the liability. This means that the Company always maintains a three-year provision for tax on the profits earned from the Authorized Sales Activities of the three most recent years.

As at December 31, 2005 the balance of the provision for these tax related liabilities amounting to \$25,379,000 (2004 – \$17,936,000) was provided on the profits of the Authorized Sales Activities earned by the BVI Subsidiaries over the three previous years.

[...] Should the PRC tax authorities recover income tax, business tax and value-added tax directly from the BVI Subsidiaries, they might do so together with related tax surcharges and tax penalties on applicable income or profits of the Authorized Sales Activities from the BVI Subsidiaries for up to three years in practice. *Under prevailing PRC tax rules, the tax surcharge is calculated at 0.05% per day on the tax amount overdue while the tax penalties can range from 50% to 500% of taxes underpaid. Under the Hong Kong tax regulations, assessments are open for up to six years in practice and tax penalties can be up to treble amount of the tax underpaid.*

[Emphasis added.]

100. However, in order to mitigate any concerns that investors may have had in relation to Sino's extensive use of AIs, Sino stated:

We intend to reduce our reliance on authorized intermediaries going forward. Currently, Jia Yao WFOE engages in sales of wood chips and logs sourced from third parties in the PRC through authorized intermediaries in the PRC. We intended to transfer Jia Yao WFOE from Sino-Panel (Gaoyao) Limited to Sino-Forest (China) Investment Limited so that Jia Yao WFOE would enter into contracts with suppliers of raw timber through Sino-Forest (China) Investment Limited, instead of authorized intermediaries.

With the successful establishment of Sino-Forest (China) Investment Limited and the subsequent establishment of Sino-Forest (Guangzhou) Trading Co. Ltd. and Sino-Forest (Suzhou) Trading Co. Ltd., we believe that we would have better opportunities to engage in trading activities through Sino-Forest (Guangzhou) Trading Co. Ltd. and Sino-Forest (Suzhou) Trading Co. *We anticipate that we will gradually phase out authorized intermediaries' involvement in these activities.* However, the pace of such a phase-out is not clear and we expect to continue to rely on the authorized intermediary in the sale of woods chips in the PRC for the foreseeable future.

[Emphasis added.]

101. Although it appeared that Sino transformed its business model over its history, from a producer and seller of wood chips to a seller of standing timber, in substance its overall business process did not change substantially. The most significant changes were the continual restructuring of Sino's organizational structure and its contractual arrangements with business partners and related entities. These changes were motivated, in whole or in part, by financial reporting objectives, specifically revenue recognition. Management consistently modified Sino's organizational structure and contractual arrangements to achieve revenue recognition at both greater values and at earlier points in time than is permissible under GAAP.

SINO'S CLASS PERIOD MISREPRESENTATIONS

102. The Defendants made misrepresentations throughout the Class Period. The particular Impugned Documents in which particular Defendants made representations, approved of them or caused them to be made during the Class Period are set out in Schedule A.

Sino's 2006 Results and AIF and its May 2007 Management Information Circular

103. Prior to the opening of markets on March 19, 2007 (the first day of the Class Period), Sino issued and filed on SEDAR its 2006 Annual Consolidated Financial Statements and 2006 Annual MD&A. Each such document contained the Representation, which was false.

104. More particularly, Sino reported in each such document, on a GAAP basis, that its revenues and net income for the year ended December 31, 2006 were, respectively, US\$645.0 million and US\$111.6 million, and further reported, on a GAAP basis, that its assets as at December 31, 2006 were US\$1.2 billion. According to these disclosure documents, Sino's revenues, net income and assets had increased from the prior year's results by, respectively, 31%, 36% and 35%. However, Sino's results for 2006, and its assets as at year-end 2006, were materially overstated.

105. Over the ten trading days following the issuance of Sino's inflated 2006 results, Sino's share price rose substantially on unusually heavy trading volume. At the close of trading on March 16, 2007 (the trading day prior to March 19, 2007), Sino's shares traded at \$10.10 per share. At the close of trading on March 29, 2007, Sino's shares traded at \$13.42 per share, which constituted an increase of approximately 33% from the March 19 closing price.

106. On March 30, 2007, Sino issued and filed on SEDAR its 2006 AIF. In that AIF, Sino stated:

...PRC laws and regulations require foreign companies to obtain licenses to engage in any business activities in the PRC. As a result of these requirements, we currently engage in our trading activities through PRC authorized intermediaries that have the requisite business licenses. There is no assurance that the PRC government will not take action to restrict our ability to engage in trading activities through our authorized intermediaries. *In order to reduce our reliance on the authorized intermediaries, we intend to use a WFOE in the PRC to enter into contracts directly with suppliers of raw timber, and then process the raw timber, or engage others to process raw timber on its behalf, and sell logs, wood chips and wood-based products to customers, although it would not be able to engage in pure trading activities.*

[Emphasis added.]

107. In its 2007 AIF, which Sino filed on March 28, 2008, Sino again declared its intention to reduce its reliance upon AIs.

108. These statements were false and/or materially misleading when made, inasmuch as Sino had no intention to reduce materially its reliance on AIs, because its AIs were critical to Sino's ability to inflate its revenue and net income. Rather, these statements had the effect of mitigating any investor concern arising from Sino's extensive reliance upon AIs.

109. Throughout the Class Period, Sino continued to depend heavily upon AIs for its purported sales of standing timber. Based in part upon management's provision for the amount the PRC tax authorities might seek to recover in relation to Sino's use of AIs, which provision increased over 400% from year-end 2006 to year-end 2010, it appears that Sino's reliance on AIs in fact *increased* during the Class Period.

110. On May 4, 2007, Sino issued and filed on SEDAR a Management Information Circular, and stated therein that "[m]aintaining a high standard of corporate governance is a top priority for the Board of Directors and the Corporation's management as both believe that effective corporate governance will help create and maintain shareholder value in the long term."

111. These statements were materially misleading when made, in that Chan and Poon, both of whom were then members of Sino’s Board, had concealed from investors the Alkaner petition, their true qualifications to manage Sino, Sino’s dealings with Leizhou, and that Sino’s investment in SJXT was fictitious. The fact that Chan and Poon had knowingly concealed these facts from investors prior to the Class Period was material to persons who acquired Sino securities during the Class Period, because Chan and Poon were then in control of Sino, and their past misconduct demonstrated that they were unfit to manage Sino.

112. In any event, the failure to disclose these facts at any time during the Class Period rendered misleading Sino’s declarations that a “high standard of corporate governance” was a “top priority.”

Sino’s Class Period Misrepresentations in Relation to its AIs

113. Throughout the Class Period, Sino materially understated the tax-related risks arising from its use of AIs.

114. Tax evasion penalties in the PRC are severe. Depending on whether the PRC authorities seek recovery of unpaid taxes by means of a civil or criminal proceeding, its claims for unpaid tax are subject to either a five- or ten-year limitation period. The unintentional failure to pay taxes is subject to a 18.75% per annum interest penalty, while an intentional failure to pay taxes is punishable with *unlimited* fines, depending on the severity of the infraction.²

115. Therefore, because Sino professed to be unable to determine whether its AIs have paid required taxes, the tax-related risks arising from Sino’s use of AIs were potentially devastating. Sino failed, however, to disclose these aspects of the PRC tax regime in its Class Period disclosure documents, as set out in paragraph 161.

² Prior to February 28, 2009, the latter penalty was capped at five times the unpaid taxes.

116. Based upon Sino's reported results, Sino's tax accruals in all of its Impugned Documents that were interim and annual financial statements were materially deficient. For example, depending on whether the PRC tax authorities would assess interest at the rate of 18.75% per annum, or would assess no interest, on the unpaid income taxes of Sino's BVI subsidiaries, and depending also on whether one assumes that Sino's AIs have paid no income taxes or have paid 50% of the income taxes due to the PRC, then Sino's tax accruals in its 2007, 2008, 2009 and 2010 Audited Annual Financial Statements were understated by, respectively, US\$10 million to US\$150 million, US\$50 million to US\$260 million, US\$81 million to US\$371 million, and US\$83 million to US\$493 million. Importantly, were one to consider the impact of unpaid taxes other than unpaid income taxes (for example, unpaid value-added taxes), then the amounts by which Sino's tax accruals were understated in these financial statements would be substantially larger. The aforementioned estimates of the amounts by which Sino's tax accruals were understated also assume that the PRC tax authorities only impose interest charges on Sino's BVI Subsidiaries and impose no other penalties for unpaid taxes, and assume further that the PRC authorities seek back taxes only for the preceding five years. As indicated above, each of these assumptions is likely to be unduly optimistic. In any case, Sino's inadequate tax accruals violated GAAP, and constituted misrepresentations.

117. Sino also violated GAAP in its 2009 Audited Annual Financial Statements by failing to apply to its 2009 financial results the PRC tax guidance that was issued in February 2010. Although that guidance was issued after year-end 2009, GAAP required that Sino apply that guidance to its 2009 financial results, because that guidance was issued in the subsequent events period.

118. Based upon Sino's reported profit margins on its dealings with AIs, which margins are extraordinary both in relation to the profit margins of Sino's peers, and in relation to the limited risks that Sino purports to assume in its transactions with its AIs, Sino's AIs are not satisfying their tax obligations, a fact that was either known to the Defendants or ought to have been known. If Sino's extraordinary profit margins are real, then Sino and its AIs must be dividing the gains from non-payment of taxes to the PRC.

119. During the Class Period, Sino also failed to disclose in any of the Impugned Documents that were AIFs, MD&As, financial statements, Prospectuses or Offering Memoranda, the risks relating to the repatriation of its earnings from the PRC. In 2010, Sino added two new sections to its AIF regarding the risk that it would not be able to repatriate earnings from its BVI subsidiaries (which deal with the AIs). The amount of retained earnings that may not be able to be repatriated is stated therein to be US\$1.4 billion. Notwithstanding this disclosure, Sino did not disclose in these Impugned Documents that it would be unable to repatriate *any* earnings absent proof of payment of PRC taxes, which it has admitted that it lacks.

120. In addition, there are material discrepancies in Sino's descriptions of its accounting treatment of its AIs. Beginning in the 2003 AIF, Sino described its AIs as follows:

Because of the provisions in the Operational Procedures that specify when we and the authorized intermediary assume the risks and obligations relating to the raw timber or wood chips, as the case may be, we treat these transactions for accounting purposes as providing that we take title to the raw timber when it is delivered to the authorized intermediary. Title then passes to the authorized intermediary once the timber is processed into wood chips. *Accordingly, we treat the authorized intermediaries for accounting purposes as being both our suppliers and customers in these transactions.*

[Emphasis added.]

121. Sino's disclosures were consistent in that regard up to and including Sino's first AIF issued in the Class Period (the 2006 AIF), which states:

Because of the provisions in the Operational Procedures that specify when we and the AI assume the risks and obligations relating to the raw timber or wood chips, as the case may be, we treat these transactions for accounting purposes as providing that we take title to the raw timber when it is delivered to the AI. Title then passes to the AI once the timber is processed into wood chips. *Accordingly, we treat the AI for accounting purposes as being both our supplier and customer in these transactions.*

[Emphasis added.]

122. In subsequent AIFs, Sino ceased without explanation to disclose whether it treated AIs for accounting purposes as being both the supplier and the customer.

123. Following the issuance of Muddy Waters' report on the last day of the Class Period, however, Sino declared publicly that Muddy Waters was "wrong" in its assertion that, for accounting purposes, Sino treated its AIs as being both supplier and customer in transactions. This claim by Sino implies either that Sino misrepresented its accounting treatment of AIs in its 2006 AIF (and in its AIFs for prior years), or that Sino changed its accounting treatment of its AIs after the issuance of its 2006 AIF. If the latter is true, then Sino was obliged by GAAP to disclose its change in its accounting treatment of its AIs. It failed to do so.

Sino Overstates its Yunnan Forestry Assets

124. In a press release issued by Sino and filed on SEDAR on March 23, 2007, Sino announced that it had entered into an agreement to sell 26 million shares to several institutional investors for gross proceeds of US\$200 million, and that the proceeds would be used for the acquisition of standing timber, including pursuant to a new agreement to purchase standing timber in Yunnan Province. It further stated in that press release that Sino-Panel (Asia) Inc. ("Sino-Panel"), a wholly-owned subsidiary of Sino, had entered on that same day into an agreement with Gengma Dai and Wa Tribes Autonomous Region Forestry Company Ltd., ("Gengma Forestry") established in Lincang City, Yunnan Province in the PRC, and that, under that Agreement, Sino-Panel would acquire approximately 200,000 hectares of non-state owned

commercial standing timber in Lincang City and surrounding cities in Yunnan for US\$700 million to US\$1.4 billion over a 10-year period.

125. These same terms of Sino's Agreement with Gengma Forestry were disclosed in Sino's Q1 2007 MD&A. Moreover, throughout the Class Period, Sino discussed its purported Yunnan acquisitions in the Impugned Documents, and Pöyry repeatedly made statements regarding said holdings, as particularized below.

126. The misrepresentations about Sino's acquisition and holdings of the Yunnan forestry assets were made in all of the Impugned Documents that were MD&As, financial statements, AIFs, Prospectuses and Offering Memoranda, except for the 2005 Audited Annual Financial Statements, the Q1 2006 interim financial statements, the 2006 Audited Annual Financial Statements, the 2006 Annual MD&A.

127. The reported Yunnan acquisitions did not take place. Sino overstated to a material degree the size and value of its forestry holdings in Yunnan Province. It simply does not own all of the trees it claims to own in Yunnan.

Sino Overstates its Suriname Forestry Assets

128. In mid-2010, Sino became a majority shareholder of Greenheart Group Ltd., a Bermuda corporation having its headquarters in Hong Kong and a listing on the Hong Kong Stock Exchange ("Greenheart").

129. In August 2010, Greenheart issued an aggregate principal amount of US\$25,000,000 convertible notes for gross proceeds of US\$24,750,000. The sole subscriber of these convertible notes was Greater Sino Holdings Limited, an entity in which Murray has an indirect interest. In addition, Chan and Murray then became members of Greenheart's Board, Chan became the Board's Chairman, and Martin became the CEO of Greenheart and a member of its Board.

130. On August 24, 2010 and December 28, 2010, Greenheart granted to Chan, Martin and Murray options to purchase, respectively, approximately 6.8 million, 6.8 million and 1.1 million Greenheart shares. The options are exercisable for a five-year term.

131. As at March 31, 2011, General Enterprise Management Services International Limited, a company in which Murray has an indirect interest, held 7,000,000 shares of Greenheart, being 0.9% of the total issued and outstanding shares of Greenheart.

132. As a result of the aforesaid transactions and interests, Sino, Chan, Martin and Murray stood to profit handsomely from any inflation in the market price of Greenheart's shares.

133. At all material times, Greenheart purported to have forestry assets in New Zealand and Suriname. On March 1, 2011, Greenheart issued a press release in which it announced that:

Greenheart acquires certain rights to additional 128,000 hectare concession in Suriname

312,000 hectares now under Greenheart management

Hong Kong, March 1, 2011 – Greenheart Group Limited (“Greenheart” or “the Company”) (HKSE: 00094), an investment holding company with forestry assets in Suriname and New Zealand (subject to certain closing conditions) today announced that *the Company has acquired 60% of Vista Marine Services N.V. (“Vista”), a private company based in Suriname, South America that controls certain harvesting rights to a 128,000 hectares hardwood concession. Vista will be rebranded as part of the Greenheart Group. This transaction will increase Greenheart’s concessions under management in Suriname to approximately 312,000 hectares.* The cost of this acquisition is not material to the Company as a whole but the Company is optimistic about the prospects of Vista and the positive impact that it will bring. *The concession is located in the Sipalawini district of Suriname, South America, bordering Lake Brokopondo and has an estimated annual allowable cut of approximately 100,000 cubic meters.*

Mr. Judson Martin, Chief Executive Officer of Greenheart and Vice-Chairman of Sino-Forest Corporation, the Company’s controlling shareholder said, “This acquisition is in line with our growth strategy to expand our footprint in Suriname. In addition to increased harvestable area, this acquisition will bring synergies in sales, marketing,

administration, financial reporting and control, logistics and overall management. *I am pleased to welcome Mr. Ty Wilkinson to Greenheart as our minority partner. Mr. Wilkinson shares our respect for the people of Suriname and the land and will be appointed Chief Executive Officer of this joint venture and be responsible for operating in a sustainable and responsible manner.* This acquisition further advances Greenheart's strategy of becoming a global agri-forestry company. We will continue to actively seek well-priced and sustainable concessions in Suriname and neighboring regions in the coming months."

About Ty Wilkinson

Mr. Wilkinson has over twenty years of experience in the agricultural and forestry business. He was awarded the prestigious "Farmer and Rancher of the year" award in the USA, in recognition of his work on water conservation, perfecting the commercial use of drip irrigation and maximizing crop yield through the use of technical soil research and analysis. Mr. Wilkinson also has extensive knowledge in sustainable forestry management, forestry planning, infrastructure development, harvest schedules, lumber drying, lumber processing, extensive local knowledge as well as regional business networks. He has been living in Suriname since 2001.

[Emphasis added.]

134. In its 2010 AIF, filed on SEDAR on March 31, 2011, Sino stated:

We hold a majority interest in Greenheart Group which, together with its subsidiaries, owns certain rights and *manages approximately 312,000 hectares of hardwood forest concessions in the Republic of Suriname, South America ("Suriname") and 11,000 hectares of a radiata pine plantation on 13,000 hectares of freehold land in New Zealand as at March 31, 2011. We believe that our ownership in Greenheart Group will strengthen our global sourcing network in supplying wood fibre for China in a sustainable and responsible manner.*

[Emphasis added.]

135. The statements reproduced in the preceding paragraph were false and/or materially misleading when made.

136. Shortly before Greenheart's purported acquisition of Vista Marine Services N.V. ("Vista"), Vista was founded by Ty Wilkinson, an American citizen who formerly resided in Sarasota, Florida. Although Greenheart saw fit to disclose in its March 1, 2011 press release that Mr. Wilkinson, Greenheart's new Suriname CEO, was once named "Farmer and Rancher of the

year,” Greenheart failed to disclose that the Circuit Court of Sarasota County, Florida, had issued a warrant for Mr. Wilkinson’s arrest in October 2009, and that Mr. Wilkinson abandoned residence in the United States at least in part to avoid arrest, and also to avoid paying various debts Wilkinson owes to a former business associate and others.

137. There is no record of Greenheart in the Suriname Trade Register maintained by the Chamber of Commerce in Suriname, nor is there any record of Greenheart with the Suriname Foundation for Forest Management and Production Control.

138. In addition, under the Suriname *Forest Management Act*, it is prohibited for one company or a group of companies in which one person or company has a majority interest to control more than 150,000 hectares of land under concession.

139. Finally, Vista’s forestry concessions are located in a region of Suriname populated by the Saramaka, an indigenous people. Pursuant to the American Convention on Human Rights and a decision of the Inter-American Court of Human Rights, the Saramaka people must have effective control over their land, including the management of their reserves, and must be effectively consulted by the State of Suriname. Sino has not disclosed in any of the Impugned Documents where it has discussed Greenheart and/or Suriname assets that Vista’s purported concessions in Suriname, if they exist at all, are impaired due to the unfulfilled rights of the indigenous peoples of Suriname. The Impugned Documents that omitted that disclosure were the 2010 Annual MD&A, the 2010 Audited Annual Financial Statements, and the 2010 AIF.

Jiangxi Forestry Assets

140. On June 11, 2009, Sino issued a press release in which it stated:

Sino-Forest Corporation (TSX: TRE), a leading commercial forest plantation operator in China, announced today that its wholly-owned subsidiary, Sino-Panel (China) Investments Limited (“Sino-Panel”), has entered into a Master Agreement for the

Purchase of Pine and Chinese Fir Plantation Forests (the “Jiangxi Master Agreement”) with Jiangxi Zhonggan Industrial Development Company Limited (“Jiangxi Zhonggan”), which will act as the authorized agent for the original plantation rights holders.

Under the Jiangxi Master Agreement, Sino-Panel will, through PRC subsidiaries of Sino-Forest, acquire between 15 million and 18 million cubic metres (m³) of wood fibre located in plantations in Jiangxi Province over a three-year period with a price not to exceed RMB300 per m³, to the extent permitted under the relevant PRC laws and regulations. *The plantations in which such amount of wood fibre to acquire is between 150,000 and 300,000 hectares to achieve an estimated average wood fibre yield of approximately 100 m³ per hectare, and include tree species such as pine, Chinese fir and others.* Jiangxi Zhonggan will ensure plantation forests sold to Sino-Panel and its PRC subsidiaries are non-state-owned, non-natural, commercial plantation forest trees.

In addition to securing the maximum tree acquisition price, Sino-Panel has pre-emptive rights to lease the underlying plantation land at a price, permitted under the relevant PRC laws and regulations, not to exceed RMB450 per hectare per annum for 30 years from the time of harvest. The land lease can also be extended to 50 years as permitted under PRC laws and regulations. The specific terms and conditions of purchasing or leasing are to be determined upon the execution of definitive agreements between the PRC subsidiaries of Sino-Panel and Jiangxi Zhonggan upon the authorisation of original plantation rights holders, and subject to the requisite governmental approval and in compliance with the relevant PRC laws and regulations.

Sino-Forest Chairman and CEO Allen Chan said, “We are fortunate to have been able to capture and support investment opportunities in China’s developing forestry sector by locking up a large amount of fibre at competitive prices. The Jiangxi Master Agreement is Sino-Forest’s fifth, long-term, fibre purchase agreement during the past two years. These five agreements cover a total plantation area of over one million hectares in five of China’s most densely forested provinces.”

[Emphasis added.]

141. According to Sino’s 2010 Annual MD&A, as of December 31, 2010, Sino had acquired 59,700 ha of plantation trees from Jiangxi Zhonggan Industrial Development Company Limited (“Zhonggan”) for US\$269.1 million under the terms of the master agreement. (In its interim report for the second quarter of 2011, which was issued after the Class Period, Sino claims that, as at June 30, 2011, this number had increased to 69,100 ha, for a purchase price of US\$309.6 million).

142. However, as was known to Sino, Chan, Poon and Horsley, and as ought to have been known to the remaining Individual Defendants, BDO, E&Y and Pöyry, Sino's plantation acquisitions through Zhonggan are materially smaller than Sino has claimed.

143. Irrespective of the true extent of Zhonggan's transactions in Jiangxi forestry plantations, Sino failed to disclose, in violation of GAAP, that Zhonggan was a related party of Sino. More particularly, according to AIC records, the legal representative of Zhonggan is Lam Hong Chiu, who is an executive vice president of Sino. Lam Hong Chiu is also a director and a 50% shareholder of China Square Industrial Limited, a BVI corporation which, according to AIC records, owns 80% of the equity of Zhonggan. The Impugned Documents that omitted that disclosure were the Q2 2009 MD&A, the Q2 2009 interim financial statements, the Q3 2009 MD&A, the Q3 2009 interim financial statements, the December 2009 Prospectus, the 2009 Annual MD&A, the 2009 Audited Annual Financial Statements, the 2009 AIF, the Q1 2010 MD&A, the Q1 2010 interim financial statements, the Q2 2010 MD&A, the Q2 2010 interim financial statements, the Q3 2010 MD&A, the Q3 2010 interim financial statements, the 2010 Annual MD&A, the 2010 Audited Annual Financial Statements, and the 2010 AIF.

Misrepresentations Regarding Related Parties other than Zhonggan

144. On January 12, 2010, Sino issued a press release in which it announced the acquisition by one of its wholly-owned subsidiaries of Homix Limited ("Homix"), which it described as a company engaged in research and development and manufacturing of engineered-wood products in China, for an aggregate amount of US\$7.1 million. That press release stated:

HOMIX has an R&D laboratory and two engineered-wood production operations based in Guangzhou and Jiangsu Provinces, covering eastern and southern China wood product markets. The company has developed a number of new technologies with patent rights, specifically 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 environment-friendly and versatile as it uses fibre from forest plantations, recycled wood and/or wood residue. This reduces the traditional use of large-diameter trees from natural forests. There is growing demand for recomposed wood technology as it reduces cost for raw material while increases the utilization and sustainable use of plantation fibre for the production of furniture and interior/exterior building materials.

[...]

Mr. Allen Chan, Sino-Forest's Chairman & CEO, said, "As we continue to ramp up our replanting programme with improved eucalyptus species, it is important for Sino-Forest to continue investing in the research and development that maximizes all aspects of the forest product supply chain. Modernization and improved productivity of the wood processing industry in China is also necessary given the country's chronic wood fibre deficit. Increased use of technology improves operation efficiency, and maximizes and broadens the use of domestic plantation wood, which reduces the need for logging domestic natural forests and for importing logs from strained tropical forests. HOMIX has significant technological capabilities in engineered-wood processing."

Mr. Chan added, "By acquiring HOMIX, we intend to use six-year eucalyptus fibre instead of 30-year tree fibre from other species to produce quality lumber using recomposed technology. We believe that this will help preserve natural forests as well as improve the demand for and pricing of our planted eucalyptus trees."

145. Sino's 2009 Audited Annual Financial Statements, Q1/2010 Unaudited Interim Financial Statements, 2010 Audited Annual Financial Statements, the MD&As related to each of the aforementioned financial statements, and Sino's AIFs for 2009 and 2010, each discussed the acquisition of Homix, but nowhere disclosed that Homix was in fact a party related to Sino.

146. More particularly, Hua Chen, a Senior Vice President, Administration & Finance, of Sino in the PRC, and who joined Sino in 2002, is a 30% shareholder of an operating subsidiary of Homix, Jiangsu Dayang Wood Co., Ltd.

147. Pursuant to GAAP, Sino was required to provide, among other things, a description of the relationship between the transacting parties when dealing with related parties. GAAP recognizes that detail on related party transactions is crucial: "Information about related party transactions is

often of more significance to a financial statement user than information about unrelated party transactions, regardless of the size of such transactions.”

148. Thus, Sino’s failure to disclose that Homix was a related party was a violation of GAAP, and a misrepresentation.

149. Finally, Homix has no patent designs registered with the PRC State Intellectual Property Office, a fact also not disclosed by Sino at the time of the acquisition of Homix or subsequently. The Impugned Documents that omitted that disclosure were the 2009 Annual MD&A, the 2009 Audited Annual Financial Statements, the 2009 AIF, the Q1 2010 MD&A, the Q1 2010 interim financial statements, the Q2 2010 MD&A, the Q2 2010 interim financial statements, the Q3 2010 MD&A, the Q3 2010 interim financial statements, the 2010 Annual MD&A, the 2010 Audited Annual Financial Statements, and the 2010 AIF.

150. In addition, during the Class Period, Sino purportedly purchased approximately 1,600 hectares of timber in Yunnan province from Yunnan Shunxuan Forestry Co. Ltd. Yunnan Shunxuan was part of Sino, acting under a separate label. Accordingly, it was considered a related party for the purposes of the GAAP disclosure requirements, a fact that Sino failed to disclose in any of the Class Period Impugned Documents that were MD&As, financial statements, AIFs and Prospectuses.

151. Sino’s failure to disclose that Yunnan Shunxuan was a related party was a violation of GAAP, and a misrepresentation.

Misrepresentations Regarding Sales of Standing Timber

152. Every financial statement and MD&A issued during the Class Period overstates Sino’s sales of standing timber to a material degree, and overstates to a material degree Sino’s reported revenues and net income for the period in question.

153. Throughout the Class Period, Sino purported to sell “standing timber.” As particularized above, such sales did not occur, or did not occur in a manner such that revenue could be recorded pursuant to GAAP.

Misrepresentations Regarding Purchases of Forestry Assets

154. As particularized above, Sino overstated its acquisition of forestry assets in Yunnan and Jiangxi Provinces in the PRC and in Suriname. Accordingly, Sino’s total assets are overstated to a material degree in all of the Impugned Documents in violation of GAAP, and each such statement of Sino’s total assets constitutes a misrepresentation.

155. In addition, during the Class Period, Pöyry and entities affiliated with it made statements that are misrepresentations in regard to Sino’s Yunnan Province “assets,” namely:

- (a) In a report dated March 14, 2008, filed on SEDAR on March 31, 2008 (the “2008 Valuations”), Pöyry: (a) stated that it had determined the valuation of the Sino forest assets to be US\$3.2 billion as at 31 December 2007; (b) provided tables and figures regarding Yunnan; (c) stated that “Stands in Yunnan range from 20 ha to 1000 ha,” that “In 2007 Sino-Forest purchased an area of mixed broadleaf forest in Yunnan Province,” that “Broadleaf forests already acquired in Yunnan are all mature,” and that “Sino-Forest is embarking on a series of forest acquisitions/expansion efforts in Hunan, Yunnan and Guangxi;” and (d) provided a detailed discussion of Sino’s Yunnan “holdings” at Appendixes 3 and 5. Pöyry’s 2008 Valuations were incorporated in Sino’s 2007 Annual MD&A, amended 2007 Annual MD&A, 2007 AIF, each of the Q1, Q2, and Q3 2008 MD&As, Annual 2008 MD&A, amended Annual 2008 MD&A, each of the Q1, Q2 and Q3 2009, annual 2009 MD&A, and July 2008 and December 2009 Offering Memoranda;
- (b) In a report dated April 1, 2009 and filed on SEDAR on April 2, 2009 (the “2009 Valuations”), Pöyry stated that “[t]he area of forest owned in Yunnan has quadrupled from around 10 000 ha to almost 40 000 ha over the past year,”

provided figures and tables regarding Yunnan, and stated that “Sino-Forest has increased its holding of broadleaf crops in Yunnan during 2008, with this province containing nearly 99% of its broadleaf resource.” Pöyry’s 2009 Valuations were incorporated in Sino’s 2008 AIF, each of the Q1, Q2, Q3 2009 MD&As, Annual 2009 MD&A, June 2009 Offering Memorandum, and June 2009 and December 2009 Prospectuses;

- (c) In a “Final Report” dated April 23, 2010, filed on SEDAR on April 30, 2010 (the “2010 Valuations”), Pöyry stated that “Guangxi, Hunan and Yunnan are the three largest provinces in terms of Sino-Forest’s holdings. The largest change in area by province, both in absolute and relative terms [sic] has been Yunnan, where the area of forest owned has almost tripled, from around 39 000 ha to almost 106 000 ha over the past year,” provided figures and tables regarding Yunnan, stated that “Yunnan contains 106 000 ha, including 85 000 ha or 99% of the total broadleaf forest,” stated that “the three provinces of Guangxi, Hunan and Yunnan together contain 391 000 ha or about 80% of the total forest area of 491 000 ha” and that “[a]lmost 97% of the broadleaf forest is in Yunnan,” and provided a detailed discussion of Sino’s Yunnan “holdings” at Appendixes 3 and 4. Pöyry’s 2010 Valuations were incorporated in Sino’s 2009 AIF, the annual 2009 MD&A, each of the Q1, Q2 and Q3 2010 MD&As, and the October 2010 Offering Memorandum;
- (d) In a “Summary Valuation Report” regarding “Valuation of Purchased Forest Crops as at 31 December 2010” and dated May 27, 2011, Pöyry provided tables and figures regarding Yunnan, stated that “[t]he major changes in area by species from December 2009 to 2010 has been in Yunnan pine, with acquisitions in Yunnan and Sichuan provinces” and that “[a]nalysis of [Sino’s] inventory data for broadleaf forest in Yunnan, and comparisons with an inventory that Pöyry undertook there in 2008 supported the upwards revision of prices applied to the Yunnan broadleaf large size log,” and stated that “[t]he yield table for Yunnan pine in Yunnan and Sichuan provinces was derived from data collected in this species in these provinces by Pöyry during other work;” and

- (e) In a press release titled "Summary of Sino-Forest's China Forest Asset 2010 Valuation Reports" and which was "jointly prepared by Sino-Forest and Pöyry to highlight key findings and outcomes from the 2010 valuation reports," Pöyry reported on Sino's "holdings" and estimated the market value of Sino's forest assets on the 754,816 ha to be approximately US\$3.1 billion as at December 31, 2010.

Misrepresentations Regarding the Failure to Disclose Sino's True History

156. In the Prospectuses, Sino described its history, but did not disclose the Alkaner petition, the true qualifications of Poon and Chan, that the SJXT investment was fictitious, or that the revenues generated by Leizhou were overstated.
157. In particular, the June 2007 Prospectus stated merely that:

The Corporation was formed under the *Business Corporations Act* (Ontario) upon the amalgamation of Mt. Kearsarge 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 the Corporation's class A subordinate-voting shares and class B multiple-voting shares. On June 25, 2002, the Corporation filed articles of continuance to continue under the *Canada Business Corporations Act*. On June 22, 2004, the Corporation 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.

158. Similarly, the June 2009 Prospectus stated only that:

The Corporation was formed under the *Business Corporations Act* (Ontario) upon the amalgamation of Mt. Kearsarge 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 the Corporation's class A subordinate-voting shares and class B multiple-voting shares. On June 25, 2002, the Corporation filed articles of continuance to continue under the *Canada Business Corporations Act*. On June 22, 2004, the Corporation 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.

159. Finally, the December 2009 Prospectus stated only that:

The Corporation was formed under the *Business Corporations Act* (Ontario) upon the amalgamation of Mt. Kearsarge 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 the Corporation's class A subordinate-voting shares and class B multiple-voting shares. On June 25, 2002, the Corporation filed articles of continuance to continue under the *Canada Business Corporations Act* (the "CBCA"). On June 22, 2004, the Corporation 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.

160. The failure to disclose the Alkaner petition, Chan's and Poon's true qualifications, and the true nature of and revenues from Sino's SJXT and Leizhou investments in the historical narrative in the Prospectuses rendered those Prospectuses false and misleading, inasmuch as those historical facts would have alerted persons who purchased Sino shares under the Prospectuses to the highly elevated risk of investing in an issuer that was managed by Poon and Chan.

Misrepresentations Regarding Sino's Margins and Taxes

161. Sino never disclosed the true source of its elevated profit margins and the true nature of the tax-related risks to which it was exposed, as particularized above in paragraphs 113 to 118.

This omission rendered each of the following statements a misrepresentation:

- (a) In the 2006 Annual Financial Statements, note 11 [b] "Provision for tax related liabilities" and associated text;
- (b) In the 2006 Annual MD&A, the subsection "Provision for Tax Related Liabilities" in the section "Critical Accounting Estimates," and associated text;
- (c) In the AIF dated March 30, 2007, the section "Estimation of the Company's provision for income and related taxes," and associated text;

- (d) In the Q1 and Q2 2007 Financial Statements, note 5 "Provision for Tax Related Liabilities," and associated text;
- (e) In the Q3 2007 Financial Statements, note 6 "Provision for Tax Related Liabilities," and associated text;
- (f) In the 2007 Annual Financial Statements, note 13 [b] "Provision for tax related liabilities," and associated text;
- (g) In the 2007 Annual MD&A and Amended 2007 Annual MD&A, the subsection "Provision for Tax Related Liabilities" in the section "Critical Accounting Estimates," and associated text;
- (h) In the AIF dated March 28, 2008, the section "Estimation of the Corporation's provision for income and related taxes," and associated text;
- (i) In the Q1, Q2 and Q3 2008 Financial Statements, note 12 "Provision for Tax Related Liabilities," and associated text;
- (j) In the Q1, Q2 and Q3 2008 MD&As, the subsection "Provision for Tax Related Liabilities" in the section "Critical Accounting Estimates," and associated text;
- (k) In the 2008 Annual Financial Statements, note 13 [d] "Provision for tax related liabilities," and associated text;
- (l) In the 2008 Annual MD&A and Amended 2008 Annual MD&A, the subsection "Provision for Tax Related Liabilities" in the section "Critical Accounting Estimates," and associated text;
- (m) In the AIF dated March 31, 2009, the section "We may be liable for income and related taxes to our business and operations, particularly our BVI Subsidiaries, in amounts greater than the amounts we have estimated and for which we have provisioned," and associated text;

- (n) In the Q1, Q2 and Q3 2009 Financial Statements, note 13 "Provision for Tax Related Liabilities," and associated text;
- (o) In the Q1, Q2 and Q3 2009 MD&As, the subsection "Provision for Tax Related Liabilities" in the section "Critical Accounting Estimates," and associated text;
- (p) In the 2009 Annual Financial Statements, note 15 [d] "Provision for tax related liabilities," and associated text;
- (q) In the 2009 Annual MD&A, the subsection "Provision for Tax Related Liabilities" in the section "Critical Accounting Estimates," and associated text;
- (r) In the AIF dated March 31, 2010, the section "We may be liable for income and related taxes to our business and operations, particularly our BVI Subsidiaries, in amounts greater than the amounts we have estimated and for which we have provisioned," and associated text;
- (s) In the Q1 and Q2 2010 Financial Statements, note 14 "Provision for Tax Related Liabilities," and associated text;
- (t) In the Q1 and Q2 2010 MD&As, the subsection "Provision for Tax Related Liabilities" in the section "Critical Accounting Estimates," and associated text;
- (u) In the Q3 2010 Financial Statements, note 14 "Provision and Contingencies for Tax Related Liabilities," and associated text; and
- (v) In the Q3 2010 MD&As, the subsection "Provision and Contingencies for Tax Related Liabilities" in the section "Critical Accounting Estimates," and associated text;
- (w) In the 2010 Annual Financial Statements, note 18 "Provision and Contingencies for Tax Related Liabilities," and associated text;

- (x) In the 2010 Annual MD&A, the subsection "Provision and Contingencies for Tax Related Liabilities" in the section "Critical Accounting Estimates," and associated text; and
- (y) In the AIF dated March 31, 2011, the section "We may be liable for income and related taxes to our business and operations, particularly our BVI Subsidiaries, in amounts greater than the amounts we have estimated and for which we have provisioned," and associated text.

162. In every Impugned Document that is a financial statement, the line item "Accounts payable and accrued liabilities" and associated figures on the Consolidated Balance Sheets fails to properly account for Sino's tax accruals and is a misrepresentation.

CHAN'S AND HORSLEY'S FALSE CERTIFICATIONS

163. Pursuant to National Instrument 52-109, the defendants Chan, as CEO, and Horsley, as CFO, were required at the material times to certify Sino's annual and quarterly MD&As and Financial Statements as well as the AIFs (and all documents incorporated into the AIFs). Such certifications included statements that the filings "do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made" and that the reports "fairly present in all material respects the financial condition, results of operations and cash flows of the issuer."

164. As particularized elsewhere herein, however, the Impugned Documents contained the Representation, which was false, as well as the other misrepresentations alleged above. Accordingly, the certifications given by Chan and Horsley were false and were themselves misrepresentations. Chan and Horsley made such false certifications knowingly or, at a minimum, recklessly.

THE TRUTH IS REVEALED

165. On June 2, 2011, Muddy Waters issued its initial report on Sino, and stated in part therein:

Sino-Forest Corp (TSE: TRE) is the granddaddy of China RTO frauds. It has always been a fraud – reporting excellent results from one of its early joint ventures – even though, because of TRE’s default on its investment obligations, the JV never went into operation. TRE just lied.

The foundation of TRE’s fraud is a convoluted structure whereby it claims to run most of its revenues through “authorized intermediaries” (“AI”). AIs are supposedly timber trader customers who purportedly pay much of TRE’s value added and income taxes. At the same time, these AIs allow TRE a gross margin of 55% on standing timber merely for TRE having speculated on trees.

The sole purpose of this structure is to fabricate sales transactions while having an excuse for not having the VAT invoices that are the mainstay of China audit work. If TRE really were processing over one billion dollars in sales through AIs, TRE and the AIs would be in serious legal trouble. No legitimate public company would take such risks – particularly because this structure has zero upside.

[...]

On the other side of the books, TRE massively exaggerates its assets. TRE significantly falsifies its investments in plantation fiber (trees). It purports to have purchased \$2.891 billion in standing timber under master agreements since 2006 [...]

[...]

Valuation

Because TRE has \$2.1 billion in debt outstanding, which we believe exceeds the potential recovery, we value its equity at less than \$1.00 per share.

166. Muddy Waters’ report also disclosed that (a) Sino’s business is a fraudulent scheme; (b) Sino systemically overstated the value of its assets; (c) Sino failed to disclose various related party transactions; (d) Sino misstated that it had enforced high standards of governance; (e) Sino misstated that its reliance on the AIs had decreased; (f) Sino misrepresented the tax risk

associated with the use of AIs; and (g) Sino failed to disclose the risks relating to repatriation of earnings from PRC.

167. After Muddy Waters' initial report became public, Sino shares fell to \$14.46, at which point trading was halted (a decline of 20.6% from the pre-disclosure close of \$18.21). When trading was allowed to resume the next day, Sino's shares fell to a close of \$5.23 (a decline of 71.3% from June 1).

SINO REWARDS ITS EXPERTS

168. Bowland, Hyde and West are former E&Y partners and employees. They served on Sino's Audit Committee but purported to exercise oversight of their former E&Y colleagues. In addition, Sino's Vice-President, Finance (Corporate), Thomas M. Maradin, is a former E&Y employee.

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

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

171. Further, Andrew Fyfe, the former Asia-Pacific President for Pöyry Forestry Industry Ltd, was appointed Chief Operating Officer of Greenheart, and is the director of several Sino subsidiaries. Fyfe signed the Pöyry valuation report dated June 30, 2004, March 22, 2005, March 23, 2006, March 14, 2008 and April 1, 2009.

172. George Ho, Sino's Vice President, Finance (China), is a former Senior Manager of BDO.

THE DEFENDANTS' RELATIONSHIP TO THE CLASS

173. By virtue of their purported accounting, financial and/or managerial acumen and qualifications, and by virtue of their having assumed, voluntarily and for profit, the role of gatekeepers, the Defendants had a duty at common law, informed by the Securities Legislation and/or the *CBCA*, to exercise care and diligence to ensure that the Impugned Documents fairly and accurately disclosed Sino's financial condition and performance in accordance with GAAP.

174. Sino is a reporting issuer and had an obligation to make timely, full, true and accurate disclosure of material facts and changes with respect to its business and affairs.

175. The Individual Defendants, by virtue of their positions as senior officers and/or directors of Sino, owed a duty to the Class Members to ensure that public statements on behalf of Sino were not untrue, inaccurate or misleading. The continuous disclosure requirements in Canadian securities law mandated that Sino provide the Impugned Documents, including quarterly and annual financial statements. These documents were meant to be read by Class Members who acquired Sino's Securities in the secondary market and to be relied on by them in making investment decisions. This public disclosure was prepared to attract investment, and Sino and the Individual Defendants intended that Class Members would rely on public disclosure for that purpose. With respect to Prospectuses and Offering Memoranda, these documents were prepared for primary market purchasers. They include detailed content as mandated under Canadian securities legislation, national instruments and OSC rules. They were meant to be read by the Class Members who acquired Sino's Securities in the primary market, and to be relied on by them in making decisions about whether to purchase the shares or notes under the Offerings to which these Prospectuses and Offering Memoranda related.

176. Chan and Horsley had statutory obligations under Canadian securities law to ensure the accuracy of disclosure documents and provided certifications in respect of the annual reports, financial statements and Prospectuses during the Class Period. The other Individual Defendants were directors of Sino during the Class Period and each had a statutory obligation as a director under the *CBCA* to manage or supervise the management of the business and affairs of Sino. These Individual Defendants also owed a statutory duty of care to shareholders under section 122 of the *CBCA*. In addition, Poon, along with Chan, co-founded Sino and has been its president since 1994. He is intimately aware of Sino's operations and as a long-standing senior officer, he had an obligation to ensure proper disclosure. Poon authorized, permitted or acquiesced in the release of the Impugned Documents.

177. BDO and E&Y acted as Sino's auditors and provided audit reports in Sino's annual financial statements that were directed to shareholders. These audit reports specified that BDO and E&Y had conducted an audit in accordance with Generally Accepted Auditing Standards, which was untrue, and included their opinions that the financial statements presented fairly, in all material respects, the financial position of Sino, the results of operations and Sino's cash flows, in accordance with GAAP. BDO and E&Y knew and intended that Class Members would rely on the audit reports and assurances about the material accuracy of the financial statements.

178. Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD each signed one or more of the Prospectuses and certified that, to the best of its knowledge, information and belief, the particular prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. These defendants knew that the Class Members who acquired Sino's Securities in the primary market would rely on these assurances and the trustworthiness that

would be credited to the Prospectuses because of their involvement. Further, those Class Members that purchased shares under these Prospectuses purchased their shares from these defendants as principals.

179. Credit Suisse USA, TD and Banc of America acted as initial purchasers or dealer managers for one or more of the note Offerings. These defendants knew that persons purchasing these notes would rely on the trustworthiness that would be credited to the Offering Memoranda because of their involvement.

THE PLAINTIFFS' CAUSES OF ACTION

Negligent Misrepresentation

180. As against all Defendants except Pöyry and the Underwriters, and on behalf of all Class Members who acquired Sino's Securities in the secondary market, the Plaintiffs plead negligent misrepresentation for all of the Impugned Documents except the Offering Memoranda.

181. Labourers and Wong, on behalf of Class Members who purchased Sino Securities in one of the distributions to which a Prospectus related, plead negligent misrepresentation as against Sino, Chan, Horsley, Poon, Wang, Martin, Mak, Murray, Hyde, BDO, E&Y, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD for the Prospectuses.

182. Grant, on behalf of Class Members who purchased Sino Securities in one of the distributions to which an Offering Memorandum related, pleads negligent misrepresentation as against Sino, BDO and E&Y for the Offering Memoranda.

183. In support of these claims, the sole misrepresentation that the Plaintiffs plead is the Representation. The Plaintiffs do not plead any other misrepresentation in support of their negligent misrepresentation claims. For greater clarity, any misrepresentations other than the

Representation that are alleged in this Statement of Claim to have been made by some or all of the Defendants during the Class Period are pleaded only in support of the Plaintiffs' other claims.

184. The Representation is contained in the phrase "[e]xcept where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles ("GAAP")." This phrase appears in the every annual and quarterly MD&A that is an Impugned Document. Sino and the Individual Defendants (for each, during the time he was a senior officer and/or director of Sino) made this statement or caused it to be made.

185. The Representation is also contained in the phrase "[t]he consolidated financial statements of Sino-Forest Corporation (the "Company") have been prepared [...] in accordance with Canadian generally accepted accounting principles." This phrase appears in every Audited Annual Financial Statement that is an Impugned Document. Every Interim Financial Statement that is an Impugned Document incorporated by reference that section of the relevant Audited Annual Financial Statement which contained that phrase. Sino and the Individual Defendants (for each, during the time he was a senior officer and/or director of Sino) made this statement, approved it and/or caused it to be made.

186. The Representation is also contained in the phrase "[t]he consolidated financial statements contained in this Annual Report have been prepared by management in accordance with Canadian generally accepted accounting principles." This phrase appears in every Audited Annual Financial Statement that is an Impugned Document. That statement was made by Sino, Chan and Horsley in the "Management's Report." The other Individual Defendants (for each,

during the time he was a senior officer and/or director of Sino) approved the statement and/or caused it to be made.

187. The Representation is contained in the phrase “[w]e prepare our financial statements in accordance with Canadian GAAP” found in the AIFs filed on March 31, 2009 and 2010. The Representation is also contained in the phrase “[p]rior to January 1, 2011, we have prepared our financial statements in accordance with Canadian GAAP” found in the AIF filed on March 31, 2011. The Impugned Documents that are Management Information Circulars incorporated the most recent AIF, Annual MD&A and Annual Financial Statements by reference and thus the Representation. Sino and the Individual Defendants (for each, during the time he was a senior officer and/or director) made these statements, approved them and/or caused them to be made.

188. The Representation is contained in the statement “[i]n our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, [years vary between documents] and the results of its operations and its cash flows for the year[s] then ended in accordance with Canadian generally accepted accounting principles,” which was made by BDO and E&Y in every Audited Annual Financial Statement that was audited by them and that is an Impugned Document.

189. The Representation is further contained in the phrase “[t]he Corporation prepares its financial statements in accordance with Canadian GAAP” found in the Prospectuses. Sino, Chan, Horsley, Poon, Wang, Martin, Mak, Murray, Hyde (for each, during the time he was a senior officer and/or director), BDO, E&Y, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD (each for those Offerings in which it acted as underwriter), made this statement, approved it and/or caused it to be made.

190. Finally, the Representation is contained in the phrase “[w]e prepare our financial statements on a consolidated basis in accordance with accounting principles generally accepted in Canada (“Canadian GAAP”)...” found in the Offering Memoranda. Sino, BDO and E&Y made this statement, approved it and/or caused it to be made.

191. The particular Impugned Documents in which particular Defendants made the Representation, approved of it or caused it to be made during the Class Period are set out in **Schedule A**.

192. The Representation was untrue: the Impugned Documents violated GAAP by, among other things, overstating to a material degree Sino’s revenues, net income and assets, failing to disclose changes in accounting policies, understating Sino’s tax accruals, and failing to disclose related party transactions.

193. The Impugned Documents were prepared for the purpose of attracting investment and inducing members of the investing public to purchase Sino securities. The Defendants knew and intended at all material times that those documents had been prepared for that purpose, and that the Class Members would rely reasonably and to their detriment upon such documents in making the decision to purchase Sino securities.

194. The Defendants further knew and intended that the information contained in the Impugned Documents would be incorporated into the price of Sino’s publicly traded securities such that the trading price of those securities would at all times reflect the information contained in the Impugned Documents.

195. As set out in paragraphs 173 to 178 above, the Defendants, other than Pöyry, Credit Suisse USA and Banc of America, had a duty at common law to exercise care and diligence to

ensure that the Impugned Documents fairly and accurately disclosed Sino's financial condition and performance in accordance with GAAP.

196. These Defendants breached that duty by making the Representation as particularized above.

197. The Plaintiffs and the other Class Members directly or indirectly relied upon the Representation in making a decision to purchase the securities of Sino, and suffered damages when the falsity of the Representation was revealed on June 2, 2011.

198. Alternatively, the Plaintiffs and the other Class Members relied upon the Representation by the act of purchasing Sino securities in an efficient market that promptly incorporated into the price of those securities all publicly available material information regarding the securities of Sino. As a result, the repeated publication of the Representation in these Impugned Documents caused the price of Sino's shares to trade at inflated prices during the Class Period, thus directly resulting in damage to the Plaintiffs and Class Members.

***Statutory Claims, Negligence, Oppression, Unjust Enrichment and Conspiracy
Statutory Liability— Secondary Market under the Securities Legislation***

199. The Plaintiffs intend to deliver a notice of motion seeking, among other things, an order granting leave to bring the statutory causes of action found in Part XXIII.1 of the OSA, and, if required, the equivalent sections of the Securities Legislation other than the OSA, against all Defendants except the Underwriters.

200. Each of the Impugned Documents except for the December 2009 and October 2010 Offering Memoranda is a "Core Document" within the meaning of the Securities Legislation.

201. Each of these Impugned Documents contained one or more misrepresentations as particularized above. Such misrepresentations and the Representation are misrepresentations for the purposes of the Securities Legislation.

202. Each of the Individual Defendants was an officer and/or director of Sino at material times. Each of the Individual Defendants authorized, permitted or acquiesced in the release of some or all of these Impugned Documents.

203. Sino is a reporting issuer within the meaning of the Securities Legislation.

204. E&Y is an expert within the meaning of the Securities Legislation. E&Y consented to the use of its statements particularized above in these Impugned Documents.

205. BDO is an expert within the meaning of the Securities Legislation. BDO consented to the use of its statements particularize above in these Impugned Documents.

206. Pöyry is an expert within the meaning of the Securities Legislation. Pöyry consented to the use of its statements particularized above in these Impugned Documents.

207. At all material times, each of Sino, Chan, Poon and Horsley, BDO and E&Y knew or, in the alternative, was wilfully blind to the fact, that the Impugned Documents contained the Representation and that the Representation was false, and that the Impugned Documents contained other of the misrepresentations that are alleged above to have been contained therein.

Statutory Liability – Primary Market for Sino’s Shares under the Securities Legislation

208. As against Sino, Chan, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD, and on behalf of those Class Members who purchased Sino shares in one of the distributions to which the June 2009 or December 2009 Prospectuses related, Labourers and Wong assert the cause of action set

forth in s. 130 of the *OSA* and, if necessary, the equivalent provisions of the Securities Legislation other than the *OSA*.

209. Sino issued the June 2009 and December 2009 Prospectuses, which contained the Representation and the other misrepresentations that are alleged above to have been contained in those Prospectuses or in the Sino disclosure documents incorporated therein by reference.

Statutory Liability – Primary Market for Sino’s Notes under the Securities Legislation

210. As against Sino, and on behalf of those Class Members who purchased or otherwise acquired Sino’s notes in one of the offerings to which the July 2008, June 2009 December 2009, and October 2010 Offering Memoranda related, Grant asserts the cause of action set forth in s. 130.1 of the *OSA* and, if necessary, the equivalent provisions of the Securities Legislation other than the *OSA*.

211. Sino issued the July 2008, June 2009, December 2009 and October 2010 Offering Memoranda, which contained the Representation and the other misrepresentations that are alleged above to have been contained in those Offering Memoranda or in the Sino disclosure documents incorporated therein by reference.

Negligence Simpliciter – Primary Market for Sino’s Securities

212. Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, BDO, E&Y, Pöyry and the Underwriters (collectively, the “Primary Market Defendants”) acted negligently in connection with one or more of the Offerings.

213. As against Sino, Chan, Horsley, Poon, Wang, Martin, Mak, Murray, Hyde, BDO, E&Y, Pöyry, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD, and on behalf of those Class Members who purchased Sino’s Securities in one of the distributions to which those Prospectuses related, Labourers and Wong assert negligence simpliciter.

214. As against Sino, BDO, E&Y, Pöyry, Credit Suisse USA, Banc of America and TD, and on behalf of those Class Members who purchased Sino's Securities in one of the distributions to which the Offering Memoranda related, Grant asserts negligence simpliciter.

215. The Primary Market Defendants owed a duty of care to ensure that the Prospectuses and/or the Offering Memoranda they issued, or authorized to be issued, or in respect of which they acted as an underwriter, initial purchaser or dealer manager, made full, true and plain disclosure of all material facts relating to the Securities offered thereby, or to ensure that their opinions or reports contained in such Prospectuses and Offering Memoranda did not contain a misrepresentation.

216. At all times material to the matters complained of herein, the Primary Market Defendants ought to have known that such Prospectuses or Offering Memoranda and the documents incorporated therein by reference were materially misleading in that they contained the Representation and the other misrepresentations particularized above.

217. Chan, Poon, Horsley, Wang, Martin, Mak, Murray and Hyde were senior officers and/or directors at the time the Offerings to which the Prospectuses related. These Prospectuses were created for the purposes of obtaining financing for Sino's operations. Chan, Horsley, Martin and Hyde signed each of the Prospectuses and certified that they made full, true and plain disclosure of all material facts relating to the shares offered. Wang, Mak and Murray were directors during one or more of these Offerings and each had a statutory obligation to manage or supervise the management of the business and affairs of Sino. Poon was a director for the June 2007 share Offering and was president of Sino at the time of the June 2009 and December 2009 Offering. Poon, along with Chan, co-founded Sino and has been the president since 1994. He is intimately aware of Sino's business and affairs.

218. The Underwriters acted as underwriters, initial purchasers or dealer managers for the Offerings to which the Prospectuses and Offering Memoranda related. They had an obligation to conduct due diligence in respect of those Offerings and ensure that those Securities were offering at a price that reflected their true value or that such distributions did not proceed if inappropriate. In addition, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD signed one or more of the Prospectuses and certified that to the best of their knowledge, information and belief, the Prospectuses constituted full, true and plain disclosure of all material facts relating to the shares offered.

219. E&Y and BDO acted as Sino's auditors and had a duty to maintain or to ensure that Sino maintained appropriate internal controls to ensure that Sino's disclosure documents adequately and fairly presented the business and affairs of Sino on a timely basis.

220. Pöyry had a duty to ensure that its opinions and reports reflected the true nature and value of Sino's assets. Pöyry, at the time it produced each of the 2008 Valuations, 2009 Valuations, and 2010 Valuations, specifically consented to the inclusion of those valuations or a summary at any time that Sino or its subsidiaries filed any documents on SEDAR or issued any documents pursuant to which any securities of Sino or any subsidiary were offered for sale.

221. The Primary Market Defendants have violated their duties to those Class Members who purchased Sino's Securities in the distributions to which a Prospectus or an Offering Memorandum related.

222. The reasonable standard of care expected in the circumstances required the Primary Market Defendants to prevent the distributions to which the Prospectuses or the Offering Memoranda related from occurring prior to the correction of the Representation and the other misrepresentations alleged above to have been contained in the Prospectuses or the Offering

Memoranda, or in the documents incorporated therein by reference. Those Defendants failed to meet the standard of care required by causing the Offerings to occur before the correction of such misrepresentations.

223. In addition, by failing to attend and participate in Sino board and board committee meetings to a reasonable degree, Murray and Poon effectively abdicated their duties to the Class Members and as directors of Sino.

224. Sino, E&Y, BDO and the Individual Defendants further breached their duty of care as they failed to maintain or to ensure that Sino maintained appropriate internal controls to ensure that Sino's disclosure documents adequately and fairly presented the business and affairs of Sino on a timely basis.

225. Had the Primary Market Defendants exercised reasonable care and diligence in connection with the distributions to which the Prospectuses related, then securities regulators likely would not have issued a receipt for any of the Prospectuses, and those distributions would not have occurred, or would have occurred at prices that reflected the true value of Sino's shares.

226. Had the Primary Market Defendants exercised reasonable care and diligence in connection with the distributions to which the Offering Memoranda related, then those distributions would not have occurred, or would have occurred at prices that reflected the true value of Sino's notes.

227. The Primary Market Defendants' negligence in relation to the Prospectuses and the Offering Memoranda resulted in damage to Labourers, Wong, Grant and to the other Class Members who purchased Sino's Securities in the related distributions. Had those Defendants satisfied their duty of care to such Class Members, then those Class Members would not have

purchased the Securities that they acquired under the Prospectuses or the Offering Memoranda, or they would have purchased them at a much lower price that reflected their true value.

Unjust Enrichment of Chan, Martin, Poon, Horsley, Mak and Murray

228. As a result of the Representation and the other misrepresentations particularized above, Sino's shares traded, and were sold by Chan, Martin, Poon, Horsley, Mak and Murray, at artificially inflated prices during the Class Period.

229. Chan, Martin, Poon, Horsley, Mak and Murray were enriched by their wrongful acts and omissions during the Class Period, and the Class Members who purchased Sino shares from such Defendants suffered a corresponding deprivation.

230. There was no juristic reason for the resulting enrichment of Chan, Martin, Poon, Horsley, Mak and Murray.

231. The Class Members who purchased Sino shares from Chan, Martin, Poon, Horsley, Mak and Murray during the Class Period are entitled to the difference between the price they paid to such Defendants for such shares, and the price that they would have paid had the Defendants not made the Representation and the other misrepresentations particularized above, and had not committed the wrongful acts and omissions particularized above.

Unjust Enrichment of Sino

232. Throughout the Class Period, Sino made the Offerings. Such Offerings were made via various documents, particularized above, that contained the Representation and the misrepresentations particularized above.

233. The Securities sold by Sino via the Offerings were sold at artificially inflated prices as a result of the Representation and the others misrepresentations particularized above.

234. Sino was enriched by, and those Class Members who purchased the Securities via the Offerings were deprived of, an amount equivalent to the difference between the amount for which the Securities offered were actually sold, and the amount for which such securities would have been sold had the Offerings not included the Representation and the misrepresentations particularized above.

235. The Offerings violated Sino's disclosure obligations under the Securities Legislation and the various instruments promulgated by the securities regulators of the Provinces in which such Offerings were made. There was no juristic reason for the enrichment of Sino.

Unjust Enrichment of the Underwriters

236. Throughout the Class Period, Sino made the Offerings. Such Offerings were made via the Prospectuses and the Offering Memoranda, which contained the Representation and the other misrepresentations particularized above. Each of the Underwriters underwrote one or more of the Offerings.

237. The Securities sold by Sino via the Offerings were sold at artificially inflated prices as a result of the Representation and the other misrepresentations particularized above. The Underwriters earned fees from the Class, whether directly or indirectly, for work that they never performed, or that they performed with gross negligence, in connection with the Offerings, or some of them.

238. The Underwriters were enriched by, and those Class Members who purchased securities via the Offerings were deprived of, an amount equivalent to the fees the Underwriters earned in connection with the Offerings.

239. The Offerings violated Sino's disclosure obligations under the Securities Legislation and the various instruments promulgated by the securities regulators of the Provinces in which such Offerings were made. There was no juristic reason for the enrichment of the Underwriters.

240. In addition, some or all of the Underwriters also acted as brokers in secondary market transactions relating to Sino securities, and earned trading commissions from the Class Members in those secondary market transactions in Sino's Securities. Those Underwriters were enriched by, and those Class Members who purchased Sino securities through those Underwriters in their capacity as brokers were deprived of, an amount equivalent to the commissions the Underwriters earned on such secondary market trades.

241. Had those Underwriters who also acted as brokers in secondary market transactions exercised reasonable diligence in connection with the Offerings in which they acted as Underwriters, then Sino's securities likely would not have traded at all in the secondary market, and the Underwriters would not have been paid the aforesaid trading commissions by the Class Members. There was no juristic reason for that enrichment of those Underwriters through their receipt of trading commissions from the Class Members.

Oppression

242. The Plaintiffs and the other Class Members had a reasonable and legitimate expectation that Sino and the Individual Defendants would use their powers to direct the company for Sino's best interests and, in turn, in the interests of its security holders. More specifically, the Plaintiffs and the other Class Members had a reasonable expectation that:

- (a) Sino and the Individual Defendants would comply with GAAP, and/or cause Sino to comply with GAAP;

- (b) Sino and the Individual Defendants would take reasonable steps to ensure that the Class Members were made aware on a timely basis of material developments in Sino's business and affairs;
- (c) Sino and the Individual Defendants would implement adequate corporate governance procedures and internal controls to ensure that Sino disclosed material facts and material changes in the company's business and affairs on a timely basis;
- (d) Sino and the Individual Defendants would not make the misrepresentations particularized above;
- (e) Sino stock options would not be backdated or otherwise mispriced; and
- (f) the Individual Defendants would adhere to the Code.

243. Such reasonable expectations were not met as:

- (a) Sino did not comply with GAAP;
- (b) the Class Members were not made aware on a timely basis of material developments in Sino's business and affairs;
- (c) Sino's corporate governance procedures and internal controls were inadequate;
- (d) the misrepresentations particularized above were made;
- (e) stock options were backdated and/or otherwise mispriced; and
- (f) the Individual Defendants did not adhere to the Code

244. Sino's and the Individual Defendants' conduct was oppressive and unfairly prejudicial to the Plaintiffs and the other Class Members and unfairly disregarded their interests. These defendants were charged with the operation of Sino for the benefit of all of its shareholders. The value of the shareholders' investments was based on, among other things:

- (a) the profitability of Sino;
- (b) the integrity of Sino's management and its ability to run the company in the interests of all shareholders;
- (c) Sino's compliance with its disclosure obligations;
- (d) Sino's ongoing representation that its corporate governance procedures met with reasonable standards, and that the business of the company was subjected to reasonable scrutiny; and
- (e) Sino's ongoing representation that its affairs and financial reporting were being conducted in accordance with GAAP.

245. This oppressive conduct impaired the ability of the Plaintiffs and other Class Members to make informed investment decisions about Sino's securities. But for that conduct, the Plaintiffs and the other Class Members would not have suffered the damages alleged herein.

Conspiracy

246. Sino, Chan, Poon and Horsley conspired with each other and with persons unknown (collectively, the "Conspirators") to inflate the price of Sino's securities. During the Class Period, the Conspirators unlawfully, maliciously and lacking bona fides, agreed together to, among other things, make the Representation and other misrepresentations particularized above, and to profit from such misrepresentations by, among other things, issuing stock options in respect of which the strike price was impermissibly low.

247. The Conspirators' predominant purposes in so conspiring were to:

- (a) inflate the price of Sino's securities, or alternatively, maintain an artificially high trading price for Sino's securities;
- (b) artificially increase the value of the securities they held; and

- (c) inflate the portion of their compensation that was dependent in whole or in part upon the performance of Sino and its securities.

248. In furtherance of the conspiracy, the following are some, but not all, of the acts carried out or caused to be carried out by the Conspirators:

- (a) they agreed to, and did, make the Representation, which they knew was false;
- (b) they agreed to, and did, make the other misrepresentations particularized above, which they knew were false;
- (c) they caused Sino to issue the Impugned Documents which they knew to be materially misleading;
- (d) as alleged more particularly below, they caused to be issued stock options in respect of which the strike price was impermissibly low; and
- (e) they authorized the sale of securities pursuant to Prospectuses and Offering Memoranda that they knew to be materially false and misleading.

249. Stock options are a form of compensation used by companies to incentivize the performance of directors, officers and employees. Options are granted on a certain date (the 'grant date') at a certain price (the 'exercise' or 'strike' price). At some point in the future, typically following a vesting period, an options-holder may, by paying the strike price, exercise the option and convert the option into a share in the company. The option-holder will make money as long as the option's strike price is lower than the market price of the security at the moment that the option is exercised. This enhances the incentive of the option recipient to work to raise the stock price of the company.

250. There are three types of option grants:

- (a) 'in-the-money' grants are options granted where the strike price is lower than the market price of the security on the date of the grant; such options are not permissible under the TSX Rules and have been prohibited by the TSX Rules at all material times;
- (b) 'at-the-money' grants are options granted where the strike price is equal to the market price of the security on the date of the grant or the closing price the day prior to the grant; and
- (c) 'out-of-the-money' grants are options granted where the strike price is higher than the market price of the security on the date of the grant.

251. Both at-the-money and out-of-the-money options are permissible under the TSX Rules and have been at all material times.

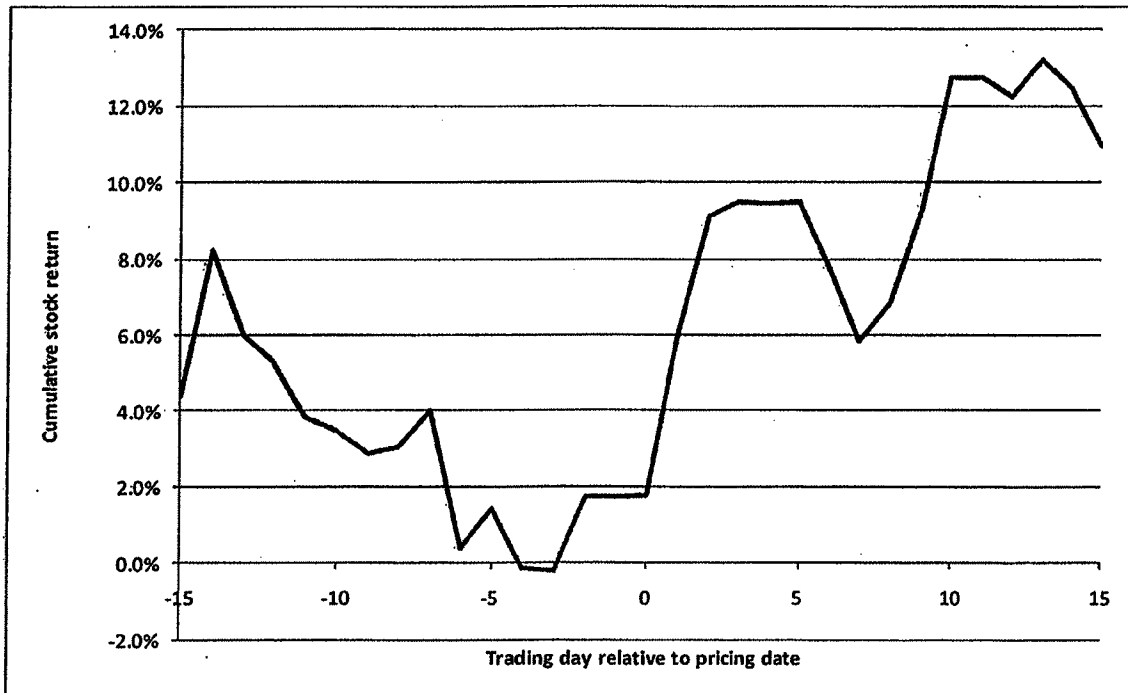
252. The purpose of both at-the-money and out-of-the-money options is to create incentives for option recipients to work to raise the share price of the company. Such options have limited value at the time of the grant, because they entitle the recipient to acquire the company's shares at or above the price at which the recipient could acquire the company's shares in the open market. Options that are in-the-money, however, have substantial value at the time of the grant irrespective of whether the company's stock price rises subsequent to the grant date.

253. At all material times, the Sino Option Plan (the "Plan") prohibited in-the-money options.

254. The Conspirators backdated and/or otherwise mispriced Sino stock options, or caused the backdating and/or mispricing of Sino stock options, in violation of, inter alia: (a) the *OSA* and the rules and regulations promulgated thereunder; (b) the Plan; (c) GAAP; (d) the Code; (e) the TSX Rules; and (f) the Conspirators' statutory, common law and contractual fiduciary duties and duties of care to Sino and its shareholders, including the Class Members.

255. The Sino stock options that were backdated or otherwise mispriced included those issued on June 26, 1996 to Chan, January 21, 2005 to Horsley, September 14, 2005 to Horsley, June 4, 2007 to Horsley and Chan, August 21, 2007 to Sino insiders other than the Conspirators, November 23, 2007 to George Ho and other Sino insiders, and March 31, 2009 to Sino insiders other than the Conspirators.

256. The graph below shows the average stock price returns for fifteen trading days prior and subsequent to the dates as of which Sino priced its stock options to its insiders. As appears therefrom, on average the dates as of which Sino's stock options were priced were preceded by a substantial decline in Sino's stock price, and were followed by a dramatic increase in Sino's stock price. This pattern could not plausibly be the result of chance.



257. The conspiracy was unlawful because the Conspirators knowingly and intentionally committed the foregoing acts when they knew such conduct was in violation of, *inter alia*, the

OSA, the Securities Legislation other than the *OSA*, the Code, the rules and requirements of the TSX (the “TSX Rules”) and the *CBCA*. The Conspirators intended to, and did, harm the Class by causing artificial inflation in the price of Sino’s securities.

258. The Conspirators directed the conspiracy toward the Plaintiffs and the other Class Members. The Conspirators knew in the circumstances that the conspiracy would, and did, cause loss to the Plaintiffs and the other Class Members. The Plaintiffs and the Class Members suffered damages when the falsity of the Representation and other misrepresentations were revealed on June 2, 2011.

**THE RELATIONSHIP BETWEEN SINO’S DISCLOSURES
AND THE PRICE OF SINO’S SECURITIES**

259. 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 of the effect of Sino’s disclosure documents upon the price of its Sino’s securities.

260. The Impugned Documents were filed, among other places, with SEDAR and the TSX, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.

261. Sino routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of Sino securities. Sino provided either copies of the above referenced documents or links thereto on its website.

262. Sino regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including press releases on newswire services in Canada, the United

States and elsewhere. Each time Sino communicated that new material information about Sino financial results to the public the price of Sino securities was directly affected.

263. Sino was the subject of analysts' reports that incorporated certain of the material information contained in the Impugned Documents, with the effect that any recommendations to purchase Sino securities in such reports during the Class Period were based, in whole or in part, upon that information.

264. Sino's securities were and are traded, among other places, on the TSX, which is a efficient and automated market. The price at which Sino's securities traded promptly incorporated material information from Sino's disclosure documents about Sino's business and affairs, including the Representation, which was disseminated to the public through the documents referred to above and distributed by Sino, as well as by other means.

VICARIOUS LIABILITY

Sino and the Individual Defendants

265. Sino is vicariously liable for the acts and omissions of the Individual Defendants particularized in this Claim.

266. The acts or omissions particularized and alleged in this Claim to have been done by Sino were authorized, ordered and done by the Individual Defendants and other agents, employees and representatives of Sino, while engaged in the management, direction, control and transaction of the business and affairs of Sino. Such acts and omissions are, therefore, not only the acts and omissions of the Individual Defendants, but are also the acts and omissions of Sino.

267. At all material times, the Individual Defendants were officers and/or directors of Sino. As their acts and omissions are independently tortious, they are personally liable for same to the Plaintiffs and the other Class Members.

E&Y

268. E&Y is vicariously liable for the acts and omissions of each of its officers, directors, partners, agents and employees as set out above.

269. The acts or omissions particularized and alleged in this Claim to have been done by E&Y were authorized, ordered and done by its officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs of E&Y. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of E&Y.

BDO

270. BDO is vicariously liable for the acts and omissions of each of its officers, directors, partners, agents and employees as set out above.

271. The acts or omissions particularized and alleged in this Claim to have been done by BDO were authorized, ordered and done by its officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs of BDO. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of BDO.

Pöyry

272. Pöyry is vicariously liable for the acts and omissions of each of its officers, directors, partners, agents and employees as set out above.

273. The acts or omissions particularized and alleged in this Claim to have been done by Pöyry were authorized, ordered and done by its officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business

and affairs of Pöyry. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of Pöyry.

The Underwriters

274. The Underwriters are vicariously liable for the acts and omissions of each of their respective officers, directors, partners, agents and employees as set out above.

275. The acts or omissions particularized and alleged in this Claim to have been done by the Underwriters were authorized, ordered and done by each of their respective officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs such Underwriters. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of the respective Underwriters.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

276. The Plaintiffs plead that this action has a real and substantial connection with Ontario because, among other thing:

- (a) Sino is a reporting issuer in Ontario;
- (b) Sino's shares trade on the TSX which is located in Toronto, Ontario;
- (c) Sino's registered office and principal business office is in Mississauga, Ontario;
- (d) the Sino disclosure documents referred to herein were disseminated in and from Ontario;
- (e) a substantial proportion of the Class Members reside in Ontario;
- (f) Sino carries on business in Ontario; and
- (g) a substantial portion of the damages sustained by the Class were sustained by persons and entities domiciled in Ontario.

SERVICE OUTSIDE OF ONTARIO

277. The Plaintiffs may serve the Notice of Action and Statement of Claim outside of Ontario without leave in accordance with rule 17.02 of the Rules of Civil Procedure, because this claim is:

- (a) a claim in respect of personal property in Ontario (para 17.02(a));
- (b) a claim in respect of damage sustained in Ontario (para 17.02(h));
- (c) a claim authorized by statute to be made against a person outside of Ontario by a proceeding in Ontario (para 17.02(n)); and
- (d) a claim against a person outside of Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario (para 17.02(o)); and
- (e) a claim against a person ordinarily resident or carrying on business in Ontario (para 17.02(p)).

RELEVANT LEGISLATION, PLACE OF TRIAL & JURY TRIAL

278. The Plaintiffs plead and rely on the *CJA*, the *CPA*, the Securities Legislation and *CBCA*, all as amended.

279. The Plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

280. The Plaintiffs will serve a jury notice.

August 30[date], 2011

Siskinds LLP
Barristers & Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

A. Dimitri Lascaris (LSUC#: 50074A)
Tel: 519.660.7844
Fax: 519.660.7845
Charles M. Wright (LSUC#: 36599Q)
Tel: 519.660.7753
Fax: 519.660.7754

Koskie Minsky LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Kirk M. Baert (LSUC#: 30942O)
Tel: 416.595.2117
Fax: 416.204.2889
Jonathan Ptak (LSUC#: 45773F)
Tel: 416-595.2149
Fax: 416.204.2903

Lawyers for the Plaintiffs

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SCHEDULE A
By Defendant, Impugned Documents for which the Plaintiffs Allege Wrong Doing

Defendant	Impugned Documents
Sino-Forest Corporation	All Impugned Documents
Allen Chan	All Impugned Documents
David Horsley	All Impugned Documents
Kai Kit Poon	All Impugned Documents
Peter Wang	Q2 2007 – Q3 2010 and 2007 –2010 annual financial statements Q2 2007 – Q3 2010 and 2007 – 2010 annual MD&As Amended 2007 and amended 2008 annual MD&As 2007 – 2010 AIF Management Information Circulars dated April 28, 2008, April 28, 2009, May 4, 2010 and May 2, 2011 July 2008, June 2009, December 2009, and October 2010 Offering Memoranda June 2009 and December 2009 Prospectuses
W. Judson Martin	All Impugned Documents
Edmund Mak	All Impugned Documents
Simon Murray	All Impugned Documents
James Hyde	All Impugned Documents
William Ardell	Q1 2010, Q2 2010 and Q3 2010 and 2009 and 2010 annual financial statements Q1 2010, Q2 2010 and Q3 2010 and 2009 and 2010 annual MD&As 2009 and 2010 AIF Management Information Circulars dated May 4, 2010 and May 2, 2011 October 2010 Offering Memorandum
James Bowland	2010 annual MD&A 2010 annual financial statements 2010 AIF Management Information Circular dated May 2, 2011
Garry West	2010 annual MD&A

	2010 annual financial statements 2010 AIF Management Information Circular dated May 2, 2011
Ernst & Young LLP	2007 – 2010 annual financial statements June 2009 and December 2009 Prospectuses July 2008, June 2009, December 2009 and October 2010 Offering Memoranda
BDO Limited	2005 and 2006 annual financial statements June 2007 and December 2009 Prospectuses July 2008, June 2009 and December 2009 Offering Memorandums
Pöyry (Beijing) Consulting Company Limited	June 2007, June 2009 and December 2009 Prospectuses July 2008, June 2009, December 2009 and October 2010 Offering Memoranda
Credit Suisse Securities (Canada), Inc.	June 2007, June 2009 and December 2009 Prospectuses
TD Securities Inc.	June 2009, December 2009 Prospectuses and December 2009 Offering Memorandum
Dundee Securities Corporation	June 2007, June 2009 and December 2009 Prospectuses
RBC Dominion Securities Inc.	December 2009 Prospectus
Scotia Capital Inc.	June 2009 and December 2009 Prospectuses
CIBC World Markets Inc.	June 2007 and December 2009 Prospectuses
Merril Lynch Canada Inc.	June 2007, June 2009 and December 2009 Prospectuses
Canaccord Financial Ltd.	December 2009 Prospectus
Maison Placements Canada Inc.	December 2009 Prospectus
Credit Suisse Securities (USA) LLC	July 2008, June 2009, December 2009 and October 2010 Offering Memoranda
Banc of America Securities (LLC)	October 2010 Offering Memorandum

Trustees of the Labourers' Pension Fund of Central and Eastern Canada *et al.* And Sino-Forest Corporation, *et al.*

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

Plaintiffs Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

**FRESH AS AMENDED STATEMENT OF CLAIM
(NOTICE OF ACTION ISSUED JULY 20, 2011)**

Siskinds LLP
Barristers & Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

A. Dimitri Lascaris (LSUC#: 50074A)
Tel: 519.660.7844
Fax: 519.660.7845
Charles M. Wright (LSUC#: 36599Q)
Tel: 519.660.7753
Fax: 519.660.7754

Koskie Minsky LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Kirk M. Baert (LSUC#: 30942O)
Tel: 416.595.2117
Fax: 416.204.2889
Jonathan Prak (LSUC#: 45773F)
Tel: 416.595.2149
Fax: 416.204.2903

Lawyers for the Plaintiffs

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The Trustees of the Labourers' Pension Fund of Central and Eastern Canada et al.
v. Sino-Forest Corporation et al.

Court File No. 11-CV-431153CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act*,
1992

ORDER

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Kirk M. Baert (LSUC#: 309420)
Tel: 416.595.2117
Fax: 416.204.2889
Jonathan Bida (LSUC #: 54211D)
Tel: 416.595.2072
Fax: 416.204.2907

SISKINDS LLP
680 Waterloo Street, P.O. Box 2520
London, ON N6A 3V8

Charles M. Wright (LSUC#: 36599Q)
Tel: 519.660.7753
Fax: 519.660.7754
Michael G. Robb (LSUC#: 45787G)
Tel: 519.660.7872
Fax: 519.660.7873

Lawyers for the Plaintiffs

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

ORDER

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Kirk M. Baert (LSUC#: 309420)
Tel: 416.595.2117
Fax: 416.204.2889
Jonathan Bida (LSUC #: 54211D)
Tel: 416.595.2072
Fax: 416.204.2907

SISKINDS LLP
680 Waterloo Street, P.O. Box 2520
London, ON N6A 3V8

Charles M. Wright (LSUC#: 36599Q)
Tel: 519.660.7753
Fax: 519.660.7754
Michael G. Robb (LSUC#: 45787G)
Tel: 519.660.7872
Fax: 519.660.7873

Lawyers for the plaintiffs in *The Trustees of the Labourers' Pension Fund of Central and Eastern Canada et al. v. Sino-Forest Corporation et al.*,
Court File No. 11-CV-431153CP

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ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

ORDER

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Kirk M. Baert (LSUC#: 309420)
Tel: 416.595.2117
Fax: 416.204.2889

Jonathan Bida (LSUC #: 54211D)
Tel: 416.595.2072
Fax: 416.204.2907

SISKINDS LLP
680 Waterloo Street, P. O. Box 2520
London, ON N6A 3V8

Charles M. Wright (LSUC#: 36599Q)
Tel: 519.660.7753
Fax: 519.660.7754

Michael G. Robb (LSUC#: 45787G)
Tel: 519.660.7872
Fax: 519.660.7873

Lawyers for the plaintiffs in *The Trustees of the Labourers' Pension Fund of Central and Eastern Canada et al. v. Sino-Forest Corporation et al.*,
Court File No. 11-CV-431153CP

TAB 3

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 F. 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. Fafan for the Plaintiffs in 11-CV-435826CP
- M. Eizonga 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: *Settingington 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: *Settingington 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; *Settingington 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 headings 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": *Settingington 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: *Settingington 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.); *Genier v. CCI Capital Canada Ltd.*, [2005] O.J. No. 1135 (S.C.J.); *Settingington 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.

F. 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 CIDC 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 Lief 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, 2011 and 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 bondholders 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

Smith v. Sino-Forest

[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.

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[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.

Northwest v. Sino-Forest

[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 ActionSmith 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	<i>Smith v. Sino-Forest</i> ,	<i>Labourers v. Sino-Forest</i> ,	<i>Northwest v. Sino-Forest</i> ,
Part XXIII of the <i>Ontario Securities Act</i> – 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 <i>Ontario Securities Act</i> – 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, 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, 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 <i>Ontario Securities Act</i> – 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 <i>Ontario Securities Act</i> – 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, 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
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 than *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 losses 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 than 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 summited 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-Forest 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) The Plaintiff and Defendant Correlation

[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, paper 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

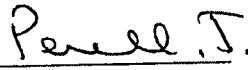
[329] For the above Reasons, I grant carriage to Koskie Minsky and Siskinds with leave to the plaintiffs in *Labourers v. Sino-Forest* to deliver a Fresh as Amended Statement of Claim.

[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.

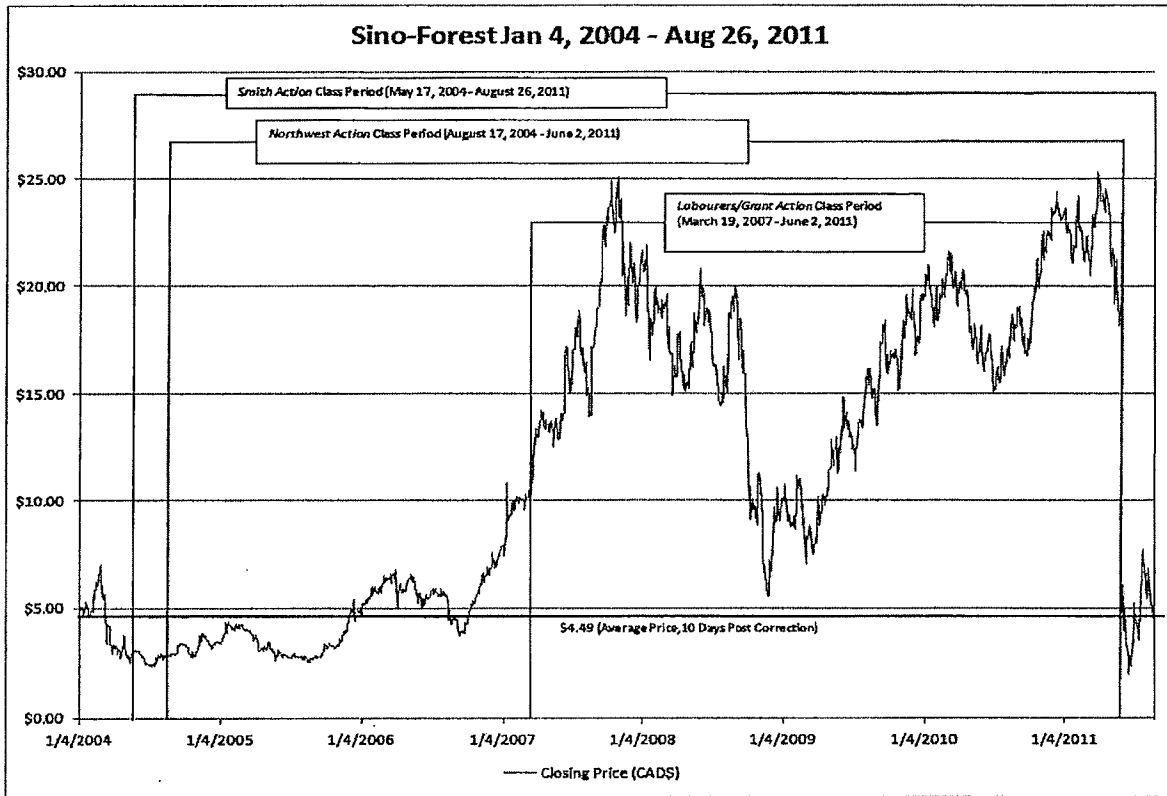
[331] I repeat that a carriage motion is without prejudice to the defendants' rights to challenge the pleadings and whether any particular cause of action is legally tenable.

[332] I make no order as to costs, which is in the usual course in carriage motions.

Released: January 6, 2012


Perell, J.

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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) MONDAY, THE 30th
)
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 Ad Hoc Committee of Purchasers of the Applicant's Securities (the "Moving Party"), for the production of certain documents in the possession, control and power of the Applicant, was heard this day, at the courthouse at 330 University Avenue, Toronto, Ontario,

ON READING the Motion Record and factum of the Moving Party, and on hearing the submissions of counsel for the Moving Party, Sino-Forest Corporation, the Monitor, an ad hoc Committee of Bondholders, Ernst & Young, BDO, and certain underwriters named as defendants in the Ontario Class Action,

AND ON BEING ADVISED that the Applicant consents to the relief contained herein and that the Monitor supports the granting of relief contained herein;

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** the Applicant to make the documents listed in Schedule "A" hereto (the "Documents") available to the Moving Party and the other Mediation Parties (as defined in the order of this court dated July 25, 2012 (the "Mediation Order")), subject to: (i) the provisions of the Mediation Order applicable to information made available through the electronic data room referenced in the Mediation Order (the "Data Room"), including without limitation the requirement for confidentiality agreements; and (ii) any claims of privilege; and provided, for greater certainty, that the Applicant need not produce any audit-related documents created after June 2, 2011.

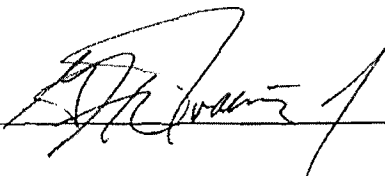
3. **THIS COURT ORDERS** that the Documents shall be added to the Data Room by the Applicant as and when they become available, but the Applicant shall make best efforts to add the Documents to the Data Room by August 16, 2012, and that, in any event, the Applicant shall add the Documents to the Data Room by no later than August 23, 2012.

4. **THIS COURT ORDERS** that, promptly following the addition of any Documents to the Data Room, the Applicant shall notify or shall cause to be notified, by email, those persons who have executed the Confidentiality Agreement pursuant to this Court's Mediation Order that such Documents have been added to the Data Room, but in no event shall the Applicant be required to provide such notification more than one time per day.

5. **THIS COURT ORDERS** that, to the extent that the Applicant withholds production of any Documents on the basis of a claim of privilege, the Applicant shall produce an itemized list describing each of the documents in the form of or substantially similar to a Schedule "B" of an affidavit of documents, with sufficient specificity to establish the Applicant's claim for privilege, including, without limitation, identifying information for each document, the nature of the privilege being asserted in respect of the document, and, if litigation privilege is being asserted, reasonable identifying

information regarding the litigation that gives rise to the privilege (the "Privilege Log"). The Applicant shall add the Privilege Log to the Data Room by August 27, 2012, unless the Court orders otherwise.

- 6. **THIS COURT ORDERS** that the Documents specified in clauses 1, 2(s), 3 and 4 of Schedule "A" hereto shall be in the English language.



REGISTERED AT / ENREGISTRÉ À TROIS
DE / BROOK BROS
LE / DANS LE REGISTRE NO.:

JUL 3 0 2012

PER/PAR:



Schedule "A"

1. the unconsolidated financial statements of Sino-Forest Corporation and its subsidiaries prepared prior to June 2, 2011;
2. the following documents relating to Sino-Forest audits, for each of the fiscal years 2006 through 2010, inclusive, for each audited entity:
 - a) information request list for each year's audit, detailing the documents to be provided by the company to the auditor;
 - b) The Year End Communication or Report of the Auditor to the Audit Committee from BDO or E&Y, including:
 - i) Audit scope and findings report;
 - ii) Significant matters discussed with management;
 - iii) Management's analysis and response;
 - iv) Significant judgments and estimates;
 - v) Audit risks encountered/identified and audit response; and
 - vi) Summary of corrected and uncorrected financial statement misstatements;
 - c) Communications between the auditors and the company regarding any disagreements with management;
 - d) The unadjusted (pre-audit) trial balance;
 - e) Proposed Adjustments presented by the auditor following each year's audit (listing adjusting journal entries, analysis and explanations);
 - f) List of related parties provided to the auditor each year;
 - g) Correspondence with the auditor concerning related parties and related party transactions;
 - h) Accounting policy manuals or documented accounting policies of the company for each year;

- i) Process and procedure manuals of the company for each year, particularly pertaining to the sales cycle and purchase/acquisition cycle;
- j) Ledgers and subledgers for the following accounts:
 - i) Cash;
 - ii) Sales;
 - iii) Timber Inventory; and
 - iv) Cost of Goods Sold;
- k) Sale transaction documents provided to (requested by) the auditors in respect of timber transactions:
 - i) Sales order (or purchase order from customer) or Sales contract/agreement;
 - ii) Invoice; and
 - iii) Proof of collection;
- l) Purchase transaction documents provided to (requested by) the auditors in respect of timber transactions:
 - i) Purchase order (or contract/agreement);
 - ii) Invoice; and
 - iii) Proof of payment;
- m) Transaction documents provided to auditor in respect of Sino's "set-off" agreements on timber transactions;
- n) Correspondence with auditors regarding confirmation of transactions with authorized intermediaries and suppliers (or authorization provided to Auditors to confirm directly with the AIs and Suppliers);
- o) Documentation concerning the auditors' procedures to independently examine timber assets, including on-site physical inspection, inventory counts, examination of transaction documentation, etc.;

- p) Internal worksheets, analyses and calculations supporting the "related party transactions" disclosure in each year's financial statements (e.g., see Note 23 of the 2009 financial statements);
 - q) Any additional information provided to/requested by the auditor regarding related party transactions;
 - r) Drafts and correspondence regarding the preparation of the Cash Flow Statement;
 - s) A statement of the total fees paid to the Applicant's auditors in respect of each of the 2006-2010 fiscal years; in addition, the Applicant shall make best efforts to break down such fees by audit-related and non-audit-related work (if any), and if non-audit related work was performed by the Applicant's auditors in any such year, a reasonably detailed description of the non-audit-related work performed by the auditors in such year;
 - t) Minutes of all meetings in which the auditors and members of management participated; and
 - u) BDO and E&Y presentations to the board of directors and management.
3. a summary of the coverage positions of the insurers of the Applicant and its directors and officers, and an approximation of the remaining insurance coverage; and
 4. the claims register as provided by the Monitor .

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at
TORONTO

ORDER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
250 University Avenue, Suite 501
Toronto, ON M5H 3E5
Ken Rosenberg / Massimo Starnino
Tel: 416-646-4300 Fax: 416-646-4301

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3
Kirk Baert / Jonathan Bida
Tel: 416-977-8353 Fax: 416-977-3316

SISKINDS LLP
680 Waterloo Street
London, ON N6A 3V8
A. Dimitri Lascaris / Charles M. Wright
Tel: 519-672-2121 Fax: 519-672-6065

Lawyers for the Ad Hoc Committee of Purchasers of
the Applicant's Securities, including the
Representative Plaintiffs in the Ontario Class Action

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TAB 4



Court File No. 11-CV-431153CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) MONDAY, THE 26TH
MR. JUSTICE PERELL) DAY OF MARCH, 2012

B E T W E E N:

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

Plaintiffs

- and -

SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly known as BDO McCabe Lo Limited), ALLEN T.Y. CHAN, W. JUDSON MARTIN, KAI KIT POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES P. BOWLAND, JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, GARRY J. WEST, 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*

ORDER

THIS MOTION, made by the plaintiffs for an order validating service, requiring delivery of statements of defence, requiring the defendants to provide insurance information and setting a timetable leading to the hearing of the plaintiffs' motions: (a) to approve a litigation funding agreement; (b) certification; and (c) leave under section 138.8 of the *Securities Act*, R.S.O. 1990, c. S.5, was heard on March 22, 2012, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

WHEREAS all of the defendants have filed a notice of intend to defend or otherwise have counsel of record and the plaintiffs no longer seek an order validating service.

AND WHEREAS all of the defendants have provided or have agreed to disclose and produce insurance policies that may responsive to the claims in this action.

AND WHEREAS the defendant Bank of America Securities LLC has merged into Merrill Lynch, Pierce, Fenner & Smith Incorporated.

ON READING the materials filed and on hearing the submissions of counsel for the plaintiffs and the defendants,

1. **THIS COURT ORDERS** that the title of proceedings in this action be and hereby is amended such that Banc of America Securities LLC is removed as a defendant and “Merrill Lynch, Pierce, Fenner & Smith Incorporated (successor by merger to Banc of America Securities LLC)” is added as a defendant in its place.
2. **THIS COURT ORDERS** that the plaintiffs shall file a Fresh As Amended Statement of Claim in the form attached as **Schedule “A”** to this order.
3. **THIS COURT ORDERS** that the plaintiffs shall not be permitted to further amend the statement of claim without leave of the court or the consent of the parties.
4. **THIS COURT ORDERS** that the plaintiffs’ motion for certification under the *Class Proceedings Act, 1992* and motion for leave under section 138.8 of the *Securities Act* shall be heard together on November 21, 2012 to November 30, 2012.
5. **THIS COURT ORDERS** that any defendant that delivers any affidavit pursuant to subsection 138.8(2) of the *Securities Act* in respect of the plaintiffs’ motion for leave under section 138.8 of the *Securities Act*, shall deliver a statement of defence.
6. **THIS COURT ORDERS** that defendants against whom there are allegations of fact referable to liability for secondary market disclosure and who do not deliver a s. 138.8(2) affidavit but who deliver a statement of defence, shall decline to either admit or deny the allegations of fact referable solely to that defendant’s liability for secondary market liability

and not referable to any other pleaded cause of action. These defendants must state that they neither admit nor deny the allegations contained in those paragraphs of the statement of claim referable solely to liability for secondary market liability and not referable to any other pleaded cause of action.

7. **THIS COURT DECLARES** that the delivery of a statement of defence shall not constitute a fresh step in this action and that any defendant may bring a motion in this action pursuant to Rule 21.01 of the *Rules of Civil Procedure*, all such motions to be returnable at the hearing of the plaintiffs' motion for certification and motion for leave under section 138.8 of the *Securities Act*.

8. **THIS COURT ORDERS** that, with the exception of the plaintiffs' motion for approval of a litigation funding agreement, there shall be no other motions brought in this action before the hearing of the plaintiffs' motions for certification and motion for leave under section 138.8 of the *Securities Act* without leave of the court first being obtained.

9. **THIS COURT ORDERS** that the timetable leading to the plaintiffs' motion for approval of a litigation funding agreement, motion for certification and motion for leave under section 138.8 of the *Securities Act*, is as follows:

Funding approval motion

March 30, 2012: defendants to deliver responding records, if any

April 6, 2012: plaintiffs to deliver factum

April 13, 2012: defendants to delivery factum

April, 17, 2012: hearing of the motion

Leave and certification motions

April 10, 2012: plaintiffs to deliver motion record

June 11, 2012: defendants to deliver responding records

July 3, 2012: plaintiffs to delivery reply records, if any

September 14, 2012: cross-examinations to be completed

October 19, 2012: plaintiffs to deliver factum

November 9, 2012: defendants to deliver factum

November 21-30, 2012: hearing of the motions

10. **THIS COURT ORDERS** that the determination of the scheduling of a motion of BDO Limited under rules 21.01 or 20.01 of the *Rules of Civil Procedure*, if any, shall be adjourned *sine die* until a date after BDO Limited has delivered a statement of defence and the plaintiffs have delivered a reply in this action.

11. **THIS COURT ORDERS** that costs of this motion shall be in the cause.

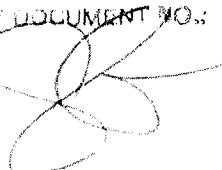


Perell J.

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LE / DANS LE REGISTRE NO.:

APR 17 2012

AS DOCUMENT NO.:
A TITRE DE DOCUMENT NO.:
PER / PAR:



SCHEDULE "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

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

Plaintiffs

- and -

SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON MARTIN, KAI KIT POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES P. BOWLAND, JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, GARRY J. WEST, 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 MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (successor by merger to Banc of America Securities LLC)

Defendants

Proceeding under the Class Proceedings Act, 1992

FRESH AS AMENDED STATEMENT OF CLAIM

(NOTICE OF ACTION ISSUED JULY 20, 2011)

TO: Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: David Horsley
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: Allen Chan
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: William Ardell
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: James Bowland
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: James Hyde
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: Edmund Mak
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: W. Judson Martin
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

AND TO: Simon Murray
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

- AND TO: Kai Kit Poon**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3
- AND TO: Peter Wang**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3
- AND TO: Garry West**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3
- AND TO: Ernst & Young LLP**
222 Bay Street
Toronto, ON M5K 1J7
- AND TO: BDO Limited**
25th Floor, Wing On Centre
111 Connaught Road Central
Hong Kong, China
- AND TO: Pöyry (Beijing) Consulting Company Limited**
2208-2210 Cloud 9 Plaza
No. 1118 West Yan'an Road
Shanghai 200052
PR CHINA
- AND TO: Credit Suisse Securities (Canada), Inc.**
1 First Canadian Place
100 King Street West, Suite 2900
Toronto, Ontario M5X 1C9
- AND TO: TD Securities Inc.**
66 Wellington Street West
P.O. Box 1, TD Bank Tower
Toronto, Ontario M5K 1A2
- AND TO: Dundee Securities Corporation**
1 Adelaide Street East
Toronto, ON M5C 2V9

- AND TO: RBC Dominion Securities Inc.**
155 Wellington Street West, 17th Floor
Toronto, Ontario M5V 3K7

- AND TO: Scotia Capital Inc.**
40 King Street West, Scotia Plaza
P.O. Box 4085, Station A
Toronto, Ontario M5W 2X6

- AND TO: CIBC World Markets Inc.**
161 Bay Street, Brookfield Place
P.O. Box 500
Toronto, Ontario M5J 2S8

- AND TO: Merrill Lynch Canada Inc.**
BCE Place, Wellington Tower
181 Bay Street, 4th and 5th Floors
Toronto, Ontario M5J 2V8

- AND TO: Canaccord Financial Ltd.**
161 Bay Street, Suite 2900
P.O. Box 516
Toronto, Ontario M5J 2S1

- AND TO: Maison Placements Canada Inc.**
130 Adelaide Street West, Suite 906
Toronto, Ontario M5H 3P5

- AND TO: Credit Suisse Securities (USA) LLC**
Eleven Madison Avenue
New York, NY 10010

- AND TO: Merrill Lynch, Pierce, Fenner & Smith Incorporated**
100 N. Tryon St., Ste. 220
Charlotte, NC 28255

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I. DEFINED TERMS

- 1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:
 - (a) “AI” means Authorized Intermediary;
 - (b) “AIF” means Annual Information Form;

- (c) “**Ardell**” means the defendant William E. Ardell;
- (d) “**Banc of America**” means the defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated;
- (e) “**BDO**” means the defendant BDO Limited;
- (f) “**Bowland**” means the defendant James P. Bowland;
- (g) “**BVI**” means British Virgin Islands;
- (h) “**Canaccord**” means the defendant Canaccord Financial Ltd.;
- (i) “**CBCA**” means the *Canada Business Corporations Act*, RSC 1985, c. C-44, as amended;
- (j) “**Chan**” means the defendant Allen T.Y. Chan also known as “Tak Yuen Chan”;
- (k) “**CIBC**” means the defendant CIBC World Markets Inc.;
- (l) “**CJA**” means the *Ontario Courts of Justice Act*, RSO 1990, c C-43, as amended;
- (m) “**Class**” and “**Class Members**” 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 includes securities 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**;
- (n) “**Class Period**” means the period from and including March 19, 2007 to and including June 2, 2011;
- (o) “**Code**” means **Sino’s** Code of Business Conduct;
- (p) “**CPA**” means the *Ontario Class Proceedings Act, 1992*, SO 1992, c 6, as amended;

- (q) “**Credit Suisse**” means the defendant Credit Suisse Securities (Canada), Inc.;
- (r) “**Credit Suisse USA**” means the defendant Credit Suisse Securities (USA) LLC;
- (s) “**Defendants**” means **Sino**, the **Individual Defendants**, **Pöyry**, **BDO**, **E&Y** and the **Underwriters**;
- (t) “**December 2009 Offering Memorandum**” means Sino’s Final Offering Memorandum, dated December 10, 2009, relating to the distribution of Sino’s 4.25% Convertible Senior Notes due 2016 which **Sino** filed on **SEDAR** on December 11, 2009;
- (u) “**December 2009 Prospectus**” means **Sino**’s Final Short Form Prospectus, dated December 10, 2009, which **Sino** filed on **SEDAR** on December 11, 2009;
- (v) “**Dundee**” means the defendant Dundee Securities Corporation;
- (w) “**E&Y**” means the defendant, Ernst and Young LLP;
- (x) “**Excluded Persons**” means 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 a member of the immediate family of an **Individual Defendant**;
- (y) “**Final Report**” means the report of the IC, as that term is defined in paragraph 10 hereof;
- (z) “**GAAP**” means Canadian generally accepted accounting principles;
- (aa) “**GAAS**” means Canadian generally accepted auditing standards;
- (bb) “**Horsley**” means the defendant David J. Horsley;
- (cc) “**Hyde**” means the defendant James M.E. Hyde;
- (dd) “**Impugned Documents**” mean the 2005 Annual Consolidated Financial Statements (filed on **SEDAR** on March 31, 2006), Q1 2006 Financial Statements

(filed on **SEDAR** on May 11, 2006), the 2006 Annual Consolidated Financial Statements (filed on **SEDAR** on March 19, 2007), 2006 **AIF** (filed on **SEDAR** on March 30, 2007), 2006 Annual **MD&A** (filed on **SEDAR** on March 19, 2007), Management Information Circular dated April 27, 2007 (filed on **SEDAR** on May 4, 2007), Q1 2007 **MD&A** (filed on **SEDAR** on May 14, 2007), Q1 2007 Financial Statements (filed on **SEDAR** on May 14, 2007), **June 2007 Prospectus**, Q2 2007 **MD&A** (filed on **SEDAR** on August 13, 2007), Q2 2007 Financial Statements (filed on **SEDAR** on August 13, 2007), Q3 2007 **MD&A** (filed on **SEDAR** on November 12, 2007), Q3 2007 Financial Statements (filed on **SEDAR** on November 12, 2007), 2007 Annual Consolidated Financial Statements (filed on **SEDAR** on March 18, 2008), 2007 **AIF** (filed on **SEDAR** on March 28, 2008), 2007 Annual **MD&A** (filed on **SEDAR** on March 18, 2008), Amended 2007 Annual **MD&A** (filed on **SEDAR** on March 28, 2008), Management Information Circular dated April 28, 2008 (filed on **SEDAR** on May 6, 2008), Q1 2008 **MD&A** (filed on **SEDAR** on May 13, 2008), Q1 2008 Financial Statements (filed on **SEDAR** on May 13, 2008), **July 2008 Offering Memorandum**, Q2 2008 **MD&A** (filed on **SEDAR** on August 12, 2008), Q2 2008 Financial Statements (filed on **SEDAR** on August 12, 2008), Q3 2008 **MD&A** (filed on **SEDAR** on November 13, 2008), Q3 2008 Financial Statements (filed on **SEDAR** on November 13, 2008), 2008 Annual Consolidated Financial Statements (filed on **SEDAR** on March 16, 2009), 2008 Annual **MD&A** (filed on **SEDAR** on March 16, 2009), Amended 2008 Annual **MD&A** (filed on **SEDAR** on March 17, 2009), 2008 **AIF** (filed on **SEDAR** on March 31, 2009), Management Information Circular dated April 28, 2009 (filed on **SEDAR** on May 4, 2009), Q1 2009 **MD&A** (filed on **SEDAR** on May 11, 2009), Q1 2009 Financial Statements (filed on **SEDAR** on May 11, 2009), **June 2009 Prospectus**, **June 2009 Offering Memorandum**, Q2 2009 **MD&A** (filed on **SEDAR** on August 10, 2009), Q2 2009 Financial Statements (filed on **SEDAR** on August 10, 2009), Q3 2009 **MD&A** (filed on **SEDAR** on November 12, 2009), Q3 2009 Financial Statements (filed on **SEDAR** on November 12, 2009), **December 2009 Prospectus**, **December 2009 Offering Memorandum**, 2009

Annual **MD&A** (filed on **SEDAR** on March 16, 2010), 2009 Audited Annual Financial Statements (filed on **SEDAR** on March 16, 2010), 2009 **AIF** (filed on **SEDAR** on March 31, 2010), Management Information Circular dated May 4, 2010 (filed on **SEDAR** on May 11, 2010), Q1 2010 **MD&A** (filed on **SEDAR** on May 12, 2010), Q1 2010 Financial Statements (filed on **SEDAR** on May 12, 2010), Q2 2010 **MD&A** (filed on **SEDAR** on August 10, 2010), Q2 2010 Financial Statements (filed on **SEDAR** on August 10, 2010), **October 2010 Offering Memorandum**, Q3 2010 **MD&A** (filed on **SEDAR** on November 10, 2010), Q3 2010 Financial Statements (filed on **SEDAR** on November 10, 2010), 2010 Annual **MD&A** (March 15, 2011), 2010 Audited Annual Financial Statements (filed on **SEDAR** on March 15, 2011), 2010 **AIF** (filed on **SEDAR** on March 31, 2011), and Management Information Circular dated May 2, 2011 (filed on **SEDAR** on May 10, 2011);

- (ee) **“Individual Defendants”** means **Chan, Martin, Poon, Horsley, Ardell, Bowland, Hyde, Mak, Murray, Wang, and West**, collectively;
- (ff) **“July 2008 Offering Memorandum”** means the Final Offering Memorandum dated July 17, 2008, relating to the distribution of Sino’s 5% Convertible Senior Notes due 2013 which **Sino** filed on **SEDAR** as a schedule to a material change report on July 25, 2008;
- (gg) **“June 2007 Prospectus”** means **Sino’s** Short Form Prospectus, dated June 5, 2007, which **Sino** filed on **SEDAR** on June 5, 2007;
- (hh) **“June 2009 Offering Memorandum”** means **Sino’s** Exchange Offer Memorandum dated June 24, 2009, relating to an offer to exchange Sino’s Guaranteed Senior Notes due 2011 for new 10.25% Guaranteed Senior Notes due 2014 which **Sino** filed on **SEDAR** as a schedule to a material change report on June 25, 2009;
- (ii) **“June 2009 Prospectus”** means **Sino’s** Final Short Form Prospectus, dated June 1, 2009, which **Sino** filed on **SEDAR** on June 1, 2009;

- (jj) “**Maison**” means the defendant Maison Placements Canada Inc.;
- (kk) “**Martin**” means the defendant W. Judson Martin;
- (ll) “**Mak**” means the defendant Edmund Mak;
- (mm) “**MD&A**” means Management’s Discussion and Analysis;
- (nn) “**Merrill**” means the defendant Merrill Lynch Canada Inc.;
- (oo) “**Muddy Waters**” means Muddy Waters LLC;
- (pp) “**Murray**” means the defendant Simon Murray;
- (qq) “**October 2010 Offering Memorandum**” means the Final Offering Memorandum dated October 14, 2010, relating to the distribution of Sino’s 6.25% Guaranteed Senior Notes due 2017;
- (rr) “**Offering**” or “**Offerings**” means the primary distributions in Canada of Sino’s **Securities** that occurred during the **Class Period** including the public offerings of Sino’s common shares pursuant to the **June 2007, June 2009 and December 2009 Prospectuses**, as well as the offerings of Sino’s notes pursuant to **the July 2008, June 2009, December 2009, and October 2010 Offering Memoranda**, collectively;
- (ss) “**OSA**” means the *Securities Act*, RSO 1990 c S.5, as amended;
- (tt) “**OSC**” means the Ontario Securities Commission;
- (uu) “**Plaintiffs**” means the plaintiffs, the Trustees of the Labourers’ Pension Fund of Central and Eastern Canada (“**Labourers**”), the Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario (“**Operating Engineers**”), Sjunde AP-Fonden (“**AP7**”), David C. Grant (“**Grant**”), and Robert Wong (“**Wong**”), collectively;
- (vv) “**Poon**” means the defendant Kai Kit Poon;

- (ww) “**Pöyry**” means the defendant, Pöyry (Beijing) Consulting Company Limited;
- (xx) “**PRC**” means the People’s Republic of China;
- (yy) “**Representation**” means the statement that Sino’s financial statements complied with **GAAP**;
- (zz) “**RBC**” means the defendant RBC Dominion Securities Inc.;
- (aaa) “**Scotia**” means the defendant Scotia Capital Inc.;
- (bbb) “**Second Report**” means the Second Interim Report of the IC, as that term is defined in paragraph 10 hereof;
- (ccc) “**Securities**” means Sino’s common shares, notes or other securities, as defined in the *OSA*;
- (ddd) “**Securities Legislation**” means, collectively, the *OSA*, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;
- (eee) “**SEDAR**” means the system for electronic document analysis and retrieval of the Canadian Securities Administrators;
- (fff) “**Sino**” means, as the context requires, either the defendant Sino-Forest Corporation, or Sino-Forest Corporation and its affiliates and subsidiaries, collectively;
- (ggg) “**TD**” means the defendant TD Securities Inc.;

- (hhh) “**TSX**” means the Toronto Stock Exchange;
- (iii) “**Underwriters**” means **Banc of America, Canaccord, CIBC, Credit Suisse, Credit Suisse USA, Dundee, Maison, Merrill, RBC, Scotia, and TD**, collectively;
- (jjj) “**Wang**” means the defendant Peter Wang;
- (kkk) “**West**” means the defendant Garry J. West; and
- (lll) “**WFOE**” means wholly foreign owned enterprise or an enterprise established in China in accordance with the relevant PRC laws, with capital provided solely by foreign investors.

II. CLAIM

2. The Plaintiffs claim:

- (a) An order certifying this action as a class proceeding and appointing the Plaintiffs as representative plaintiffs for the Class, or such other class as may be certified by the Court;
- (b) A declaration that the Impugned Documents contained, either explicitly or implicitly, the Representation, and that, when made, the Representation was a misrepresentation, both at law and within the meaning of the Securities Legislation;
- (c) A declaration that the Impugned Documents contained one or more of the other misrepresentations alleged herein, and that, when made, those other misrepresentations constituted misrepresentations, both at law and within the meaning of the Securities Legislation;
- (d) A declaration that Sino is vicariously liable for the acts and/or omissions of the Individual Defendants and of its other officers, directors and employees;
- (e) A declaration that the Underwriters, E&Y, BDO and Pöyry are each vicariously liable for the acts and/or omissions of their respective officers, directors, partners and employees;
- (f) On behalf of all of the Class Members who purchased Sino's Securities in the secondary market during the Class Period, and as against all of the Defendants other than the Underwriters, general damages in the sum of \$6.5 billion;
- (g) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which the June 2007 Prospectus related, and as against Sino, Chan, Poon, Horsley, Martin, Mak, Murray, Hyde, Pöyry, BDO, Dundee, CIBC, Merrill and Credit Suisse general damages in the sum of \$175,835,000;
- (h) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which the June 2009 Prospectus related, and as against Sino, Chan,

Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, E&Y, Dundee, Merrill, Credit Suisse, Scotia and TD, general damages in the sum of \$330,000,000;

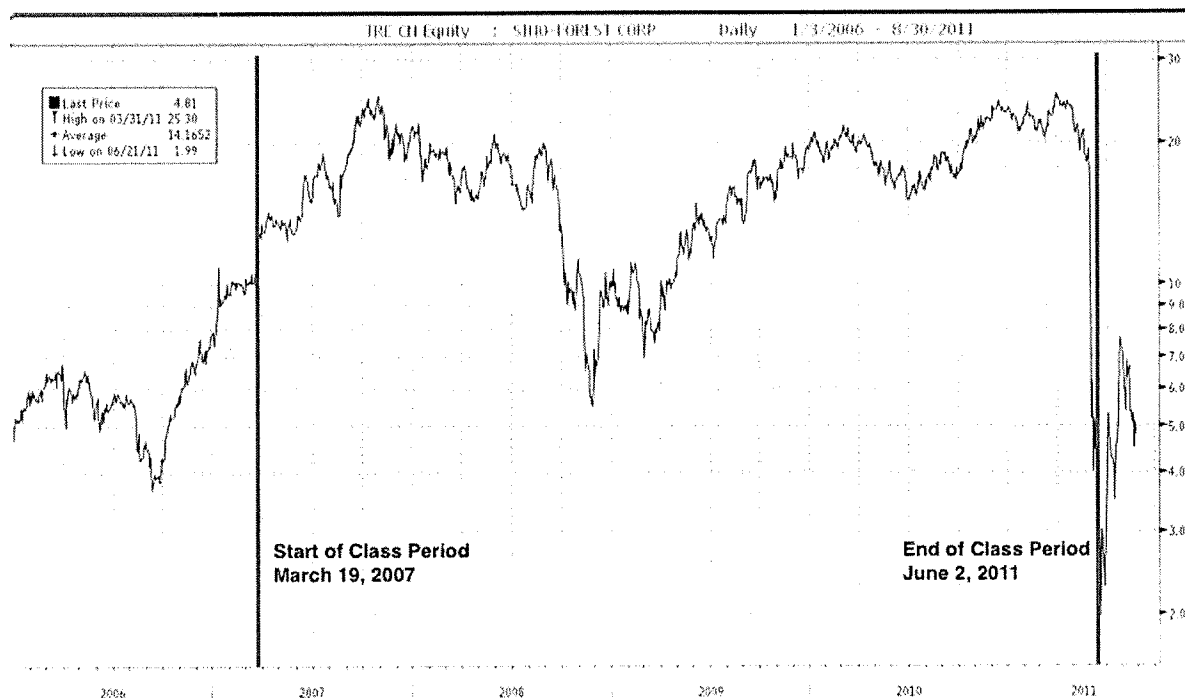
- (i) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which the December 2009 Prospectus related, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD, general damages in the sum of \$319,200,000;
- (j) On behalf of all the Class Members who purchased Sino's 5% Convertible Senior Notes due 2013 pursuant to the July 2008 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y and Credit Suisse USA, general damages in the sum of US\$345 million;
- (k) On behalf of all the Class Members who purchased Sino's 10.25% Guaranteed Senior Notes due 2014 pursuant to the June 2009 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y and Credit Suisse USA, general damages in the sum of US\$400 million;
- (l) On behalf of all the Class Members who purchased Sino's 4.25% Convertible Senior Notes due 2016 pursuant to the December 2009 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y, Credit Suisse USA and TD, general damages in the sum of US\$460 million;
- (m) On behalf of all the Class Members who purchased Sino's 6.25% Guaranteed Senior Notes due 2017 pursuant to the October 2010 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Mak, Murray, Hyde, Ardell, Pöyry, E&Y, Credit Suisse USA and Banc of America, general damages in the sum of US\$600 million;

- (n) On behalf of all of the Class Members, and as against Sino, Chan, Poon and Horsley, punitive damages, in respect of the conspiracy pled below, in the sum of \$50 million;
- (o) A declaration that Sino, Chan, Poon, Horsley, Martin, Mak, Murray and the Underwriters were unjustly enriched;
- (p) A constructive trust, accounting or such other equitable remedy as may be available as against Sino, Chan, Poon, Horsley, Martin, Mak, Murray and the Underwriters;
- (q) A declaration that the acts and omissions of Sino have effected a result, the business or affairs of Sino have been carried on or conducted in a manner, or the powers of the directors of Sino have been exercised in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the Plaintiffs and the Class Members, pursuant to s. 241 of the *CBCA*;
- (r) An order directing a reference or giving such other directions as may be necessary to determine the issues, if any, not determined at the trial of the common issues;
- (s) Prejudgment and post judgment interest;
- (t) Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus, pursuant to s 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and
- (u) Such further and other relief as to this Honourable Court may seem just.

III. OVERVIEW

3. From the time of its establishment in 1994, Sino has claimed to be a legitimate business operating in the commercial forestry industry in the PRC and elsewhere. Throughout that period, Sino has also claimed to have experienced breathtaking growth.

4. Beguiled by Sino's reported results, and by Sino's constant refrain that China constituted an extraordinary growth opportunity, investors drove Sino's stock price dramatically higher, as appears from the following chart:



5. The Defendants profited handsomely from the market's appetite for Sino's securities. Certain of the Individual Defendants sold Sino shares at lofty prices, and thereby reaped millions of dollars of gains. Sino's senior management also used Sino's illusory success to justify their lavish salaries, bonuses and other perks. For certain of the Individual Defendants, these outsized gains were not enough. Sino stock options granted to Chan, Horsley and other insiders were backdated or otherwise mispriced, prior to and during the Class Period, in violation of the TSX Rules, GAAP and the Securities Legislation.

6. Sino itself raised in excess of \$2.7 billion¹ in the capital markets during this period. Meanwhile, the Underwriters were paid lucrative underwriting commissions, and BDO, E&Y and Pöyry garnered millions of dollars in fees to bless Sino's reported results and assets. To their great detriment, the Class Members relied upon these supposed gatekeepers.

7. As a reporting issuer in Ontario and elsewhere, Sino was required at all material times to comply with GAAP. Indeed, Sino, BDO and E&Y, Sino's auditors during the Class Period and previously, repeatedly misrepresented that Sino's financial statements complied with GAAP. This was false.

8. On June 2, 2011, Muddy Waters, a short seller and research firm with extensive PRC experience, issued its first research report in relation to Sino, and unveiled the scale of the deception that had been worked upon the Class Members. Muddy Waters' initial report effectively revealed, among other things, that Sino had materially misstated its financial results, had falsely claimed to have acquired trees that it did not own, had reported sales that had not been made, or that had been made in a manner that did not permit Sino to book those sales as revenue under GAAP, and had concealed numerous related party transactions. These revelations had a catastrophic effect on Sino's stock price.

9. On June 1, 2011, prior to the publication of Muddy Waters' report, Sino's common shares closed at \$18.21. After the Muddy Waters report became public, Sino shares fell to \$14.46 on the TSX (a decline of 20.6%), at which point trading was halted. When trading resumed the next day, Sino's shares fell to a close of \$5.23 (a decline of 71.3% from June 1).

10. On June 3, 2011, Sino announced that, in response to the allegations of Muddy Waters, its board had formed a committee, which Sino then falsely characterized as "independent" (the

¹ Dollar figures are in Canadian dollars (unless otherwise indicated) and are rounded for convenience.

“Independent Committee” or “IC”), to examine and review the allegations contained in the Muddy Waters’ report of June 2, 2011. The initial members of the IC were the Defendants Ardell, Bowland and Hyde. The IC subsequently retained legal, accounting and other advisers to assist it in the fulfillment of its mandate.

11. On August 26, 2011, the OSC issued a cease-trade order in respect of Sino’s securities, alleging that Sino appeared to have engaged in significant non-arm’s length transactions which may have been contrary to Ontario securities laws and the public interest, that Sino and certain of its officers and directors appeared to have misrepresented some of Sino’s revenue and/or exaggerated some of its timber holdings, and that Sino and certain of its officers and directors, including Chan, appeared to be engaging or participating in acts, practices or a course of conduct related to Sino’s securities which they (or any of them) knew or ought reasonably know would perpetuate a fraud.

12. On November 13, 2011, the IC released the Second Report. Therein, the IC revealed, *inter alia*, that: (1) Sino’s management had failed to cooperate in numerous important respects with the IC’s investigation; (2) “there is a risk” that certain of Sino’s operations “taken as a whole” were in violation of PRC law; (3) Sino adopted processes that “avoid[] Chinese foreign exchange controls which must be complied with in a normal cross-border sale and purchase transaction, and [which] could present an obstacle to future repatriation of sales proceeds, and could have tax implications as well”; (4) the IC “has not been able to verify that any relevant income taxes and VAT have been paid by or on behalf of the BVIs in China”; (5) Sino lacked proof of title to the vast majority of its purported holdings of standing timber; (6) Sino’s “transaction volumes with a number of AI and Suppliers do not match the revenue reported by such Suppliers in their SAIC filing”; (7) “[n]one of the BVI timber purchase contracts have as

attachments either (i) Plantation Rights Certificates from either the Counterparty or original owner or (ii) villager resolutions, both of which are contemplated as attachments by the standard form of BVI timber purchase contract employed by the Company; and (8) “[t]here are indications in emails and in interviews with Suppliers that gifts or cash payments are made to forestry bureaus and forestry bureau officials.”

13. On January 31, 2012, the IC released its Final Report. Therein, the IC effectively revealed that, despite having conducted an investigation over nearly eight months, and despite the expenditure of US\$50 million on that investigation, it had failed to refute, or even to provide plausible answers to, key allegations made by Muddy Waters:

This Final Report of the IC sets out the activities undertaken by the IC since mid-November, the findings from such activities and the IC’s conclusions regarding its examination and review. The IC’s activities during this period have been limited as a result of Canadian and Chinese holidays (Christmas, New Year and Chinese New Year) and the extensive involvement of IC members in the Company’s Restructuring and Audit Committees, both of which are advised by different advisors than those retained by the IC. The IC believes that, notwithstanding there remain issues which have not been fully answered, the work of the IC is now at the point of diminishing returns because much of the information which it is seeking lies with non-compellable third parties, may not exist or is apparently not retrievable from the records of the Company.

[...]

Given the circumstances described above, the IC understands that, with the delivery of this Final Report, its review and examination activities are terminated. The IC does not expect to undertake further work other than assisting with responses to regulators and the RCMP as required and engaging in such further specific activities as the IC may deem advisable or the Board may instruct. The IC has asked the IC Advisors to remain available to assist and advise the IC upon its instructions

14. Sino failed to meet the standards required of a public company in Canada. Aided by its auditors and the Underwriters, Sino raised billions of dollars from investors on the false premise that they were investing in a well managed, ethical and GAAP-compliant corporation. They

were not. Accordingly, this action is brought to recover the Class Members' losses from those who caused them: the Defendants.

IV. THE PARTIES

A. *The Plaintiffs*

15. Labourers are the trustees of the Labourers' Pension Fund of Central and Eastern Canada, a multi-employer pension plan providing benefits for employees working in the construction industry. The fund is a union-negotiated, collectively-bargained defined benefit pension plan established on February 23, 1972 and currently has approximately \$2 billion in assets, over 39,000 members and over 13,000 pensioners and beneficiaries and approximately 2,000 participating employers. A board of trustees representing members of the plan governs the fund. The plan is registered under the *Pension Benefits Act*, RSO 1990, c P.8 and the *Income Tax Act*, RSC 1985, 5th Supp, c.1. Labourers purchased Sino's common shares over the TSX during the Class Period and continued to hold shares at the end of the Class Period. In addition, Labourers purchased Sino common shares offered by the December 2009 Prospectus and in the distribution to which that Prospectus related.

16. Operating Engineers are the trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario, a multi-employer pension plan providing pension benefits for operating engineers in Ontario. The pension plan is a union-negotiated, collectively-bargained defined benefit pension plan established on November 1, 1973 and currently has approximately \$1.5 billion in assets, over 9,000 members and pensioners and beneficiaries. The fund is governed by a board of trustees representing members of the plan. The plan is registered under the *Pension Benefits Act*, RSO 1990, c P.8 and the *Income Tax Act*, RSC 1985, 5th Supp, c.1. Operating Engineers purchased Sino's common shares over the TSX during the Class Period, and continued to hold shares at the end of the Class Period.

17. AP7 is the Swedish National Pension Fund. As of June 30, 2011, AP7 had approximately \$15.3 billion in assets under management. Funds managed by AP7 purchased Sino's common shares over the TSX during the Class Period and continued to hold those common shares at the end of the Class Period.

18. Grant is an individual residing in Calgary, Alberta. He purchased 100 of the Sino 6.25% Guaranteed Senior Notes due 2017 that were offered by the October 2010 Offering Memorandum and in the distribution to which that Offering Memorandum related. Grant continued to hold those Notes at the end of the Class Period.

19. Wong is an individual residing in Kincardine, Ontario. During the Class Period, Wong purchased Sino's common shares over the TSX and continued to hold some or all of such shares at the end of the Class Period. In addition, Wong purchased Sino common shares offered by the December 2009 Prospectus and in the distribution to which that Prospectus related, and continued to own those shares at the end of the Class Period.

B. *The Defendants*

20. Sino purports to be a commercial forest plantation operator in the PRC and elsewhere. Sino is a corporation formed under the *CBCA*.

21. At the material times, Sino was a reporting issuer in all provinces of Canada, and had its registered office located in Mississauga, Ontario. At the material times, Sino's shares were listed for trading on the TSX under the ticker symbol "TRE," on the Berlin exchange as "SFJ GR," on the over-the-counter market in the United States as "SNOFF" and on the Tradedgate market as "SFJ TH." Sino securities are also listed on alternative trading venues in Canada and elsewhere including, without limitation, AlphaToronto and PureTrading. Sino's shares also traded over-

the-counter in the United States. Sino has various debt instruments, derivatives and other securities that are traded in Canada and elsewhere.

22. As a reporting issuer in Ontario, Sino was required throughout the Class Period to issue and file with SEDAR:

- (a) within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with GAAP that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;
- (b) within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with GAAP, including comparative financial statements relating to the period covered by the preceding financial year;
- (c) contemporaneously with each of the above, a MD&A of each of the above financial statements; and
- (d) within 90 days of the end of the fiscal year, an AIF, including material information about the company and its business at a point in time in the context of its historical and possible future development.

23. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in future.

24. AIFs are an annual disclosure document intended to provide material information about the company and its business at a point in time in the context of its historical and future development. The AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically.

25. Sino controlled the contents of its MD&As, financial statements, AIFs and the other documents particularized herein and the misrepresentations made therein were made by Sino.

26. Chan is a co-founder of Sino, and was the Chairman, Chief Executive Officer and a director of the company from 1994 until his resignation from those positions on or about August 25, 2011. As Sino's CEO, Chan signed and certified the company's disclosure documents during the Class Period. Chan, along with Hyde, signed each of the 2006-2010 Audited Annual Financial Statements on behalf of Sino's board. Chan resides in Hong Kong, China.

27. Chan certified each of Sino's Class Period annual and quarterly MD&As and financial statements, each of which is an Impugned Document. In so doing, he adopted as his own the false statements such documents contained, as particularized below. Chan signed each of Sino's Class Period annual financial statements, each of which is an Impugned Document. In so doing, he adopted as his own the false statements such documents contained, as particularized below. As a director and officer, he caused Sino to make the misrepresentations particularized below.

28. Since Sino was established, Chan has received lavish compensation from Sino. For example, for 2006 to 2010, Chan's total compensation (other than share-based compensation) was, respectively, US\$3.0 million, US\$3.8 million, US\$5.0 million, US\$7.6 million and US\$9.3 million.

29. As at May 1, 1995, shortly after Sino became a reporting issuer, Chan held 18.3% of Sino's outstanding common shares and 37.5% of its preference shares. As of April 29, 2011 he held 2.7% of Sino's common shares (the company no longer has preference shares outstanding). Chan has made in excess of \$10 million through the sale of Sino shares.

30. Horsley is Sino's Chief Financial Officer, and has held this position since October 2005. In his position as Sino's CFO, Horsley has signed and certified the company's disclosure documents during the Class Period. Horsley resides in Ontario. Horsley has made in excess of \$11 million through the sale of Sino shares.

31. Horsley certified each of Sino's Class Period annual and quarterly MD&As and financial statements, each of which is an Impugned Document. In so doing, he adopted as his own the false statements such documents contained, as particularized below. Horsley signed each of Sino's Class Period annual financial statements, each of which is an Impugned Document. In so doing, he adopted as his own the false statements such documents contained, as particularized below. As an officer, he caused Sino to make the misrepresentations particularized below.

32. Since becoming Sino's CFO, Horsley has also received lavish compensation from Sino. For 2006 to 2010, Horsley's total compensation (other than share-based compensation) was, respectively, US\$1.1 million, US\$1.4 million, US\$1.7 million, US\$2.5 million, and US\$3.1 million.

33. Poon is a co-founder of Sino, and has been the President of the company since 1994. He was a director of Sino from 1994 to May 2009, and he continues to serve as Sino's President. Poon resides in Hong Kong, China. While he was a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when such statements were signed on his behalf. While he was a board member, he caused Sino to make the misrepresentations particularized below.

34. As at May 1, 1995, shortly after Sino became a reporting issuer, Poon held 18.3% of Sino's outstanding common shares and 37.5% of its preference shares. As of April 29, 2011 he

held 0.42% of Sino's common shares. Poon has made in excess of \$34.4 million through the sale of Sino shares.

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

36. Wang is a director of Sino, and has held this position since August 2007. Wang resides in Hong Kong, China. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

37. Martin has been a director of Sino since 2006, and was appointed vice-chairman in 2010. On or about August 25, 2011, Martin replaced Chan as Chief Executive Officer of Sino. Martin was a member of Sino's audit committee prior to early 2011. Martin has made in excess of \$474,000 through the sale of Sino shares. He resides in Hong Kong, China. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized herein.

38. Mak is a director of Sino, and has held this position since 1994. Mak was a member of Sino's audit committee prior to early 2011. Mak and persons connected with Mak have made in excess of \$6.4 million through sales of Sino shares. Mak resides in British Columbia. As a board member, he adopted as his own the false statements made in each of Sino's annual

financial statements, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

39. Murray is a director of Sino, and has held this position since 1999. Murray has made in excess of \$9.9 million through sales of Sino shares. Murray resides in Hong Kong, China. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

40. Since becoming a director, Murray has rarely attended board and board committee meetings. From the beginning of 2006 to the close of 2010, Murray attended 14 of 64 board meetings, or less than 22% of board meetings held during that period. During that same period, Murray attended 2 out of 13, or 15%, of the meetings held by the Board's Compensation and Nominating Committee, and attended *none* of the 11 meetings of that Committee held from the beginning of 2007 to the close of 2010.

41. Hyde is a director of Sino, and has held this position since 2004. Hyde was previously a partner of E&Y. Hyde is the chairman of Sino's Audit Committee. Hyde, along with Chan, signed each of the 2007-2010 Annual Consolidated Financial Statements on behalf of Sino's board. Hyde is also member of the Compensation and Nominating Committee. Hyde has made in excess of \$2.4 million through the sale of Sino shares. Hyde resides in Ontario. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when he signed such statements or when they were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

42. Ardell is a director of Sino, and has held this position since January 2010. Ardell is a member of Sino's audit committee. Ardell resides in Ontario. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements released while he was a board member, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

43. Bowland was a director of Sino from February 2011 until his resignation from the Board of Sino in November 2011. While on Sino's Board, Bowland was a member of Sino's Audit Committee. He was formerly an employee of a predecessor to E&Y. Bowland resides in Ontario. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements released while he was a board member, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

44. West is a director of Sino, and has held this position since February 2011. West was previously a partner at E&Y. West is a member of Sino's Audit Committee. West resides in Ontario. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements released while he was a board member, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

45. As officer and/or directors of Sino, the Individual Defendants were fiduciaries of Sino, and they made the misrepresentations alleged herein, adopted such misrepresentations, and/or caused Sino to make such misrepresentations while they were acting in their capacity as fiduciaries, and in violation of their fiduciary duties. In addition, Chan, Poon, Horsley, Martin,

Mak and Murray were unjustly enriched in the manner and to the extent particularized below while they were acting in their capacity as fiduciaries, and in violation of their fiduciary duties.

46. At all material times, Sino maintained the Code, which governed Sino's employees, officers and directors, including the Individual Defendants. The Code stated that the members of senior management "are expected to lead according to high standards of ethical conduct, in both words and actions..." The Code further required that Sino representatives act in the best interests of shareholders, corporate opportunities not be used for personal gain, no one trade in Sino securities based on undisclosed knowledge stemming from their position or employment with Sino, the company's books and records be honest and accurate, conflicts of interest be avoided, and any violations or suspected violations of the Code, and any concerns regarding accounting, financial statement disclosure, internal accounting or disclosure controls or auditing matters, be reported.

47. E&Y has been engaged as Sino's auditor since August 13, 2007. E&Y was also engaged as Sino's auditor from Sino's creation through February 19, 1999, when E&Y abruptly resigned during audit season and was replaced by the now-defunct Arthur Andersen LLP. E&Y was also Sino's auditor from 2000 to 2004, when it was replaced by BDO. E&Y is an expert of Sino within the meaning of the Securities Legislation.

48. E&Y, in providing what it purported to be "audit" services to Sino, made statements that it knowingly intended to be, and which were, disseminated to Sino's current and prospective security holders. At all material times, E&Y was aware of that class of persons, intended to and did communicate with them, and intended that that class of persons would rely on E&Y's statements relating to Sino, which they did to their detriment.

49. E&Y consented to the inclusion in the June 2009 and December 2009 Prospectuses, as well as the July 2008, June 2009, December 2009 and October 2010 Offering Memoranda, of its audit reports on Sino's Annual Financial Statements for various years, as alleged more particularly below.

50. BDO is the successor of BDO McCabe Lo Limited, the Hong Kong, China based auditing firm that was engaged as Sino's auditor during the period of March 21, 2005 through August 12, 2007, when they resigned at Sino's request, and were replaced by E&Y. BDO is an expert of Sino within the meaning of the Securities Legislation.

51. During the term of its service as Sino's auditor, BDO provided what it purported to be "audit" services to Sino, and in the course thereof made statements that it knowingly intended to be, and which were, disseminated to Sino's current and prospective security holders. At all material times, BDO was aware of that class of persons, intended to and did communicate with them, and intended that that class of persons rely on BDO's statements relating to Sino, which they did to their detriment.

52. BDO consented to the inclusion in each of the June 2007 and December 2009 Prospectuses and the July 2008, June 2009 and December 2009 Offering Memoranda, of its audit reports on Sino's Annual Financial Statements for 2005 and 2006.

53. E&Y and BDO's annual Auditors' Report was made "to the shareholders of Sino-Forest corporation," which included the Class Members. Indeed, s. 1000.11 of the Handbook of the Canadian Institute of Chartered Accountants states that "the objective of financial statements for profit-oriented enterprises focuses primarily on the information needs of *investors and creditors*" [emphasis added].

54. Sino's shareholders, including numerous Class Members, appointed E&Y as auditors of Sino-Forest by shareholder resolutions passed on various dates, including on June 21, 2004, May 26, 2008, May 25, 2009, May 31, 2010 and May 30, 2011.

55. Sino's shareholders, including numerous Class Members, appointed BDO as auditors of Sino-Forest by resolutions passed on May 16, 2005, June 5, 2006 and May 28, 2007.

56. During the Class Period, with the knowledge and consent of BDO or E&Y (as the case may be), Sino's audited annual financial statements for the years ended December 31, 2006, 2007, 2008, 2009 and 2010, together with the report of BDO or E&Y thereon (as the case may be), were presented to the shareholders of Sino (including numerous Class Members) at annual meetings of such shareholders held in Toronto, Canada on, respectively, May 28, 2007, May 26, 2008, May 25, 2009, May 31, 2010 and May 30, 2011. As alleged elsewhere herein, all such financial statements constituted Impugned Documents.

57. Pöyry is an international forestry consulting firm which purported to provide certain forestry consultation services to Sino. Pöyry is an expert of Sino within the meaning of the Securities Legislation.

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

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

60. The Underwriters are various financial institutions who served as underwriters in one or more of the Offerings.

61. In connection with the distributions conducted pursuant to the June 2007, June 2009 and December 2009 Prospectuses, the Underwriters who underwrote those distributions were paid, respectively, an aggregate of approximately \$7.5 million, \$14.0 million and \$14.4 million in underwriting commissions. In connection with the offerings of Sino's notes in July 2008, December 2009, and October 2010, the Underwriters who underwrote those offerings were paid, respectively, an aggregate of approximately US\$2.2 million, US\$8.5 million and \$US6 million. Those commissions were paid in substantial part as consideration for the Underwriters' purported due diligence examination of Sino's business and affairs.

62. None of the Underwriters conducted a reasonable investigation into Sino in connection with any of the Offerings. None of the Underwriters had reasonable grounds to believe that there was no misrepresentation in any of the Impugned Documents. In the circumstances of this case, including the facts that Sino operated in an emerging economy, Sino had entered Canada's capital markets by means of a reverse merger, and Sino had reported extraordinary results over an extended period of time that far surpassed those reported by Sino's peers, the Underwriters all ought to have exercised heightened vigilance and caution in the course of discharging their duties to investors, which they did not do. Had they done so, they would have uncovered Sino's true nature, and the Class Members to whom they owed their duties would not have sustained the losses that they sustained on their Sino investments.

V. THE OFFERINGS

63. Through the Offerings, Sino raised in aggregate in excess of \$2.7 billion from investors during the Class Period. In particular:

- (a) On June 5, 2007, Sino issued and filed with SEDAR the June 2007 Prospectus pursuant to which Sino distributed to the public 15,900,000 common shares at a price of \$12.65 per share for gross proceeds of \$201,135,000. The June 2007 Prospectus incorporated by reference Sino's: (1) 2006 AIF; (2) 2006 Audited Annual Financial Statements; (3) 2006 Annual MD&A; (4) Management Information Circular dated April 27, 2007; (5) Q1 2007 Financial Statements; and (6) Q1 2007 MD&A;
- (b) On July 17, 2008, Sino issued the July 2008 Offering Memorandum pursuant to which Sino sold through private placement US\$345 million in aggregate principal amount of convertible senior notes due 2013. The July 2008 Offering Memorandum included: (1) Sino's Consolidated Annual Financial Statements for 2005, 2006 and 2007; (2) Sino's unaudited interim financial statements for the three-month periods ended March 31, 2007 and 2008; (3) the section of the 2007 AIF entitled "Audit Committee" and the charter of the Audit Committee attached as an appendix to the 2007 AIF; and (4) the Pöyry report entitled "Sino-Forest Corporation Valuation of China Forest Assets Report as at 31 December 2007" dated March 14, 2008;
- (c) On June 1, 2009, Sino issued and filed with SEDAR the June 2009 Prospectus pursuant to which Sino distributed to the public 34,500,000 common shares at a price of \$11.00 per share for gross proceeds of \$379,500,000. The June 2009 Prospectus incorporated by reference Sino's: (1) 2008 AIF; (2) 2007 and 2008 Annual Consolidated Financial Statements; (3) Amended 2008 Annual MD&A; (4) Q1 2009 MD&A; (5) Q1 2008 and 2009 Financial Statements; (6) Q1 2009 MD&A; (7) Management Information Circular dated April 28, 2009; and (8) the Pöyry report titled "Valuation of China Forest Corp Assets As at 31 December 2008" dated April 1, 2009;

- (d) On June 24, 2009, Sino issued the June 2009 Offering Memorandum for exchange of certain of its then outstanding senior notes due 2011 with new notes, pursuant to which Sino issued US\$212,330,000 in aggregate principal amount of 10.25% Guaranteed Senior Notes due 2014. The June 2009 Offering Memorandum incorporated by reference: (1) Sino's 2005, 2006 and 2007 Consolidated Annual Financial Statements; (2) the auditors' report of BDO dated March 19, 2007 with respect to Sino's Consolidated Annual Financial Statements for 2005 and 2006; (3) the auditors' report of E&Y dated March 12, 2008 with respect to Sino's Consolidated Annual Financial Statements for 2007 except as to notes 2, 18 and 23; (4) Sino's Consolidated Annual Financial Statements for 2007 and 2008 and the auditors' report of E&Y dated March 13, 2009; (5) the section entitled "Audit Committee" in the 2008 AIF, and the charter of the Audit Committee attached as an appendix to the 2008 AIF; and (6) the unaudited interim financial statements for the three-month periods ended March 31, 2008 and 2009;
- (e) On December 10, 2009, Sino issued the December 2009 Offering Memorandum pursuant to which Sino sold through private placement US\$460,000,000 in aggregate principal amount of 4.25% convertible senior notes due 2016. This Offering Memorandum incorporated by reference: (1) Sino's Consolidated Annual Financial Statements for 2005, 2006, 2007; (2) the auditors' report of BDO dated March 19, 2007 with respect to Sino's Annual Financial Statements for 2005 and 2006; (3) the auditors' report of E&Y dated March 12, 2008 with respect to Sino's Consolidated Annual Financial Statements for 2007, except as to notes 2, 18 and 23; (4) Sino's Consolidated Annual Financial Statements for 2007 and 2008 and the auditors' report of E&Y dated March 13, 2009; (5) the unaudited interim consolidated financial statements for the nine-month periods ended September 30, 2008 and 2009; (6) the section entitled "Audit Committee" in the 2008 AIF, and the charter of the Audit Committee attached to the 2008 AIF; (7) the Pöyry report entitled "Sino-Forest Corporation Valuation of China Forest Assets as at 31 December 2007"; and (8) the Pöyry report entitled "Sino-Forest Corporation Valuation of China Forest Corp Assets as at 31 December 2008" dated April 1, 2009;

- (f) On December 10, 2009, Sino issued and filed with SEDAR the December 2009 Prospectus (together with the June 2007 Prospectus and the June 2009 Prospectus, the “**Prospectuses**”) pursuant to which Sino distributed to the public 21,850,000 common shares at a price of \$16.80 per share for gross proceeds of \$367,080,000. The December 2009 Prospectus incorporated by reference Sino’s: (1) 2008 AIF; (2) 2007 and 2008 Annual Consolidated Financial Statements; (3) Amended 2008 Annual MD&A; (4) Q3 2008 and 2009 Financial Statements; (5) Q3 2009 MD&A; (6) Management Information Circular dated April 28, 2009; and (7) the Pöyry report titled “Valuation of China Forest Corp Assets As at 31 December 2008” dated April 1, 2009;
- (g) On February 8, 2010, Sino closed the acquisition of substantially all of the outstanding common shares of Mandra Forestry Holdings Limited. Concurrent with this acquisition, Sino completed an exchange with holders of 99.7% of the USD\$195 million notes issued by Mandra Forestry Finance Limited and 96.7% of the warrants issued by Mandra Forestry Holdings Limited, for new 10.25% guaranteed senior notes issued by Sino in the aggregate principal amount of USD\$187,177,375 with a maturity date of July 28, 2014. On February 11, 2010, Sino exchanged the new 2014 Senior Notes for an additional issue of USD\$187,187,000 in aggregate principal amount of Sino’s existing 2014 Senior Notes, issued pursuant to the June 2009 Offering Memorandum; and
- (h) On October 14, 2010, Sino issued the October 2010 Offering Memorandum pursuant to which Sino sold through private placement US\$600,000,000 in aggregate principal amount of 6.25% guaranteed senior notes due 2017. The October 2010 Offering Memorandum incorporated by reference: (1) Sino’s Consolidated Annual Financial Statements for 2007, 2008 and 2009; (2) the auditors’ report of E&Y dated March 15, 2010 with respect to Sino’s Annual Financial Statements for 2008 and 2009; and (3) Sino’s unaudited interim financial statements for the six-month periods ended June 30, 2009 and 2010.

64. The offering documents referenced in the preceding paragraph included, or incorporated other documents by reference that included, the Representation and the other misrepresentations in such documents that are particularized elsewhere herein. Had the truth in regard to Sino's management, business and affairs been timely disclosed, securities regulators likely would not have received the Prospectuses, nor would any of the Offerings have occurred.

65. Each of Chan, Horsley, Martin and Hyde signed the June 2007 Prospectus, and therein falsely certified that that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. Each of Dundee, CIBC, Merrill and Credit Suisse also signed the June 2007 Prospectus, and therein falsely certified that, to the best of its knowledge, information and belief, that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby.

66. Each of Chan, Horsley, Martin and Hyde signed the June 2009 Prospectus, and therein falsely certified that that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. Each of Dundee, Merrill, Credit Suisse, Scotia and TD also signed the June 2009 Prospectus, and therein falsely certified that, to the best of its knowledge, information and belief, that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby.

67. Each of Chan, Horsley, Martin and Hyde signed the December 2009 Prospectus, and therein falsely certified that that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities

offered thereby. Each of Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD also signed the December 2009 Prospectus, and therein falsely certified that, to the best of its knowledge, information and belief, that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby.

68. E&Y consented to the inclusion in: (1) the June 2009 Prospectus, of its audit reports on Sino's Audited Annual Financial Statements for 2007 and 2008; (2) the December 2009 Prospectus, of its audit reports on Sino's Audited Annual Financial Statements for 2007 and 2008; (3) the July 2008 Offering Memorandum, of its audit reports on Sino's Audited Annual Financial Statements for 2007, and its adjustments to Sino's Audited Annual Financial Statements for 2005 and 2006; (4) the December 2009 Offering Memorandum, of its audit reports on Sino's Audited Annual Financial Statements for 2007 and 2008; and (5) the October 2010 Offering Memoranda, of its audit reports on Sino's Audited Annual Financial Statements for 2008 and 2009.

69. BDO consented to the inclusion in each of the June 2007 and December 2009 Prospectuses and the July 2008, June 2009 and December 2009 Offering Memoranda of its audit reports on Sino's Audited Annual Financial Statements for 2006 and 2005.

VI. THE MISREPRESENTATIONS

70. During the Class Period, Sino made the misrepresentations particularized below. These misrepresentations related to:

- A. Sino's history and fraudulent origins;
- B. Sino's forestry assets;
- C. Sino's related party transactions;

- D. Sino's relationships with forestry bureaus and its purported title to forestry assets in the PRC;
- E. Sino's relationships with its "Authorized Intermediaries;"
- F. Sino's cash flows;
- G. Certain risks to which Sino was exposed; and
- H. Sino's compliance with GAAP and the Auditors' compliance with GAAS.

A. *Misrepresentations relating to Sino's History and Fraudulent Origins*

(i) Sino Overstates the Value of, and the Revenues Generated by, the Leizhou Joint Venture

71. At the time of its founding by way of reverse merger in 1994, Sino's business was conducted primarily through an equity joint venture between Sino's Hong Kong subsidiary, Sino-Wood Partners, Limited ("Sino-Wood"), and the Leizhou Forestry Bureau, which was situated in Guangdong Province in the south of the PRC. The name of the venture was Zhanjiang Leizhou Eucalyptus Resources Development Co. Ltd. ("**Leizhou**"). The stated purpose of Leizhou, established in 1994, was:

Managing forests, wood processing, the production of wood products and wood chemical products, and establishing a production facility with an annual production capacity of 50,000 m³ of Micro Density Fiber Board (MDF), managing a base of 120,000 mu (8,000 ha) of which the forest annual utilization would be 8,000 m³.

72. There are two types of joint ventures in the PRC relevant to Sino: equity joint ventures ("EJV") and cooperating joint ventures ("CJV"). In an EJV, profits and assets are distributed in proportion to the parties' equity holdings upon winding up. In a CJV, the parties may contract to divide profits and assets disproportionately to their equity interests.

73. According to a Sino prospectus issued in January 1997, Leizhou, an EJV, was responsible for 20,000 hectares of the 30,000 hectares that Sino claimed to have “phased-in.” Leizhou was the key driver of Sino’s purported early growth.

74. Sino claimed to hold 53% of the equity in Leizhou, which was to total US\$10 million, and Sino further claimed that the Leizhou Forestry Bureau was to contribute 20,000 ha of forestry land. In reality, however, the terms of the EJV required the Leizhou Forestry Bureau to contribute a mere 3,533 ha.

75. What was also unknown to investors was that Leizhou did not generate the sales claimed by Sino. More particularly, in 1994, 1995 and 1996, respectively, Sino claimed to have generated US\$11.3 million, US\$23.9 million and US\$23.1 million in sales from Leizhou. In reality, however, these sales did not occur, or were materially overstated.

76. Indeed, in an undisclosed letter from Leizhou Forestry Bureau to Zhanjiang City Foreign and Economic Relations and Trade Commission, dated February 27, 1998, the Bureau complained:

To: Zhanjiang Municipal Foreign Economic Relations & Trade Commission

Through mutual consultation between Leizhou Forestry Administration (hereinafter referred to as *our side*) and Sino-Wood Partners Limited (hereinafter referred to as the *foreign party*), and, with the approval document ZJMPZ No.021 [1994] issued by your commission on 28th January 1994 for approving the contracts and articles of association entered into by both parties, and, with the approval certificate WJMZHZZZ No.065 [1994] issued by your commission, both parties jointly established Zhanjiang Eucalyptus Resources Development Co. Ltd. (hereinafter referred to as the Joint Venture) whose incorporate number is 162622-0012 and duly registered the same with Zhanjiang Administration for Industry and Commerce and obtained the business license GSQHYZ No.00604 on 29th January in the same year. It has been 4 years since the registration and we set out the situation as follows:

I. Information of the investment of both sides

- A. The investment of our side: according to the contract and articles of association signed by both sides and approved by your commission, our side has paid in RMB95,481,503.29 (equivalent to USD11,640,000.00) to the Joint Venture on 20th June 1995 through an in-kind contribution. The payment was made in accordance with the prescribed procedures and confirmed by signatures of the legal representatives of both parties. According to the Capital Verification Report from Yuexi (• •) Accounting Firm, this payment accounts for 99.1% of the agreed capital contribution from our side, which is USD11,750,000, and accounts for 46.56% of the total investment.
- B. The investment of the foreign party: the foreign party has paid in USD1,000,000 on 16th March 1994, which was in the starting period of the Joint Venture. According to the Capital Verification Report from Yuexi (• •) Accounting Firm, this payment only accounts for 7.55% of the agreed capital contribution from the foreign party totaling USD13,250,000, and accounts for 4% of the total investment. Then, in the prescribed investment period, the foreign party did not further pay capital into the Joint Venture. In view of this, your commission sent a “Notice on Time for Capital Contribution” to the foreign party on 30th January 1996. In accordance with the notice, the foreign party then on 10th April sent a letter to your commission, requesting for postponing the deadline for capital contribution to 20th December the same year. On 14th May 1996, your commission replied to Allen Chan (• • •), the Chairman of the Joint Venture, stating that “postponement of the deadline for capital contribution is subject to the consent of our side and requires amendment of the term on the capital contribution time in the original contract, and both parties shall sign a bilateral supplementary contract; after the application has been approved, the postponed deadline will become effective.”. Based on the spirit of the letter dated 14th May from your commission and for the purpose of achieving mutual communication and dealing with the issues of the Joint Venture actively and appropriately, on 11th June 1996, Chan Shixing (• • •) and two other Directors from our side sent a joint letter to Allen Chan (• • •), the Chairman of the Joint Venture, to propose a meeting of the board to be convened before 30th June 1996 in Zhanjiang, in order to discuss how to deal with the issues of the Joint Venture in accordance with the relevant State provisions. Unfortunately, the foreign party neither had discussion with our side pursuant to your commission’s letter, nor replied to the proposal of our side, and furthermore failed to make payment to the Joint Venture. Now, it has been two years beyond the deadline for capital contribution (29th January 1996), and more than one year beyond the date prescribed by the Notice on Time for Capital Contribution issued by your commission (30th April 1996). However, the foreign party has been evading the discussion of the capital contribution issue, and moreover has taken no further action.

II. *The Joint Venture is not capable of attaining substantial operation*

According to the contract and articles of association, the main purposes of setting up the Joint Venture are, on the one hand, to invest and construct a project producing 50,000 cubic meter Medium Density Fiberboard (MDF) a year; and on the other hand, to create a forest base of 120,000 mu, with which to produce 80,000 cubic meter of timber as raw material for the production of medium density fiberboard. The contract and articles of association also prescribed that the whole funding required for the MDF board project should be paid by the foreign party in cash; our side should pay in-kind the proportion of the fund prescribed by the contract. *After contributing capital of USD1,000,000 in the early stage, the foreign party not only failed to make subsequent capital contributions, but also in their own name successively withdrew a total amount of RMB4,141,045.02, from the funds they contributed, of which USD270,000 was paid to Huadu Baixing Wood Products Factory (.), which has no business relationship with the Joint Venture. This amount of money equals 47.6% of [the foreign party's] paid in capital. Although our side has almost paid off the agreed capital contribution (only short 0.9% of the total committed), due to the limited contribution from the foreign party and the fact that they withdrew a huge amount of money from those funds originally contributed by them, it is impossible for the Joint Venture to construct or set up production projects and to commence production operation while the funds have been insufficient and the foreign party did not pay in the majority of the subscribed capital. In fact, the Joint Venture therefore is merely a shell, existing in name only.*

Additionally, after the establishment of the Joint Venture, its internal operations have been extremely abnormal, for example, annual board meetings have not been held as scheduled; annual reports on the status and the results of the annual financial audit are missing; the withdrawal of the huge amount of funds by the foreign party was not discussed in the board meetings, etc. It is hard to list all here.

In light of the present state of contributions by both sides and the status of the Joint Venture from its establishment till now, our side now applies to your commission for:

1. The cancellation of the approval certificate for “Zhanjiang Eucalyptus Resources Development Co. Ltd.”, i.e. WJMZHZZZ No. 065[1994], based on the relevant provisions of Certain Regulations on the Subscription of Capital by the Parties to Sino-Foreign Joint Equity Enterprises,

2. Direct the Joint Venture to complete the deregistration procedures for "Zhanjiang Eucalyptus Resources Development Co. Ltd." at the local Administration for Industry and Commerce, and for the return of its business license.
3. Coordination with both parties to resolve the relevant remaining issues.

Please let us have your reply on whether the above is in order.

The Seal of the Leizhou Forestry Bureau

1998, February 27

[Translation; emphasis added.]

77. In its 1996 Annual Financial Statements, Sino stated:

The \$14,992,000 due from the LFB represents cash collected from the sale of wood chips on behalf of the Leizhou EJV. As originally agreed to by Sino-Wood, the cash was being retained by the LFB to fund the ongoing plantation costs of the Leizhou EJV incurred by the LFB. Sino-Wood and LFB have agreed that the amount due to the Leizhou EJV, after reduction for plantation costs incurred, will be settled in 1997 concurrent with the settlement of capital contributions due to the Leizhou EJV by Sino-Wood.

78. These statements were false, inasmuch as Leizhou never generated such sales. Leizhou was wound-up in 1998.

79. At all material times, Sino's founders, Chan and Poon, were fully aware of the reality relating to Leizhou, and knowingly misrepresented the true status of Leizhou, as well as its true revenues and profits.

(ii) Sino's Fictitious Investment in SJXT

80. In Sino's audited financial statements for the year ended December 31, 1997, filed on SEDAR on May 20, 1998 (the "1997 Financial Statements"), Sino stated that, in order to establish strategic partnerships with key local wood product suppliers and to build a strong distribution for the wood-based product and contract supply businesses, it had acquired a 20% equity interest in "Shanghai Jin Xiang Timber Ltd." ("SJXT"). Sino then described SJXT as an

EJV that had been formed in 1997 by the Ministry of Forestry in China, and declared that its function was to organize and manage the first and only official market for timber and log trading in Eastern China. It further stated that the investment in SJXT was expected to provide the Company with good accessibility to a large base of potential customers and companies in the timber and log businesses in Eastern China.

81. There is, in fact, no entity known as “Shanghai Jin Xiang Timber Ltd.” While an entity called “Shanghai Jin Xiang Timber Wholesale Market” does exist, Sino did not have, as claimed in its disclosure documents, an equity stake in that venture.

82. According to the 1997 Audited Annual Financial Statements, the total investment of SJXT was estimated to be US\$9.7 million, of which Sino would be required to contribute approximately US\$1.9 million for a 20% equity interest. The 1997 Audited Annual Financial Statements stated that, as at December 31, 1997, Sino had made capital contributions to SJXT in the amount of US\$1.0 million. In Sino’s balance sheet as at December 31, 1997, the SXJT investment was shown as an asset of \$1.0 million.

83. In October 1998, Sino announced an Agency Agreement with SJXT. At that time, Sino stated that it would provide 130,000 m³ of various wood products to SJXT over an 18 month period, and that, based on then-current market prices, it expected this contract to generate “significant revenue” for Sino-Forest amounting to approximately \$40 million. The revenues that were purportedly anticipated from the SJXT contract were highly material to Sino. Indeed, Sino’s total reported revenues in 1998 were \$92.7 million.

84. In Sino’s Audited Annual Financial Statements for the year ended December 31, 1998, which statements were filed on SEDAR on May 18, 1999 (the “**1998 Financial Statements**”), Sino again stated that, in 1997, it had acquired a 20% equity interest in SJXT, that the total

investment in SJXT was estimated to be US\$9.7 million, of which Sino would be required to contribute approximately \$1.9 million, representing 20% of the registered capital, and that, as at December 31, 1997 and 1998, Sino had made contributions in the amount of US\$1.0 million to SJXT. In Sino's balance sheet as at December 31, 1998, the SXJT investment was again shown as an asset of US\$1.0 million.

85. Sino also stated in the 1998 Audited Annual Financial Statements that, during 1998, the sale of logs and lumber to SJXT amounted to approximately US\$537,000. These sales were identified in the notes to the 1998 Financial Statements as related party transactions.

86. In Sino's Annual Report for 1998, Chan stated that lumber and wood products trading constituted a "promising new opportunity." Chan explained that:

SJXT represents a very significant development for our lumber and wood products trading business. The market is prospering and continues to look very promising. Phase I, consisting of 100 shops, is completed. Phases II and III are expected to be completed by the year 2000. This expansion would triple the size of the Shanghai Timber Market.

The Shanghai Timber Market is important to Sino-Forest as a generator of significant new revenue. In addition to supplying various forest products to the market from our own operations, our direct participation in SJXT increases our activities in sourcing a wide range of other wood products both from inside China and internationally.

The Shanghai Timber Market is also very beneficial to the development of the forest products industry in China because it is the first forest products national sub-market in the eastern region of the country.

[...]

The market also greatly facilitates Sino-Forest's networking activities, enabling us to build new industry relationships and add to our market intelligence, all of which increasingly leverage our ability to act as principal in our dealings.

[Emphasis added.]

87. Chan also stated in the 1998 Annual Report that the “Agency Agreement with SJXT [is] expected to generate approximately \$40 million over 18 months.”

88. In Sino’s Annual Report for 1999, Sino stated:

There are also promising growth opportunities as Sino-Forest’s investment in Shanghai Jin Xiang Timber Ltd. (SJXT or the Shanghai Timber Market), develops. The Company also continues to explore opportunities to establish and reinforce ties with other international forestry companies and to bring our e-commerce technology into operation.

Sino-Forest’s investment in the Shanghai Timber Market — the first national forest products submarket in eastern China — has provided a strong foundation for the Company’s lumber and wood products trading business.

[Emphasis added.]

89. In Sino’s MD&A for the year ended December 31, 1999, Sino also stated that:

Sales from lumber and wood products trading increased 264% to \$34.2 million compared to \$9.4 million in 1998. The increase in lumber and wood products trading is attributable largely to the increase in new business generated from our investment in Shanghai Jin Xiang Timber Ltd. (SJXT) and a larger sales force in 1999. Lumber and wood products trading on an agency basis has increased 35% from \$2.3 million in 1998 to \$3.1 million in 1999. The increase in commission income on lumber and wood products trading is attributable to approximately \$1.8 million of fees earned from a new customer.

[Emphasis added.]

90. That same MD&A, however, also states that “The investment in SJXT has contributed to the significant growth of the lumber and wood products trading business, *which has recorded an increase in sales of 219% from \$11.7 million in 1998 to \$37.2 million in 1999*” (emphasis added).

91. In Sino’s Audited Annual Financial Statements for the year ended December 31, 1999, which statements were filed on SEDAR on May 18, 2000 (the “1999 Financial Statements”), Sino stated:

During the year, Shanghai Jin Xiang Timber Ltd. ["SJXT"] applied to increase *the original total capital contributions of \$868,000* [Chinese renminbi 7.2 million] to \$1,509,000 [Chinese renminbi 12.5 million]. Sino-Wood is required to *make an additional contribution of \$278,000* as a result of the increase in total capital contributions. The additional capital contribution of \$278,000 was made in 1999 *increasing its equity interest in SJXT from 27.8% to 34.4%*. The principal activity of SJXT is to organize trading of timber and logs in the PRC market.

[Emphasis added.]

92. The statements made in the 1999 Financial Statements contradicted Sino's prior representations in relation to SJXT. Among other things, Sino previously claimed to have made a capital contribution of \$1,037,000 for a 20% equity interest in SJXT.

93. In addition, note 2(b) to the 1999 Financial Statements stated that, "[a]s at December 31, 1999, \$796,000...advances to SJXT remained outstanding. The advances to SJXT were unsecured, non-interest bearing and without a fixed repayment date." Thus, assuming that Sino's contributions to SJXT were actually made, then Sino's prior statements in relation to SJXT were materially misleading, and violated GAAP, inasmuch as those statements failed to disclose that Sino had made to SJXT, a related party, a non-interest bearing loan of \$796,000.

94. In Sino's Audited Annual Financial Statements for the year ended December 31, 2000, which statements were filed on SEDAR on May 18, 2000 (the "**2000 Financial Statements**"), Sino stated:

In 1999, Shanghai Jin Xiang Timber Ltd. ("SJXT") applied to increase the original total capital contributions of \$868,000 [Chinese renminbi 7.2 million] to \$1,509,000 [Chinese renminbi 12.5 million]. Sino-Wood is required to make an additional contribution of \$278,000 as a result of the increase in total capital contributions. The additional capital contribution of \$278,000 was made in 1999 increasing its equity interest in SJXT from 27.8% to 34.4%. The principal activity of SJXT is to organize the trading of timber and logs in the PRC market. During the year, advances to SJXT of \$796,000 were repaid.

95. In Sino's balance sheet as at December 31, 2000, the SJXT investment was shown as an asset of \$519,000, being the sum of Sino's purported SJXT investment of \$1,315,000 as at December 31, 1999, and the \$796,000 of "advances" purportedly repaid to Sino by SJXT during the year ended December 31, 2000.

96. In Sino's Annual Reports (including the audited annual financial statements contained therein) for the years 2001 and beyond, there is no discussion whatsoever of SJXT. Indeed, Sino's "promising" and "very significant" investment in SJXT simply evaporated, without explanation, from Sino's disclosure documents. In fact, and unbeknownst to the public, Sino never invested in a company called "Shanghai Jin Xiang Timber Ltd." Chan and Poon knew, or were reckless in not knowing of, that fact.

97. At all material times, Sino's founders, Chan and Poon, were fully aware of the reality relating to SJXT, and knowingly misrepresented the true status of SJXT and Sino's interest therein.

(iii) Sino's Materially Deficient and Misleading Class Period Disclosures regarding Sino's History

98. During the Class Period, the Sino disclosure documents identified below purported to provide investors with an overview of Sino's history. However, those disclosure documents, and indeed all of the Impugned Documents, failed to disclose the material fact that, from its very founding, Sino was a fraud, inasmuch as its purportedly key investments in Leizhou and SJXT were either grossly inflated or fictitious.

99. Accordingly, the statements particularized in paragraphs 100 to 104 below were misrepresentations. The misleading nature of such statements was exacerbated by the fact that, throughout the Class Period, Sino's senior management and Board purported to be governed by

the Code, which touted the “high standards of ethical conduct, in both words and actions”, of Sino’s senior management and Board.

100. In the Prospectuses, Sino described its history, but did not disclose that the SJXT investment was fictitious, or that the revenues generated by Leizhou were non-existent or grossly overstated.

101. In particular, the June 2007 Prospectus stated merely that:

The Corporation was formed under the *Business Corporations Act* (Ontario) upon the amalgamation of Mt. Kearsarge 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 the Corporation’s class A subordinate-voting shares and class B multiple-voting shares. On June 25, 2002, the Corporation filed articles of continuance to continue under the *Canada Business Corporations Act*. On June 22, 2004, the Corporation 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.

102. Similarly, the June 2009 Prospectus stated only that:

The Corporation was formed under the *Business Corporations Act* (Ontario) upon the amalgamation of Mt. Kearsarge 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 the Corporation’s class A subordinate-voting shares and class B multiple-voting shares. On June 25, 2002, the Corporation filed articles of continuance to continue under the *Canada Business Corporations Act*. On June 22, 2004, the Corporation 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.

103. Finally, the December 2009 Prospectus stated only that:

The Corporation was formed under the *Business Corporations Act* (Ontario) upon the amalgamation of Mt. Kearsarge 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 the

Corporation's class A subordinate-voting shares and class B multiple-voting shares. On June 25, 2002, the Corporation filed articles of continuance to continue under the *Canada Business Corporations Act* (the "CBCA"). On June 22, 2004, the Corporation 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.

104. The failure to disclose the true nature of, and/or Sino's revenues and profits from, SJXT and Leizhou in the historical narrative in the Prospectuses rendered those Prospectuses materially false and misleading. Those historical facts would have alerted persons who purchased Sino shares under the Prospectuses, and/or in the secondary markets, to the highly elevated risk of investing in a company that continued to be controlled by Chan and Poon, both of whom were founders of Sino, and both of whom had knowingly misrepresented the true nature of Leizhou and SJXT from the time of Sino's creation. Thus, Sino was required to disclose those historical facts to the Class Members during the Class Period, but failed to do so, either in the Prospectuses or in any other Impugned Document.

B. *Misrepresentations relating to Sino's Forestry Assets*

(i) Sino Overstates its Yunnan Forestry Assets

105. In a press release issued by Sino and filed on SEDAR on March 23, 2007, Sino announced that it had entered into an agreement to sell 26 million shares to several institutional investors for gross proceeds of US\$200 million, and that the proceeds would be used for the acquisition of standing timber, including pursuant to a new agreement to purchase standing timber in Yunnan Province. It further stated in that press release that Sino-Panel (Asia) Inc. ("**Sino-Panel**"), a wholly-owned subsidiary of Sino, had entered on that same day into an agreement with Gengma Dai and Wa Tribes Autonomous Region Forestry Company Ltd., ("**Gengma Forestry**") established in Lincang City, Yunnan Province in the PRC, and that, under that Agreement, Sino-Panel would acquire approximately 200,000 hectares of non-state owned

commercial standing timber in Lincang City and surrounding cities in Yunnan for US\$700 million to US\$1.4 billion over a 10-year period.

106. These same terms of Sino's Agreement with Gengma Forestry were disclosed in Sino's Q1 2007 MD&A. Moreover, throughout the Class Period, Sino discussed its purported Yunnan acquisitions in the Impugned Documents, and Pöyry repeatedly made statements regarding said holdings, as particularized below.

107. The reported acquisitions did not take place. Sino overstated to a material degree the size and value of its forestry holdings in Yunnan Province. It simply does not own all of the trees it claims to own in Yunnan. Sino's overstatement of the Yunnan forestry assets violated GAAP.

108. The misrepresentations about Sino's acquisition and holdings of the Yunnan forestry assets were made in all of the Impugned Documents that were MD&As, financial statements, AIFs, Prospectuses and Offering Memoranda, except for the 2005 Audited Annual Financial Statements, the Q1 2006 interim financial statements, the 2006 Audited Annual Financial Statements, the 2006 Annual MD&A.

(ii) Sino Overstates its Suriname Forestry Assets; Alternatively, Sino fails to Disclose the Material Fact that its Suriname Forestry Assets are contrary to the Laws of Suriname

109. In mid-2010, Sino became a majority shareholder of Greenheart Group Ltd., a Bermuda corporation having its headquarters in Hong Kong, China and a listing on the Hong Kong Stock Exchange ("**Greenheart**").

110. In August 2010, Greenheart issued an aggregate principal amount of US\$25,000,000 convertible notes for gross proceeds of US\$24,750,000. The sole subscriber of these convertible notes was Greater Sino Holdings Limited, an entity in which Murray has an indirect interest. In

addition, Chan and Murray then became members of Greenheart's Board, Chan became the Board's Chairman, and Martin became the CEO of Greenheart and a member of its Board.

111. On August 24, 2010 and December 28, 2010, Greenheart granted to Chan, Martin and Murray options to purchase, respectively, approximately 6.8 million, 6.8 million and 1.1 million Greenheart shares. The options are exercisable for a five-year term.

112. As at March 31, 2011, General Enterprise Management Services International Limited, a company in which Murray has an indirect interest, held 7,000,000 shares of Greenheart, being 0.9% of the total issued and outstanding shares of Greenheart.

113. As a result of the aforesaid transactions and interests, Sino, Chan, Martin and Murray stood to profit handsomely from any inflation in the market price of Greenheart's shares.

114. At all material times, Greenheart purported to have forestry assets in New Zealand and Suriname. On March 1, 2011, Greenheart issued a press release in which it announced that:

Greenheart acquires certain rights to additional 128,000 hectare concession in Suriname

312,000 hectares now under Greenheart management

Hong Kong, March 1, 2011 – Greenheart Group Limited (“Greenheart” or “the Company”) (HKSE: 00094), an investment holding company with forestry assets in Suriname and New Zealand (subject to certain closing conditions) today announced that *the Company has acquired 60% of Vista Marine Services N.V. (“Vista”), a private company based in Suriname, South America that controls certain harvesting rights to a 128,000 hectares hardwood concession. Vista will be rebranded as part of the Greenheart Group. This transaction will increase Greenheart's concessions under management in Suriname to approximately 312,000 hectares.* The cost of this acquisition is not material to the Company as a whole but the Company is optimistic about the prospects of Vista and the positive impact that it will bring. *The concession is located in the Sipalawini district of Suriname, South America, bordering Lake Brokopondo and has an estimated annual allowable cut of approximately 100,000 cubic meters.*

Mr. Judson Martin, Chief Executive Officer of Greenheart and Vice-Chairman of Sino-Forest Corporation, the Company's controlling shareholder said, "This acquisition is in line with our growth strategy to expand our footprint in Suriname. In addition to increased harvestable area, this acquisition will bring synergies in sales, marketing, administration, financial reporting and control, logistics and overall management. I am pleased to welcome Mr. Ty Wilkinson to Greenheart as our minority partner. Mr. Wilkinson shares our respect for the people of Suriname and the land and will be appointed Chief Executive Officer of this joint venture and be responsible for operating in a sustainable and responsible manner. This acquisition further advances Greenheart's strategy of becoming a global agri-forestry company. We will continue to actively seek well-priced and sustainable concessions in Suriname and neighboring regions in the coming months."

[Emphasis added.]

115. In its 2010 AIF, filed on SEDAR on March 31, 2011, Sino stated:

We hold a majority interest in Greenheart Group which, together with its subsidiaries, owns certain rights and *manages approximately 312,000 hectares of hardwood forest concessions in the Republic of Suriname, South America* ("Suriname") and 11,000 hectares of a radiata pine plantation on 13,000 hectares of freehold land in New Zealand as at March 31, 2011. *We believe that our ownership in Greenheart Group will strengthen our global sourcing network in supplying wood fibre for China in a sustainable and responsible manner.*

[Emphasis added.]

116. The statements reproduced in the preceding paragraph were false and/or materially misleading when made. Under the Suriname *Forest Management Act*, it is prohibited for one company or a group of companies in which one person or company has a majority interest to control more than 150,000 hectares of land under concession. Therefore, either Greenheart's concessions under management in Suriname did not exceed 150,000 hectares, or Greenheart's concessions under management in Suriname violated the laws of Suriname, which was a material fact not disclosed in any of the Impugned Documents.

117. In each of the October 2010 Offering Memorandum, the 2010 Annual MD&A, the 2010 AIF, Sino represented that Greenheart had well in excess of 150,000 hectares of concession

under management in Suriname without however disclosing that Suriname law imposed a limit of 150,000 hectares on Greenheart and its subsidiaries.

118. Finally, Vista’s forestry concessions are located in a region of Suriname populated by the Saramaka, an indigenous people. Pursuant to the American Convention on Human Rights and a decision of the Inter-American Court of Human Rights, the Saramaka people must have effective control over their land, including the management of their reserves, and must be effectively consulted by the State of Suriname. Sino has not disclosed in any of the Impugned Documents where it has discussed Greenheart and/or Suriname assets that Vista’s purported concessions in Suriname, if they exist at all, are impaired due to the unfulfilled rights of the indigenous people of Suriname, in violation of GAAP. The Impugned Documents that omitted that disclosure were the 2010 Annual MD&A, the 2010 Audited Annual Financial Statements, and the 2010 AIF.

(iii) Sino overstates its Jiangxi Forestry Assets

119. On June 11, 2009, Sino issued a press release in which it stated:

Sino-Forest Corporation (TSX: TRE), a leading commercial forest plantation operator in China, announced today that its wholly-owned subsidiary, Sino-Panel (China) Investments Limited (“Sino-Panel”), has entered into a Master Agreement for the Purchase of Pine and Chinese Fir Plantation Forests (the “Jiangxi Master Agreement”) with Jiangxi Zhonggan Industrial Development Company Limited (“Jiangxi Zhonggan”), which will act as the authorized agent for the original plantation rights holders.

Under the Jiangxi Master Agreement, Sino-Panel will, through PRC subsidiaries of Sino-Forest, acquire between 15 million and 18 million cubic metres (m³) of wood fibre located in plantations in Jiangxi Province over a three-year period with a price not to exceed RMB300 per m³, to the extent permitted under the relevant PRC laws and regulations. *The plantations in which such amount of wood fibre to acquire is between 150,000 and 300,000 hectares* to achieve an estimated average wood fibre yield of approximately 100 m³ per hectare, and include tree species such as pine, Chinese fir and others. Jiangxi Zhonggan will ensure plantation forests sold to Sino-Panel and its PRC subsidiaries are non-state-owned, non-natural, commercial plantation forest trees.

In addition to securing the maximum tree acquisition price, Sino-Panel has pre-emptive rights to lease the underlying plantation land at a price, permitted under the relevant PRC laws and regulations, not to exceed RMB450 per hectare per annum for 30 years from the

time of harvest. The land lease can also be extended to 50 years as permitted under PRC laws and regulations. The specific terms and conditions of purchasing or leasing are to be determined upon the execution of definitive agreements between the PRC subsidiaries of Sino-Panel and Jiangxi Zhonggan upon the authorisation of original plantation rights holders, and subject to the requisite governmental approval and in compliance with the relevant PRC laws and regulations.

Sino-Forest Chairman and CEO Allen Chan said, “We are fortunate to have been able to capture and support investment opportunities in China’s developing forestry sector by locking up a large amount of fibre at competitive prices. The Jiangxi Master Agreement is Sino-Forest’s fifth, long-term, fibre purchase agreement during the past two years. These five agreements cover a total plantation area of over one million hectares in five of China’s most densely forested provinces.”

[Emphasis added.]

120. According to Sino’s 2010 Annual MD&A, as of December 31, 2010, Sino had acquired 59,700 ha of plantation trees from Jiangxi Zhonggan Industrial Development Company Limited (“Zhonggan”) for US\$269.1 million under the terms of the master agreement. (In its interim report for the second quarter of 2011, which was issued after the Class Period, Sino claims that, as at June 30, 2011, this number had increased to 69,100 ha, for a purchase price of US\$309.6 million).

121. However, as was known to Sino, Chan, Poon and Horsley, and as ought to have been known to the remaining Individual Defendants, BDO, E&Y and Pöyry, Sino’s plantation acquisitions through Zhonggan are materially smaller than Sino has claimed.

(iv) Poyry makes Misrepresentations in relation to Sino’s Forestry Assets

122. As particularized above, Sino overstated its forestry assets in Yunnan and Jiangxi Provinces in the PRC and in Suriname. Accordingly, Sino’s total assets are overstated to a material degree in all of the Impugned Documents, in violation of GAAP, and each such statement of Sino’s total assets constitutes a misrepresentation.

123. In addition, during the Class Period, Pöyry and entities affiliated with it made statements that are misrepresentations in regard to Sino's Yunnan Province "assets," namely:

- (a) In a report dated March 14, 2008, filed on SEDAR on March 31, 2008 (the "2008 Valuations"), Pöyry: (a) stated that it had determined the valuation of the Sino forest assets to be US\$3.2 billion as at 31 December 2007; (b) provided tables and figures regarding Yunnan; (c) stated that "Stands in Yunnan range from 20 ha to 1000 ha," that "In 2007 Sino-Forest purchased an area of mixed broadleaf forest in Yunnan Province," that "Broadleaf forests already acquired in Yunnan are all mature," and that "Sino-Forest is embarking on a series of forest acquisitions/expansion efforts in Hunan, Yunnan and Guangxi;" and (d) provided a detailed discussion of Sino's Yunnan "holdings" at Appendixes 3 and 5. Pöyry's 2008 Valuations were incorporated in Sino's 2007 Annual MD&A, amended 2007 Annual MD&A, 2007 AIF, each of the Q1, Q2, and Q3 2008 MD&As, Annual 2008 MD&A, amended Annual 2008 MD&A, each of the Q1, Q2 and Q3 2009, annual 2009 MD&A, and July 2008 and December 2009 Offering Memoranda;
- (b) In a report dated April 1, 2009 and filed on SEDAR on April 2, 2009 (the "2009 Valuations"), Pöyry stated that "[t]he area of forest owned in Yunnan has quadrupled from around 10 000 ha to almost 40 000 ha over the past year," provided figures and tables regarding Yunnan, and stated that "Sino-Forest has increased its holding of broadleaf crops in Yunnan during 2008, with this province containing nearly 99% of its broadleaf resource." Pöyry's 2009 Valuations were incorporated in Sino's 2008 AIF, each of the Q1, Q2, Q3 2009 MD&As, Annual 2009 MD&A, June 2009 Offering Memorandum, and June 2009 and December 2009 Prospectuses;
- (c) In a "Final Report" dated April 23, 2010, filed on SEDAR on April 30, 2010 (the "2010 Valuations"), Pöyry stated that "Guangxi, Hunan and Yunnan are the three largest provinces in terms of Sino-Forest's holdings. The largest change in area by province, both in absolute and relative terms [sic] has been Yunnan, where the

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

- (d) In a “Summary Valuation Report” regarding “Valuation of Purchased Forest Crops as at 31 December 2010” and dated May 27, 2011, Pöyry provided tables and figures regarding Yunnan, stated that “[t]he major changes in area by species from December 2009 to 2010 has been in Yunnan pine, with acquisitions in Yunnan and Sichuan provinces” and that “[a]nalysis of [Sino’s] inventory data for broadleaf forest in Yunnan, and comparisons with an inventory that Pöyry undertook there in 2008 supported the upwards revision of prices applied to the Yunnan broadleaf large size log,” and stated that “[t]he yield table for Yunnan pine in Yunnan and Sichuan provinces was derived from data collected in this species in these provinces by Pöyry during other work;” and
- (e) In a press release titled “Summary of Sino-Forest’s China Forest Asset 2010 Valuation Reports” and which was “jointly prepared by Sino-Forest and Pöyry to highlight key findings and outcomes from the 2010 valuation reports,” Pöyry reported on Sino’s “holdings” and estimated the market value of Sino’s forest assets on the 754,816 ha to be approximately US\$3.1 billion as at December 31, 2010.

C. *Misrepresentations relating to Sino's Related Party Transactions*

(i) Related Party Transactions Generally

124. Under GAAP and GAAS, a "related party" exists "when one party has the ability to exercise directly or indirectly, control, joint control or significant influence over the other." (CICA Handbook 3840.03) Examples include a parent-subsidary relationship or an entity that is economically dependent upon another.

125. Related parties raise the concern that transactions may not be conducted at arm's length, and pricing or other terms may not be determined at fair market values. For example, when a subsidiary "sells" an asset to its parent at a given price, it may not be appropriate that that asset be reported on the balance sheet or charged against the earnings of the parent at that price. Where transactions are conducted between arm's length parties, this concern is generally not present.

126. The existence of related party transactions is important to investors irrespective of the reported dollar values of the transactions because the transactions may be controlled, manipulated and/or concealed by management (for example, for corporate purposes or because fraudulent activity is involved), and because such transactions may be used to benefit management or persons close to management at the expense of the company, and therefore its shareholders.

(ii) Sino fails to disclose that Zhonggan was a Related Party

127. Irrespective of the true extent of Zhonggan's transactions in Jiangxi forestry plantations, Sino failed to disclose, in violation of GAAP, that Zhonggan was a related party of Sino. More particularly, according to AIC records, the legal representative of Zhonggan is Lam Hong Chiu, who is an executive vice president of Sino. Lam Hong Chiu is also a director and a 50%

shareholder of China Square Industrial Limited, a BVI corporation which, according to AIC records, owns 80% of the equity of Zhonggan.

128. The Impugned Documents that omitted that disclosure were the Q2 2009 MD&A, the Q2 2009 interim financial statements, the Q3 2009 MD&A, the Q3 2009 interim financial statements, the December 2009 Prospectus, the 2009 Annual MD&A, the 2009 Audited Annual Financial Statements, the 2009 AIF, the Q1 2010 MD&A, the Q1 2010 interim financial statements, the Q2 2010 MD&A, the Q2 2010 interim financial statements, the Q3 2010 MD&A, the Q3 2010 interim financial statements, the 2010 Annual MD&A, the 2010 Audited Annual Financial Statements, and the 2010 AIF.

(iii) Sino fails to disclose that Homix was a Related Party

129. On January 12, 2010, Sino issued a press release in which it announced the acquisition by one of its wholly-owned subsidiaries of Homix Limited (“**Homix**”), which it described as a company engaged in research and development and manufacturing of engineered-wood products in China, for an aggregate amount of US\$7.1 million. That press release stated:

HOMIX has an R&D laboratory and two engineered-wood production operations based in Guangzhou and Jiangsu Provinces, covering eastern and southern China wood product markets. The company has developed a number of new technologies with patent rights, specifically 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 environment-friendly and versatile as it uses fibre from forest plantations, recycled wood and/or wood residue. This reduces the traditional use of large-diameter trees from natural forests. There is growing demand for recomposed wood technology as it reduces cost for raw material while increases the utilization and sustainable use of plantation fibre for the production of furniture and interior/exterior building materials.

[...]

Mr. Allen Chan, Sino-Forest’s Chairman & CEO, said, “As we continue to ramp up our replanting programme with improved eucalyptus species, it is important for Sino-Forest to continue investing in the research and development that maximizes all aspects of the

forest product supply chain. Modernization and improved productivity of the wood processing industry in China is also necessary given the country's chronic wood fibre deficit. Increased use of technology improves operation efficiency, and maximizes and broadens the use of domestic plantation wood, which reduces the need for logging domestic natural forests and for importing logs from strained tropical forests. HOMIX has significant technological capabilities in engineered-wood processing."

Mr. Chan added, "By acquiring HOMIX, we intend to use six-year eucalyptus fibre instead of 30-year tree fibre from other species to produce quality lumber using recomposed technology. We believe that this will help preserve natural forests as well as improve the demand for and pricing of our planted eucalyptus trees."

130. Sino's 2009 Audited Annual Financial Statements, Q1/2010 Unaudited Interim Financial Statements, 2010 Audited Annual Financial Statements, the MD&As related to each of the aforementioned financial statements, and Sino's AIFs for 2009 and 2010, each discussed the acquisition of Homix, but nowhere disclosed that Homix was in fact a related party of Sino.

131. More particularly, Hua Chen, a Senior Vice President, Administration & Finance, of Sino in the PRC, and who joined Sino in 2002, is a 30% shareholder of an operating subsidiary of Homix, Jiangsu Dayang Wood Co., Ltd. ("**Jiangsu**")

132. In order to persuade current and prospective Sino shareholders that there was a commercial justification for the Homix acquisition, Sino misrepresented Homix's patent designs registered with the PRC State Intellectual Property Office. In particular, in its 2009 Annual Report, Sino stated:

HOMIX acquisition

In accordance with our strategy to focus on research and development and to improve the end-use of our wood fibre, we acquired HOMIX Ltd. in January 2010 for \$7.1 million. This corporate acquisition is small but strategically important *adding valuable intellectual property rights* and two engineered-wood processing facilities located in Guangdong and Jiangsu Provinces to our operations. *Homix has developed environment-friendly technology, an efficient process using recomposed technology to convert small-diameter plantation logs into building materials and furniture.* Since we plan to grow high volumes of eucalypt and other FGHY species, this acquisition will help us achieve our long-term objectives of maximizing the use of our fibre, supplying a

variety of downstream customers and enhancing economic rural development. [Emphasis added]

133. However, Homix itself then had no patent designs registered with the PRC State Intellectual Property Office. At that time, Homix had two subsidiaries, Jiangsu and Guangzhou Pany Dacheng Wood Co. The latter then had no patent designs registered with the PRC State Intellectual Property Office, while Jiangsu had two patent designs. However, each such design was for wood dyeing, and not for the conversion of small-diameter plantation logs into building materials and furniture.

(iv) Sino fails to disclose that Yunnan Shunxuan was a Related Party

134. In addition, during the Class Period, Sino purportedly purchased approximately 1,600 hectares of timber in Yunnan province from Yunnan Shunxuan Forestry Co. Ltd. Yunnan Shunxuan was part of Sino, acting under a separate label. Accordingly, it was considered a related party for the purposes of the GAAP disclosure requirements, a fact that Sino failed to disclose.

135. The Impugned Documents that omitted that disclosure were the 2009 Annual MD&A, the 2009 Audited Annual Financial Statements, the 2009 AIF, the Q1 2010 MD&A, the Q1 2010 interim financial statements, the Q2 2010 MD&A, the Q2 2010 interim financial statements, the Q3 2010 MD&A, the Q3 2010 interim financial statements, the 2010 Annual MD&A, the 2010 Audited Annual Financial Statements, and the 2010 AIF.

136. Sino's failure to disclose that Yunnan Shunxuan was a related party was a violation of GAAP, and a misrepresentation.

(v) Sino fails to disclose that Yuda Wood was a Related Party

137. Huaihua City Yuda Wood Co. Ltd., based in Huaihua City, Hunan Province ("**Yuda Wood**"), was a major supplier of Sino at material times. Yuda Wood was founded in April 2006

and, from 2007 until 2010, its business with Sino totalled approximately 152,164 Ha and RMB 4.94 billion.

138. During that period, Yuda Wood was a related party of Sino. Indeed, in the Second Report, the IC acknowledged that *“there is evidence suggesting close cooperation [between Sino and Yuda Wood] (including administrative assistance, possible payment of capital at the time of establishment, joint control of certain of Yuda Wood’s RMB bank accounts and the numerous emails indicating coordination of funding and other business activities)”* [emphasis added.]

139. The fact that Yuda Wood was a related party of Sino during the Class Period was a material fact and was required to be disclosed under GAAP, but, during the Class Period, that fact was not disclosed by Sino in any of the Impugned Documents, or otherwise.

(vi) Sino fails to Disclose that Major Suppliers were Related Parties

140. At material times, Sino had at least thirteen suppliers where former Sino employees, consultants or secondees are or were directors, officers and/or shareholders of one or more such suppliers. Due to these and other connections between these suppliers and Sino, some or all of such suppliers were in fact undisclosed related parties of Sino.

141. Including Yuda Wood, the thirteen suppliers referenced above accounted for 43% of Sino’s purported plantation purchases between 2006 and the first quarter of 2011.

142. In none of the Impugned Documents did Sino disclose that any of these suppliers were related parties, nor did it disclose sufficient particulars of its relations with such suppliers as would have enabled the investing public to ascertain that those suppliers were related parties.

D. *Misrepresentations relating to Sino's Relations with Forestry Bureaus and its Purported Title to Forestry Assets in the PRC*

143. In at least two instances during the Class Period, PRC forestry bureau officials were either concurrently or subsequently employees of, or consultants to, Sino. One forestry bureau assigned employees to Sino and other companies to assist in the development of the forestry industry in its jurisdiction.

144. In addition, a vice-chief of the forestry bureau was assigned to work closely with Sino, and while that vice chief still drew a basic salary from the forestry bureau, he also acted as a consultant to Sino in the conduct of Sino's business. This arrangement was in place for several years. That vice-chief appeared on Sino's payroll from January 2007 with a monthly payment of RMB 15,000, which was significant compared with his forestry bureau salary.

145. In addition, at material times, Sino and/or its subsidiaries and/or its suppliers made cash payments and gave "gifts" to forestry bureau officials, which potentially constituted a serious criminal offence under the laws of the PRC. At least some of these payments and gifts were made or given in order to induce the recipients to issue "confirmation letters" in relation to Sino's purported holdings in the PRC of standing timber. These practices utterly compromised the integrity of the process whereby those "confirmation letters" were obtained.

146. Further, a chief of a forestry bureau who had authorized the issuance of confirmations to Sino was arrested due to corruption charges. That forestry bureau had issued confirmations only to Sino and to no other companies. Subsequent to the termination of that forestry bureau chief, that forestry bureau did not issue confirmations to any company.

147. The foregoing facts were material because: (1) they undermined the reliability (if any) of the documentation upon which Sino relied and continues to rely to establish its ownership of

standing timber; and (2) the corruption in which Sino was engaged exposed Sino to potential criminal penalties, including substantial fines, as well as a risk of severe reputational damage in Sino's most important market, the PRC.

148. However, none of these facts was disclosed in any of the Impugned Documents. On the contrary, Sino only made the following disclosure regarding former government officials in its 2007 Annual Report (and in no other Impugned Document), which was materially incomplete, and a misrepresentation:

To ensure successful growth, we have trained and promoted staff from within our organization, and hired knowledgeable people with relevant working experience and industry expertise – some joined us from forestry bureaus in various regions and provinces and/or state-owned tree farms. [...] 4. Based in Heyuan, Guangdong, Deputy GM responsible for Heyuan plantations, previously with forestry bureau; studied at Yangdongxian Dangxiao [Mr. Liang] 5. Based in Hunan, Plantation controller, graduated from Hunan Agricultural University, previously Assistant Manager of state-owned farm trees in Hunan [Mr. Xie].

149. In respect of Sino's purported title to standing timber in the PRC, Sino possessed Plantation Rights Certificates, or registered title, only in respect of 18% of its purported holdings of standing timber as at December 31, 2010, a fact nowhere disclosed by Sino during the Class Period. This fact was highly material to Sino, inasmuch as standing timber comprised a large proportion of Sino's assets throughout the Class Period, and in the absence of Plantation Rights Certificates, Sino could not establish its title to that standing timber.

150. Rather than disclose this highly material fact, Sino made the following misrepresentations in the following Impugned Documents:

- (a) In the 2008 AIF: "*We have obtained the plantation rights certificates or requisite approvals for acquiring the relevant plantation rights for most of the purchased tree plantations and planted tree plantations currently under our management*, and we are in the process of applying for the plantation rights

certificates for those plantations for which we have not obtained such certificates” [emphasis added];

- (b) In the 2009 AIF: “*We have obtained the plantation rights certificates or requisite approvals for acquiring the relevant plantation rights for most of the purchased plantations and planted plantations currently under our management*, and we are in the process of applying for the plantation rights certificates for those plantations for which we have not obtained such certificates” [emphasis added]; and
- (c) In the 2010 AIF: “*We have obtained the plantation rights certificates or requisite approvals for acquiring the relevant plantation rights for most of the purchased plantations and planted plantations currently under our management*, and we are in the process of applying for the plantation rights certificates for those plantations for which we have not obtained such certificates” [emphasis added].

151. In the absence of Plantation Rights Certificates, Sino relies principally on the purchase contracts entered into by its BVI subsidiaries (“BVIs”) in order to demonstrate its ownership of standing timber.

152. However, under PRC law, those contracts are void and unenforceable.

153. In the alternative, if those contracts are valid and enforceable, they are enforceable only as against the counterparties through which Sino purported to acquire the standing timber, and not against the party who has registered title (if any) to the standing timber. Because some or all of those counterparties were or became insolvent, corporate shells or thinly capitalized, then any claims that Sino would have against those counterparties under PRC law, whether for unjust enrichment or otherwise, were of little to no value, and certainly constituted no substitute for registered title to the standing timber which Sino purported to own.

154. Sino never disclosed these material facts during the Class Period, whether in the Impugned Documents or otherwise. On the contrary, Sino made the following misrepresentations in relation to its purported title to standing timber:

- (a) In the July 2008 Offering Memorandum, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased plantations”;
- (b) In the June 2009 Offering Memorandum, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased plantations”;
- (c) In the October 2010 Offering Memorandum, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased plantations”;
- (d) In the 2006 AIF, Sino stated “Based on the supplemental purchase contracts and the plantation rights certificates issued by the relevant forestry departments, we have the legal right to own our purchased tree plantations”;
- (e) In the 2007 AIF, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry departments, we have the legal right to own our purchased tree plantations”;
- (f) In the 2008 AIF, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased tree plantations”;

- (g) In the 2009 AIF, Sino stated “Based on the relevant purchase contracts and the approvals issued by the local forestry bureaus, we legally own our purchased plantations”;
- (h) In the December 2009 Offering Memorandum, Sino stated “Based on the relevant purchase contracts and the approvals issued by the local forestry bureaus, we legally own our purchased plantations”; and
- (i) In the 2010 AIF, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased plantations.”

155. In addition, during the Class Period, Sino never disclosed the material fact, belatedly revealed in the Second Report, that *“in practice it is not able to obtain Plantation Rights Certificates for standing timber purchases when no land transfer rights are transferred”* [emphasis added].

156. On the contrary, during the Class Period, Sino made the following misrepresentation in each of the 2006 and 2007 AIFs:

Since 2000, the PRC has been improving its system of registering plantation land ownership, plantation land use rights and plantation ownership rights and its system of issuing certificates to the persons having plantation land use rights, to owners owning the plantation trees and to owners of the plantation land. In April 2000, the PRC State Forestry Bureau announced the “Notice on the Implementation of Nationwide Uniform Plantation Right Certificates” (Lin Zi Fa [2000] No. 159) on April 19, 2000 (the “Notice”). Under the Notice, a new uniform form of plantation rights certificate is to be used commencing from the date of the Notice. *The same type of new form plantation rights certificate will be issued to the persons having the right to use the plantation land, to persons who own the plantation land and plantation trees, and to persons having the right to use plantation trees.*

[Emphasis added]

157. Under PRC law, county and provincial forestry bureaus have no authority to issue confirmation letters. Such letters cannot be relied upon in a court of law to resolve a dispute and are not a guarantee of title. Notwithstanding this, during the Class Period, Sino made the following misrepresentations:

- (a) In the 2006 AIF: “In addition, for the purchased tree plantations, *we have obtained confirmations from the relevant forestry bureaus that we have the legal right to own the purchased tree plantations for which we have not received certificates*” [emphasis added]; and
- (b) In the 2007 AIF: “For our Purchased Tree Plantations, we have applied for the relevant Plantation Rights Certificates with the competent local forestry departments. As the relevant locations where we purchased our Purchased Tree Plantations have not fully implemented the new form Plantation Rights Certificate, we are not able to obtain all the corresponding Plantation Rights Certificates for our Purchased Tree Plantations. *In this connection, we obtained confirmation on our ownership of our Purchased Tree Plantations from the relevant forestry departments.*” [emphasis added]

E. Misrepresentations relating to Sino's Relationships with its AIs

158. In addition to the misrepresentations alleged above in relation to Sino's AIs, including those alleged in Section VI.C hereof (*Misrepresentations relating to Sino's Related Party Transactions*), Sino made the following misrepresentations during the Class Period in relation to its relationships with its AIs.

(i) Sino Misrepresents the Degree of its Reliance on its AIs

159. On March 30, 2007, Sino issued and filed on SEDAR its 2006 AIF. In that AIF, Sino stated:

...PRC laws and regulations require foreign companies to obtain licenses to engage in any business activities in the PRC. As a result of these requirements, we currently engage in our trading activities through PRC authorized intermediaries that have the requisite business licenses. There is no assurance that the PRC government will not take action to restrict our ability to engage in trading activities through our authorized intermediaries. ***In order to reduce our reliance on the authorized intermediaries, we intend to use a WFOE in the PRC to enter into contracts directly with suppliers of raw timber, and then process the raw timber, or engage others to process raw timber on its behalf, and sell logs, wood chips and wood-based products to customers, although it would not be able to engage in pure trading activities.***

[Emphasis added.]

160. In its 2007 AIF, which Sino filed on March 28, 2008, Sino again declared its intention to reduce its reliance upon AIs.

161. These statements were false and/or materially misleading when made, inasmuch as Sino had no intention to reduce materially its reliance on AIs, because its AIs were critical to Sino's ability to inflate its revenue and net income. Rather, these statements had the effect of mitigating any investor concern arising from Sino's extensive reliance upon AIs.

162. Throughout the Class Period, Sino continued to depend heavily upon AIs for its purported sales of standing timber. In fact, contrary to Sino's purported intention to reduce its reliance on its AIs, Sino's reliance on its AIs in fact *increased* during the Class Period.

(ii) *Sino Misrepresents the Tax-related Risks Arising from its use of AIs*

163. Throughout the Class Period, Sino materially understated the tax-related risks arising from its use of AIs.

164. Tax evasion penalties in the PRC are severe. Depending on whether the PRC authorities seek recovery of unpaid taxes by means of a civil or criminal proceeding, its claims for unpaid tax are subject to either a five- or ten-year limitation period. The unintentional failure to pay taxes is subject to a 0.05% per day interest penalty, while an intentional failure to pay taxes is punishable with fines of up to five times the unpaid taxes, and confiscation of part or all of the criminal's personal properties maybe also imposed.

165. Therefore, because Sino professed to be unable to determine whether its AIs have paid required taxes, the tax-related risks arising from Sino's use of AIs were potentially devastating. Sino failed, however, to disclose these aspects of the PRC tax regime in its Class Period disclosure documents, as alleged more particularly below.

166. Based upon Sino's reported results, Sino's tax accruals in all of its Impugned Documents that were interim and annual financial statements were materially deficient. For example, depending on whether the PRC tax authorities would assess interest at the rate of 18.75% per annum, or would assess no interest, on the unpaid income taxes of Sino's BVI subsidiaries, and depending also on whether one assumes that Sino's AIs have paid no income taxes or have paid 50% of the income taxes due to the PRC, then Sino's tax accruals in its 2007, 2008, 2009 and 2010 Audited Annual Financial Statements were understated by, respectively, US\$10 million to US\$150 million, US\$50 million to US\$260 million, US\$81 million to US\$371 million, and US\$83 million to US\$493 million. Importantly, were one to consider the impact of unpaid taxes other than unpaid income taxes (for example, unpaid value-added taxes), then the amounts by

which Sino's tax accruals were understated in these financial statements would be substantially larger.

167. The aforementioned estimates of the amounts by which Sino's tax accruals were understated also assume that the PRC tax authorities only impose interest charges on Sino's BVI Subsidiaries and impose no other penalties for unpaid taxes, and assume further that the PRC authorities seek back taxes only for the preceding five years. As indicated above, each of these assumptions is likely to be unduly optimistic. In any case, Sino's inadequate tax accruals violated GAAP, and constituted misrepresentations.

168. Sino also violated GAAP in its 2009 Audited Annual Financial Statements by failing to apply to its 2009 financial results the PRC tax guidance that was issued in February 2010. Although that guidance was issued after year-end 2009, GAAP required that Sino apply that guidance to its 2009 financial results, because that guidance was issued in the subsequent events period.

169. Based upon Sino's reported profit margins on its dealings with AIs, which margins are extraordinary both in relation to the profit margins of Sino's peers, and in relation to the limited risks that Sino purports to assume in its transactions with its AIs, Sino's AIs are not satisfying their tax obligations, a fact that was either known to the Defendants or ought to have been known. If Sino's extraordinary profit margins are real, then Sino and its AIs must be dividing the gains from non-payment of taxes to the PRC.

170. During the Class Period, Sino never disclosed the true nature of the tax-related risks to which it was exposed. This omission, in violation of GAAP, rendered each of the following statements a misrepresentation:

- (a) In the 2006 Annual Financial Statements, note 11 [b] “Provision for tax related liabilities” and associated text;
- (b) In the 2006 Annual MD&A, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (c) In the AIF dated March 30, 2007, the section “Estimation of the Company’s provision for income and related taxes,” and associated text;
- (d) In the Q1 and Q2 2007 Financial Statements, note 5 “Provision for Tax Related Liabilities,” and associated text;
- (e) In the Q3 2007 Financial Statements, note 6 “Provision for Tax Related Liabilities,” and associated text;
- (f) In the 2007 Annual Financial Statements, note 13 [b] “Provision for tax related liabilities,” and associated text;
- (g) In the 2007 Annual MD&A and Amended 2007 Annual MD&A, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (h) In the AIF dated March 28, 2008, the section “Estimation of the Corporation’s provision for income and related taxes,” and associated text;
- (i) In the Q1, Q2 and Q3 2008 Financial Statements, note 12 “Provision for Tax Related Liabilities,” and associated text;
- (j) In the Q1, Q2 and Q3 2008 MD&As, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (k) In the July 2008 Offering Memorandum, the subsection “Taxation” in the section “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and associated text;

- (l) In the 2008 Annual Financial Statements, note 13 [d] “Provision for tax related liabilities,” and associated text;
- (m) In the 2008 Annual MD&A and Amended 2008 Annual MD&A, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (n) In the AIF dated March 31, 2009, the section “We may be liable for income and related taxes to our business and operations, particularly our BVI Subsidiaries, in amounts greater than the amounts we have estimated and for which we have provisioned,” and associated text;
- (o) In the Q1, Q2 and Q3 2009 Financial Statements, note 13 “Provision for Tax Related Liabilities,” and associated text;
- (p) In the Q1, Q2 and Q3 2009 MD&As, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (q) In the 2009 Annual Financial Statements, note 15 [d] “Provision for tax related liabilities,” and associated text;
- (r) In the 2009 Annual MD&A, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (s) In the AIF dated March 31, 2010, the section “We may be liable for income and related taxes to our business and operations, particularly our BVI Subsidiaries, in amounts greater than the amounts we have estimated and for which we have provisioned,” and associated text;
- (t) In the Q1 and Q2 2010 Financial Statements, note 14 “Provision for Tax Related Liabilities,” and associated text;
- (u) In the Q1 and Q2 2010 MD&As, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;

- (v) In the Q3 2010 Financial Statements, note 14 “Provision and Contingencies for Tax Related Liabilities,” and associated text; and
- (w) In the Q3 2010 MD&As, the subsection “Provision and Contingencies for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (x) In the October 2010 Offering Memorandum, the subsection “Taxation” in the section “Selected Financial Information,” and associated text;
- (y) In the 2010 Annual Financial Statements, note 18 “Provision and Contingencies for Tax Related Liabilities,” and associated text;
- (z) In the 2010 Annual MD&A, the subsection “Provision and Contingencies for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text; and
- (aa) In the AIF dated March 31, 2011, the section “We may be liable for income and related taxes to our business and operations, particularly our BVI Subsidiaries, in amounts greater than the amounts we have estimated and for which we have provisioned,” and associated text.

171. In every Impugned Document that is a financial statement, the line item “Accounts payable and accrued liabilities” and associated figures on the Consolidated Balance Sheets fails to properly account for Sino’s tax accruals and is a misrepresentation, and a violation of GAAP.

172. During the Class Period, Sino also failed to disclose in any of the Impugned Documents that were AIFs, MD&As, financial statements, Prospectuses or Offering Memoranda, the risks relating to the repatriation of its earnings from the PRC. In 2010, Sino added two new sections to its AIF regarding the risk that it would not be able to repatriate earnings from its BVI subsidiaries (which deal with the AIs). The amount of retained earnings that may not be able to be repatriated is stated therein to be US\$1.4 billion. Notwithstanding this disclosure, Sino did not

disclose in these Impugned Documents that it would be unable to repatriate *any* earnings absent proof of payment of PRC taxes, which it has admitted that it lacks.

(iii) *Sino Misrepresents its Accounting Treatment of its AIs*

173. In addition, there are material discrepancies in Sino's descriptions of its accounting treatment of its AIs. Beginning in the 2003 AIF, Sino described its AIs as follows:

Because of the provisions in the Operational Procedures that specify when we and the authorized intermediary assume the risks and obligations relating to the raw timber or wood chips, as the case may be, we treat these transactions for accounting purposes as providing that we take title to the raw timber when it is delivered to the authorized intermediary. Title then passes to the authorized intermediary once the timber is processed into wood chips. ***Accordingly, we treat the authorized intermediaries for accounting purposes as being both our suppliers and customers in these transactions.***

[Emphasis added.]

174. Sino's disclosures were consistent in that regard up to and including Sino's first AIF issued in the Class Period (the 2006 AIF), which states:

Because of the provisions in the Operational Procedures that specify when we and the AI assume the risks and obligations relating to the raw timber or wood chips, as the case may be, we treat these transactions for accounting purposes as providing that we take title to the raw timber when it is delivered to the AI. Title then passes to the AI once the timber is processed into wood chips. ***Accordingly, we treat the AI for accounting purposes as being both our supplier and customer in these transactions.***

[Emphasis added.]

175. In subsequent AIFs, Sino ceased without explanation to disclose whether it treated AIs for accounting purposes as being both the supplier and the customer.

176. Following the issuance of Muddy Waters' report on the last day of the Class Period, however, Sino declared publicly that Muddy Waters was "wrong" in its assertion that, for accounting purposes, Sino treated its AIs as being both supplier and customer in transactions. This claim by Sino implies either that Sino misrepresented its accounting treatment of AIs in its

2006 AIF (and in its AIFs for prior years), or that Sino changed its accounting treatment of its AIs after the issuance of its 2006 AIF. If the latter is true, then Sino was obliged by GAAP to disclose its change in its accounting treatment of its AIs. It failed to do so.

F. *Misrepresentations relating to Sino's Cash Flow Statements*

177. Given the nature of Sino's operations, that of a frequent trader of standing timber, Sino improperly accounted for its purchases of timber assets as "Investments" in its Consolidated Statements Of Cash Flow. In fact, such purchases are "Inventory" within the meaning of GAAP, given the nature of Sino's business.

178. Additionally, Sino violated the GAAP 'matching' principle in treating timber asset purchases as "Investments" and the sale of timber assets as "Inventory": cash flow that came into the company was treated as cash flow from operations, but cash flow that was spent by Sino was treated as cash flow for investments. As a result, "Additions to timber holding" was improperly treated as a "Cash Flows Used In Investing Activities" instead of "Cash Flows From Operating Activities" and the item "Depletion of timber holdings included in cost of sales" should not be included in "Cash Flows From Operating Activities," because it is not a cash item.

179. The effect of these misstatements is that Sino's Cash Flows From Operating Activities were materially overstated throughout the Class Period, which created the impression that Sino was a far more successful cash generator than it was. Such mismatching and misclassification is a violation of GAAP.

180. Cash Flows From Operating Activities are one of the crucial metrics used by the financial analysts who followed Sino's performance. These misstatements were designed to, and did, have the effect of causing such analysts to materially overstate the value of Sino. This material

overstatement was incorporated into various research reports made available to the Class Members, the market and the public at large.

181. Matching is a foundational requirement of GAAP reporting. E&Y and BDO were aware, at all material times, that Sino was required to adhere to the matching principle. If E&Y and BDO had conducted GAAS-complaint audits, they would have been aware that Sino's reporting was not GAAP compliant with regard to the matching principle. Accordingly, if they had conducted GAAS-compliant audits, the statements by E&Y and BDO that Sino's reporting was GAAP-compliant were not only false, but were made, at a minimum, recklessly.

182. Further, at all material times, E&Y and BDO were aware that misstatements in Cash Flows From Operating Activities would materially impact the market's valuation of Sino.

183. Accordingly, in every Impugned Document that is a financial statement, the Consolidated Statements Of Cash Flow are a misrepresentation and, particularly, the Cash Flows From Operating Activities item and associated figures is materially overstated, the "additions to timber holdings" item and figures is required to be listed as Cash Flows From Operating Activities, and the "depletion of timber holdings included in cost of sales" item and figures should not have been included.

G. Misrepresentations relating to Certain Risks to which Sino was exposed

(i) Sino is conducting “business activities” in China

184. At material times, PRC law required foreign entities engaging in “business activities” in the PRC to register to obtain and maintain a license. Violation of this requirement could have resulted in both administrative sanctions and criminal punishment, including banning the unlicensed business activities, confiscating illegal income and properties used exclusively therefor, and/or an administrative fines of no more than RMB 500,000. Possible criminal punishment included a criminal fine from 1 to 5 times the amount of the profits gained.

185. Consequently, were Sino’s BVI subsidiaries to have been engaged in unlicensed in “business activities” in the PRC during the Class Period, they would have been exposed to risks that were highly material to Sino.

186. Under PRC law, the term “business activities” generally encompasses any for-profit activities, and Sino’s BVI subsidiaries were in fact engaged in unlicensed “business activities” in the PRC during the Class Period. However, Sino did not disclose this fact in any of the Impugned Documents, including in its AIFs for 2008-2010, which purported to make full disclosure of the material risks to which Sino was then exposed.

(ii) Sino fails to disclose that no proceeds were paid to it by its AIs

187. In the Second Report, Sino belatedly revealed that:

In practice, proceeds from the Entrusted Sale Agreements are not paid to SF but are held by the AIs as instructed by SF and subsequently used to pay for further purchases of standing timber by the same or other BVIs. The AIs will continue to hold these proceeds until the Company instructs the AIs to use these proceeds to pay for new BVI standing timber purchases. ***No proceeds are directly paid to the Company, either onshore or offshore.***

[Emphasis added]

188. This material fact was never disclosed in any of the Impugned Documents during the Class Period. On the contrary, Sino made the following statements during the Class Period in relation to the proceeds paid to it by its AIs, each of which was materially misleading and therefore a misrepresentation:

- (a) In the 2005 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of wood chips and standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other PRC liabilities” [emphasis added];
- (b) In the 2006 Annual MD&A, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (c) In the 2006 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of wood chips and standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi” [emphasis added];
- (d) In the 2007 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi;”
- (e) In the 2008 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi” [emphasis added];
- (f) In the 2009 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi” [emphasis added]; and

- (g) In the 2010 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi” [emphasis added].

H. *Misrepresentations relating to Sino’s GAAP Compliance and the Auditors’ GAAS Compliance*

(i) Sino, Chan and Horsley misrepresent that Sino complied with GAAP

189. In each of its Class Period financial statements, Sino represented that its financial reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein.

190. In particular, Sino misrepresented in those financial statements that it was GAAP-compliant as follows:

- (a) In the annual statements filed on March 19, 2007, at Note 1: “These consolidated financial statements Sino-Forest Corporation (the “Company”) have been prepared in United States dollars in accordance with Canadian generally accepted accounting principles”;
- (b) In the annual financial statements filed on March 18, 2008, at Note 1: “The consolidated financial statements of Sino-Forest Corporation (the “Company”) have been prepared in United States dollars and in accordance with Canadian generally accepted accounting principles”;
- (c) In the annual financial statements filed on March 16, 2009, at note 1: “The consolidated financial statements of Sino-Forest Corporation (the “Company”) have been prepared in United States dollars and in accordance with Canadian generally accepted accounting principles”;

- (d) In the annual financial statements filed on March 16, 2010, at note 1: “The consolidated financial statements of Sino-Forest Corporation (the “Company”) have been prepared in United States dollars and in accordance with Canadian generally accepted accounting principles”; and
- (e) In the annual financial statements filed on March 15, 2011, at note 1: “The consolidated financial statements of Sino-Forest Corporation (the “Company”) have been prepared in United States dollars and in accordance with Canadian generally accepted accounting principles”.

191. In each of its Class Period MD&As, Sino represented that its reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein.

192. In particular, Sino misrepresented in those MD&As that it was GAAP-compliant as follows:

- (a) In the annual MD&A filed on March 19, 2007: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;
- (b) In the quarterly MD&A filed on May 14, 2007: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;
- (c) In the quarterly MD&A filed on August 13, 2007: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;
- (d) In the quarterly MD&A filed on November 12, 2007: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;

- (e) In the annual MD&A filed on March 18, 2008: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;
- (f) In the amended annual MD&A filed on March 28, 2008: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;
- (g) In the quarterly MD&A filed on May 13, 2008: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;
- (h) In the quarterly MD&A filed on August 12, 2008: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;
- (i) In the quarterly MD&A filed on November 13, 2008: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;
- (j) In the annual MD&A filed on March 16, 2009: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;
- (k) In the amended annual MD&A filed on March 17, 2009: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;
- (l) In the quarterly MD&A filed on May 11, 2009: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;
- (m) In the quarterly MD&A filed on August 10, 2009: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;

- (n) In the quarterly MD&A filed on November 12, 2009: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles (“GAAP”);”
- (o) In the annual MD&A files on March 16, 2010: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles (“GAAP”);”
- (p) In the quarterly MD&A filed on May 12, 2010: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles (“GAAP”);”
- (q) In the quarterly MD&A filed on August 10, 2010: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles (“GAAP”);”
- (r) In the quarterly MD&A filed on November 10, 2010: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles (“GAAP”); and
- (s) In the annual MD&A filed on March 15, 2011: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles (“GAAP”).”

193. In the Offerings, Sino represented that its reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein.

194. In particular, Sino misrepresented in the Offerings that it was GAAP-compliant as follows:

- (a) In the July 2008 Offering Memorandum: “We prepare our financial statements on a consolidated basis in accordance with accounting principles generally accepted in Canada (“Canadian GAAP”)[...],” “Our auditors conduct their audit of our

financial statements in accordance with auditing standards generally accepted in Canada” and “Each of the foregoing reports or financial statements will be prepared in accordance with Canadian generally accepted accounting principles other than for reports prepared for financial periods commencing on or after January 1, 2011 [...]”;

- (b) In the June 2009 Offering Memorandum: “We prepare our financial statements on a consolidated basis in accordance with accounting principles generally accepted in Canada (“Canadian GAAP”)[...],” “Our auditors conduct their audit of our financial statements in accordance with auditing standards generally accepted in Canada,” “The audited and unaudited consolidated financial statements were prepared in accordance with Canadian GAAP,” “Our audited and consolidated financial statements for the years ended December 31, 2006, 2007 and 2008 and our unaudited interim consolidated financial statements for the three-month periods ended March 31, 2008 and 2009 have been prepared in accordance with Canadian GAAP”;
- (c) In the June 2009 Offering Memorandum: “We prepare our financial statements on a consolidated basis in accordance with accounting principles generally accepted in Canada (“Canadian GAAP”)[...],” “Our auditors conduct their audit of our financial statements in accordance with auditing standards generally accepted in Canada” and “The audited and unaudited consolidated financial statements were prepared in accordance with Canadian GAAP”; and
- (d) In the October 2010 Offering Memorandum: “We prepare our financial statements on a consolidated basis in accordance with accounting principles generally accepted in Canada (“Canadian GAAP”)[...],” “Our auditors conduct their audit of our financial statements in accordance with auditing standards generally accepted in Canada,” “The audited and unaudited consolidated financial statements were prepared in accordance with Canadian GAAP,” “Our audited and consolidated financial statements for the years ended December 31, 2007, 2008 and 2009 and our unaudited interim consolidated financial statements for the six-

month periods ended June 30, 2009 and 2010 have been prepared in accordance with Canadian GAAP.”

195. In the Class Period Management’s Reports, Chan and Horsley represented that Sino’s reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein.

196. In particular, Chan and Horsley misrepresented in those Management’s Reports that Sino’s financial statements were GAAP-compliant as follows:

- (a) In the annual statements filed on March 19, 2007 Chan and Horlsey stated: “The consolidated financial statements contained in this Annual Report have been prepared by management in accordance with Canadian generally accepted accounting principles”;
- (b) In the annual financial statements filed on March 18, 2008 Chan and Horlsey stated: “The consolidated financial statements contained in this Annual Report have been prepared by management in accordance with Canadian generally accepted accounting principles”;
- (c) In the annual financial statements filed on March 16, 2009 Chan and Horlsey stated: “The consolidated financial statements contained in this Annual Report have been prepared by management in accordance with Canadian generally accepted accounting principles”;
- (d) In the annual financial statements filed on March 16, 2010 Chan and Horlsey stated: “The consolidated financial statements contained in this Annual Report have been prepared by management in accordance with Canadian generally accepted accounting principles”; and
- (e) In the annual financial statements filed on March 15, 2011 Chan and Horlsey stated: “The consolidated financial statements contained in this Annual Report

have been prepared by management in accordance with Canadian generally accepted accounting principles.”

(ii) *E&Y and BDO misrepresent that Sino complied with GAAP and that they complied with GAAS*

197. In each of Sino’s Class Period annual financial statements, E&Y or BDO, as the case may be, represented that Sino’s reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein. In addition, in each such annual financial statement, E&Y and BDO, as the case may be, represented that they had conducted their audit in compliance with GAAS, which was a misrepresentation because they did not in fact conduct their audits in accordance with GAAS.

198. In particular, E&Y and BDO misrepresented that Sino’s financial statements were GAAP-compliant and that they had conducted their audits in compliance with GAAS as follows:

- (a) In Sino’s annual financial statements filed on March 19, 2007, BDO stated: “We conducted our audit in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2006 and 2005 and the results of its operations and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles”;
- (b) In the June 2007 Prospectus, BDO stated: “We have complied with Canadian generally accepted standards for an auditor’s involvement with offering documents”;
- (c) In Sino’s annual financial statements filed on March 18, 2008, E&Y stated: “We conducted our audit in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at

December 31, 2007 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles. The financial statements as at December 31, 2006 and for the year then ended were audited by other auditors who expressed an opinion without reservation on those statements in their report dated March 19, 2007”;

- (d) In the July 2008 Offering Memorandum, BDO stated: “We conducted our audit in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2006 and 2005 and the results of its operations and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles” and E&Y stated “We conducted our audit in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2007 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles”;
- (e) In Sino’s annual financial statements filed on March 16, 2009, E&Y stated: “We conducted our audits in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2008 and 2007 and the results of its operations and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles”;
- (f) In Sino’s annual financial statements filed on March 16, 2010, E&Y stated: “We conducted our audits in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2009 and 2008 and the results of its operations and its cash flows

for the years then ended in accordance with Canadian generally accepted accounting principles”; and

- (g) In Sino’s annual financial statements filed on March 15, 2011, E&Y stated: “We conducted our audits in accordance with Canadian generally accepted auditing standards.” and “In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of Sino-Forest corporation as at December 31, 2010 and 2009 and the results of its operations and cash flows for the years then ended in accordance with Canadian generally accepted accounting principles.”

(iii) *The Market Relied on Sino’s Purported GAAP-compliance and E&Y’s and BDO’s purported GAAS-compliance in Sino’s Financial Reporting*

199. As a public company, Sino communicated the results it claimed to have achieved to the Class Members via quarterly and annual financial results, among other disclosure documents. Sino’s auditors, E&Y and BDO, as the case may be, were instrumental in the communication of Sino’s financial information to the Class Members. The auditors certified that the financial statements were compliant with GAAP and that they had performed their audits in compliance with GAAS. Neither was true.

200. The Class Members invested in Sino’s securities on the critical premise that Sino’s financial statements were in fact GAAP-compliant, and that Sino’s auditors had in fact conducted their audits in compliance with GAAS. Sino’s reported financial results were also followed by analysts at numerous financial institutions. These analysts promptly reported to the market at large when Sino made earnings announcements, and incorporated into their Sino-related analyses and reports Sino’s purportedly GAAP-compliant financial results. These analyses and reports, in turn, significantly affected the market price for Sino’s securities.

201. The market, including the Class Members, would not have relied on Sino's financial reporting had the auditors disclosed that Sino's financial statements were not reliable or that they had not followed the processes that would have amply revealed that those statements were reliable.

VII. CHAN'S AND HORSLEY'S FALSE CERTIFICATIONS

202. Pursuant to National Instrument 52-109, the defendants Chan, as CEO, and Horsley, as CFO, were required at the material times to certify Sino's annual and quarterly MD&As and Financial Statements as well as the AIFs (and all documents incorporated into the AIFs). Such certifications included statements that the filings "do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made" and that the reports "fairly present in all material respects the financial condition, results of operations and cash flows of the issuer."

203. As particularized elsewhere herein, however, the Impugned Documents contained the Representation, which was false, as well as the other misrepresentations alleged above. Accordingly, the certifications given by Chan and Horsley were false and were themselves misrepresentations. Chan and Horsley made such false certifications knowingly or, at a minimum, recklessly.

VIII. THE TRUTH IS REVEALED

204. On June 2, 2011, Muddy Waters issued its initial report on Sino, and stated in part therein:

Sino-Forest Corp (TSE: TRE) is the granddaddy of China RTO frauds. It has always been a fraud – reporting excellent results from one of its early joint ventures – even though, because of TRE’s default on its investment obligations, the JV never went into operation. TRE just lied.

The foundation of TRE’s fraud is a convoluted structure whereby it claims to run most of its revenues through “authorized intermediaries” (“AI”). AIs are supposedly timber trader customers who purportedly pay much of TRE’s value added and income taxes. At the same time, these AIs allow TRE a gross margin of 55% on standing timber merely for TRE having speculated on trees.

The sole purpose of this structure is to fabricate sales transactions while having an excuse for not having the VAT invoices that are the mainstay of China audit work. If TRE really were processing over one billion dollars in sales through AIs, TRE and the AIs would be in serious legal trouble. No legitimate public company would take such risks – particularly because this structure has zero upside.

[...]

On the other side of the books, TRE massively exaggerates its assets. TRE significantly falsifies its investments in plantation fiber (trees). It purports to have purchased \$2.891 billion in standing timber under master agreements since 2006 [...]

[...]

Valuation

Because TRE has \$2.1 billion in debt outstanding, which we believe exceeds the potential recovery, we value its equity at less than \$1.00 per share.

205. Muddy Waters’ report also disclosed that (a) Sino’s business is a fraudulent scheme; (b) Sino systemically overstated the value of its assets; (c) Sino failed to disclose various related party transactions; (d) Sino misstated that it had enforced high standards of governance; (e) Sino misstated that its reliance on the AIs had decreased; (f) Sino misrepresented the tax risk associated with the use of AIs; and (g) Sino failed to disclose the risks relating to repatriation of earnings from PRC.

206. After Muddy Waters’ initial report became public, Sino shares fell to \$14.46, at which point trading was halted (a decline of 20.6% from the pre-disclosure close of \$18.21). When

trading was allowed to resume the next day, Sino's shares fell to a close of \$5.23 (a decline of 71.3% from June 1).

207. On November 13, 2011 Sino released the Second Report in redacted form. Therein, the Committee summarized its findings:

B. Overview of Principal Findings

The following sets out a very high level overview of the IC's principal findings and should be read in conjunction with the balance of this report.

Timber Ownership

[...]

The Company does not obtain registered title to BVI purchased plantations. In the case of the BVIs' plantations, the IC has visited forestry bureaus, Suppliers and AIs to seek independent evidence to establish a chain of title or payment transactions to verify such acquisitions. The purchase contracts, set-off arrangement documentation and forestry bureau confirmations constitute the documentary evidence as to the Company's contractual or other rights. ***The IC has been advised that the Company's rights to such plantations could be open to challenge. However, Management has advised that, to date, it is unaware of any such challenges that have not been resolved*** with the Suppliers in a manner satisfactory to the Company.

Forestry Bureau Confirmations and Plantation Rights Certificates

Registered title, through Plantation Rights Certificates is not available in the jurisdictions (i.e. cities and counties) examined by the IC Advisors for standing timber that is held without land use/lease rights. ***Therefore the Company was not able to obtain Plantation Rights Certificates for its BVIs standing timber assets in those areas.*** In these circumstances, the Company sought confirmations from the relevant local forestry bureau acknowledging its rights to the standing timber.

The IC Advisors reviewed forestry bureau confirmations for virtually all BVIs assets and non-Mandra WFOE purchased plantations held as at December 31, 2010. The IC Advisors, in meetings organized by Management, met with a sample of forestry bureaus with a view to obtaining verification of the Company's rights to standing timber in those jurisdictions. The result of such meetings to date have concluded with the forestry bureaus or related entities having issued new confirmations as to the Company's contractual rights to the Company in respect of 111,177 Ha. as of December 31, 2010 and 133,040 Ha. as of March 31, 2011, and have acknowledged the issuance of existing confirmations issued to the

Company as to certain rights, among other things, in respect of 113,058 Ha. as of December 31, 2010.

Forestry bureau confirmations are not officially recognized documents and are not issued pursuant to a legislative mandate or, to the knowledge of the IC, a published policy. It appears they were issued at the request of the Company or its Suppliers. The confirmations are not title documents, in the Western sense of that term, although the IC believes they should be viewed as comfort indicating the relevant forestry bureau does not dispute SF's claims to the standing timber to which they relate and might provide comfort in case of disputes. The purchase contracts are the primary evidence of the Company's interest in timber assets.

In the meetings with forestry bureaus, the IC Advisors did not obtain significant insight into the internal authorization or diligence processes undertaken by the forestry bureaus in issuing confirmations and, as reflected elsewhere in this report, the IC did not have visibility into or complete comfort regarding the methods by which those confirmations were obtained. It should be noted that several Suppliers observed that SF was more demanding than other buyers in requiring forestry bureau confirmations.

Book Value of Timber

Based on its review to date, the IC is satisfied that the book value of the BVIs timber assets of \$2.476 billion reflected on its 2010 Financial Statements and of SP WFOE standing timber assets of \$298.6 million reflected in its 2010 Financial Statements reflects the purchase prices for such assets as set out in the BVIs and WFOE standing timber purchase contracts reviewed by the IC Advisors. Further, the purchase prices for such BVIs timber assets have been reconciled to the Company's financial statements based on set-off documentation relating to such contracts that were reviewed by the IC. However, *these comments are also subject to the conclusions set out above under "Timber Ownership" on title and other rights to plantation assets.*

The IC Advisors reviewed documentation acknowledging the execution of the set-off arrangements between Suppliers, the Company and AIs for the 2006-2010 period. *However, the IC Advisors were unable to review any documentation of AIs or Suppliers which independently verified movements of cash in connection with such set-off arrangements between Suppliers, the Company and the AIs used to settle purchase prices paid to Suppliers by AIs on behalf of SF.* We note also that the independent valuation referred to in Part VIII below has not yet been completed.

Revenue Reconciliation

As reported in its First Interim Report, the IC has reconciled reported 2010 total revenue to the sales prices in BVIs timber sales contracts, together with macro customer level data from other businesses. However, *the IC was unable to review any documentation of AIs or Suppliers which independently verified movements*

of cash in connection with set-off arrangements used to settle purchase prices paid, or sale proceeds received by, or on behalf of SF.

Relationships

- Yuda Wood: The IC is satisfied that Mr. Huang Ran is not currently an employee of the Company and that Yuda Wood is not a subsidiary of the Company. However, *there is evidence suggesting close cooperation (including administrative assistance, possible payment of capital at the time of establishment, joint control of certain of Yuda Wood's RMB bank accounts and the numerous emails indicating coordination of funding and other business activities)*. Management has explained these arrangements were mechanisms that allowed the Company to monitor its interest in the timber transactions. Further, *Huang Ran (a Yuda Wood employee) has an ownership and/or directorship in a number of Suppliers* (See Section VI.B). The IC Advisors have been introduced to persons identified as influential backers of Yuda Wood but were unable to determine the relationships, if any, of such persons with Yuda Wood, the Company or other Suppliers or AIs. *Management explanations of a number of Yuda Wood-related emails and answers to E&Y's questions are being reviewed by the IC and may not be capable of independent verification.*
- Other: The IC's review has identified other situations which require further review. *These situations suggest that the Company may have close relationships with certain Suppliers, and certain Suppliers and AIs may have cross-ownership and other relationships with each other.* The IC notes that in the interviews conducted by the IC with selected AIs and Suppliers, all such parties represented that they were independent of SF. Management has very recently provided information and analysis intended to explain these situations. The IC is reviewing this material from Management and intends to report its findings in this regard in its final report to the Board. Some of such information and explanations may not be capable of independent verification.
- Accounting Considerations: *To the extent that any of SF's purchase and sale transactions are with related parties for accounting purposes, the value of these transactions as recorded on the books and records of the Company may be impacted.*

[...]

BVI Structure

The BVI structure used by SF to purchase and sell standing timber assets could be challenged by the relevant Chinese authorities as the undertaking of "business activities" within China by foreign companies, which may only be undertaken by entities established within China with the requisite approvals. However, there is no clear definition of what constitutes "business activities" under Chinese law and there are different views among the IC's Chinese counsel and the Company's Chinese counsel as to whether the purchase and sale of timber in China as

undertaken by the BVIs could be considered to constitute “business activities” within China. In the event that the relevant Chinese authorities consider the BVIs to be undertaking “business activities” within China, they may be required to cease such activities and could be subject to other regulatory action. As regularization of foreign businesses in China is an ongoing process, the government has in the past tended to allow foreign companies time to restructure their operations in accordance with regulatory requirements (the cost of which is uncertain), rather than enforcing the laws strictly and imposing penalties without notice. See Section II.B.2

C. Challenges

Throughout its process, the IC has encountered numerous challenges in its attempts to implement a robust independent process which would yield reliable results. Among those challenges are the following:

(a) Chinese Legal Regime for Forestry:

- national laws and policies appear not yet to be implemented at all local levels;
- in practice, none of the local jurisdictions tested in which BVIs hold standing timber appears to have instituted a government registry and documentation system for the ownership of standing timber as distinct from a government registry system for the ownership of plantation land use rights;
- the registration of plantation land use rights, the issue of Plantation Rights Certificates and the establishment of registries, is incomplete in some jurisdictions based on the information available to the IC;
- as a result, *title to standing timber, when not held in conjunction with a land use right, cannot be definitively proven by reference to a government maintained register*; and
- Sino-Forest has requested confirmations from forestry bureaus of its acquisition of timber holdings (excluding land leases) as additional evidence of ownership. Certain forestry bureaus and Suppliers have indicated the confirmation was beyond the typical diligence practice in China for acquisition of timber holdings.

(b) Obtaining Information from Third Parties: For a variety of reasons, all of them outside the control of the IC, it is very difficult to obtain information from third parties in China. These reasons include the following:

- *many of the third parties from whom the IC wanted information (e.g., AIs, Suppliers and forestry bureaus) are not compellable by the Company or Canadian legal processes*;
- third parties appeared to have concerns relating to disclosure of information regarding their operations that could become public or fall into the hands of

Chinese government authorities: *many third parties explained their reluctance to provide requested documentation and information as being “for tax reasons” but declined to elaborate;* and

- awareness of MW allegations, investigations and information gathering by the OSC and other parties, and court proceedings; while not often explicitly articulated, third parties had an awareness of the controversy surrounding SF and a reluctance to be associated with any of these allegations or drawn into any of these processes.

[...]

(e) Corporate Governance/Operational Weaknesses: *Management has asserted that business in China is based upon relationships.* The IC and the IC Advisors have observed this through their efforts to obtain meetings with forestry bureaus, Suppliers and AIs and their other experience in China. The importance of relationships appears to have resulted in dependence on a relatively small group of Management who are integral to maintaining customer relationships, negotiating and finalizing the purchase and sale of plantation fibre contracts and the settlement of accounts receivable and accounts payable associated with plantation fibre contracts. This concentration of authority or lack of segregation of duties has been previously disclosed by the Company as a control weakness. As a result and as disclosed in the 2010 MD&A, senior Management in their ongoing evaluation of disclosure controls and procedures and internal controls over financial reporting, recognizing the disclosed weakness, determined that the design and controls were ineffective. The Chairman and Chief Financial Officer provided annual and quarterly certifications of their regulatory filings. Related to this weakness the following challenges presented themselves in the examination by the IC and the IC Advisors:

- operational and administration systems that are generally not sophisticated having regard to the size and complexity of the Company’s business and in relation to North American practices; including:

- *incomplete or inadequate record creation and retention practices;*
- contracts not maintained in a central location;
- significant volumes of data maintained across multiple locations on decentralized servers;
- *data on some servers in China appearing to have been deleted on an irregular basis, and there is no back-up system;*
- no integrated accounting system: accounting data is not maintained on a single, consolidated application, which can require extensive manual procedures to produce reports; and

- a treasury function that was centralized for certain major financial accounts, but was not actively involved in the control or management of numerous local operations bank accounts;
- *no internal audit function* although there is evidence the Company has undertaken and continues to assess its disclosure controls and procedures and internal controls over financial reporting using senior Management and independent control consultants;
- *SF employees conduct Company affairs from time to time using personal devices and non-corporate email addresses* which have been observed to be shared across groups of staff and changed on a periodic and organized basis; this complicated and delayed the examination of email data by the IC Advisors; and
- lack of full cooperation/openness in the ICs examination from certain members of Management.

(f) Complexity, Lack of Visibility into, and Limitations of BVIs Model: *The use of AIs and Suppliers as an essential feature of the BVIs standing timber business model contributes to the lack of visibility into title documentation, cash movements and tax liability since cash settlement in respect of the BVIs standing timber transactions takes place outside of the Company's books.*

(g) Cooperation and openness of the Company's executives throughout the process: From the outset, the IC Advisors sought the full cooperation and support of Allen Chan and the executive management team. Initially, the executive management team appeared ill-prepared to address the IC's concerns in an organized fashion and there was perhaps a degree of culture shock as Management adjusted to the IC Advisors' examination. *In any event, significant amounts of material information, particularly with respect to the relationship with Yuda Wood, interrelationships between AIs and/or Suppliers, were not provided to the IC Advisors as requested.* In late August 2011 on the instructions of the IC, interviews of Management were conducted by the IC Advisors in which documents evidencing these connections were put to the Management for explanation. As a result of these interviews (which were also attended by BJ) the Company placed certain members of Management on administrative leave upon the advice of Company counsel. At the same time the OSC made allegations in the CTO of Management misconduct.

[...]

(h) Independence of the IC Process: *The cooperation and collaboration of the IC with Management (operating under the direction of the new Chief Executive Officer) and with Company counsel in completing certain aspects of the IC's mandate has been noted by the OSC and by E&Y. Both have questioned the degree of independence of the IC from Management as a result of this interaction.* The IC has explained the practical impediments to its work in the context of the distinct business culture (and associated issues of privacy) in the

forestry sector in China in which the Company operates. Cooperation of third parties in Hong Kong and China, including employees, depends heavily on relationships and trust. As noted above, the Company's placing certain members of Management on administrative leave, as well as the OSC's allegations in the CTO, further hampered the IC's ability to conduct its process. As a result, the work of the IC was frequently done with the assistance of, or in reliance on, the new Chief Executive Officer and his Management team and Company counsel. Given that Mr. Martin was, in effect, selected by the IC and BJ was appointed in late June 2011, the IC concluded that, while not ideal, this was a practical and appropriate way to proceed in the circumstances. As evidenced by the increased number of scheduled meetings with forestry bureaus, Suppliers and AIs, and, very recently, the delivery to the IC of information regarding AIs and Suppliers and relationships among the Company and such parties, it is acknowledged that Mr. Martin's involvement in the process has been beneficial. It is also acknowledged that in executing his role and assisting the IC he has had to rely on certain of the members of Management who had been placed on administrative leave.

[Emphasis added]

208. On January 31, 2012, Sino released the Final Report. In material part, it read:

This Final Report of the IC sets out the activities undertaken by the IC since mid-November, the findings from such activities and the IC's conclusions regarding its examination and review. The IC's activities during this period have been limited as a result of Canadian and Chinese holidays (Christmas, New Year and Chinese New Year) and the extensive involvement of IC members in the Company's Restructuring and Audit Committees, both of which are advised by different advisors than those retained by the IC. *The IC believes that, notwithstanding there remain issues which have not been fully answered, the work of the IC is now at the point of diminishing returns because much of the information which it is seeking lies with non-compellable third parties, may not exist or is apparently not retrievable from the records of the Company.*

In December 2011, the Company defaulted under the indentures relating to its outstanding bonds with the result that its resources are now more focused on dealing with its bondholders. This process is being overseen by the Restructuring Committee appointed by the Board. Pursuant to the Waiver Agreement dated January 18, 2012 between the Company and the holders of a majority of the principal amount of its 2014 Notes, the Company agreed, among other things, that the final report of the IC to the Board would be made public by January 31, 2012.

Given the circumstances described above, the IC understands that, with the delivery of this Final Report, its review and examination activities are terminated. the IC does not expect to undertake further work other than assisting with responses to regulators and the RCMP as required and engaging in such further specific activities as the IC may deem advisable or the Board may instruct. The

IC has asked the IC Advisors to remain available to assist and advise the IC upon its instructions.

[...]

II. RELATIONSHIPS

The objectives of the IC's examination of the Company's relationships with its AIs and Suppliers were to determine, in light of the MW allegations, if such relationships are arm's length and to obtain, if possible, independent verification of the cash flows underlying the set-off transactions described in Section II.A of the Second Interim Report. ***That the Company's relationships with its AIs and Suppliers be arm's length is relevant to SF's ability under GAAP to:***

- ***book its timber assets at cost in its 2011 and prior years' financial statements, both audited and unaudited***
- ***recognize revenue from standing timber sales as currently reflected in its 2011 and prior years' financial statements, both audited and unaudited.***

A. Yuda Wood

Yuda Wood was founded in April 2006 and was until 2010 a Supplier of SF. Its business with SF from 2007 to 2010 totalled approximately 152,164 Ha and RMB 4.94 billion. Section VI.A and Schedule VI.A.2(a) of the Second Interim Report described the MW allegations relating to Yuda Wood, the review conducted by the IC and its findings to date. The IC concluded that Huang Ran is not currently an employee, and that Yuda Wood is not a subsidiary, of the Company. ***However, there is evidence suggesting a close cooperation between SF and Yuda Wood which the IC had asked Management to explain.*** At the time the Second Interim Report was issued, the IC was continuing to review Management's explanations of a number of Yuda Wood-related emails and certain questions arising therefrom.

Subsequent to the issuance of its Second Interim Report in mid-November, the IC, with the assistance of the IC Advisors, has reviewed the Management responses provided to date relating to Yuda Wood and has sought further explanations and documentary support for such explanations. This was supplementary to the activities of the Audit Committee of SF and its advisors who have had during this period primary carriage of examining Management's responses on the interactions of SF and Yuda Wood. ***While many answers and explanations have been obtained, the IC believes that they are not yet sufficient to allow it to fully understand the nature and scope of the relationship between SF and Yuda Wood. Accordingly, based on the information it has obtained, the IC is still unable to independently verify that the relationship of Yuda Wood is at arm's length to SF.*** It is to be noted that Management is of the view that Yuda Wood is unrelated to SF for accounting purposes. The IC remains satisfied that Yuda is not a subsidiary of SF. Management continues to undertake work related to Yuda

Wood, including seeking documentation from third parties and responding to e-mails where the responses are not yet complete or prepared. Management has provided certain banking records to the Audit Committee that the Audit Committee advises support Management's position that SF did not capitalize Yuda Wood (but that review is not yet completed). The IC anticipates that Management will continue to work with the Audit Committee, Company counsel and E&Y on these issues.

B. Other Relationships

Section VI.B.1 of the Second Interim Report described certain other relationships which had been identified in the course of the IC's preparation for certain interviews with AIs and Suppliers. *These relationships include (i) thirteen Suppliers where former SF employees, consultants or secondees are or have been directors, officers and/or shareholders (including Yuda Wood); (ii) an AI with a former SF employee in a senior position; (iii) potential relationships between AIs and Suppliers; (iv) set-off payments for BVI standing timber purchases being made by companies that are not AIs and other setoff arrangements involving non-AI entities; (v) payments by AIs to potentially connected Suppliers; and (vi) sale of standing timber to an AI potentially connected to a Supplier of that timber. Unless expressly addressed herein, the IC has no further update of a material nature on the items raised above.*

On the instructions of the IC, the IC Advisors gave the details of these possible relationships to Management for further follow up and explanation. Just prior to the Second Interim Report, Management provided information regarding AIs and Suppliers relationships among the Company and such parties.

This information was in the form of a report dated November 10, 2011, subsequently updated on November 21, 2011 and January 20, 2012 (the latest version being the "Kaitong Report") prepared by Kaitong Law Firm ("Kaitong"), a Chinese law firm which advises the Company. The Kaitong Report has been separately delivered to the Board. *Kaitong has advised that much of the information in the Kaitong Report was provided by Management and has not been independently verified by such law firm or the IC.*

[...]

The Kaitong Report generally describes certain relationships amongst AIs and Suppliers and certain relationships between their personnel and Sino-Forest, either identified by Management or through SAIC and other searches. The Kaitong Report also specifically addresses certain relationships identified in the Second Interim Report. The four main areas of information in the Kaitong Report are as follows and are discussed in more detail below:

(i) Backers to Suppliers and AIs: The Kaitong Report explains the concept of "backers" to both Suppliers and AIs. The Kaitong Report suggests that backers are individuals with considerable influence in political, social or business circles,

or all three. The Kaitong Report also states that such backers or their identified main business entities do not generally appear in SAIC filings by the Suppliers or AIs as shareholders thereof and, in most instances, in any other capacity.

(ii) *Suppliers and AIs with Former SF Personnel: The appendices to the Kaitong Report list certain Suppliers that have former SF personnel as current shareholders.*

(iii) Common Shareholders Between Suppliers and AIs: The Kaitong Report states that there are 5 Suppliers and 3 AIs with current common shareholders but there is no cross majority ownership positions between Suppliers and AIs.

(iv) Transactions Involving Suppliers and AIs that have Shareholders in common: The Kaitong Report states that, where SF has had transactions with Suppliers and AIs that have certain current shareholders in common as noted above, the subject timber in those transactions is not the same; that is, the timber which SF buys from such Suppliers and the timber which SF sells to such AIs are located in different counties or provinces.

The IC Advisors have reviewed the Kaitong Report on behalf of the IC. The IC Advisors liaised with Kaitong and met with Kaitong and current and former Management. A description of the Kaitong Report and the IC's findings and comments are summarized below. By way of summary, the Kaitong Report provides considerable information regarding relationships among Suppliers and AIs, and between them and SF, but much of this information related to the relationship of each backer with the associated Suppliers and AIs is not supported by any documentary or other independent evidence. *As such, some of the information provided is unverified and, particularly as it relates to the nature of the relationships with the backers, is viewed by the IC to be likely unverifiable by it.*

1. Backers to Suppliers and AIs

[...]

Given the general lack of information on the backers or the nature and scope of the relationships between the Suppliers or AIs and their respective backers and the absence of any documentary support or independent evidence of such relationships, the IC has been unable to reach any conclusion as to the existence, nature or importance of such relationships. *As a result, the IC is unable to assess the implications, if any, of these backers with respect to SF's relationships with its Suppliers or AIs. Based on its experience to date, including interviews with Suppliers and AIs involving persons who have now been identified as backers in the Kaitong Report, the IC believes that it would be very difficult for the IC Advisors to arrange interviews with either the AIs or Suppliers or their respective backers and, if arranged, that such interviews would yield very little, if any, verifiable information to such advisors.* The IC understands Management is continuing to seek meetings with its AIs and Suppliers with the objective of

obtaining information, to the extent such is available, that will provide further background to the relationships to the Audit Committee.

[...]

2. Suppliers and AIs with Former SF Personnel

The Appendices to the Kaitong Report list the Suppliers with former SF personnel as current shareholders. According to the information previously obtained by the IC Advisors, the identification of former SF personnel indicated in the Kaitong Report to be current shareholders of past or current Suppliers is correct.

(a) Suppliers with former SF personnel

The Kaitong Report, which is limited to examining Suppliers where ex-SF employees are current shareholders as shown in SAIC filings, does not provide material new information concerning Suppliers where former SF employees were identified by the IC in the Second Interim Report as having various past or present connections to current or former Suppliers except that the Kaitong Report provides an explanation of two transactions identified in the Second Interim Report. These involved purchases of standing timber by SF from Suppliers controlled by persons who were employees of SF at the time of these transactions. Neither of the Suppliers have been related to an identified backer in the Kaitong Report. The explanations are similar indicating that neither of the SF employees was an officer in charge of plantation purchases or one of SF's senior management at the time of the transactions. The employees in question were Shareholder #14 in relation to a RMB 49 million purchase from Supplier #18 in December 2007 (shown in SAIC filings to be 100% owned by him) and Shareholder #20 in relation to a RMB 3.3 million purchase from Supplier #23 (shown in SAIC filings to be 70% owned by him) in October 2007. ***The Kaitong Report indicates Shareholder #20 is a current employee of SF who then had responsibilities in SF's wood board production business.***

The IC is not aware that the employees' ownership positions were brought to the attention of the Board at the time of the transactions or, subsequently, until the publication of the Second Interim Report and understands the Audit Committee will consider such information.

(b) AIs with former SF personnel

The Kaitong Report indicates that no SF employees are listed in SAIC filing reports as current shareholders of AIs. Except as noted herein, the IC agrees with this statement. The Kaitong Report does not address the apparent role of an ex-employee Officer #3 who was introduced to the IC as the person in charge of AI #2 by Backer #5 of AI Conglomerate #1. Backer #5 is identified in the Kaitong Report as a backer of two AIs, including AI#2. (The Kaitong Report properly does not include AI #14, as an AI for this purpose, whose 100% shareholder is former SF employee Officer #3. However, the IC is satisfied that the activities of

this entity primarily relate to certain onshoring transactions that facilitated the transfer of SF BVI timber assets to SF WFOE subsidiaries.)

There was one other instance where a past shareholding relationship has been identified between an AI #10 and persons who were previously or are still shown on the SF human resources records, Shareholder #26 and Shareholder #27. Management has explained that such entity sold wood board processing and other assets to SF and that the persons associated with that company consulted with SF after such sale in relation to the purchased wood board processing assets. *Such entity subsequently also undertook material timber purchases as an AI of SF in 2007-2008 over a time period in which such persons are shown as shareholders of such AI in the SAIC filing reviewed (as to 47.5% for Shareholder #26 and as to 52.5% for Shareholder #27). That time period also intersects the time that Shareholder #26 is shown in such human resources records and partially intersects the time that Shareholder #27 is shown on such records. Management has also explained that Shareholder #26 subsequent to the time of such AI sales became an employee of a SF wood board processing subsidiary. Management has provided certain documentary evidence of its explanations. The IC understands that the Audit Committee will consider this matter.*

3. Common Shareholders between Supplier and AIs

The Kaitong Report states that there are 5 Suppliers and 3 AIs that respectively have certain common current shareholders but also states that there is no cross control by those current shareholders of such Suppliers or AIs based on SAIC filings. The Kaitong Report correctly addresses current cross shareholdings in Suppliers and AIs based on SAIC filings but does not address certain other shareholdings. With the exception of one situation of cross control in the past, the IC has not identified a circumstance in the SAIC filings reviewed where the same person controlled a Supplier at the time it controlled a different AI. *The one exception is that from April 2002 to February 2006, AI #13 is shown in SAIC filings as the 90% shareholder of Supplier/AI #14. AI #13 did business with SF BVIs from 2005 through 2007 and Supplier/AI #14 supplied SF BVIs from 2004 through 2006. However, the IC to date has only identified one contract involving timber bought from Supplier/AI #14 that was subsequently sold to AI #13. It involved a parcel of 2,379 Ha. timber sold to AI #13 in December 2005 that originated from a larger timber purchase contract with Supplier/AI #14 earlier that year. Management has provided an explanation for this transaction. The IC understands that the Audit Committee will consider this matter.*

4. Transactions involving Suppliers and AIs with Current Shareholders in Common

The Kaitong Report states that where SF has had transactions with 5 Suppliers and 3 AIs that have current shareholders in common (but no one controlling shareholder) as shown in SAIC filings, the subject timber in the transactions they

each undertook with SF is not the same; that is, the timber which SF buys from the Suppliers and the timber which SF sells to the AIs where the Supplier and AI have a current common shareholder were located in different areas and do not involve the same plots of timber. The Kaitong Report further states that where SF has had transactions with 5 Suppliers and 3 AIs with current shareholders in common as shown in SAIC filings, SF had transactions with those AIs prior to having transactions with those Suppliers, thus SF was not overstating its transactions by buying and selling to the same counterparties.

[...]

The Kaitong Report does not specifically address historical situations involving common shareholders and potential other interconnections between AIs and Suppliers that may appear as a result of the identification of backers. There is generally no ownership connection shown in SAIC filings between backers and the Suppliers and AIs associated with such backers in the Kaitong Report.

[...]

VI. OUTSTANDING MATTERS

As noted in Section I above, the IC understands that with the delivery of this report, its examination and review activities are terminated. The IC would expect its next steps may include only:

- (a) assisting in responses to regulators and RCMP as required; and
- (b) such other specific activities as it may deem advisable or the Board may instruct.

[Emphasis added]

IX. SINO REWARDS ITS EXPERTS

209. Bowland, Hyde and West are former E&Y partners and employees. They served on Sino's Audit Committee but purported to exercise oversight of their former E&Y colleagues. In addition, Sino's Vice-President, Finance (Corporate), Thomas M. Maradin, is a former E&Y employee.

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

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

212. Further, Andrew Fyfe, the former Asia-Pacific President for Pöyry Forestry Industry Ltd, was appointed Chief Operating Officer of Greenheart, and is the director of several Sino subsidiaries. Fyfe signed the Pöyry valuation report dated June 30, 2004, March 22, 2005, March 23, 2006, March 14, 2008 and April 1, 2009.

213. George Ho, Sino's Vice President, Finance (China), is a former Senior Manager of the BDO.

X. THE DEFENDANTS' RELATIONSHIP TO THE CLASS

214. By virtue of their purported accounting, financial and/or managerial acumen and qualifications, and by virtue of their having assumed, voluntarily and for profit, the role of gatekeepers, the Defendants had a duty at common law, informed by the Securities Legislation and/or the *CBCA*, to exercise care and diligence to ensure that the Impugned Documents fairly and accurately disclosed Sino's financial condition and performance in accordance with GAAP.

215. Sino is a reporting issuer and had an obligation to make timely, full, true and accurate disclosure of material facts and changes with respect to its business and affairs.

216. The Individual Defendants, by virtue of their positions as senior officers and/or directors of Sino, owed a duty to the Class Members to ensure that public statements on behalf of Sino were not untrue, inaccurate or misleading. The continuous disclosure requirements in Canadian securities law mandated that Sino provide the Impugned Documents, including quarterly and annual financial statements. These documents were meant to be read by Class Members who acquired Sino's Securities in the secondary market and to be relied on by them in making investment decisions. This public disclosure was prepared to attract investment, and Sino and the Individual Defendants intended that Class Members would rely on public disclosure for that purpose. With respect to Prospectuses and Offering Memoranda, these documents were prepared for primary market purchasers. They include detailed content as mandated under Canadian securities legislation, national instruments and OSC rules. They were meant to be read by the Class Members who acquired Sino's Securities in the primary market, and to be relied on by them in making decisions about whether to purchase the shares or notes under the Offerings to which these Prospectuses and Offering Memoranda related.

217. Chan and Horsley had statutory obligations under Canadian securities law to ensure the accuracy of disclosure documents and provided certifications in respect of the annual reports, financial statements and Prospectuses during the Class Period. The other Individual Defendants were directors of Sino during the Class Period and each had a statutory obligation as a director under the *CBCA* to manage or supervise the management of the business and affairs of Sino. These Individual Defendants also owed a statutory duty of care to shareholders under section 122 of the *CBCA*. In addition, Poon, along with Chan, co-founded Sino and has been its president since 1994. He is intimately aware of Sino's operations and as a long-standing senior officer, he

had an obligation to ensure proper disclosure. Poon authorized, permitted or acquiesced in the release of the Impugned Documents.

218. BDO and E&Y acted as Sino's auditors and provided audit reports in Sino's annual financial statements that were directed to shareholders. These audit reports specified that BDO and E&Y had conducted an audit in accordance with GAAS, which was untrue, and included their opinions that the financial statements presented fairly, in all material respects, the financial position of Sino, the results of operations and Sino's cash flows, in accordance with GAAP. BDO and E&Y knew and intended that Class Members would rely on the audit reports and assurances about the material accuracy of the financial statements.

219. Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD each signed one or more of the Prospectuses and certified that, to the best of its knowledge, information and belief, the particular prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. These defendants knew that the Class Members who acquired Sino's Securities in the primary market would rely on these assurances and the trustworthiness that would be credited to the Prospectuses because of their involvement. Further, those Class Members that purchased shares under these Prospectuses purchased their shares from these defendants as principals.

220. Credit Suisse USA, TD and Banc of America acted as initial purchasers or dealer managers for one or more of the note Offerings. These defendants knew that persons purchasing these notes would rely on the trustworthiness that would be credited to the Offering Memoranda because of their involvement.

XI. THE PLAINTIFFS' CAUSES OF ACTION

A. *Negligent Misrepresentation*

221. As against all Defendants except Pöyry and the Underwriters, and on behalf of all Class Members who acquired Sino's Securities in the secondary market, the Plaintiffs plead negligent misrepresentation for all of the Impugned Documents except the Offering Memoranda.

222. Labourers and Wong, on behalf of Class Members who purchased Sino Securities in one of the distributions to which a Prospectus related, plead negligent misrepresentation as against Sino, Chan, Horsley, Poon, Wang, Martin, Mak, Murray, Hyde, BDO, E&Y, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD for the Prospectuses.

223. Grant, on behalf of Class Members who purchased Sino Securities in one of the distributions to which an Offering Memorandum related, pleads negligent misrepresentation as against Sino, BDO and E&Y for the Offering Memoranda.

224. In support of these claims, the sole misrepresentation that the Plaintiffs plead is the Representation. The Representation is contained in the language relating to GAAP particularized above, and was untrue for the reasons particularized elsewhere herein.

225. The Impugned Documents were prepared for the purpose of attracting investment and inducing members of the investing public to purchase Sino securities. The Defendants knew and intended at all material times that those documents had been prepared for that purpose, and that the Class Members would rely reasonably and to their detriment upon such documents in making the decision to purchase Sino securities.

226. The Defendants further knew and intended that the information contained in the Impugned Documents would be incorporated into the price of Sino's publicly traded securities

such that the trading price of those securities would at all times reflect the information contained in the Impugned Documents.

227. As set out elsewhere herein, the Defendants, other than Pöyry, Credit Suisse USA and Banc of America, had a duty at common law to exercise care and diligence to ensure that the Impugned Documents fairly and accurately disclosed Sino's financial condition and performance in accordance with GAAP.

228. These Defendants breached that duty by making the Representation as particularized above.

229. The Plaintiffs and the other Class Members directly or indirectly relied upon the Representation in making a decision to purchase the securities of Sino, and suffered damages when the falsity of the Representation was revealed on June 2, 2011.

230. Alternatively, the Plaintiffs and the other Class Members relied upon the Representation by the act of purchasing Sino securities in an efficient market that promptly incorporated into the price of those securities all publicly available material information regarding the securities of Sino. As a result, the repeated publication of the Representation in these Impugned Documents caused the price of Sino's shares to trade at inflated prices during the Class Period, thus directly resulting in damage to the Plaintiffs and Class Members.

B. *Statutory Claims, Negligence, Oppression, Unjust Enrichment and Conspiracy*

(i) Statutory Liability—Secondary Market under the Securities Legislation

231. The Plaintiffs plead the claim found in Part XXIII.1 of the *OSA*, and, if required, the equivalent sections of the Securities Legislation other than the *OSA*, against all Defendants except the Underwriters.

232. Each of the Impugned Documents except for the December 2009 and October 2010 Offering Memoranda is a “Core Document” within the meaning of the Securities Legislation.

233. Each of these Impugned Documents contained one or more misrepresentations as particularized above. Such misrepresentations and the Representation are misrepresentations for the purposes of the Securities Legislation.

234. Each of the Individual Defendants was an officer and/or director of Sino at material times. Each of the Individual Defendants authorized, permitted or acquiesced in the release of some or all of these Impugned Documents.

235. Sino is a reporting issuer within the meaning of the Securities Legislation.

236. E&Y is an expert within the meaning of the Securities Legislation. E&Y consented to the use of its statements particularized above in these Impugned Documents.

237. BDO is an expert within the meaning of the Securities Legislation. BDO consented to the use of its statements particularize above in these Impugned Documents.

238. Pöyry is an expert within the meaning of the Securities Legislation. Pöyry consented to the use of its statements particularized above in these Impugned Documents.

239. At all material times, each of Sino, Chan, Poon and Horsley, BDO and E&Y knew or, in the alternative, was wilfully blind to the fact, that the Impugned Documents contained the Representation and that the Representation was false, and that the Impugned Documents contained other of the misrepresentations that are alleged above to have been contained therein.

(ii) Statutory Liability – Primary Market for Sino’s Shares under the Securities Legislation

240. As against Sino, Chan, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD, and on behalf

of those Class Members who purchased Sino shares in one of the distributions to which the June 2009 or December 2009 Prospectuses related, Labourers and Wong assert the cause of action set forth in s. 130 of the *OSA* and, if necessary, the equivalent provisions of the Securities Legislation other than the *OSA*.

241. Sino issued the June 2009 and December 2009 Prospectuses, which contained the Representation and the other misrepresentations that are alleged above to have been contained in those Prospectuses or in the Sino disclosure documents incorporated therein by reference.

(iii) *Statutory Liability – Primary Market for Sino’s Notes under the Securities Legislation*

242. As against Sino, and on behalf of those Class Members who purchased or otherwise acquired Sino’s notes in one of the offerings to which the July 2008, June 2009, December 2009, and October 2010 Offering Memoranda related, Grant asserts the cause of action set forth in s. 130.1 of the *OSA* and, if necessary, the equivalent provisions of the Securities Legislation other than the *OSA*.

243. Sino issued the July 2008, June 2009, December 2009 and October 2010 Offering Memoranda, which contained the Representation and the other misrepresentations that are alleged above to have been contained in those Offering Memoranda or in the Sino disclosure documents incorporated therein by reference.

(iv) *Negligence Simpliciter – Primary Market for Sino’s Securities*

244. Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, BDO, E&Y, Pöyry and the Underwriters (collectively, the “**Primary Market Defendants**”) acted negligently in connection with one or more of the Offerings.

245. As against Sino, Chan, Horsley, Poon, Wang, Martin, Mak, Murray, Hyde, BDO, E&Y, Pöyry, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD, and on

behalf of those Class Members who purchased Sino's Securities in one of the distributions to which those Prospectuses related, Labourers and Wong assert negligence simpliciter.

246. As against Sino, BDO, E&Y, Pöyry, Credit Suisse USA, Banc of America and TD, and on behalf of those Class Members who purchased Sino's Securities in one of the distributions to which the Offering Memoranda related, Grant asserts negligence simpliciter.

247. The Primary Market Defendants owed a duty of care to ensure that the Prospectuses and/or the Offering Memoranda they issued, or authorized to be issued, or in respect of which they acted as an underwriter, initial purchaser or dealer manager, made full, true and plain disclosure of all material facts relating to the Securities offered thereby, or to ensure that their opinions or reports contained in such Prospectuses and Offering Memoranda did not contain a misrepresentation.

248. At all times material to the matters complained of herein, the Primary Market Defendants ought to have known that such Prospectuses or Offering Memoranda and the documents incorporated therein by reference were materially misleading in that they contained the Representation and the other misrepresentations particularized above.

249. Chan, Poon, Horsley, Wang, Martin, Mak, Murray and Hyde were senior officers and/or directors at the time the Offerings to which the Prospectuses related. These Prospectuses were created for the purposes of obtaining financing for Sino's operations. Chan, Horsley, Martin and Hyde signed each of the Prospectuses and certified that they made full, true and plain disclosure of all material facts relating to the shares offered. Wang, Mak and Murray were directors during one or more of these Offerings and each had a statutory obligation to manage or supervise the management of the business and affairs of Sino. Poon was a director for the June 2007 share Offering and was president of Sino at the time of the June 2009 and December 2009 Offering.

Poon, along with Chan, co-founded Sino and has been the president since 1994. He is intimately aware of Sino's business and affairs.

250. The Underwriters acted as underwriters, initial purchasers or dealer managers for the Offerings to which the Prospectuses and Offering Memoranda related. They had an obligation to conduct due diligence in respect of those Offerings and ensure that those Securities were offering at a price that reflected their true value or that such distributions did not proceed if inappropriate. In addition, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD signed one or more of the Prospectuses and certified that to the best of their knowledge, information and belief, the Prospectuses constituted full, true and plain disclosure of all material facts relating to the shares offered.

251. E&Y and BDO acted as Sino's auditors and had a duty to maintain or to ensure that Sino maintained appropriate internal controls to ensure that Sino's disclosure documents adequately and fairly presented the business and affairs of Sino on a timely basis.

252. Pöyry had a duty to ensure that its opinions and reports reflected the true nature and value of Sino's assets. Pöyry, at the time it produced each of the 2008 Valuations, 2009 Valuations, and 2010 Valuations, specifically consented to the inclusion of those valuations or a summary at any time that Sino or its subsidiaries filed any documents on SEDAR or issued any documents pursuant to which any securities of Sino or any subsidiary were offered for sale.

253. The Primary Market Defendants have violated their duties to those Class Members who purchased Sino's Securities in the distributions to which a Prospectus or an Offering Memorandum related.

254. The reasonable standard of care expected in the circumstances required the Primary Market Defendants to prevent the distributions to which the Prospectuses or the Offering Memoranda related from occurring prior to the correction of the Representation and the other misrepresentations alleged above to have been contained in the Prospectuses or the Offering Memoranda, or in the documents incorporated therein by reference. Those Defendants failed to meet the standard of care required by causing the Offerings to occur before the correction of such misrepresentations.

255. In addition, by failing to attend and participate in Sino board and board committee meetings to a reasonable degree, Murray and Poon effectively abdicated their duties to the Class Members and as directors of Sino.

256. Sino, E&Y, BDO and the Individual Defendants further breached their duty of care as they failed to maintain or to ensure that Sino maintained appropriate internal controls to ensure that Sino's disclosure documents adequately and fairly presented the business and affairs of Sino on a timely basis.

257. Had the Primary Market Defendants exercised reasonable care and diligence in connection with the distributions to which the Prospectuses related, then securities regulators likely would not have issued a receipt for any of the Prospectuses, and those distributions would not have occurred, or would have occurred at prices that reflected the true value of Sino's shares.

258. Had the Primary Market Defendants exercised reasonable care and diligence in connection with the distributions to which the Offering Memoranda related, then those distributions would not have occurred, or would have occurred at prices that reflected the true value of Sino's notes.

259. The Primary Market Defendants' negligence in relation to the Prospectuses and the Offering Memoranda resulted in damage to Labourers, Grant and Wong, and to the other Class Members who purchased Sino's Securities in the related distributions. Had those Defendants satisfied their duty of care to such Class Members, then those Class Members would not have purchased the Securities that they acquired under the Prospectuses or the Offering Memoranda, or they would have purchased them at a much lower price that reflected their true value.

(v) *Unjust Enrichment of Chan, Martin, Poon, Horsley, Mak and Murray*

260. As a result of the Representation and the other misrepresentations particularized above, Sino's shares traded, and were sold by Chan, Martin, Poon, Horsley, Mak and Murray, at artificially inflated prices during the Class Period.

261. Chan, Martin, Poon, Horsley, Mak and Murray were enriched by their wrongful acts and omissions during the Class Period, and the Class Members who purchased Sino shares from such Defendants suffered a corresponding deprivation.

262. There was no juristic reason for the resulting enrichment of Chan, Martin, Poon, Horsley, Mak and Murray.

263. The Class Members who purchased Sino shares from Chan, Martin, Poon, Horsley, Mak and Murray during the Class Period are entitled to the difference between the price they paid to such Defendants for such shares, and the price that they would have paid had the Defendants not made the Representation and the other misrepresentations particularized above, and had not committed the wrongful acts and omissions particularized above.

(vi) *Unjust Enrichment of Sino*

264. Throughout the Class Period, Sino made the Offerings. Such Offerings were made via various documents, particularized above, that contained the Representation and the misrepresentations particularized above.

265. The Securities sold by Sino via the Offerings were sold at artificially inflated prices as a result of the Representation and the others misrepresentations particularized above.

266. Sino was enriched by, and those Class Members who purchased the Securities via the Offerings were deprived of, an amount equivalent to the difference between the amount for which the Securities offered were actually sold, and the amount for which such securities would have been sold had the Offerings not included the Representation and the misrepresentations particularized above.

267. The Offerings violated Sino's disclosure obligations under the Securities Legislation and the various instruments promulgated by the securities regulators of the Provinces in which such Offerings were made. There was no juristic reason for the enrichment of Sino.

(vi) *Unjust Enrichment of the Underwriters*

268. Throughout the Class Period, Sino made the Offerings. Such Offerings were made via the Prospectuses and the Offering Memoranda, which contained the Representation and the other misrepresentations particularized above. Each of the Underwriters underwrote one or more of the Offerings.

269. The Securities sold by Sino via the Offerings were sold at artificially inflated prices as a result of the Representation and the other misrepresentations particularized above. The Underwriters earned fees from the Class, whether directly or indirectly, for work that they never

performed, or that they performed with gross negligence, in connection with the Offerings, or some of them.

270. The Underwriters were enriched by, and those Class Members who purchased securities via the Offerings were deprived of, an amount equivalent to the fees the Underwriters earned in connection with the Offerings.

271. The Offerings violated Sino's disclosure obligations under the Securities Legislation and the various instruments promulgated by the securities regulators of the Provinces in which such Offerings were made. There was no juristic reason for the enrichment of the Underwriters.

272. In addition, some or all of the Underwriters also acted as brokers in secondary market transactions relating to Sino securities, and earned trading commissions from the Class Members in those secondary market transactions in Sino's Securities. Those Underwriters were enriched by, and those Class Members who purchased Sino securities through those Underwriters in their capacity as brokers were deprived of, an amount equivalent to the commissions the Underwriters earned on such secondary market trades.

273. Had those Underwriters who also acted as brokers in secondary market transactions exercised reasonable diligence in connection with the Offerings in which they acted as Underwriters, then Sino's securities likely would not have traded at all in the secondary market, and the Underwriters would not have been paid the aforesaid trading commissions by the Class Members. There was no juristic reason for that enrichment of those Underwriters through their receipt of trading commissions from the Class Members.

(vii) Oppression

274. The Plaintiffs and the other Class Members had a reasonable and legitimate expectation that Sino and the Individual Defendants would use their powers to direct the company for Sino's

best interests and, in turn, in the interests of its security holders. More specifically, the Plaintiffs and the other Class Members had a reasonable expectation that:

- (a) Sino and the Individual Defendants would comply with GAAP, and/or cause Sino to comply with GAAP;
- (b) Sino and the Individual Defendants would take reasonable steps to ensure that the Class Members were made aware on a timely basis of material developments in Sino's business and affairs;
- (c) Sino and the Individual Defendants would implement adequate corporate governance procedures and internal controls to ensure that Sino disclosed material facts and material changes in the company's business and affairs on a timely basis;
- (d) Sino and the Individual Defendants would not make the misrepresentations particularized above;
- (e) Sino stock options would not be backdated or otherwise mispriced; and
- (f) the Individual Defendants would adhere to the Code.

275. Such reasonable expectations were not met as:

- (a) Sino did not comply with GAAP;
- (b) the Class Members were not made aware on a timely basis of material developments in Sino's business and affairs;
- (c) Sino's corporate governance procedures and internal controls were inadequate;
- (d) the misrepresentations particularized above were made;
- (e) stock options were backdated and/or otherwise mispriced; and
- (f) the Individual Defendants did not adhere to the Code.

276. Sino's and the Individual Defendants' conduct was oppressive and unfairly prejudicial to the Plaintiffs and the other Class Members and unfairly disregarded their interests. These defendants were charged with the operation of Sino for the benefit of all of its shareholders. The value of the shareholders' investments was based on, among other things:

- (a) the profitability of Sino;
- (b) the integrity of Sino's management and its ability to run the company in the interests of all shareholders;
- (c) Sino's compliance with its disclosure obligations;
- (d) Sino's ongoing representation that its corporate governance procedures met with reasonable standards, and that the business of the company was subjected to reasonable scrutiny; and
- (e) Sino's ongoing representation that its affairs and financial reporting were being conducted in accordance with GAAP.

277. This oppressive conduct impaired the ability of the Plaintiffs and other Class Members to make informed investment decisions about Sino's securities. But for that conduct, the Plaintiffs and the other Class Members would not have suffered the damages alleged herein.

(viii) Conspiracy

278. Sino, Chan, Poon and Horsley conspired with each other and with persons unknown (collectively, the "**Conspirators**") to inflate the price of Sino's securities. During the Class Period, the Conspirators unlawfully, maliciously and lacking bona fides, agreed together to, among other things, make the Representation and other misrepresentations particularized above, and to profit from such misrepresentations by, among other things, issuing stock options in respect of which the strike price was impermissibly low.

279. The Conspirators' predominant purposes in so conspiring were to:

- (a) inflate the price of Sino's securities, or alternatively, maintain an artificially high trading price for Sino's securities;
- (b) artificially increase the value of the securities they held; and
- (c) inflate the portion of their compensation that was dependent in whole or in part upon the performance of Sino and its securities.

280. In furtherance of the conspiracy, the following are some, but not all, of the acts carried out or caused to be carried out by the Conspirators:

- (a) they agreed to, and did, make the Representation, which they knew was false;
- (b) they agreed to, and did, make the other misrepresentations particularized above, which they knew were false;
- (c) they caused Sino to issue the Impugned Documents which they knew to be materially misleading;
- (d) as alleged more particularly below, they caused to be issued stock options in respect of which the strike price was impermissibly low; and
- (e) they authorized the sale of securities pursuant to Prospectuses and Offering Memoranda that they knew to be materially false and misleading.

281. Stock options are a form of compensation used by companies to incentivize the performance of directors, officers and employees. Options are granted on a certain date (the 'grant date') at a certain price (the 'exercise' or 'strike' price). At some point in the future, typically following a vesting period, an options-holder may, by paying the strike price, exercise the option and convert the option into a share in the company. The option-holder will make money as long as the option's strike price is lower than the market price of the security at the

moment that the option is exercised. This enhances the incentive of the option recipient to work to raise the stock price of the company.

282. There are three types of option grants:

- (a) 'in-the-money' grants are options granted where the strike price is lower than the market price of the security on the date of the grant; such options are not permissible under the TSX Rules and have been prohibited by the TSX Rules at all material times;
- (b) 'at-the-money' grants are options granted where the strike price is equal to the market price of the security on the date of the grant or the closing price the day prior to the grant; and
- (c) 'out-of-the-money' grants are options granted where the strike price is higher than the market price of the security on the date of the grant.

283. Both at-the-money and out-of-the-money options are permissible under the TSX Rules and have been at all material times.

284. The purpose of both at-the-money and out-of-the-money options is to create incentives for option recipients to work to raise the share price of the company. Such options have limited value at the time of the grant, because they entitle the recipient to acquire the company's shares at or above the price at which the recipient could acquire the company's shares in the open market. Options that are in-the-money, however, have substantial value at the time of the grant irrespective of whether the company's stock price rises subsequent to the grant date.

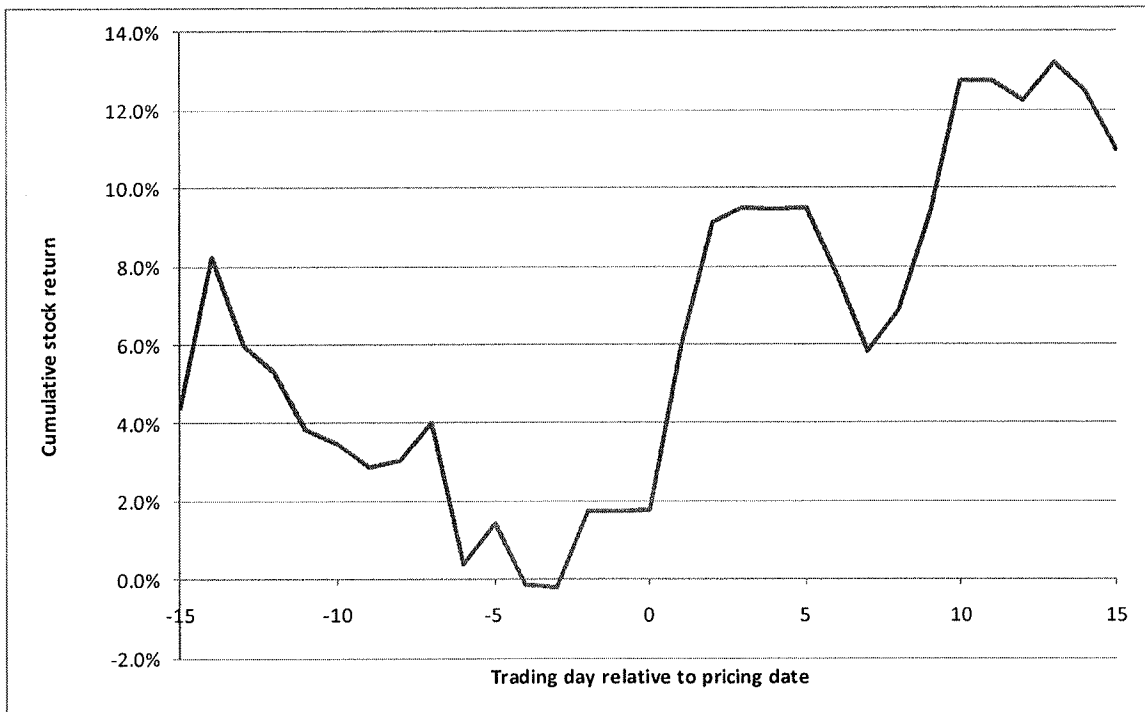
285. At all material times, the Sino Option Plan (the "**Plan**") prohibited in-the-money options.

286. The Conspirators backdated and/or otherwise mispriced Sino stock options, or caused the backdating and/or mispricing of Sino stock options, in violation of, inter alia: (a) the *OSA* and the rules and regulations promulgated thereunder; (b) the Plan; (c) GAAP; (d) the Code; (e) the TSX

Rules; and (f) the Conspirators' statutory, common law and contractual fiduciary duties and duties of care to Sino and its shareholders, including the Class Members.

287. The Sino stock options that were backdated or otherwise mispriced included those issued on June 26, 1996 to Chan, January 21, 2005 to Horsley, September 14, 2005 to Horsley, June 4, 2007 to Horsley and Chan, August 21, 2007 to Sino insiders other than the Conspirators, November 23, 2007 to George Ho and other Sino insiders, and March 31, 2009 to Sino insiders other than the Conspirators.

288. The graph below shows the average stock price returns for fifteen trading days prior and subsequent to the dates as of which Sino priced its stock options to its insiders. As appears therefrom, on average the dates as of which Sino's stock options were priced were preceded by a substantial decline in Sino's stock price, and were followed by a dramatic increase in Sino's stock price. This pattern could not plausibly be the result of chance.



289. The conspiracy was unlawful because the Conspirators knowingly and intentionally committed the foregoing acts when they knew such conduct was in violation of, *inter alia*, the *OSA*, the Securities Legislation other than the *OSA*, the Code, the rules and requirements of the TSX (the “**TSX Rules**”) and the *CBCA*. The Conspirators intended to, and did, harm the Class by causing artificial inflation in the price of Sino’s securities.

290. The Conspirators directed the conspiracy toward the Plaintiffs and the other Class Members. The Conspirators knew in the circumstances that the conspiracy would, and did, cause loss to the Plaintiffs and the other Class Members. The Plaintiffs and the Class Members suffered damages when the falsity of the Representation and other misrepresentations were revealed on June 2, 2011.

XII. THE RELATIONSHIP BETWEEN SINO’S DISCLOSURES AND THE PRICE OF SINO’S SECURITIES

291. 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 of the effect of Sino’s disclosure documents upon the price of its Sino’s securities.

292. The Impugned Documents were filed, among other places, with SEDAR and the TSX, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.

293. Sino routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of Sino securities. Sino provided either copies of the above referenced documents or links thereto on its website.

294. Sino regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including press releases on newswire services in Canada, the United States and elsewhere. Each time Sino communicated that new material information about Sino financial results to the public the price of Sino securities was directly affected.

295. Sino was the subject of analysts' reports that incorporated certain of the material information contained in the Impugned Documents, with the effect that any recommendations to purchase Sino securities in such reports during the Class Period were based, in whole or in part, upon that information.

296. Sino's securities were and are traded, among other places, on the TSX, which is an efficient and automated market. The price at which Sino's securities traded promptly incorporated material information from Sino's disclosure documents about Sino's business and affairs, including the Representation, which was disseminated to the public through the documents referred to above and distributed by Sino, as well as by other means.

XIII. VICARIOUS LIABILITY

A. *Sino and the Individual Defendants*

297. Sino is vicariously liable for the acts and omissions of the Individual Defendants particularized in this Claim.

298. The acts or omissions particularized and alleged in this Claim to have been done by Sino were authorized, ordered and done by the Individual Defendants and other agents, employees and representatives of Sino, while engaged in the management, direction, control and transaction of the business and affairs of Sino. Such acts and omissions are, therefore, not only the acts and omissions of the Individual Defendants, but are also the acts and omissions of Sino.

299. At all material times, the Individual Defendants were officers and/or directors of Sino. As their acts and omissions are independently tortious, they are personally liable for same to the Plaintiffs and the other Class Members.

B. E&Y

300. E&Y is vicariously liable for the acts and omissions of each of its officers, directors, partners, agents and employees as set out above.

301. The acts or omissions particularized and alleged in this Claim to have been done by E&Y were authorized, ordered and done by its officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs of E&Y. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of E&Y.

C. BDO

302. BDO is vicariously liable for the acts and omissions of each of its officers, directors, partners, agents and employees as set out above.

303. The acts or omissions particularized and alleged in this Claim to have been done by BDO were authorized, ordered and done by its officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs of BDO. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of BDO.

D. Pöyry

304. Pöyry is vicariously liable for the acts and omissions of each of its officers, directors, partners, agents and employees as set out above.

305. The acts or omissions particularized and alleged in this Claim to have been done by Pöyry were authorized, ordered and done by its officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs of Pöyry. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of Pöyry.

E. *The Underwriters*

306. The Underwriters are vicariously liable for the acts and omissions of each of their respective officers, directors, partners, agents and employees as set out above.

307. The acts or omissions particularized and alleged in this Claim to have been done by the Underwriters were authorized, ordered and done by each of their respective officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs such Underwriters. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of the respective Underwriters.

XIV. REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

308. The Plaintiffs plead that this action has a real and substantial connection with Ontario because, among other thing:

- (a) Sino is a reporting issuer in Ontario;
- (b) Sino's shares trade on the TSX which is located in Toronto, Ontario;
- (c) Sino's registered office and principal business office is in Mississauga, Ontario;
- (d) the Sino disclosure documents referred to herein were disseminated in and from Ontario;
- (e) a substantial proportion of the Class Members reside in Ontario;

- (f) Sino carries on business in Ontario; and
- (g) a substantial portion of the damages sustained by the Class were sustained by persons and entities domiciled in Ontario.

XV. SERVICE OUTSIDE OF ONTARIO

309. The Plaintiffs may serve the Notice of Action and Statement of Claim outside of Ontario without leave in accordance with rule 17.02 of the Rules of Civil Procedure, because this claim is:

- (a) a claim in respect of personal property in Ontario (para 17.02(a));
- (b) a claim in respect of damage sustained in Ontario (para 17.02(h));
- (c) a claim authorized by statute to be made against a person outside of Ontario by a proceeding in Ontario (para 17.02(n)); and
- (d) a claim against a person outside of Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario (para 17.02(o)); and
- (e) a claim against a person ordinarily resident or carrying on business in Ontario (para 17.02(p)).

XVI. RELEVANT LEGISLATION, PLACE OF TRIAL, JURY TRIAL AND HEADINGS

310. The Plaintiffs plead and rely on the *CJA*, the *CPA*, the Securities Legislation and *CBCA*, all as amended.

311. The Plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

312. The Plaintiffs will serve a jury notice.

313. The headings contained in this Statement of Claim are for convenience only. This Statement of Claim is intended to be read as an integrated whole, and not as a series of unrelated components.

January 26, 2012

Siskinds LLP
Barristers & Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

A. Dimitri Lascaris (LSUC#: 50074A)
Tel: 519.660.7844
Fax: 519.660.7845
Charles M. Wright (LSUC#: 36599Q)
Tel: 519.660.7753
Fax: 519.660.7754
Michael G. Robb (LSUC#: 45787G)
Tel: 519.660.7872
Fax: 519.660.7873

Koskie Minsky LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3
Kirk M. Baert (LSUC#: 30942O)
Tel: 416.595.2117
Fax: 416.204.2889
Jonathan Ptak (LSUC#: 45773F)
Tel: 416-595.2149
Fax: 416.204.2903

Lawyers for the Plaintiffs

Trustees of the Labourers' Pension Fund of Central and Eastern Canada,
et al.

Plaintiffs

Sino-Forest Corporation,
et al.

Defendants

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

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

(NOTICE OF ACTION ISSUED JULY 20, 2011)

Siskinds LLP

Barristers & Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

A. Dimitri Lascaris (LSUC#: 50074A)

Tel: 519.660.7844

Fax: 519.660.7845

Charles M. Wright (LSUC#: 36599Q)

Tel: 519.660.7753

Fax: 519.660.7754

Michael G. Robb (LSUC#: 45787G)

Tel: 519.660.7872

Fax: 519.660.7873

Koskie Minsky LLP

20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Kirk M. Baert (LSUC#: 30942O)

Tel: 416.595.2117

Fax: 416.204.2889

Jonathan Ptak (LSUC#: 45773F)

Tel: 416-595.2149

Fax: 416.204.2903

Lawyers for the Plaintiffs

312

The Trustees of the Labourer's Pension Fund
of Central and Eastern Canada, et al.
Plaintiffs

Sino-Forest Corporation, et al.
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceedings Under the *Class Proceedings Act, 1992*

ORDER

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900, Box 52
Toronto ON M5H 3R3
Kirk M. Baert (LSUC#: 309420)
Tel: (416) 595-2117
Fax: (416) 204-2889
Jonathan Bida (LSUC #: 54211D)
Tel: (416) 595-2072
Fax: (416) 204-2907

SISKINDS LLP
680 Waterloo Street, P.O. Box 2520
London ON N6A 3V8
Charles M. Wright (LSUC#: 36599Q)
Tel: (519) 660-7753
Fax: (519) 660-7754
A. Dimitri Lascaris (LSUC#: 50074A)
Tel: (519) 660-7844
Fax: (519) 660-7845

Lawyers for the Plaintiffs

313

TAB 5

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

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

Plaintiffs

- and -

SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly known as BDO MCCABE LO LIMITED), ALLEN T. Y. CHAN, W. JUDSON MARTIN, KAI KIT POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES P. BOWLAND, JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, GARRY J. WEST, 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 MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (successor by merger to Banc of America Securities LLC)

Defendants

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

(NOTICE OF ACTION ISSUED JULY 20, 2011)

AMENDED THIS April 18/12 PURSUANT TO
 MODIFIÉ CE _____ CONFORMÉMENT À _____

RÈGLE/LA RÉGLE 26.02 (_____)

THE ORDER OF Mr. J. Perrell
 L'ORDONNANCE DU _____

DATED / FAIT LE March 26 2012

REGISTRAR _____ GREFFIER _____
 SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

S. Chandradet
Registrar

- TO: Sino-Forest Corporation**
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

- AND TO: David Horsley**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

- AND TO: Allen Chan**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

- AND TO: William Ardell**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

- AND TO: James Bowland**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

- AND TO: James Hyde**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

- AND TO: Edmund Mak**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

- AND TO: W. Judson Martin**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

- AND TO: Simon Murray**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3

- AND TO: Kai Kit Poon**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3
- AND TO: Peter Wang**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3
- AND TO: Garry West**
Sino-Forest Corporation
1208-90 Burnhamthorpe Rd W
Mississauga, ON L5B 3C3
- AND TO: Ernst & Young LLP**
222 Bay Street
Toronto, ON M5K 1J7
- AND TO: BDO Limited**
25th Floor, Wing On Centre
111 Connaught Road Central
Hong Kong, China
- AND TO: Pöyry (Beijing) Consulting Company Limited**
2208-2210 Cloud 9 Plaza
No. 1118 West Yan'an Road
Shanghai 200052
PR CHINA
- AND TO: Credit Suisse Securities (Canada), Inc.**
1 First Canadian Place
100 King Street West, Suite 2900
Toronto, Ontario M5X 1C9
- AND TO: TD Securities Inc.**
66 Wellington Street West
P.O. Box 1, TD Bank Tower
Toronto, Ontario M5K 1A2
- AND TO: Dundee Securities Corporation**
1 Adelaide Street East
Toronto, ON M5C 2V9

- AND TO: RBC Dominion Securities Inc.**
155 Wellington Street West, 17th Floor
Toronto, Ontario M5V 3K7
- AND TO: Scotia Capital Inc.**
40 King Street West, Scotia Plaza
P.O. Box 4085, Station A
Toronto, Ontario M5W 2X6
- AND TO: CIBC World Markets Inc.**
161 Bay Street, Brookfield Place
P.O. Box 500
Toronto, Ontario M5J 2S8
- AND TO: Merrill Lynch Canada Inc.**
BCE Place, Wellington Tower
181 Bay Street, 4th and 5th Floors
Toronto, Ontario M5J 2V8
- AND TO: Canaccord Financial Ltd.**
161 Bay Street, Suite 2900
P.O. Box 516
Toronto, Ontario M5J 2S1
- AND TO: Maison Placements Canada Inc.**
130 Adelaide Street West, Suite 906
Toronto, Ontario M5H 3P5
- AND TO: Credit Suisse Securities (USA) LLC**
Eleven Madison Avenue
New York, NY 10010
- AND TO: Merrill Lynch, Pierce, Fenner & Smith Incorporated**
100 N. Tryon St., Ste. 220
Charlotte, NC 28255

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I. DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:
 - (a) “**AI**” means Authorized Intermediary;
 - (b) “**AIF**” means Annual Information Form;

- (c) “**Ardell**” means the defendant William E. Ardell;
- (d) “**Banc of America**” means the defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated;
- (e) “**BDO**” means the defendant BDO Limited;
- (f) “**Bowland**” means the defendant James P. Bowland;
- (g) “**BVI**” means British Virgin Islands;
- (h) “**Canaccord**” means the defendant Canaccord Financial Ltd.;
- (i) “**CBCA**” means the *Canada Business Corporations Act*, RSC 1985, c. C-44, as amended;
- (j) “**Chan**” means the defendant Allen T.Y. Chan also known as “Tak Yuen Chan”;
- (k) “**CIBC**” means the defendant CIBC World Markets Inc.;
- (l) “**CJA**” means the Ontario *Courts of Justice Act*, RSO 1990, c C-43, as amended;
- (m) “**Class**” and “**Class Members**” 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 includes securities 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**;
- (n) “**Class Period**” means the period from and including March 19, 2007 to and including June 2, 2011;
- (o) “**Code**” means **Sino’s Code of Business Conduct**;
- (p) “**CPA**” means the Ontario *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;

- (q) “**Credit Suisse**” means the defendant Credit Suisse Securities (Canada), Inc.;
- (r) “**Credit Suisse USA**” means the defendant Credit Suisse Securities (USA) LLC;
- (s) “**Defendants**” means **Sino, the Individual Defendants, Pöyry, BDO, E&Y and the Underwriters**;
- (t) “**December 2009 Offering Memorandum**” means Sino’s Final Offering Memorandum, dated December 10, 2009, relating to the distribution of Sino’s 4.25% Convertible Senior Notes due 2016 which **Sino** filed on **SEDAR** on December 11, 2009;
- (u) “**December 2009 Prospectus**” means **Sino**’s Final Short Form Prospectus, dated December 10, 2009, which **Sino** filed on **SEDAR** on December 11, 2009;
- (v) “**Dundee**” means the defendant Dundee Securities Corporation;
- (w) “**E&Y**” means the defendant, Ernst and Young LLP;
- (x) “**Excluded Persons**” means 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 a member of the immediate family of an **Individual Defendant**;
- (y) “**Final Report**” means the report of the IC, as that term is defined in paragraph 10 hereof;
- (z) “**GAAP**” means Canadian generally accepted accounting principles;
- (aa) “**GAAS**” means Canadian generally accepted auditing standards;
- (bb) “**Horsley**” means the defendant David J. Horsley;
- (cc) “**Hyde**” means the defendant James M.E. Hyde;
- (dd) “**Impugned Documents**” mean the 2005 Annual Consolidated Financial Statements (filed on **SEDAR** on March 31, 2006), Q1 2006 Financial Statements

(filed on **SEDAR** on May 11, 2006), the 2006 Annual Consolidated Financial Statements (filed on **SEDAR** on March 19, 2007), 2006 AIF (filed on **SEDAR** on March 30, 2007), 2006 Annual MD&A (filed on **SEDAR** on March 19, 2007), Management Information Circular dated April 27, 2007 (filed on **SEDAR** on May 4, 2007), Q1 2007 MD&A (filed on **SEDAR** on May 14, 2007), Q1 2007 Financial Statements (filed on **SEDAR** on May 14, 2007), **June 2007 Prospectus**, Q2 2007 MD&A (filed on **SEDAR** on August 13, 2007), Q2 2007 Financial Statements (filed on **SEDAR** on August 13, 2007), Q3 2007 MD&A (filed on **SEDAR** on November 12, 2007), Q3 2007 Financial Statements (filed on **SEDAR** on November 12, 2007), 2007 Annual Consolidated Financial Statements (filed on **SEDAR** on March 18, 2008), 2007 AIF (filed on **SEDAR** on March 28, 2008), 2007 Annual MD&A (filed on **SEDAR** on March 18, 2008), Amended 2007 Annual MD&A (filed on **SEDAR** on March 28, 2008), Management Information Circular dated April 28, 2008 (filed on **SEDAR** on May 6, 2008), Q1 2008 MD&A (filed on **SEDAR** on May 13, 2008), Q1 2008 Financial Statements (filed on **SEDAR** on May 13, 2008), **July 2008 Offering Memorandum**, Q2 2008 MD&A (filed on **SEDAR** on August 12, 2008), Q2 2008 Financial Statements (filed on **SEDAR** on August 12, 2008), Q3 2008 MD&A (filed on **SEDAR** on November 13, 2008), Q3 2008 Financial Statements (filed on **SEDAR** on November 13, 2008), 2008 Annual Consolidated Financial Statements (filed on **SEDAR** on March 16, 2009), 2008 Annual MD&A (filed on **SEDAR** on March 16, 2009), Amended 2008 Annual MD&A (filed on **SEDAR** on March 17, 2009), 2008 AIF (filed on **SEDAR** on March 31, 2009), Management Information Circular dated April 28, 2009 (filed on **SEDAR** on May 4, 2009), Q1 2009 MD&A (filed on **SEDAR** on May 11, 2009), Q1 2009 Financial Statements (filed on **SEDAR** on May 11, 2009), **June 2009 Prospectus**, **June 2009 Offering Memorandum**, Q2 2009 MD&A (filed on **SEDAR** on August 10, 2009), Q2 2009 Financial Statements (filed on **SEDAR** on August 10, 2009), Q3 2009 MD&A (filed on **SEDAR** on November 12, 2009), Q3 2009 Financial Statements (filed on **SEDAR** on November 12, 2009), **December 2009 Prospectus**, **December 2009 Offering Memorandum**, 2009

Annual **MD&A** (filed on **SEDAR** on March 16, 2010), 2009 Audited Annual Financial Statements (filed on **SEDAR** on March 16, 2010), 2009 **AIF** (filed on **SEDAR** on March 31, 2010), Management Information Circular dated May 4, 2010 (filed on **SEDAR** on May 11, 2010), Q1 2010 **MD&A** (filed on **SEDAR** on May 12, 2010), Q1 2010 Financial Statements (filed on **SEDAR** on May 12, 2010), Q2 2010 **MD&A** (filed on **SEDAR** on August 10, 2010), Q2 2010 Financial Statements (filed on **SEDAR** on August 10, 2010), **October 2010 Offering Memorandum**, Q3 2010 **MD&A** (filed on **SEDAR** on November 10, 2010), Q3 2010 Financial Statements (filed on **SEDAR** on November 10, 2010), 2010 Annual **MD&A** (March 15, 2011), 2010 Audited Annual Financial Statements (filed on **SEDAR** on March 15, 2011), 2010 **AIF** (filed on **SEDAR** on March 31, 2011), and Management Information Circular dated May 2, 2011 (filed on **SEDAR** on May 10, 2011);

- (ee) **“Individual Defendants”** means **Chan, Martin, Poon, Horsley, Ardell, Bowland, Hyde, Mak, Murray, Wang, and West**, collectively;
- (ff) **“July 2008 Offering Memorandum”** means the Final Offering Memorandum dated July 17, 2008, relating to the distribution of Sino’s 5% Convertible Senior Notes due 2013 which **Sino** filed on **SEDAR** as a schedule to a material change report on July 25, 2008;
- (gg) **“June 2007 Prospectus”** means **Sino’s** Short Form Prospectus, dated June 5, 2007, which **Sino** filed on **SEDAR** on June 5, 2007;
- (hh) **“June 2009 Offering Memorandum”** means **Sino’s** Exchange Offer Memorandum dated June 24, 2009, relating to an offer to exchange Sino’s Guaranteed Senior Notes due 2011 for new 10.25% Guaranteed Senior Notes due 2014 which **Sino** filed on **SEDAR** as a schedule to a material change report on June 25, 2009;
- (ii) **“June 2009 Prospectus”** means **Sino’s** Final Short Form Prospectus, dated June 1, 2009, which **Sino** filed on **SEDAR** on June 1, 2009;

- (jj) “**Maison**” means the defendant Maison Placements Canada Inc.;
- (kk) “**Martin**” means the defendant W. Judson Martin;
- (ll) “**Mak**” means the defendant Edmund Mak;
- (mm) “**MD&A**” means Management’s Discussion and Analysis;
- (nn) “**Merrill**” means the defendant Merrill Lynch Canada Inc.;
- (oo) “**Muddy Waters**” means Muddy Waters LLC;
- (pp) “**Murray**” means the defendant Simon Murray;
- (qq) “**October 2010 Offering Memorandum**” means the Final Offering Memorandum dated October 14, 2010, relating to the distribution of Sino’s 6.25% Guaranteed Senior Notes due 2017;
- (rr) “**Offering**” or “**Offerings**” means the primary distributions in Canada of Sino’s **Securities** that occurred during the **Class Period** including the public offerings of Sino’s common shares pursuant to the **June 2007, June 2009 and December 2009 Prospectuses**, as well as the offerings of Sino’s notes pursuant to the **July 2008, June 2009, December 2009, and October 2010 Offering Memoranda**, collectively;
- (ss) “**OSA**” means the *Securities Act*, RSO 1990 c S.5, as amended;
- (tt) “**OSC**” means the Ontario Securities Commission;
- (uu) “**Plaintiffs**” means the plaintiffs, the Trustees of the Labourers’ Pension Fund of Central and Eastern Canada (“**Labourers**”), the Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario (“**Operating Engineers**”), Sjunde AP-Fonden (“**AP7**”), David C. Grant (“**Grant**”), and Robert Wong (“**Wong**”), collectively;
- (vv) “**Poon**” means the defendant Kai Kit Poon;

- (ww) “**Pöyry**” means the defendant, Pöyry (Beijing) Consulting Company Limited;
- (xx) “**PRC**” means the People’s Republic of China;
- (yy) “**Representation**” means the statement that Sino’s financial statements complied with **GAAP**;
- (zz) “**RBC**” means the defendant RBC Dominion Securities Inc.;
- (aaa) “**Scotia**” means the defendant Scotia Capital Inc.;
- (bbb) “**Second Report**” means the Second Interim Report of the IC, as that term is defined in paragraph 10 hereof;
- (ccc) “**Securities**” means Sino’s common shares, notes or other securities, as defined in the *OSA*;
- (ddd) “**Securities Legislation**” means, collectively, the *OSA*, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; the *Securities Act, 1988*, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;
- (eee) “**SEDAR**” means the system for electronic document analysis and retrieval of the Canadian Securities Administrators;
- (fff) “**Sino**” means, as the context requires, either the defendant Sino-Forest Corporation, or Sino-Forest Corporation and its affiliates and subsidiaries, collectively;
- (ggg) “**TD**” means the defendant TD Securities Inc.;

- (hhh) “**TSX**” means the Toronto Stock Exchange;
- (iii) “**Underwriters**” means **Banc of America, Canaccord, CIBC, Credit Suisse, Credit Suisse USA, Dundee, Maison, Merrill, RBC, Scotia, and TD**, collectively;
- (jjj) “**Wang**” means the defendant Peter Wang;
- (kkk) “**West**” means the defendant Garry J. West; and
- (III) “**WFOE**” means wholly foreign owned enterprise or an enterprise established in China in accordance with the relevant PRC laws, with capital provided solely by foreign investors.

II. CLAIM

2. The Plaintiffs claim:

- (a) An order certifying this action as a class proceeding and appointing the Plaintiffs as representative plaintiffs for the Class, or such other class as may be certified by the Court;
- (b) A declaration that the Impugned Documents contained, either explicitly or implicitly, the Representation, and that, when made, the Representation was a misrepresentation, both at law and within the meaning of the Securities Legislation;
- (c) A declaration that the Impugned Documents contained one or more of the other misrepresentations alleged herein, and that, when made, those other misrepresentations constituted misrepresentations, both at law and within the meaning of the Securities Legislation;
- (d) A declaration that Sino is vicariously liable for the acts and/or omissions of the Individual Defendants and of its other officers, directors and employees;
- (e) A declaration that the Underwriters, E&Y, BDO and Pöyry are each vicariously liable for the acts and/or omissions of their respective officers, directors, partners and employees;
- (f) On behalf of all of the Class Members who purchased Sino's Securities in the secondary market during the Class Period, and as against all of the Defendants other than the Underwriters, general damages in the sum of \$6.5 billion;
- (g) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which the June 2007 Prospectus related, and as against Sino, Chan, Poon, Horsley, Martin, Mak, Murray, Hyde, Pöyry, BDO, Dundee, CIBC, Merrill and Credit Suisse general damages in the sum of \$175,835,000;
- (h) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which the June 2009 Prospectus related, and as against Sino, Chan,

Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, E&Y, Dundee, Merrill, Credit Suisse, Scotia and TD, general damages in the sum of \$330,000,000;

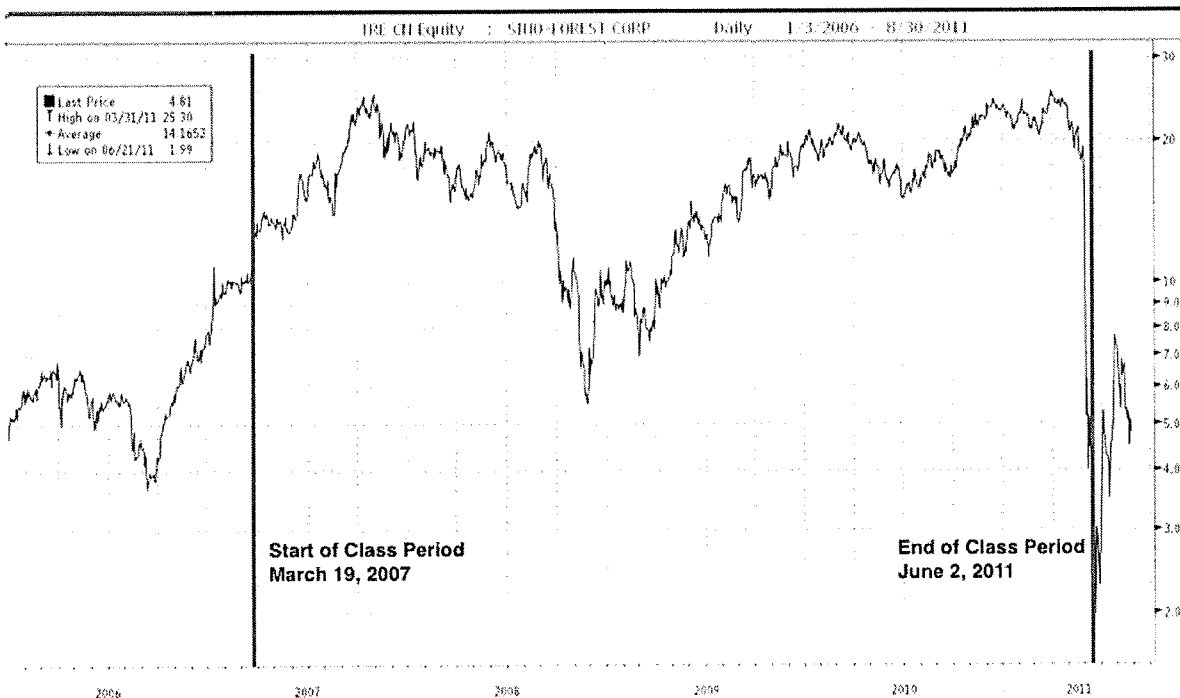
- (i) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which the December 2009 Prospectus related, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD, general damages in the sum of \$319,200,000;
- (j) On behalf of all the Class Members who purchased Sino's 5% Convertible Senior Notes due 2013 pursuant to the July 2008 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y and Credit Suisse USA, general damages in the sum of US\$345 million;
- (k) On behalf of all the Class Members who purchased Sino's 10.25% Guaranteed Senior Notes due 2014 pursuant to the June 2009 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y and Credit Suisse USA, general damages in the sum of US\$400 million;
- (l) On behalf of all the Class Members who purchased Sino's 4.25% Convertible Senior Notes due 2016 pursuant to the December 2009 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y, Credit Suisse USA and TD, general damages in the sum of US\$460 million;
- (m) On behalf of all the Class Members who purchased Sino's 6.25% Guaranteed Senior Notes due 2017 pursuant to the October 2010 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Mak, Murray, Hyde, Ardell, Pöyry, E&Y, Credit Suisse USA and Banc of America, general damages in the sum of US\$600 million;

- (n) On behalf of all of the Class Members, and as against Sino, Chan, Poon and Horsley, punitive damages, in respect of the conspiracy pled below, in the sum of \$50 million;
- (o) A declaration that Sino, Chan, Poon, Horsley, Martin, Mak, Murray and the Underwriters were unjustly enriched;
- (p) A constructive trust, accounting or such other equitable remedy as may be available as against Sino, Chan, Poon, Horsley, Martin, Mak, Murray and the Underwriters;
- (q) A declaration that the acts and omissions of Sino have effected a result, the business or affairs of Sino have been carried on or conducted in a manner, or the powers of the directors of Sino have been exercised in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the Plaintiffs and the Class Members, pursuant to s. 241 of the *CBCA*;
- (r) An order directing a reference or giving such other directions as may be necessary to determine the issues, if any, not determined at the trial of the common issues;
- (s) Prejudgment and post judgment interest;
- (t) Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus, pursuant to s 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and
- (u) Such further and other relief as to this Honourable Court may seem just.

III. OVERVIEW

3. From the time of its establishment in 1994, Sino has claimed to be a legitimate business operating in the commercial forestry industry in the PRC and elsewhere. Throughout that period, Sino has also claimed to have experienced breathtaking growth.

4. Beguiled by Sino's reported results, and by Sino's constant refrain that China constituted an extraordinary growth opportunity, investors drove Sino's stock price dramatically higher, as appears from the following chart:



5. The Defendants profited handsomely from the market's appetite for Sino's securities. Certain of the Individual Defendants sold Sino shares at lofty prices, and thereby reaped millions of dollars of gains. Sino's senior management also used Sino's illusory success to justify their lavish salaries, bonuses and other perks. For certain of the Individual Defendants, these outsized gains were not enough. Sino stock options granted to Chan, Horsley and other insiders were backdated or otherwise mispriced, prior to and during the Class Period, in violation of the TSX Rules, GAAP and the Securities Legislation.

6. Sino itself raised in excess of \$2.7 billion¹ in the capital markets during this period. Meanwhile, the Underwriters were paid lucrative underwriting commissions, and BDO, E&Y and Pöyry garnered millions of dollars in fees to bless Sino's reported results and assets. To their great detriment, the Class Members relied upon these supposed gatekeepers.

7. As a reporting issuer in Ontario and elsewhere, Sino was required at all material times to comply with GAAP. Indeed, Sino, BDO and E&Y, Sino's auditors during the Class Period and previously, repeatedly misrepresented that Sino's financial statements complied with GAAP. This was false.

8. On June 2, 2011, Muddy Waters, a short seller and research firm with extensive PRC experience, issued its first research report in relation to Sino, and unveiled the scale of the deception that had been worked upon the Class Members. Muddy Waters' initial report effectively revealed, among other things, that Sino had materially misstated its financial results, had falsely claimed to have acquired trees that it did not own, had reported sales that had not been made, or that had been made in a manner that did not permit Sino to book those sales as revenue under GAAP, and had concealed numerous related party transactions. These revelations had a catastrophic effect on Sino's stock price.

9. On June 1, 2011, prior to the publication of Muddy Waters' report, Sino's common shares closed at \$18.21. After the Muddy Waters report became public, Sino shares fell to \$14.46 on the TSX (a decline of 20.6%), at which point trading was halted. When trading resumed the next day, Sino's shares fell to a close of \$5.23 (a decline of 71.3% from June 1).

10. On June 3, 2011, Sino announced that, in response to the allegations of Muddy Waters, its board had formed a committee, which Sino then falsely characterized as "independent" (the

¹ Dollar figures are in Canadian dollars (unless otherwise indicated) and are rounded for convenience.

“**Independent Committee**” or “**IC**”), to examine and review the allegations contained in the Muddy Waters’ report of June 2, 2011. The initial members of the IC were the Defendants Ardell, Bowland and Hyde. The IC subsequently retained legal, accounting and other advisers to assist it in the fulfillment of its mandate.

11. On August 26, 2011, the OSC issued a cease-trade order in respect of Sino’s securities, alleging that Sino appeared to have engaged in significant non-arm’s length transactions which may have been contrary to Ontario securities laws and the public interest, that Sino and certain of its officers and directors appeared to have misrepresented some of Sino’s revenue and/or exaggerated some of its timber holdings, and that Sino and certain of its officers and directors, including Chan, appeared to be engaging or participating in acts, practices or a course of conduct related to Sino’s securities which they (or any of them) knew or ought reasonably know would perpetuate a fraud.

12. On November 13, 2011, the IC released the Second Report. Therein, the IC revealed, *inter alia*, that: (1) Sino’s management had failed to cooperate in numerous important respects with the IC’s investigation; (2) “there is a risk” that certain of Sino’s operations “taken as a whole” were in violation of PRC law; (3) Sino adopted processes that “avoid[] Chinese foreign exchange controls which must be complied with in a normal cross-border sale and purchase transaction, and [which] could present an obstacle to future repatriation of sales proceeds, and could have tax implications as well”; (4) the IC “has not been able to verify that any relevant income taxes and VAT have been paid by or on behalf of the BVIs in China”; (5) Sino lacked proof of title to the vast majority of its purported holdings of standing timber; (6) Sino’s “transaction volumes with a number of AI and Suppliers do not match the revenue reported by such Suppliers in their SAIC filing”; (7) “[n]one of the BVI timber purchase contracts have as

attachments either (i) Plantation Rights Certificates from either the Counterparty or original owner or (ii) villager resolutions, both of which are contemplated as attachments by the standard form of BVI timber purchase contract employed by the Company; and (8) “[t]here are indications in emails and in interviews with Suppliers that gifts or cash payments are made to forestry bureaus and forestry bureau officials.”

13. On January 31, 2012, the IC released its Final Report. Therein, the IC effectively revealed that, despite having conducted an investigation over nearly eight months, and despite the expenditure of US\$50 million on that investigation, it had failed to refute, or even to provide plausible answers to, key allegations made by Muddy Waters:

This Final Report of the IC sets out the activities undertaken by the IC since mid-November, the findings from such activities and the IC’s conclusions regarding its examination and review. The IC’s activities during this period have been limited as a result of Canadian and Chinese holidays (Christmas, New Year and Chinese New Year) and the extensive involvement of IC members in the Company’s Restructuring and Audit Committees, both of which are advised by different advisors than those retained by the IC. The IC believes that, notwithstanding there remain issues which have not been fully answered, the work of the IC is now at the point of diminishing returns because much of the information which it is seeking lies with non-compellable third parties, may not exist or is apparently not retrievable from the records of the Company.

[...]

Given the circumstances described above, the IC understands that, with the delivery of this Final Report, its review and examination activities are terminated. The IC does not expect to undertake further work other than assisting with responses to regulators and the RCMP as required and engaging in such further specific activities as the IC may deem advisable or the Board may instruct. The IC has asked the IC Advisors to remain available to assist and advise the IC upon its instructions

14. Sino failed to meet the standards required of a public company in Canada. Aided by its auditors and the Underwriters, Sino raised billions of dollars from investors on the false premise that they were investing in a well managed, ethical and GAAP-compliant corporation. They

were not. Accordingly, this action is brought to recover the Class Members' losses from those who caused them: the Defendants.

IV. THE PARTIES

A. *The Plaintiffs*

15. Labourers are the trustees of the Labourers' Pension Fund of Central and Eastern Canada, a multi-employer pension plan providing benefits for employees working in the construction industry. The fund is a union-negotiated, collectively-bargained defined benefit pension plan established on February 23, 1972 and currently has approximately \$2 billion in assets, over 39,000 members and over 13,000 pensioners and beneficiaries and approximately 2,000 participating employers. A board of trustees representing members of the plan governs the fund. The plan is registered under the *Pension Benefits Act*, RSO 1990, c P.8 and the *Income Tax Act*, RSC 1985, 5th Supp, c.1. Labourers purchased Sino's common shares over the TSX during the Class Period and continued to hold shares at the end of the Class Period. In addition, Labourers purchased Sino common shares offered by the December 2009 Prospectus and in the distribution to which that Prospectus related.

16. Operating Engineers are the trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario, a multi-employer pension plan providing pension benefits for operating engineers in Ontario. The pension plan is a union-negotiated, collectively-bargained defined benefit pension plan established on November 1, 1973 and currently has approximately \$1.5 billion in assets, over 9,000 members and pensioners and beneficiaries. The fund is governed by a board of trustees representing members of the plan. The plan is registered under the *Pension Benefits Act*, RSO 1990, c P.8 and the *Income Tax Act*, RSC 1985, 5th Supp, c.1. Operating Engineers purchased Sino's common shares over the TSX during the Class Period, and continued to hold shares at the end of the Class Period.

17. AP7 is the Swedish National Pension Fund. As of June 30, 2011, AP7 had approximately \$15.3 billion in assets under management. Funds managed by AP7 purchased Sino's common shares over the TSX during the Class Period and continued to hold those common shares at the end of the Class Period.

18. Grant is an individual residing in Calgary, Alberta. He purchased 100 of the Sino 6.25% Guaranteed Senior Notes due 2017 that were offered by the October 2010 Offering Memorandum and in the distribution to which that Offering Memorandum related. Grant continued to hold those Notes at the end of the Class Period.

19. Wong is an individual residing in Kincardine, Ontario. During the Class Period, Wong purchased Sino's common shares over the TSX and continued to hold some or all of such shares at the end of the Class Period. In addition, Wong purchased Sino common shares offered by the December 2009 Prospectus and in the distribution to which that Prospectus related, and continued to own those shares at the end of the Class Period.

B. *The Defendants*

20. Sino purports to be a commercial forest plantation operator in the PRC and elsewhere. Sino is a corporation formed under the *CBCA*.

21. At the material times, Sino was a reporting issuer in all provinces of Canada, and had its registered office located in Mississauga, Ontario. At the material times, Sino's shares were listed for trading on the TSX under the ticker symbol "TRE," on the Berlin exchange as "SFJ GR," on the over-the-counter market in the United States as "SNOFF" and on the Tradedgate market as "SFJ TH." Sino securities are also listed on alternative trading venues in Canada and elsewhere including, without limitation, AlphaToronto and PureTrading. Sino's shares also traded over-

the-counter in the United States. Sino has various debt instruments, derivatives and other securities that are traded in Canada and elsewhere.

22. As a reporting issuer in Ontario, Sino was required throughout the Class Period to issue and file with SEDAR:

- (a) within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with GAAP that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;
- (b) within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with GAAP, including comparative financial statements relating to the period covered by the preceding financial year;
- (c) contemporaneously with each of the above, a MD&A of each of the above financial statements; and
- (d) within 90 days of the end of the fiscal year, an AIF, including material information about the company and its business at a point in time in the context of its historical and possible future development.

23. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in future.

24. AIFs are an annual disclosure document intended to provide material information about the company and its business at a point in time in the context of its historical and future development. The AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically.

25. Sino controlled the contents of its MD&As, financial statements, AIFs and the other documents particularized herein and the misrepresentations made therein were made by Sino.

26. Chan is a co-founder of Sino, and was the Chairman, Chief Executive Officer and a director of the company from 1994 until his resignation from those positions on or about August 25, 2011. As Sino's CEO, Chan signed and certified the company's disclosure documents during the Class Period. Chan, along with Hyde, signed each of the 2006-2010 Audited Annual Financial Statements on behalf of Sino's board. Chan resides in Hong Kong, China.

27. Chan certified each of Sino's Class Period annual and quarterly MD&As and financial statements, each of which is an Impugned Document. In so doing, he adopted as his own the false statements such documents contained, as particularized below. Chan signed each of Sino's Class Period annual financial statements, each of which is an Impugned Document. In so doing, he adopted as his own the false statements such documents contained, as particularized below. As a director and officer, he caused Sino to make the misrepresentations particularized below.

28. Since Sino was established, Chan has received lavish compensation from Sino. For example, for 2006 to 2010, Chan's total compensation (other than share-based compensation) was, respectively, US\$3.0 million, US\$3.8 million, US\$5.0 million, US\$7.6 million and US\$9.3 million.

29. As at May 1, 1995, shortly after Sino became a reporting issuer, Chan held 18.3% of Sino's outstanding common shares and 37.5% of its preference shares. As of April 29, 2011 he held 2.7% of Sino's common shares (the company no longer has preference shares outstanding). Chan has made in excess of \$10 million through the sale of Sino shares.

30. Horsley is Sino's Chief Financial Officer, and has held this position since October 2005. In his position as Sino's CFO, Horsley has signed and certified the company's disclosure documents during the Class Period. Horsley resides in Ontario. Horsley has made in excess of \$11 million through the sale of Sino shares.

31. Horsley certified each of Sino's Class Period annual and quarterly MD&As and financial statements, each of which is an Impugned Document. In so doing, he adopted as his own the false statements such documents contained, as particularized below. Horsley signed each of Sino's Class Period annual financial statements, each of which is an Impugned Document. In so doing, he adopted as his own the false statements such documents contained, as particularized below. As an officer, he caused Sino to make the misrepresentations particularized below.

32. Since becoming Sino's CFO, Horsley has also received lavish compensation from Sino. For 2006 to 2010, Horsley's total compensation (other than share-based compensation) was, respectively, US\$1.1 million, US\$1.4 million, US\$1.7 million, US\$2.5 million, and US\$3.1 million.

33. Poon is a co-founder of Sino, and has been the President of the company since 1994. He was a director of Sino from 1994 to May 2009, and he continues to serve as Sino's President. Poon resides in Hong Kong, China. While he was a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when such statements were signed on his behalf. While he was a board member, he caused Sino to make the misrepresentations particularized below.

34. As at May 1, 1995, shortly after Sino became a reporting issuer, Poon held 18.3% of Sino's outstanding common shares and 37.5% of its preference shares. As of April 29, 2011 he

held 0.42% of Sino's common shares. Poon has made in excess of \$34.4 million through the sale of Sino shares.

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

36. Wang is a director of Sino, and has held this position since August 2007. Wang resides in Hong Kong, China. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

37. Martin has been a director of Sino since 2006, and was appointed vice-chairman in 2010. On or about August 25, 2011, Martin replaced Chan as Chief Executive Officer of Sino. Martin was a member of Sino's audit committee prior to early 2011. Martin has made in excess of \$474,000 through the sale of Sino shares. He resides in Hong Kong, China. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized herein.

38. Mak is a director of Sino, and has held this position since 1994. Mak was a member of Sino's audit committee prior to early 2011. Mak and persons connected with Mak have made in excess of \$6.4 million through sales of Sino shares. Mak resides in British Columbia. As a board member, he adopted as his own the false statements made in each of Sino's annual

financial statements, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

39. Murray is a director of Sino, and has held this position since 1999. Murray has made in excess of \$9.9 million through sales of Sino shares. Murray resides in Hong Kong, China. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

40. Since becoming a director, Murray has rarely attended board and board committee meetings. From the beginning of 2006 to the close of 2010, Murray attended 14 of 64 board meetings, or less than 22% of board meetings held during that period. During that same period, Murray attended 2 out of 13, or 15%, of the meetings held by the Board's Compensation and Nominating Committee, and attended *none* of the 11 meetings of that Committee held from the beginning of 2007 to the close of 2010.

41. Hyde is a director of Sino, and has held this position since 2004. Hyde was previously a partner of E&Y. Hyde is the chairman of Sino's Audit Committee. Hyde, along with Chan, signed each of the 2007-2010 Annual Consolidated Financial Statements on behalf of Sino's board. Hyde is also member of the Compensation and Nominating Committee. Hyde has made in excess of \$2.4 million through the sale of Sino shares. Hyde resides in Ontario. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when he signed such statements or when they were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

42. Ardell is a director of Sino, and has held this position since January 2010. Ardell is a member of Sino's audit committee. Ardell resides in Ontario. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements released while he was a board member, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

43. Bowland was a director of Sino from February 2011 until his resignation from the Board of Sino in November 2011. While on Sino's Board, Bowland was a member of Sino's Audit Committee. He was formerly an employee of a predecessor to E&Y. Bowland resides in Ontario. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements released while he was a board member, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

44. West is a director of Sino, and has held this position since February 2011. West was previously a partner at E&Y. West is a member of Sino's Audit Committee. West resides in Ontario. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements released while he was a board member, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

45. As officer and/or directors of Sino, the Individual Defendants were fiduciaries of Sino, and they made the misrepresentations alleged herein, adopted such misrepresentations, and/or caused Sino to make such misrepresentations while they were acting in their capacity as fiduciaries, and in violation of their fiduciary duties. In addition, Chan, Poon, Horsley, Martin,

Mak and Murray were unjustly enriched in the manner and to the extent particularized below while they were acting in their capacity as fiduciaries, and in violation of their fiduciary duties.

46. At all material times, Sino maintained the Code, which governed Sino's employees, officers and directors, including the Individual Defendants. The Code stated that the members of senior management "are expected to lead according to high standards of ethical conduct, in both words and actions..." The Code further required that Sino representatives act in the best interests of shareholders, corporate opportunities not be used for personal gain, no one trade in Sino securities based on undisclosed knowledge stemming from their position or employment with Sino, the company's books and records be honest and accurate, conflicts of interest be avoided, and any violations or suspected violations of the Code, and any concerns regarding accounting, financial statement disclosure, internal accounting or disclosure controls or auditing matters, be reported.

47. E&Y has been engaged as Sino's auditor since August 13, 2007. E&Y was also engaged as Sino's auditor from Sino's creation through February 19, 1999, when E&Y abruptly resigned during audit season and was replaced by the now-defunct Arthur Andersen LLP. E&Y was also Sino's auditor from 2000 to 2004, when it was replaced by BDO. E&Y is an expert of Sino within the meaning of the Securities Legislation.

48. E&Y, in providing what it purported to be "audit" services to Sino, made statements that it knowingly intended to be, and which were, disseminated to Sino's current and prospective security holders. At all material times, E&Y was aware of that class of persons, intended to and did communicate with them, and intended that that class of persons would rely on E&Y's statements relating to Sino, which they did to their detriment.

49. E&Y consented to the inclusion in the June 2009 and December 2009 Prospectuses, as well as the July 2008, June 2009, December 2009 and October 2010 Offering Memoranda, of its audit reports on Sino's Annual Financial Statements for various years, as alleged more particularly below.

50. BDO is the successor of BDO McCabe Lo Limited, the Hong Kong, China based auditing firm that was engaged as Sino's auditor during the period of March 21, 2005 through August 12, 2007, when they resigned at Sino's request, and were replaced by E&Y. BDO is an expert of Sino within the meaning of the Securities Legislation.

51. During the term of its service as Sino's auditor, BDO provided what it purported to be "audit" services to Sino, and in the course thereof made statements that it knowingly intended to be, and which were, disseminated to Sino's current and prospective security holders. At all material times, BDO was aware of that class of persons, intended to and did communicate with them, and intended that that class of persons rely on BDO's statements relating to Sino, which they did to their detriment.

52. BDO consented to the inclusion in each of the June 2007 and December 2009 Prospectuses and the July 2008, June 2009 and December 2009 Offering Memoranda, of its audit reports on Sino's Annual Financial Statements for 2005 and 2006.

53. E&Y and BDO's annual Auditors' Report was made "to the shareholders of Sino-Forest corporation," which included the Class Members. Indeed, s. 1000.11 of the Handbook of the Canadian Institute of Chartered Accountants states that "the objective of financial statements for profit-oriented enterprises focuses primarily on the information needs of *investors and creditors*" [emphasis added].

54. Sino's shareholders, including numerous Class Members, appointed E&Y as auditors of Sino-Forest by shareholder resolutions passed on various dates, including on June 21, 2004, May 26, 2008, May 25, 2009, May 31, 2010 and May 30, 2011.

55. Sino's shareholders, including numerous Class Members, appointed BDO as auditors of Sino-Forest by resolutions passed on May 16, 2005, June 5, 2006 and May 28, 2007.

56. During the Class Period, with the knowledge and consent of BDO or E&Y (as the case may be), Sino's audited annual financial statements for the years ended December 31, 2006, 2007, 2008, 2009 and 2010, together with the report of BDO or E&Y thereon (as the case may be), were presented to the shareholders of Sino (including numerous Class Members) at annual meetings of such shareholders held in Toronto, Canada on, respectively, May 28, 2007, May 26, 2008, May 25, 2009, May 31, 2010 and May 30, 2011. As alleged elsewhere herein, all such financial statements constituted Impugned Documents.

57. Pöyry is an international forestry consulting firm which purported to provide certain forestry consultation services to Sino. Pöyry is an expert of Sino within the meaning of the Securities Legislation.

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

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

60. The Underwriters are various financial institutions who served as underwriters in one or more of the Offerings.

61. In connection with the distributions conducted pursuant to the June 2007, June 2009 and December 2009 Prospectuses, the Underwriters who underwrote those distributions were paid, respectively, an aggregate of approximately \$7.5 million, \$14.0 million and \$14.4 million in underwriting commissions. In connection with the offerings of Sino's notes in July 2008, December 2009, and October 2010, the Underwriters who underwrote those offerings were paid, respectively, an aggregate of approximately US\$2.2 million, US\$8.5 million and \$US6 million. Those commissions were paid in substantial part as consideration for the Underwriters' purported due diligence examination of Sino's business and affairs.

62. None of the Underwriters conducted a reasonable investigation into Sino in connection with any of the Offerings. None of the Underwriters had reasonable grounds to believe that there was no misrepresentation in any of the Impugned Documents. In the circumstances of this case, including the facts that Sino operated in an emerging economy, Sino had entered Canada's capital markets by means of a reverse merger, and Sino had reported extraordinary results over an extended period of time that far surpassed those reported by Sino's peers, the Underwriters all ought to have exercised heightened vigilance and caution in the course of discharging their duties to investors, which they did not do. Had they done so, they would have uncovered Sino's true nature, and the Class Members to whom they owed their duties would not have sustained the losses that they sustained on their Sino investments.

V. THE OFFERINGS

63. Through the Offerings, Sino raised in aggregate in excess of \$2.7 billion from investors during the Class Period. In particular:

- (a) On June 5, 2007, Sino issued and filed with SEDAR the June 2007 Prospectus pursuant to which Sino distributed to the public 15,900,000 common shares at a price of \$12.65 per share for gross proceeds of \$201,135,000. The June 2007 Prospectus incorporated by reference Sino's: (1) 2006 AIF; (2) 2006 Audited Annual Financial Statements; (3) 2006 Annual MD&A; (4) Management Information Circular dated April 27, 2007; (5) Q1 2007 Financial Statements; and (6) Q1 2007 MD&A;
- (b) On July 17, 2008, Sino issued the July 2008 Offering Memorandum pursuant to which Sino sold through private placement US\$345 million in aggregate principal amount of convertible senior notes due 2013. The July 2008 Offering Memorandum included: (1) Sino's Consolidated Annual Financial Statements for 2005, 2006 and 2007; (2) Sino's unaudited interim financial statements for the three-month periods ended March 31, 2007 and 2008; (3) the section of the 2007 AIF entitled "Audit Committee" and the charter of the Audit Committee attached as an appendix to the 2007 AIF; and (4) the Pöyry report entitled "Sino-Forest Corporation Valuation of China Forest Assets Report as at 31 December 2007" dated March 14, 2008;
- (c) On June 1, 2009, Sino issued and filed with SEDAR the June 2009 Prospectus pursuant to which Sino distributed to the public 34,500,000 common shares at a price of \$11.00 per share for gross proceeds of \$379,500,000. The June 2009 Prospectus incorporated by reference Sino's: (1) 2008 AIF; (2) 2007 and 2008 Annual Consolidated Financial Statements; (3) Amended 2008 Annual MD&A; (4) Q1 2009 MD&A; (5) Q1 2008 and 2009 Financial Statements; (6) Q1 2009 MD&A; (7) Management Information Circular dated April 28, 2009; and (8) the Pöyry report titled "Valuation of China Forest Corp Assets As at 31 December 2008" dated April 1, 2009;

- (d) On June 24, 2009, Sino issued the June 2009 Offering Memorandum for exchange of certain of its then outstanding senior notes due 2011 with new notes, pursuant to which Sino issued US\$212,330,000 in aggregate principal amount of 10.25% Guaranteed Senior Notes due 2014. The June 2009 Offering Memorandum incorporated by reference: (1) Sino's 2005, 2006 and 2007 Consolidated Annual Financial Statements; (2) the auditors' report of BDO dated March 19, 2007 with respect to Sino's Consolidated Annual Financial Statements for 2005 and 2006; (3) the auditors' report of E&Y dated March 12, 2008 with respect to Sino's Consolidated Annual Financial Statements for 2007 except as to notes 2, 18 and 23; (4) Sino's Consolidated Annual Financial Statements for 2007 and 2008 and the auditors' report of E&Y dated March 13, 2009; (5) the section entitled "Audit Committee" in the 2008 AIF, and the charter of the Audit Committee attached as an appendix to the 2008 AIF; and (6) the unaudited interim financial statements for the three-month periods ended March 31, 2008 and 2009;
- (e) On December 10, 2009, Sino issued the December 2009 Offering Memorandum pursuant to which Sino sold through private placement US\$460,000,000 in aggregate principal amount of 4.25% convertible senior notes due 2016. This Offering Memorandum incorporated by reference: (1) Sino's Consolidated Annual Financial Statements for 2005, 2006, 2007; (2) the auditors' report of BDO dated March 19, 2007 with respect to Sino's Annual Financial Statements for 2005 and 2006; (3) the auditors' report of E&Y dated March 12, 2008 with respect to Sino's Consolidated Annual Financial Statements for 2007, except as to notes 2, 18 and 23; (4) Sino's Consolidated Annual Financial Statements for 2007 and 2008 and the auditors' report of E&Y dated March 13, 2009; (5) the unaudited interim consolidated financial statements for the nine-month periods ended September 30, 2008 and 2009; (6) the section entitled "Audit Committee" in the 2008 AIF, and the charter of the Audit Committee attached to the 2008 AIF; (7) the Pöyry report entitled "Sino-Forest Corporation Valuation of China Forest Assets as at 31 December 2007"; and (8) the Pöyry report entitled "Sino-Forest Corporation Valuation of China Forest Corp Assets as at 31 December 2008" dated April 1, 2009;

- (f) On December 10, 2009, Sino issued and filed with SEDAR the December 2009 Prospectus (together with the June 2007 Prospectus and the June 2009 Prospectus, the “**Prospectuses**”) pursuant to which Sino distributed to the public 21,850,000 common shares at a price of \$16.80 per share for gross proceeds of \$367,080,000. The December 2009 Prospectus incorporated by reference Sino’s: (1) 2008 AIF; (2) 2007 and 2008 Annual Consolidated Financial Statements; (3) Amended 2008 Annual MD&A; (4) Q3 2008 and 2009 Financial Statements; (5) Q3 2009 MD&A; (6) Management Information Circular dated April 28, 2009; and (7) the Pöyry report titled “Valuation of China Forest Corp Assets As at 31 December 2008” dated April 1, 2009;
- (g) On February 8, 2010, Sino closed the acquisition of substantially all of the outstanding common shares of Mandra Forestry Holdings Limited. Concurrent with this acquisition, Sino completed an exchange with holders of 99.7% of the USD\$195 million notes issued by Mandra Forestry Finance Limited and 96.7% of the warrants issued by Mandra Forestry Holdings Limited, for new 10.25% guaranteed senior notes issued by Sino in the aggregate principal amount of USD\$187,177,375 with a maturity date of July 28, 2014. On February 11, 2010, Sino exchanged the new 2014 Senior Notes for an additional issue of USD\$187,187,000 in aggregate principal amount of Sino’s existing 2014 Senior Notes, issued pursuant to the June 2009 Offering Memorandum; and
- (h) On October 14, 2010, Sino issued the October 2010 Offering Memorandum pursuant to which Sino sold through private placement US\$600,000,000 in aggregate principal amount of 6.25% guaranteed senior notes due 2017. The October 2010 Offering Memorandum incorporated by reference: (1) Sino’s Consolidated Annual Financial Statements for 2007, 2008 and 2009; (2) the auditors’ report of E&Y dated March 15, 2010 with respect to Sino’s Annual Financial Statements for 2008 and 2009; and (3) Sino’s unaudited interim financial statements for the six-month periods ended June 30, 2009 and 2010.

64. The offering documents referenced in the preceding paragraph included, or incorporated other documents by reference that included, the Representation and the other misrepresentations in such documents that are particularized elsewhere herein. Had the truth in regard to Sino's management, business and affairs been timely disclosed, securities regulators likely would not have receipted the Prospectuses, nor would any of the Offerings have occurred.

65. Each of Chan, Horsley, Martin and Hyde signed the June 2007 Prospectus, and therein falsely certified that that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. Each of Dundee, CIBC, Merrill and Credit Suisse also signed the June 2007 Prospectus, and therein falsely certified that, to the best of its knowledge, information and belief, that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby.

66. Each of Chan, Horsley, Martin and Hyde signed the June 2009 Prospectus, and therein falsely certified that that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. Each of Dundee, Merrill, Credit Suisse, Scotia and TD also signed the June 2009 Prospectus, and therein falsely certified that, to the best of its knowledge, information and belief, that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby.

67. Each of Chan, Horsley, Martin and Hyde signed the December 2009 Prospectus, and therein falsely certified that that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities

offered thereby. Each of Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD also signed the December 2009 Prospectus, and therein falsely certified that, to the best of its knowledge, information and belief, that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby.

68. E&Y consented to the inclusion in: (1) the June 2009 Prospectus, of its audit reports on Sino's Audited Annual Financial Statements for 2007 and 2008; (2) the December 2009 Prospectus, of its audit reports on Sino's Audited Annual Financial Statements for 2007 and 2008; (3) the July 2008 Offering Memorandum, of its audit reports on Sino's Audited Annual Financial Statements for 2007, and its adjustments to Sino's Audited Annual Financial Statements for 2005 and 2006; (4) the December 2009 Offering Memorandum, of its audit reports on Sino's Audited Annual Financial Statements for 2007 and 2008; and (5) the October 2010 Offering Memoranda, of its audit reports on Sino's Audited Annual Financial Statements for 2008 and 2009.

69. BDO consented to the inclusion in each of the June 2007 and December 2009 Prospectuses and the July 2008, June 2009 and December 2009 Offering Memoranda of its audit reports on Sino's Audited Annual Financial Statements for 2006 and 2005.

VI. THE MISREPRESENTATIONS

70. During the Class Period, Sino made the misrepresentations particularized below. These misrepresentations related to:

- A. Sino's history and fraudulent origins;
- B. Sino's forestry assets;
- C. Sino's related party transactions;

- D. Sino's relationships with forestry bureaus and its purported title to forestry assets in the PRC;
- E. Sino's relationships with its "Authorized Intermediaries;"
- F. Sino's cash flows;
- G. Certain risks to which Sino was exposed; and
- H. Sino's compliance with GAAP and the Auditors' compliance with GAAS.

A. *Misrepresentations relating to Sino's History and Fraudulent Origins*

(i) *Sino Overstates the Value of, and the Revenues Generated by, the Leizhou Joint Venture*

71. At the time of its founding by way of reverse merger in 1994, Sino's business was conducted primarily through an equity joint venture between Sino's Hong Kong subsidiary, Sino-Wood Partners, Limited ("Sino-Wood"), and the Leizhou Forestry Bureau, which was situated in Guangdong Province in the south of the PRC. The name of the venture was Zhanjiang Leizhou Eucalyptus Resources Development Co. Ltd. ("**Leizhou**"). The stated purpose of Leizhou, established in 1994, was:

Managing forests, wood processing, the production of wood products and wood chemical products, and establishing a production facility with an annual production capacity of 50,000 m³ of Micro Density Fiber Board (MDF), managing a base of 120,000 mu (8,000 ha) of which the forest annual utilization would be 8,000 m³.

72. There are two types of joint ventures in the PRC relevant to Sino: equity joint ventures ("EJV") and cooperating joint ventures ("CJV"). In an EJV, profits and assets are distributed in proportion to the parties' equity holdings upon winding up. In a CJV, the parties may contract to divide profits and assets disproportionately to their equity interests.

73. According to a Sino prospectus issued in January 1997, Leizhou, an EJV, was responsible for 20,000 hectares of the 30,000 hectares that Sino claimed to have “phased-in.” Leizhou was the key driver of Sino’s purported early growth.

74. Sino claimed to hold 53% of the equity in Leizhou, which was to total US\$10 million, and Sino further claimed that the Leizhou Forestry Bureau was to contribute 20,000 ha of forestry land. In reality, however, the terms of the EJV required the Leizhou Forestry Bureau to contribute a mere 3,533 ha.

75. What was also unknown to investors was that Leizhou did not generate the sales claimed by Sino. More particularly, in 1994, 1995 and 1996, respectively, Sino claimed to have generated US\$11.3 million, US\$23.9 million and US\$23.1 million in sales from Leizhou. In reality, however, these sales did not occur, or were materially overstated.

76. Indeed, in an undisclosed letter from Leizhou Forestry Bureau to Zhanjiang City Foreign and Economic Relations and Trade Commission, dated February 27, 1998, the Bureau complained:

To: Zhanjiang Municipal Foreign Economic Relations & Trade Commission

Through mutual consultation between Leizhou Forestry Administration (hereinafter referred to as *our side*) and Sino-Wood Partners Limited (hereinafter referred to as the *foreign party*), and, with the approval document ZJMPZ No.021 [1994] issued by your commission on 28th January 1994 for approving the contracts and articles of association entered into by both parties, and, with the approval certificate WJMZHZZZ No.065 [1994] issued by your commission, both parties jointly established Zhanjiang Eucalyptus Resources Development Co. Ltd. (hereinafter referred to as the Joint Venture) whose incorporate number is 162622-0012 and duly registered the same with Zhanjiang Administration for Industry and Commerce and obtained the business license GSQHYZ No.00604 on 29th January in the same year. It has been 4 years since the registration and we set out the situation as follows:

I. Information of the investment of both sides

- A. The investment of our side: according to the contract and articles of association signed by both sides and approved by your commission, our side has paid in RMB95,481,503.29 (equivalent to USD11,640,000.00) to the Joint Venture on 20th June 1995 through an in-kind contribution. The payment was made in accordance with the prescribed procedures and confirmed by signatures of the legal representatives of both parties. According to the Capital Verification Report from Yuexi (• •) Accounting Firm, this payment accounts for 99.1% of the agreed capital contribution from our side, which is USD11,750,000, and accounts for 46.56% of the total investment.
- B. The investment of the foreign party: the foreign party has paid in USD1,000,000 on 16th March 1994, which was in the starting period of the Joint Venture. According to the Capital Verification Report from Yuexi (• •) Accounting Firm, this payment only accounts for 7.55% of the agreed capital contribution from the foreign party totaling USD13,250,000, and accounts for 4% of the total investment. Then, in the prescribed investment period, the foreign party did not further pay capital into the Joint Venture. In view of this, your commission sent a "Notice on Time for Capital Contribution" to the foreign party on 30th January 1996. In accordance with the notice, the foreign party then on 10th April sent a letter to your commission, requesting for postponing the deadline for capital contribution to 20th December the same year. On 14th May 1996, your commission replied to Allen Chan (• • •), the Chairman of the Joint Venture, stating that "postponement of the deadline for capital contribution is subject to the consent of our side and requires amendment of the term on the capital contribution time in the original contract, and both parties shall sign a bilateral supplementary contract; after the application has been approved, the postponed deadline will become effective.". Based on the spirit of the letter dated 14th May from your commission and for the purpose of achieving mutual communication and dealing with the issues of the Joint Venture actively and appropriately, on 11th June 1996, Chan Shixing (• • •) and two other Directors from our side sent a joint letter to Allen Chan (• • •), the Chairman of the Joint Venture, to propose a meeting of the board to be convened before 30th June 1996 in Zhanjiang, in order to discuss how to deal with the issues of the Joint Venture in accordance with the relevant State provisions. Unfortunately, the foreign party neither had discussion with our side pursuant to your commission's letter, nor replied to the proposal of our side, and furthermore failed to make payment to the Joint Venture. Now, it has been two years beyond the deadline for capital contribution (29th January 1996), and more than one year beyond the date prescribed by the Notice on Time for Capital Contribution issued by your commission (30th April 1996). However, the foreign party has been evading the discussion of the capital contribution issue, and moreover has taken no further action.

II. *The Joint Venture is not capable of attaining substantial operation*

According to the contract and articles of association, the main purposes of setting up the Joint Venture are, on the one hand, to invest and construct a project producing 50,000 cubic meter Medium Density Fiberboard (MDF) a year; and on the other hand, to create a forest base of 120,000 mu, with which to produce 80,000 cubic meter of timber as raw material for the production of medium density fiberboard. The contract and articles of association also prescribed that the whole funding required for the MDF board project should be paid by the foreign party in cash; our side should pay in-kind the proportion of the fund prescribed by the contract. *After contributing capital of USD1,000,000 in the early stage, the foreign party not only failed to make subsequent capital contributions, but also in their own name successively withdrew a total amount of RMB4,141,045.02, from the funds they contributed, of which USD270,000 was paid to Huadu Baixing Wood Products Factory (.), which has no business relationship with the Joint Venture. This amount of money equals 47.6% of [the foreign party's] paid in capital. Although our side has almost paid off the agreed capital contribution (only short 0.9% of the total committed), due to the limited contribution from the foreign party and the fact that they withdrew a huge amount of money from those funds originally contributed by them, it is impossible for the Joint Venture to construct or set up production projects and to commence production operation while the funds have been insufficient and the foreign party did not pay in the majority of the subscribed capital. In fact, the Joint Venture therefore is merely a shell, existing in name only.*

Additionally, after the establishment of the Joint Venture, its internal operations have been extremely abnormal, for example, annual board meetings have not been held as scheduled; annual reports on the status and the results of the annual financial audit are missing; the withdrawal of the huge amount of funds by the foreign party was not discussed in the board meetings, etc. It is hard to list all here.

In light of the present state of contributions by both sides and the status of the Joint Venture from its establishment till now, our side now applies to your commission for:

1. The cancellation of the approval certificate for "Zhanjiang Eucalyptus Resources Development Co. Ltd.", i.e. WJMZHZZZ No. 065[1994], based on the relevant provisions of Certain Regulations on the Subscription of Capital by the Parties to Sino-Foreign Joint Equity Enterprises,

2. Direct the Joint Venture to complete the deregistration procedures for "Zhanjiang Eucalyptus Resources Development Co. Ltd." at the local Administration for Industry and Commerce, and for the return of its business license.
3. Coordination with both parties to resolve the relevant remaining issues.

Please let us have your reply on whether the above is in order.

The Seal of the Leizhou Forestry Bureau

1998, February 27

[Translation; emphasis added.]

77. In its 1996 Annual Financial Statements, Sino stated:

The \$14,992,000 due from the LFB represents cash collected from the sale of wood chips on behalf of the Leizhou EJV. As originally agreed to by Sino-Wood, the cash was being retained by the LFB to fund the ongoing plantation costs of the Leizhou EJV incurred by the LFB. Sino-Wood and LFB have agreed that the amount due to the Leizhou EJV, after reduction for plantation costs incurred, will be settled in 1997 concurrent with the settlement of capital contributions due to the Leizhou EJV by Sino-Wood.

78. These statements were false, inasmuch as Leizhou never generated such sales. Leizhou was wound-up in 1998.

79. At all material times, Sino's founders, Chan and Poon, were fully aware of the reality relating to Leizhou, and knowingly misrepresented the true status of Leizhou, as well as its true revenues and profits.

(ii) Sino's Fictitious Investment in SJXT

80. In Sino's audited financial statements for the year ended December 31, 1997, filed on SEDAR on May 20, 1998 (the "1997 Financial Statements"), Sino stated that, in order to establish strategic partnerships with key local wood product suppliers and to build a strong distribution for the wood-based product and contract supply businesses, it had acquired a 20% equity interest in "Shanghai Jin Xiang Timber Ltd." ("SJXT"). Sino then described SJXT as an

EJV that had been formed in 1997 by the Ministry of Forestry in China, and declared that its function was to organize and manage the first and only official market for timber and log trading in Eastern China. It further stated that the investment in SJXT was expected to provide the Company with good accessibility to a large base of potential customers and companies in the timber and log businesses in Eastern China.

81. There is, in fact, no entity known as “Shanghai Jin Xiang Timber Ltd.” While an entity called “Shanghai Jin Xiang Timber Wholesale Market” does exist, Sino did not have, as claimed in its disclosure documents, an equity stake in that venture.

82. According to the 1997 Audited Annual Financial Statements, the total investment of SJXT was estimated to be US\$9.7 million, of which Sino would be required to contribute approximately US\$1.9 million for a 20% equity interest. The 1997 Audited Annual Financial Statements stated that, as at December 31, 1997, Sino had made capital contributions to SJXT in the amount of US\$1.0 million. In Sino’s balance sheet as at December 31, 1997, the SJXT investment was shown as an asset of \$1.0 million.

83. In October 1998, Sino announced an Agency Agreement with SJXT. At that time, Sino stated that it would provide 130,000 m³ of various wood products to SJXT over an 18 month period, and that, based on then-current market prices, it expected this contract to generate “significant revenue” for Sino-Forest amounting to approximately \$40 million. The revenues that were purportedly anticipated from the SJXT contract were highly material to Sino. Indeed, Sino’s total reported revenues in 1998 were \$92.7 million.

84. In Sino’s Audited Annual Financial Statements for the year ended December 31, 1998, which statements were filed on SEDAR on May 18, 1999 (the “1998 Financial Statements”), Sino again stated that, in 1997, it had acquired a 20% equity interest in SJXT, that the total

investment in SJXT was estimated to be US\$9.7 million, of which Sino would be required to contribute approximately \$1.9 million, representing 20% of the registered capital, and that, as at December 31, 1997 and 1998, Sino had made contributions in the amount of US\$1.0 million to SJXT. In Sino's balance sheet as at December 31, 1998, the SXJT investment was again shown as an asset of US\$1.0 million.

85. Sino also stated in the 1998 Audited Annual Financial Statements that, during 1998, the sale of logs and lumber to SJXT amounted to approximately US\$537,000. These sales were identified in the notes to the 1998 Financial Statements as related party transactions.

86. In Sino's Annual Report for 1998, Chan stated that lumber and wood products trading constituted a "promising new opportunity." Chan explained that:

SJXT represents a very significant development for our lumber and wood products trading business. The market is prospering and continues to look very promising. Phase I, consisting of 100 shops, is completed. Phases II and III are expected to be completed by the year 2000. This expansion would triple the size of the Shanghai Timber Market.

The Shanghai Timber Market is important to Sino-Forest as a generator of significant new revenue. In addition to supplying various forest products to the market from our own operations, our direct participation in SJXT increases our activities in sourcing a wide range of other wood products both from inside China and internationally.

The Shanghai Timber Market is also very beneficial to the development of the forest products industry in China because it is the first forest products national sub-market in the eastern region of the country.

[...]

The market also greatly facilitates Sino-Forest's networking activities, enabling us to build new industry relationships and add to our market intelligence, all of which increasingly leverage our ability to act as principal in our dealings.

[Emphasis added.]

87. Chan also stated in the 1998 Annual Report that the “Agency Agreement with SJXT [is] expected to generate approximately \$40 million over 18 months.”

88. In Sino’s Annual Report for 1999, Sino stated:

There are also promising growth opportunities as Sino-Forest’s investment in Shanghai Jin Xiang Timber Ltd. (SJXT or the Shanghai Timber Market), develops. The Company also continues to explore opportunities to establish and reinforce ties with other international forestry companies and to bring our e-commerce technology into operation.

Sino-Forest’s investment in the Shanghai Timber Market — the first national forest products submarket in eastern China — has provided a strong foundation for the Company’s lumber and wood products trading business.

[Emphasis added.]

89. In Sino’s MD&A for the year ended December 31, 1999, Sino also stated that:

Sales from lumber and wood products trading increased 264% to \$34.2 million compared to \$9.4 million in 1998. The increase in lumber and wood products trading is attributable largely to the increase in new business generated from our investment in Shanghai Jin Xiang Timber Ltd. (SJXT) and a larger sales force in 1999. Lumber and wood products trading on an agency basis has increased 35% from \$2.3 million in 1998 to \$3.1 million in 1999. The increase in commission income on lumber and wood products trading is attributable to approximately \$1.8 million of fees earned from a new customer.

[Emphasis added.]

90. That same MD&A, however, also states that “The investment in SJXT has contributed to the significant growth of the lumber and wood products trading business, *which has recorded an increase in sales of 219% from \$11.7 million in 1998 to \$37.2 million in 1999*” (emphasis added).

91. In Sino’s Audited Annual Financial Statements for the year ended December 31, 1999, which statements were filed on SEDAR on May 18, 2000 (the “1999 Financial Statements”), Sino stated:

During the year, Shanghai Jin Xiang Timber Ltd. ["SJXT"] applied to increase *the original total capital contributions of \$868,000* [Chinese renminbi 7.2 million] to \$1,509,000 [Chinese renminbi 12.5 million]. Sino-Wood is required to *make an additional contribution of \$278,000* as a result of the increase in total capital contributions. The additional capital contribution of \$278,000 was made in 1999 *increasing its equity interest in SJXT from 27.8% to 34.4%*. The principal activity of SJXT is to organize trading of timber and logs in the PRC market.

[Emphasis added.]

92. The statements made in the 1999 Financial Statements contradicted Sino's prior representations in relation to SJXT. Among other things, Sino previously claimed to have made a capital contribution of \$1,037,000 for a 20% equity interest in SJXT.

93. In addition, note 2(b) to the 1999 Financial Statements stated that, "[a]s at December 31, 1999, \$796,000...advances to SJXT remained outstanding. The advances to SJXT were unsecured, non-interest bearing and without a fixed repayment date." Thus, assuming that Sino's contributions to SJXT were actually made, then Sino's prior statements in relation to SJXT were materially misleading, and violated GAAP, inasmuch as those statements failed to disclose that Sino had made to SJXT, a related party, a non-interest bearing loan of \$796,000.

94. In Sino's Audited Annual Financial Statements for the year ended December 31, 2000, which statements were filed on SEDAR on May 18, 2000 (the "**2000 Financial Statements**"), Sino stated:

In 1999, Shanghai Jin Xiang Timber Ltd. ("SJXT") applied to increase the original total capital contributions of \$868,000 [Chinese renminbi 7.2 million] to \$1,509,000 [Chinese renminbi 12.5 million]. Sino-Wood is required to make an additional contribution of \$278,000 as a result of the increase in total capital contributions. The additional capital contribution of \$278,000 was made in 1999 increasing its equity interest in SJXT from 27.8% to 34.4%. The principal activity of SJXT is to organize the trading of timber and logs in the PRC market. During the year, advances to SJXT of \$796,000 were repaid.

95. In Sino's balance sheet as at December 31, 2000, the SJXT investment was shown as an asset of \$519,000, being the sum of Sino's purported SJXT investment of \$1,315,000 as at December 31, 1999, and the \$796,000 of "advances" purportedly repaid to Sino by SJXT during the year ended December 31, 2000.

96. In Sino's Annual Reports (including the audited annual financial statements contained therein) for the years 2001 and beyond, there is no discussion whatsoever of SJXT. Indeed, Sino's "promising" and "very significant" investment in SJXT simply evaporated, without explanation, from Sino's disclosure documents. In fact, and unbeknownst to the public, Sino never invested in a company called "Shanghai Jin Xiang Timber Ltd." Chan and Poon knew, or were reckless in not knowing of, that fact.

97. At all material times, Sino's founders, Chan and Poon, were fully aware of the reality relating to SJXT, and knowingly misrepresented the true status of SJXT and Sino's interest therein.

(iii) Sino's Materially Deficient and Misleading Class Period Disclosures regarding Sino's History

98. During the Class Period, the Sino disclosure documents identified below purported to provide investors with an overview of Sino's history. However, those disclosure documents, and indeed all of the Impugned Documents, failed to disclose the material fact that, from its very founding, Sino was a fraud, inasmuch as its purportedly key investments in Leizhou and SJXT were either grossly inflated or fictitious.

99. Accordingly, the statements particularized in paragraphs 100 to 104 below were misrepresentations. The misleading nature of such statements was exacerbated by the fact that, throughout the Class Period, Sino's senior management and Board purported to be governed by

the Code, which touted the “high standards of ethical conduct, in both words and actions”, of Sino’s senior management and Board.

100. In the Prospectuses, Sino described its history, but did not disclose that the SJXT investment was fictitious, or that the revenues generated by Leizhou were non-existent or grossly overstated.

101. In particular, the June 2007 Prospectus stated merely that:

The Corporation was formed under the *Business Corporations Act* (Ontario) upon the amalgamation of Mt. Kearsarge 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 the Corporation’s class A subordinate-voting shares and class B multiple-voting shares. On June 25, 2002, the Corporation filed articles of continuance to continue under the *Canada Business Corporations Act*. On June 22, 2004, the Corporation 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.

102. Similarly, the June 2009 Prospectus stated only that:

The Corporation was formed under the *Business Corporations Act* (Ontario) upon the amalgamation of Mt. Kearsarge 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 the Corporation’s class A subordinate-voting shares and class B multiple-voting shares. On June 25, 2002, the Corporation filed articles of continuance to continue under the *Canada Business Corporations Act*. On June 22, 2004, the Corporation 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.

103. Finally, the December 2009 Prospectus stated only that:

The Corporation was formed under the *Business Corporations Act* (Ontario) upon the amalgamation of Mt. Kearsarge 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 the

Corporation's class A subordinate-voting shares and class B multiple-voting shares. On June 25, 2002, the Corporation filed articles of continuance to continue under the *Canada Business Corporations Act* (the "CBCA"). On June 22, 2004, the Corporation 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.

104. The failure to disclose the true nature of, and/or Sino's revenues and profits from, SJXT and Leizhou in the historical narrative in the Prospectuses rendered those Prospectuses materially false and misleading. Those historical facts would have alerted persons who purchased Sino shares under the Prospectuses, and/or in the secondary markets, to the highly elevated risk of investing in a company that continued to be controlled by Chan and Poon, both of whom were founders of Sino, and both of whom had knowingly misrepresented the true nature of Leizhou and SJXT from the time of Sino's creation. Thus, Sino was required to disclose those historical facts to the Class Members during the Class Period, but failed to do so, either in the Prospectuses or in any other Impugned Document.

B. *Misrepresentations relating to Sino's Forestry Assets*

(i) Sino Overstates its Yunnan Forestry Assets

105. In a press release issued by Sino and filed on SEDAR on March 23, 2007, Sino announced that it had entered into an agreement to sell 26 million shares to several institutional investors for gross proceeds of US\$200 million, and that the proceeds would be used for the acquisition of standing timber, including pursuant to a new agreement to purchase standing timber in Yunnan Province. It further stated in that press release that Sino-Panel (Asia) Inc. ("**Sino-Panel**"), a wholly-owned subsidiary of Sino, had entered on that same day into an agreement with Gengma Dai and Wa Tribes Autonomous Region Forestry Company Ltd., ("**Gengma Forestry**") established in Lincang City, Yunnan Province in the PRC, and that, under that Agreement, Sino-Panel would acquire approximately 200,000 hectares of non-state owned

commercial standing timber in Lincang City and surrounding cities in Yunnan for US\$700 million to US\$1.4 billion over a 10-year period.

106. These same terms of Sino's Agreement with Gengma Forestry were disclosed in Sino's Q1 2007 MD&A. Moreover, throughout the Class Period, Sino discussed its purported Yunnan acquisitions in the Impugned Documents, and Pöyry repeatedly made statements regarding said holdings, as particularized below.

107. The reported acquisitions did not take place. Sino overstated to a material degree the size and value of its forestry holdings in Yunnan Province. It simply does not own all of the trees it claims to own in Yunnan. Sino's overstatement of the Yunnan forestry assets violated GAAP.

108. The misrepresentations about Sino's acquisition and holdings of the Yunnan forestry assets were made in all of the Impugned Documents that were MD&As, financial statements, AIFs, Prospectuses and Offering Memoranda, except for the 2005 Audited Annual Financial Statements, the Q1 2006 interim financial statements, the 2006 Audited Annual Financial Statements, the 2006 Annual MD&A.

(ii) *Sino Overstates its Suriname Forestry Assets; Alternatively, Sino fails to Disclose the Material Fact that its Suriname Forestry Assets are contrary to the Laws of Suriname*

109. In mid-2010, Sino became a majority shareholder of Greenheart Group Ltd., a Bermuda corporation having its headquarters in Hong Kong, China and a listing on the Hong Kong Stock Exchange ("Greenheart").

110. In August 2010, Greenheart issued an aggregate principal amount of US\$25,000,000 convertible notes for gross proceeds of US\$24,750,000. The sole subscriber of these convertible notes was Greater Sino Holdings Limited, an entity in which Murray has an indirect interest. In

addition, Chan and Murray then became members of Greenheart's Board, Chan became the Board's Chairman, and Martin became the CEO of Greenheart and a member of its Board.

111. On August 24, 2010 and December 28, 2010, Greenheart granted to Chan, Martin and Murray options to purchase, respectively, approximately 6.8 million, 6.8 million and 1.1 million Greenheart shares. The options are exercisable for a five-year term.

112. As at March 31, 2011, General Enterprise Management Services International Limited, a company in which Murray has an indirect interest, held 7,000,000 shares of Greenheart, being 0.9% of the total issued and outstanding shares of Greenheart.

113. As a result of the aforesaid transactions and interests, Sino, Chan, Martin and Murray stood to profit handsomely from any inflation in the market price of Greenheart's shares.

114. At all material times, Greenheart purported to have forestry assets in New Zealand and Suriname. On March 1, 2011, Greenheart issued a press release in which it announced that:

Greenheart acquires certain rights to additional 128,000 hectare concession in Suriname

312,000 hectares now under Greenheart management

Hong Kong, March 1, 2011 – Greenheart Group Limited (“Greenheart” or “the Company”) (HKSE: 00094), an investment holding company with forestry assets in Suriname and New Zealand (subject to certain closing conditions) today announced that *the Company has acquired 60% of Vista Marine Services N.V. (“Vista”), a private company based in Suriname, South America that controls certain harvesting rights to a 128,000 hectares hardwood concession. Vista will be rebranded as part of the Greenheart Group. This transaction will increase Greenheart’s concessions under management in Suriname to approximately 312,000 hectares.* The cost of this acquisition is not material to the Company as a whole but the Company is optimistic about the prospects of Vista and the positive impact that it will bring. *The concession is located in the Sipalawini district of Suriname, South America, bordering Lake Brokopondo and has an estimated annual allowable cut of approximately 100,000 cubic meters.*

Mr. Judson Martin, Chief Executive Officer of Greenheart and Vice-Chairman of Sino-Forest Corporation, the Company's controlling shareholder said, "This acquisition is in line with our growth strategy to expand our footprint in Suriname. In addition to increased harvestable area, this acquisition will bring synergies in sales, marketing, administration, financial reporting and control, logistics and overall management. I am pleased to welcome Mr. Ty Wilkinson to Greenheart as our minority partner. Mr. Wilkinson shares our respect for the people of Suriname and the land and will be appointed Chief Executive Officer of this joint venture and be responsible for operating in a sustainable and responsible manner. This acquisition further advances Greenheart's strategy of becoming a global agri-forestry company. We will continue to actively seek well-priced and sustainable concessions in Suriname and neighboring regions in the coming months."

[Emphasis added.]

115. In its 2010 AIF, filed on SEDAR on March 31, 2011, Sino stated:

We hold a majority interest in Greenheart Group which, together with its subsidiaries, owns certain rights and *manages approximately 312,000 hectares of hardwood forest concessions in the Republic of Suriname, South America* ("Suriname") and 11,000 hectares of a radiata pine plantation on 13,000 hectares of freehold land in New Zealand as at March 31, 2011. *We believe that our ownership in Greenheart Group will strengthen our global sourcing network in supplying wood fibre for China in a sustainable and responsible manner.*

[Emphasis added.]

116. The statements reproduced in the preceding paragraph were false and/or materially misleading when made. Under the Suriname *Forest Management Act*, it is prohibited for one company or a group of companies in which one person or company has a majority interest to control more than 150,000 hectares of land under concession. Therefore, either Greenheart's concessions under management in Suriname did not exceed 150,000 hectares, or Greenheart's concessions under management in Suriname violated the laws of Suriname, which was a material fact not disclosed in any of the Impugned Documents.

117. In each of the October 2010 Offering Memorandum, the 2010 Annual MD&A, the 2010 AIF, Sino represented that Greenheart had well in excess of 150,000 hectares of concession

under management in Suriname without however disclosing that Suriname law imposed a limit of 150,000 hectares on Greenheart and its subsidiaries.

118. Finally, Vista's forestry concessions are located in a region of Suriname populated by the Saramaka, an indigenous people. Pursuant to the American Convention on Human Rights and a decision of the Inter-American Court of Human Rights, the Saramaka people must have effective control over their land, including the management of their reserves, and must be effectively consulted by the State of Suriname. Sino has not disclosed in any of the Impugned Documents where it has discussed Greenheart and/or Suriname assets that Vista's purported concessions in Suriname, if they exist at all, are impaired due to the unfulfilled rights of the indigenous people of Suriname, in violation of GAAP. The Impugned Documents that omitted that disclosure were the 2010 Annual MD&A, the 2010 Audited Annual Financial Statements, and the 2010 AIF.

(iii) Sino overstates its Jiangxi Forestry Assets

119. On June 11, 2009, Sino issued a press release in which it stated:

Sino-Forest Corporation (TSX: TRE), a leading commercial forest plantation operator in China, announced today that its wholly-owned subsidiary, Sino-Panel (China) Investments Limited ("Sino-Panel"), has entered into a Master Agreement for the Purchase of Pine and Chinese Fir Plantation Forests (the "Jiangxi Master Agreement") with Jiangxi Zhonggan Industrial Development Company Limited ("Jiangxi Zhonggan"), which will act as the authorized agent for the original plantation rights holders.

Under the Jiangxi Master Agreement, Sino-Panel will, through PRC subsidiaries of Sino-Forest, acquire between 15 million and 18 million cubic metres (m³) of wood fibre located in plantations in Jiangxi Province over a three-year period with a price not to exceed RMB300 per m³, to the extent permitted under the relevant PRC laws and regulations. ***The plantations in which such amount of wood fibre to acquire is between 150,000 and 300,000 hectares*** to achieve an estimated average wood fibre yield of approximately 100 m³ per hectare, and include tree species such as pine, Chinese fir and others. Jiangxi Zhonggan will ensure plantation forests sold to Sino-Panel and its PRC subsidiaries are non-state-owned, non-natural, commercial plantation forest trees.

In addition to securing the maximum tree acquisition price, Sino-Panel has pre-emptive rights to lease the underlying plantation land at a price, permitted under the relevant PRC laws and regulations, not to exceed RMB450 per hectare per annum for 30 years from the

time of harvest. The land lease can also be extended to 50 years as permitted under PRC laws and regulations. The specific terms and conditions of purchasing or leasing are to be determined upon the execution of definitive agreements between the PRC subsidiaries of Sino-Panel and Jiangxi Zhonggan upon the authorisation of original plantation rights holders, and subject to the requisite governmental approval and in compliance with the relevant PRC laws and regulations.

Sino-Forest Chairman and CEO Allen Chan said, "We are fortunate to have been able to capture and support investment opportunities in China's developing forestry sector by locking up a large amount of fibre at competitive prices. The Jiangxi Master Agreement is Sino-Forest's fifth, long-term, fibre purchase agreement during the past two years. These five agreements cover a total plantation area of over one million hectares in five of China's most densely forested provinces."

[Emphasis added.]

120. According to Sino's 2010 Annual MD&A, as of December 31, 2010, Sino had acquired 59,700 ha of plantation trees from Jiangxi Zhonggan Industrial Development Company Limited ("Zhonggan") for US\$269.1 million under the terms of the master agreement. (In its interim report for the second quarter of 2011, which was issued after the Class Period, Sino claims that, as at June 30, 2011, this number had increased to 69,100 ha, for a purchase price of US\$309.6 million).

121. However, as was known to Sino, Chan, Poon and Horsley, and as ought to have been known to the remaining Individual Defendants, BDO, E&Y and Pöyry, Sino's plantation acquisitions through Zhonggan are materially smaller than Sino has claimed.

(iv) Poyry makes Misrepresentations in relation to Sino's Forestry Assets

122. As particularized above, Sino overstated its forestry assets in Yunnan and Jiangxi Provinces in the PRC and in Suriname. Accordingly, Sino's total assets are overstated to a material degree in all of the Impugned Documents, in violation of GAAP, and each such statement of Sino's total assets constitutes a misrepresentation.

123. In addition, during the Class Period, Pöyry and entities affiliated with it made statements that are misrepresentations in regard to Sino's Yunnan Province "assets," namely:

- (a) In a report dated March 14, 2008, filed on SEDAR on March 31, 2008 (the "2008 Valuations"), Pöyry: (a) stated that it had determined the valuation of the Sino forest assets to be US\$3.2 billion as at 31 December 2007; (b) provided tables and figures regarding Yunnan; (c) stated that "Stands in Yunnan range from 20 ha to 1000 ha," that "In 2007 Sino-Forest purchased an area of mixed broadleaf forest in Yunnan Province," that "Broadleaf forests already acquired in Yunnan are all mature," and that "Sino-Forest is embarking on a series of forest acquisitions/expansion efforts in Hunan, Yunnan and Guangxi;" and (d) provided a detailed discussion of Sino's Yunnan "holdings" at Appendixes 3 and 5. Pöyry's 2008 Valuations were incorporated in Sino's 2007 Annual MD&A, amended 2007 Annual MD&A, 2007 AIF, each of the Q1, Q2, and Q3 2008 MD&As, Annual 2008 MD&A, amended Annual 2008 MD&A, each of the Q1, Q2 and Q3 2009, annual 2009 MD&A, and July 2008 and December 2009 Offering Memoranda;
- (b) In a report dated April 1, 2009 and filed on SEDAR on April 2, 2009 (the "2009 Valuations"), Pöyry stated that "[t]he area of forest owned in Yunnan has quadrupled from around 10 000 ha to almost 40 000 ha over the past year," provided figures and tables regarding Yunnan, and stated that "Sino-Forest has increased its holding of broadleaf crops in Yunnan during 2008, with this province containing nearly 99% of its broadleaf resource." Pöyry's 2009 Valuations were incorporated in Sino's 2008 AIF, each of the Q1, Q2, Q3 2009 MD&As, Annual 2009 MD&A, June 2009 Offering Memorandum, and June 2009 and December 2009 Prospectuses;
- (c) In a "Final Report" dated April 23, 2010, filed on SEDAR on April 30, 2010 (the "2010 Valuations"), Pöyry stated that "Guangxi, Hunan and Yunnan are the three largest provinces in terms of Sino-Forest's holdings. The largest change in area by province, both in absolute and relative terms [sic] has been Yunnan, where the

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

- (d) In a “Summary Valuation Report” regarding “Valuation of Purchased Forest Crops as at 31 December 2010” and dated May 27, 2011, Pöyry provided tables and figures regarding Yunnan, stated that “[t]he major changes in area by species from December 2009 to 2010 has been in Yunnan pine, with acquisitions in Yunnan and Sichuan provinces” and that “[a]nalysis of [Sino’s] inventory data for broadleaf forest in Yunnan, and comparisons with an inventory that Pöyry undertook there in 2008 supported the upwards revision of prices applied to the Yunnan broadleaf large size log,” and stated that “[t]he yield table for Yunnan pine in Yunnan and Sichuan provinces was derived from data collected in this species in these provinces by Pöyry during other work;” and
- (e) In a press release titled “Summary of Sino-Forest’s China Forest Asset 2010 Valuation Reports” and which was “jointly prepared by Sino-Forest and Pöyry to highlight key findings and outcomes from the 2010 valuation reports,” Pöyry reported on Sino’s “holdings” and estimated the market value of Sino’s forest assets on the 754,816 ha to be approximately US\$3.1 billion as at December 31, 2010.

C. *Misrepresentations relating to Sino's Related Party Transactions*

(i) Related Party Transactions Generally

124. Under GAAP and GAAS, a “related party” exists “when one party has the ability to exercise directly or indirectly, control, joint control or significant influence over the other.” (CICA Handbook 3840.03) Examples include a parent-subsiary relationship or an entity that is economically dependent upon another.

125. Related parties raise the concern that transactions may not be conducted at arm’s length, and pricing or other terms may not be determined at fair market values. For example, when a subsidiary “sells” an asset to its parent at a given price, it may not be appropriate that that asset be reported on the balance sheet or charged against the earnings of the parent at that price. Where transactions are conducted between arm’s length parties, this concern is generally not present.

126. The existence of related party transactions is important to investors irrespective of the reported dollar values of the transactions because the transactions may be controlled, manipulated and/or concealed by management (for example, for corporate purposes or because fraudulent activity is involved), and because such transactions may be used to benefit management or persons close to management at the expense of the company, and therefore its shareholders.

(ii) Sino fails to disclose that Zhonggan was a Related Party

127. Irrespective of the true extent of Zhonggan’s transactions in Jiangxi forestry plantations, Sino failed to disclose, in violation of GAAP, that Zhonggan was a related party of Sino. More particularly, according to AIC records, the legal representative of Zhonggan is Lam Hong Chiu, who is an executive vice president of Sino. Lam Hong Chiu is also a director and a 50%

shareholder of China Square Industrial Limited, a BVI corporation which, according to AIC records, owns 80% of the equity of Zhonggan.

128. The Impugned Documents that omitted that disclosure were the Q2 2009 MD&A, the Q2 2009 interim financial statements, the Q3 2009 MD&A, the Q3 2009 interim financial statements, the December 2009 Prospectus, the 2009 Annual MD&A, the 2009 Audited Annual Financial Statements, the 2009 AIF, the Q1 2010 MD&A, the Q1 2010 interim financial statements, the Q2 2010 MD&A, the Q2 2010 interim financial statements, the Q3 2010 MD&A, the Q3 2010 interim financial statements, the 2010 Annual MD&A, the 2010 Audited Annual Financial Statements, and the 2010 AIF.

(iii) Sino fails to disclose that Homix was a Related Party

129. On January 12, 2010, Sino issued a press release in which it announced the acquisition by one of its wholly-owned subsidiaries of Homix Limited (“**Homix**”), which it described as a company engaged in research and development and manufacturing of engineered-wood products in China, for an aggregate amount of US\$7.1 million. That press release stated:

HOMIX has an R&D laboratory and two engineered-wood production operations based in Guangzhou and Jiangsu Provinces, covering eastern and southern China wood product markets. The company has developed a number of new technologies with patent rights, specifically 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 environment-friendly and versatile as it uses fibre from forest plantations, recycled wood and/or wood residue. This reduces the traditional use of large-diameter trees from natural forests. There is growing demand for recomposed wood technology as it reduces cost for raw material while increases the utilization and sustainable use of plantation fibre for the production of furniture and interior/exterior building materials.

[...]

Mr. Allen Chan, Sino-Forest’s Chairman & CEO, said, “As we continue to ramp up our replanting programme with improved eucalyptus species, it is important for Sino-Forest to continue investing in the research and development that maximizes all aspects of the

forest product supply chain. Modernization and improved productivity of the wood processing industry in China is also necessary given the country's chronic wood fibre deficit. Increased use of technology improves operation efficiency, and maximizes and broadens the use of domestic plantation wood, which reduces the need for logging domestic natural forests and for importing logs from strained tropical forests. HOMIX has significant technological capabilities in engineered-wood processing."

Mr. Chan added, "By acquiring HOMIX, we intend to use six-year eucalyptus fibre instead of 30-year tree fibre from other species to produce quality lumber using recomposed technology. We believe that this will help preserve natural forests as well as improve the demand for and pricing of our planted eucalyptus trees."

130. Sino's 2009 Audited Annual Financial Statements, Q1/2010 Unaudited Interim Financial Statements, 2010 Audited Annual Financial Statements, the MD&As related to each of the aforementioned financial statements, and Sino's AIFs for 2009 and 2010, each discussed the acquisition of Homix, but nowhere disclosed that Homix was in fact a related party of Sino.

131. More particularly, Hua Chen, a Senior Vice President, Administration & Finance, of Sino in the PRC, and who joined Sino in 2002, is a 30% shareholder of an operating subsidiary of Homix, Jiangsu Dayang Wood Co., Ltd. ("**Jiangsu**")

132. In order to persuade current and prospective Sino shareholders that there was a commercial justification for the Homix acquisition, Sino misrepresented Homix's patent designs registered with the PRC State Intellectual Property Office. In particular, in its 2009 Annual Report, Sino stated:

HOMIX acquisition

In accordance with our strategy to focus on research and development and to improve the end-use of our wood fibre, we acquired HOMIX Ltd. in January 2010 for \$7.1 million. This corporate acquisition is small but strategically important *adding valuable intellectual property rights* and two engineered-wood processing facilities located in Guangdong and Jiangsu Provinces to our operations. *Homix has developed environment-friendly technology, an efficient process using recomposed technology to convert small-diameter plantation logs into building materials and furniture.* Since we plan to grow high volumes of eucalypt and other FGHY species, this acquisition will help us achieve our long-term objectives of maximizing the use of our fibre, supplying a

variety of downstream customers and enhancing economic rural development. [Emphasis added]

133. However, Homix itself then had no patent designs registered with the PRC State Intellectual Property Office. At that time, Homix had two subsidiaries, Jiangsu and Guangzhou Pany Dacheng Wood Co. The latter then had no patent designs registered with the PRC State Intellectual Property Office, while Jiangsu had two patent designs. However, each such design was for wood dyeing, and not for the conversion of small-diameter plantation logs into building materials and furniture.

(iv) Sino fails to disclose that Yunnan Shunxuan was a Related Party

134. In addition, during the Class Period, Sino purportedly purchased approximately 1,600 hectares of timber in Yunnan province from Yunnan Shunxuan Forestry Co. Ltd. Yunnan Shunxuan was part of Sino, acting under a separate label. Accordingly, it was considered a related party for the purposes of the GAAP disclosure requirements, a fact that Sino failed to disclose.

135. The Impugned Documents that omitted that disclosure were the 2009 Annual MD&A, the 2009 Audited Annual Financial Statements, the 2009 AIF, the Q1 2010 MD&A, the Q1 2010 interim financial statements, the Q2 2010 MD&A, the Q2 2010 interim financial statements, the Q3 2010 MD&A, the Q3 2010 interim financial statements, the 2010 Annual MD&A, the 2010 Audited Annual Financial Statements, and the 2010 AIF.

136. Sino's failure to disclose that Yunnan Shunxuan was a related party was a violation of GAAP, and a misrepresentation.

(v) Sino fails to disclose that Yuda Wood was a Related Party

137. Huaihua City Yuda Wood Co. Ltd., based in Huaihua City, Hunan Province ("Yuda Wood"), was a major supplier of Sino at material times. Yuda Wood was founded in April 2006

and, from 2007 until 2010, its business with Sino totalled approximately 152,164 Ha and RMB 4.94 billion.

138. During that period, Yuda Wood was a related party of Sino. Indeed, in the Second Report, the IC acknowledged that *“there is evidence suggesting close cooperation [between Sino and Yuda Wood] (including administrative assistance, possible payment of capital at the time of establishment, joint control of certain of Yuda Wood’s RMB bank accounts and the numerous emails indicating coordination of funding and other business activities)”* [emphasis added.]

139. The fact that Yuda Wood was a related party of Sino during the Class Period was a material fact and was required to be disclosed under GAAP, but, during the Class Period, that fact was not disclosed by Sino in any of the Impugned Documents, or otherwise.

(vi) Sino fails to Disclose that Major Suppliers were Related Parties

140. At material times, Sino had at least thirteen suppliers where former Sino employees, consultants or secondees are or were directors, officers and/or shareholders of one or more such suppliers. Due to these and other connections between these suppliers and Sino, some or all of such suppliers were in fact undisclosed related parties of Sino.

141. Including Yuda Wood, the thirteen suppliers referenced above accounted for 43% of Sino’s purported plantation purchases between 2006 and the first quarter of 2011.

142. In none of the Impugned Documents did Sino disclose that any of these suppliers were related parties, nor did it disclose sufficient particulars of its relations with such suppliers as would have enabled the investing public to ascertain that those suppliers were related parties.

D. *Misrepresentations relating to Sino's Relations with Forestry Bureaus and its Purported Title to Forestry Assets in the PRC*

143. In at least two instances during the Class Period, PRC forestry bureau officials were either concurrently or subsequently employees of, or consultants to, Sino. One forestry bureau assigned employees to Sino and other companies to assist in the development of the forestry industry in its jurisdiction.

144. In addition, a vice-chief of the forestry bureau was assigned to work closely with Sino, and while that vice chief still drew a basic salary from the forestry bureau, he also acted as a consultant to Sino in the conduct of Sino's business. This arrangement was in place for several years. That vice-chief appeared on Sino's payroll from January 2007 with a monthly payment of RMB 15,000, which was significant compared with his forestry bureau salary.

145. In addition, at material times, Sino and/or its subsidiaries and/or its suppliers made cash payments and gave "gifts" to forestry bureau officials, which potentially constituted a serious criminal offence under the laws of the PRC. At least some of these payments and gifts were made or given in order to induce the recipients to issue "confirmation letters" in relation to Sino's purported holdings in the PRC of standing timber. These practices utterly compromised the integrity of the process whereby those "confirmation letters" were obtained.

146. Further, a chief of a forestry bureau who had authorized the issuance of confirmations to Sino was arrested due to corruption charges. That forestry bureau had issued confirmations only to Sino and to no other companies. Subsequent to the termination of that forestry bureau chief, that forestry bureau did not issue confirmations to any company.

147. The foregoing facts were material because: (1) they undermined the reliability (if any) of the documentation upon which Sino relied and continues to rely to establish its ownership of

standing timber; and (2) the corruption in which Sino was engaged exposed Sino to potential criminal penalties, including substantial fines, as well as a risk of severe reputational damage in Sino's most important market, the PRC.

148. However, none of these facts was disclosed in any of the Impugned Documents. On the contrary, Sino only made the following disclosure regarding former government officials in its 2007 Annual Report (and in no other Impugned Document), which was materially incomplete, and a misrepresentation:

To ensure successful growth, we have trained and promoted staff from within our organization, and hired knowledgeable people with relevant working experience and industry expertise – some joined us from forestry bureaus in various regions and provinces and/or state-owned tree farms. [...] 4. Based in Heyuan, Guangdong, Deputy GM responsible for Heyuan plantations, previously with forestry bureau; studied at Yangdongxian Dangxiao [Mr. Liang] 5. Based in Hunan, Plantation controller, graduated from Hunan Agricultural University, previously Assistant Manager of state-owned farm trees in Hunan [Mr. Xie].

149. In respect of Sino's purported title to standing timber in the PRC, Sino possessed Plantation Rights Certificates, or registered title, only in respect of 18% of its purported holdings of standing timber as at December 31, 2010, a fact nowhere disclosed by Sino during the Class Period. This fact was highly material to Sino, inasmuch as standing timber comprised a large proportion of Sino's assets throughout the Class Period, and in the absence of Plantation Rights Certificates, Sino could not establish its title to that standing timber.

150. Rather than disclose this highly material fact, Sino made the following misrepresentations in the following Impugned Documents:

- (a) In the 2008 AIF: "*We have obtained the plantation rights certificates or requisite approvals for acquiring the relevant plantation rights for most of the purchased tree plantations and planted tree plantations currently under our management*, and we are in the process of applying for the plantation rights

certificates for those plantations for which we have not obtained such certificates” [emphasis added];

- (b) In the 2009 AIF: “*We have obtained the plantation rights certificates or requisite approvals for acquiring the relevant plantation rights for most of the purchased plantations and planted plantations currently under our management*, and we are in the process of applying for the plantation rights certificates for those plantations for which we have not obtained such certificates” [emphasis added]; and
- (c) In the 2010 AIF: “*We have obtained the plantation rights certificates or requisite approvals for acquiring the relevant plantation rights for most of the purchased plantations and planted plantations currently under our management*, and we are in the process of applying for the plantation rights certificates for those plantations for which we have not obtained such certificates” [emphasis added].

151. In the absence of Plantation Rights Certificates, Sino relies principally on the purchase contracts entered into by its BVI subsidiaries (“BVIs”) in order to demonstrate its ownership of standing timber.

152. However, under PRC law, those contracts are void and unenforceable.

153. In the alternative, if those contracts are valid and enforceable, they are enforceable only as against the counterparties through which Sino purported to acquire the standing timber, and not against the party who has registered title (if any) to the standing timber. Because some or all of those counterparties were or became insolvent, corporate shells or thinly capitalized, then any claims that Sino would have against those counterparties under PRC law, whether for unjust enrichment or otherwise, were of little to no value, and certainly constituted no substitute for registered title to the standing timber which Sino purported to own.

154. Sino never disclosed these material facts during the Class Period, whether in the Impugned Documents or otherwise. On the contrary, Sino made the following misrepresentations in relation to its purported title to standing timber:

- (a) In the July 2008 Offering Memorandum, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased plantations”;
- (b) In the June 2009 Offering Memorandum, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased plantations”;
- (c) In the October 2010 Offering Memorandum, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased plantations”;
- (d) In the 2006 AIF, Sino stated “Based on the supplemental purchase contracts and the plantation rights certificates issued by the relevant forestry departments, we have the legal right to own our purchased tree plantations”;
- (e) In the 2007 AIF, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry departments, we have the legal right to own our purchased tree plantations”;
- (f) In the 2008 AIF, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased tree plantations”;

- (g) In the 2009 AIF, Sino stated “Based on the relevant purchase contracts and the approvals issued by the local forestry bureaus, we legally own our purchased plantations”;
- (h) In the December 2009 Offering Memorandum, Sino stated “Based on the relevant purchase contracts and the approvals issued by the local forestry bureaus, we legally own our purchased plantations”; and
- (i) In the 2010 AIF, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased plantations.”

155. In addition, during the Class Period, Sino never disclosed the material fact, belatedly revealed in the Second Report, that *“in practice it is not able to obtain Plantation Rights Certificates for standing timber purchases when no land transfer rights are transferred”* [emphasis added].

156. On the contrary, during the Class Period, Sino made the following misrepresentation in each of the 2006 and 2007 AIFs:

Since 2000, the PRC has been improving its system of registering plantation land ownership, plantation land use rights and plantation ownership rights and its system of issuing certificates to the persons having plantation land use rights, to owners owning the plantation trees and to owners of the plantation land. In April 2000, the PRC State Forestry Bureau announced the “Notice on the Implementation of Nationwide Uniform Plantation Right Certificates” (Lin Zi Fa [2000] No. 159) on April 19, 2000 (the “Notice”). Under the Notice, a new uniform form of plantation rights certificate is to be used commencing from the date of the Notice. *The same type of new form plantation rights certificate will be issued to the persons having the right to use the plantation land, to persons who own the plantation land and plantation trees, and to persons having the right to use plantation trees.*

[Emphasis added]

157. Under PRC law, county and provincial forestry bureaus have no authority to issue confirmation letters. Such letters cannot be relied upon in a court of law to resolve a dispute and are not a guarantee of title. Notwithstanding this, during the Class Period, Sino made the following misrepresentations:

- (a) In the 2006 AIF: “In addition, for the purchased tree plantations, *we have obtained confirmations from the relevant forestry bureaus that we have the legal right to own the purchased tree plantations for which we have not received certificates*” [emphasis added]; and
- (b) In the 2007 AIF: “For our Purchased Tree Plantations, we have applied for the relevant Plantation Rights Certificates with the competent local forestry departments. As the relevant locations where we purchased our Purchased Tree Plantations have not fully implemented the new form Plantation Rights Certificate, we are not able to obtain all the corresponding Plantation Rights Certificates for our Purchased Tree Plantations. *In this connection, we obtained confirmation on our ownership of our Purchased Tree Plantations from the relevant forestry departments.*” [emphasis added]

E. Misrepresentations relating to Sino's Relationships with its AIs

158. In addition to the misrepresentations alleged above in relation to Sino's AIs, including those alleged in Section VI.C hereof (*Misrepresentations relating to Sino's Related Party Transactions*), Sino made the following misrepresentations during the Class Period in relation to its relationships with its AIs.

(i) Sino Misrepresents the Degree of its Reliance on its AIs

159. On March 30, 2007, Sino issued and filed on SEDAR its 2006 AIF. In that AIF, Sino stated:

...PRC laws and regulations require foreign companies to obtain licenses to engage in any business activities in the PRC. As a result of these requirements, we currently engage in our trading activities through PRC authorized intermediaries that have the requisite business licenses. There is no assurance that the PRC government will not take action to restrict our ability to engage in trading activities through our authorized intermediaries. ***In order to reduce our reliance on the authorized intermediaries, we intend to use a WFOE in the PRC to enter into contracts directly with suppliers of raw timber, and then process the raw timber, or engage others to process raw timber on its behalf, and sell logs, wood chips and wood-based products to customers, although it would not be able to engage in pure trading activities.***

[Emphasis added.]

160. In its 2007 AIF, which Sino filed on March 28, 2008, Sino again declared its intention to reduce its reliance upon AIs.

161. These statements were false and/or materially misleading when made, inasmuch as Sino had no intention to reduce materially its reliance on AIs, because its AIs were critical to Sino's ability to inflate its revenue and net income. Rather, these statements had the effect of mitigating any investor concern arising from Sino's extensive reliance upon AIs.

162. Throughout the Class Period, Sino continued to depend heavily upon AIs for its purported sales of standing timber. In fact, contrary to Sino's purported intention to reduce its reliance on its AIs, Sino's reliance on its AIs in fact *increased* during the Class Period.

(ii) *Sino Misrepresents the Tax-related Risks Arising from its use of AIs*

163. Throughout the Class Period, Sino materially understated the tax-related risks arising from its use of AIs.

164. Tax evasion penalties in the PRC are severe. Depending on whether the PRC authorities seek recovery of unpaid taxes by means of a civil or criminal proceeding, its claims for unpaid tax are subject to either a five- or ten-year limitation period. The unintentional failure to pay taxes is subject to a 0.05% per day interest penalty, while an intentional failure to pay taxes is punishable with fines of up to five times the unpaid taxes, and confiscation of part or all of the criminal's personal properties maybe also imposed.

165. Therefore, because Sino professed to be unable to determine whether its AIs have paid required taxes, the tax-related risks arising from Sino's use of AIs were potentially devastating. Sino failed, however, to disclose these aspects of the PRC tax regime in its Class Period disclosure documents, as alleged more particularly below.

166. Based upon Sino's reported results, Sino's tax accruals in all of its Impugned Documents that were interim and annual financial statements were materially deficient. For example, depending on whether the PRC tax authorities would assess interest at the rate of 18.75% per annum, or would assess no interest, on the unpaid income taxes of Sino's BVI subsidiaries, and depending also on whether one assumes that Sino's AIs have paid no income taxes or have paid 50% of the income taxes due to the PRC, then Sino's tax accruals in its 2007, 2008, 2009 and 2010 Audited Annual Financial Statements were understated by, respectively, US\$10 million to US\$150 million, US\$50 million to US\$260 million, US\$81 million to US\$371 million, and US\$83 million to US\$493 million. Importantly, were one to consider the impact of unpaid taxes other than unpaid income taxes (for example, unpaid value-added taxes), then the amounts by

which Sino's tax accruals were understated in these financial statements would be substantially larger.

167. The aforementioned estimates of the amounts by which Sino's tax accruals were understated also assume that the PRC tax authorities only impose interest charges on Sino's BVI Subsidiaries and impose no other penalties for unpaid taxes, and assume further that the PRC authorities seek back taxes only for the preceding five years. As indicated above, each of these assumptions is likely to be unduly optimistic. In any case, Sino's inadequate tax accruals violated GAAP, and constituted misrepresentations.

168. Sino also violated GAAP in its 2009 Audited Annual Financial Statements by failing to apply to its 2009 financial results the PRC tax guidance that was issued in February 2010. Although that guidance was issued after year-end 2009, GAAP required that Sino apply that guidance to its 2009 financial results, because that guidance was issued in the subsequent events period.

169. Based upon Sino's reported profit margins on its dealings with AIs, which margins are extraordinary both in relation to the profit margins of Sino's peers, and in relation to the limited risks that Sino purports to assume in its transactions with its AIs, Sino's AIs are not satisfying their tax obligations, a fact that was either known to the Defendants or ought to have been known. If Sino's extraordinary profit margins are real, then Sino and its AIs must be dividing the gains from non-payment of taxes to the PRC.

170. During the Class Period, Sino never disclosed the true nature of the tax-related risks to which it was exposed. This omission, in violation of GAAP, rendered each of the following statements a misrepresentation:

- (a) In the 2006 Annual Financial Statements, note 11 [b] “Provision for tax related liabilities” and associated text;
- (b) In the 2006 Annual MD&A, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (c) In the AIF dated March 30, 2007, the section “Estimation of the Company’s provision for income and related taxes,” and associated text;
- (d) In the Q1 and Q2 2007 Financial Statements, note 5 “Provision for Tax Related Liabilities,” and associated text;
- (e) In the Q3 2007 Financial Statements, note 6 “Provision for Tax Related Liabilities,” and associated text;
- (f) In the 2007 Annual Financial Statements, note 13 [b] “Provision for tax related liabilities,” and associated text;
- (g) In the 2007 Annual MD&A and Amended 2007 Annual MD&A, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (h) In the AIF dated March 28, 2008, the section “Estimation of the Corporation’s provision for income and related taxes,” and associated text;
- (i) In the Q1, Q2 and Q3 2008 Financial Statements, note 12 “Provision for Tax Related Liabilities,” and associated text;
- (j) In the Q1, Q2 and Q3 2008 MD&As, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (k) In the July 2008 Offering Memorandum, the subsection “Taxation” in the section “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and associated text;

- (l) In the 2008 Annual Financial Statements, note 13 [d] “Provision for tax related liabilities,” and associated text;
- (m) In the 2008 Annual MD&A and Amended 2008 Annual MD&A, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (n) In the AIF dated March 31, 2009, the section “We may be liable for income and related taxes to our business and operations, particularly our BVI Subsidiaries, in amounts greater than the amounts we have estimated and for which we have provisioned,” and associated text;
- (o) In the Q1, Q2 and Q3 2009 Financial Statements, note 13 “Provision for Tax Related Liabilities,” and associated text;
- (p) In the Q1, Q2 and Q3 2009 MD&As, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (q) In the 2009 Annual Financial Statements, note 15 [d] “Provision for tax related liabilities,” and associated text;
- (r) In the 2009 Annual MD&A, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (s) In the AIF dated March 31, 2010, the section “We may be liable for income and related taxes to our business and operations, particularly our BVI Subsidiaries, in amounts greater than the amounts we have estimated and for which we have provisioned,” and associated text;
- (t) In the Q1 and Q2 2010 Financial Statements, note 14 “Provision for Tax Related Liabilities,” and associated text;
- (u) In the Q1 and Q2 2010 MD&As, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;

- (v) In the Q3 2010 Financial Statements, note 14 “Provision and Contingencies for Tax Related Liabilities,” and associated text; and
- (w) In the Q3 2010 MD&As, the subsection “Provision and Contingencies for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (x) In the October 2010 Offering Memorandum, the subsection “Taxation” in the section “Selected Financial Information,” and associated text;
- (y) In the 2010 Annual Financial Statements, note 18 “Provision and Contingencies for Tax Related Liabilities,” and associated text;
- (z) In the 2010 Annual MD&A, the subsection “Provision and Contingencies for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text; and
- (aa) In the AIF dated March 31, 2011, the section “We may be liable for income and related taxes to our business and operations, particularly our BVI Subsidiaries, in amounts greater than the amounts we have estimated and for which we have provisioned,” and associated text.

171. In every Impugned Document that is a financial statement, the line item “Accounts payable and accrued liabilities” and associated figures on the Consolidated Balance Sheets fails to properly account for Sino’s tax accruals and is a misrepresentation, and a violation of GAAP.

172. During the Class Period, Sino also failed to disclose in any of the Impugned Documents that were AIFs, MD&As, financial statements, Prospectuses or Offering Memoranda, the risks relating to the repatriation of its earnings from the PRC. In 2010, Sino added two new sections to its AIF regarding the risk that it would not be able to repatriate earnings from its BVI subsidiaries (which deal with the AIs). The amount of retained earnings that may not be able to be repatriated is stated therein to be US\$1.4 billion. Notwithstanding this disclosure, Sino did not

disclose in these Impugned Documents that it would be unable to repatriate *any* earnings absent proof of payment of PRC taxes, which it has admitted that it lacks.

(iii) *Sino Misrepresents its Accounting Treatment of its AIs*

173. In addition, there are material discrepancies in Sino's descriptions of its accounting treatment of its AIs. Beginning in the 2003 AIF, Sino described its AIs as follows:

Because of the provisions in the Operational Procedures that specify when we and the authorized intermediary assume the risks and obligations relating to the raw timber or wood chips, as the case may be, we treat these transactions for accounting purposes as providing that we take title to the raw timber when it is delivered to the authorized intermediary. Title then passes to the authorized intermediary once the timber is processed into wood chips. ***Accordingly, we treat the authorized intermediaries for accounting purposes as being both our suppliers and customers in these transactions.***

[Emphasis added.]

174. Sino's disclosures were consistent in that regard up to and including Sino's first AIF issued in the Class Period (the 2006 AIF), which states:

Because of the provisions in the Operational Procedures that specify when we and the AI assume the risks and obligations relating to the raw timber or wood chips, as the case may be, we treat these transactions for accounting purposes as providing that we take title to the raw timber when it is delivered to the AI. Title then passes to the AI once the timber is processed into wood chips. ***Accordingly, we treat the AI for accounting purposes as being both our supplier and customer in these transactions.***

[Emphasis added.]

175. In subsequent AIFs, Sino ceased without explanation to disclose whether it treated AIs for accounting purposes as being both the supplier and the customer.

176. Following the issuance of Muddy Waters' report on the last day of the Class Period, however, Sino declared publicly that Muddy Waters was "wrong" in its assertion that, for accounting purposes, Sino treated its AIs as being both supplier and customer in transactions. This claim by Sino implies either that Sino misrepresented its accounting treatment of AIs in its

2006 AIF (and in its AIFs for prior years), or that Sino changed its accounting treatment of its AIs after the issuance of its 2006 AIF. If the latter is true, then Sino was obliged by GAAP to disclose its change in its accounting treatment of its AIs. It failed to do so.

F. *Misrepresentations relating to Sino's Cash Flow Statements*

177. Given the nature of Sino's operations, that of a frequent trader of standing timber, Sino improperly accounted for its purchases of timber assets as "Investments" in its Consolidated Statements Of Cash Flow. In fact, such purchases are "Inventory" within the meaning of GAAP, given the nature of Sino's business.

178. Additionally, Sino violated the GAAP 'matching' principle in treating timber asset purchases as "Investments" and the sale of timber assets as "Inventory": cash flow that came into the company was treated as cash flow from operations, but cash flow that was spent by Sino was treated as cash flow for investments. As a result, "Additions to timber holding" was improperly treated as a "Cash Flows Used In Investing Activities" instead of "Cash Flows From Operating Activities" and the item "Depletion of timber holdings included in cost of sales" should not be included in "Cash Flows From Operating Activities," because it is not a cash item.

179. The effect of these misstatements is that Sino's Cash Flows From Operating Activities were materially overstated throughout the Class Period, which created the impression that Sino was a far more successful cash generator than it was. Such mismatching and misclassification is a violation of GAAP.

180. Cash Flows From Operating Activities are one of the crucial metrics used by the financial analysts who followed Sino's performance. These misstatements were designed to, and did, have the effect of causing such analysts to materially overstate the value of Sino. This material

overstatement was incorporated into various research reports made available to the Class Members, the market and the public at large.

181. Matching is a foundational requirement of GAAP reporting. E&Y and BDO were aware, at all material times, that Sino was required to adhere to the matching principle. If E&Y and BDO had conducted GAAS-complaint audits, they would have been aware that Sino's reporting was not GAAP compliant with regard to the matching principle. Accordingly, if they had conducted GAAS-compliant audits, the statements by E&Y and BDO that Sino's reporting was GAAP-compliant were not only false, but were made, at a minimum, recklessly.

182. Further, at all material times, E&Y and BDO were aware that misstatements in Cash Flows From Operating Activities would materially impact the market's valuation of Sino.

183. Accordingly, in every Impugned Document that is a financial statement, the Consolidated Statements Of Cash Flow are a misrepresentation and, particularly, the Cash Flows From Operating Activities item and associated figures is materially overstated, the "additions to timber holdings" item and figures is required to be listed as Cash Flows From Operating Activities, and the "depletion of timber holdings included in cost of sales" item and figures should not have been included.

G. *Misrepresentations relating to Certain Risks to which Sino was exposed*

(i) Sino is conducting “business activities” in China

184. At material times, PRC law required foreign entities engaging in “business activities” in the PRC to register to obtain and maintain a license. Violation of this requirement could have resulted in both administrative sanctions and criminal punishment, including banning the unlicensed business activities, confiscating illegal income and properties used exclusively therefor, and/or an administrative fines of no more than RMB 500,000. Possible criminal punishment included a criminal fine from 1 to 5 times the amount of the profits gained.

185. Consequently, were Sino’s BVI subsidiaries to have been engaged in unlicensed in “business activities” in the PRC during the Class Period, they would have been exposed to risks that were highly material to Sino.

186. Under PRC law, the term “business activities” generally encompasses any for-profit activities, and Sino’s BVI subsidiaries were in fact engaged in unlicensed “business activities” in the PRC during the Class Period. However, Sino did not disclose this fact in any of the Impugned Documents, including in its AIFs for 2008-2010, which purported to make full disclosure of the material risks to which Sino was then exposed.

(ii) Sino fails to disclose that no proceeds were paid to it by its AIs

187. In the Second Report, Sino belatedly revealed that:

In practice, proceeds from the Entrusted Sale Agreements are not paid to SF but are held by the AIs as instructed by SF and subsequently used to pay for further purchases of standing timber by the same or other BVIs. The AIs will continue to hold these proceeds until the Company instructs the AIs to use these proceeds to pay for new BVI standing timber purchases. ***No proceeds are directly paid to the Company, either onshore or offshore.***

[Emphasis added]

188. This material fact was never disclosed in any of the Impugned Documents during the Class Period. On the contrary, Sino made the following statements during the Class Period in relation to the proceeds paid to it by its AIs, each of which was materially misleading and therefore a misrepresentation:

- (a) In the 2005 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of wood chips and standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other PRC liabilities” [emphasis added];
- (b) In the 2006 Annual MD&A, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (c) In the 2006 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of wood chips and standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi” [emphasis added];
- (d) In the 2007 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi;”
- (e) In the 2008 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi” [emphasis added];
- (f) In the 2009 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi” [emphasis added]; and

- (g) In the 2010 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi” [emphasis added].

H. *Misrepresentations relating to Sino’s GAAP Compliance and the Auditors’ GAAS Compliance*

- (i) *Sino, Chan and Horsley misrepresent that Sino complied with GAAP*

189. In each of its Class Period financial statements, Sino represented that its financial reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein.

190. In particular, Sino misrepresented in those financial statements that it was GAAP-compliant as follows:

- (a) In the annual statements filed on March 19, 2007, at Note 1: “These consolidated financial statements Sino-Forest Corporation (the “Company”) have been prepared in United States dollars in accordance with Canadian generally accepted accounting principles”;
- (b) In the annual financial statements filed on March 18, 2008, at Note 1: “The consolidated financial statements of Sino-Forest Corporation (the “Company”) have been prepared in United States dollars and in accordance with Canadian generally accepted accounting principles”;
- (c) In the annual financial statements filed on March 16, 2009, at note 1: “The consolidated financial statements of Sino-Forest Corporation (the “Company”) have been prepared in United States dollars and in accordance with Canadian generally accepted accounting principles”;

- (d) In the annual financial statements filed on March 16, 2010, at note 1: “The consolidated financial statements of Sino-Forest Corporation (the “Company”) have been prepared in United States dollars and in accordance with Canadian generally accepted accounting principles”; and
- (e) In the annual financial statements filed on March 15, 2011, at note 1: “The consolidated financial statements of Sino-Forest Corporation (the “Company”) have been prepared in United States dollars and in accordance with Canadian generally accepted accounting principles”.

191. In each of its Class Period MD&As, Sino represented that its reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein.

192. In particular, Sino misrepresented in those MD&As that it was GAAP-compliant as follows:

- (a) In the annual MD&A filed on March 19, 2007: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;
- (b) In the quarterly MD&A filed on May 14, 2007: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;
- (c) In the quarterly MD&A filed on August 13, 2007: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;
- (d) In the quarterly MD&A filed on November 12, 2007: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;

- (e) In the annual MD&A filed on March 18, 2008: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;
- (f) In the amended annual MD&A filed on March 28, 2008: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;
- (g) In the quarterly MD&A filed on May 13, 2008: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;
- (h) In the quarterly MD&A filed on August 12, 2008: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;
- (i) In the quarterly MD&A filed on November 13, 2008: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;
- (j) In the annual MD&A filed on March 16, 2009: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;
- (k) In the amended annual MD&A filed on March 17, 2009: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;
- (l) In the quarterly MD&A filed on May 11, 2009: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;
- (m) In the quarterly MD&A filed on August 10, 2009: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;

- (n) In the quarterly MD&A filed on November 12, 2009: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles (“GAAP”)”;
- (o) In the annual MD&A files on March 16, 2010: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles (“GAAP”)”;
- (p) In the quarterly MD&A filed on May 12, 2010: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles (“GAAP”)”;
- (q) In the quarterly MD&A filed on August 10, 2010: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles (“GAAP”)”;
- (r) In the quarterly MD&A filed on November 10, 2010: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles (“GAAP”)”; and
- (s) In the annual MD&A filed on March 15, 2011: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles (“GAAP”).”

193. In the Offerings, Sino represented that its reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein.

194. In particular, Sino misrepresented in the Offerings that it was GAAP-compliant as follows:

- (a) In the July 2008 Offering Memorandum: “We prepare our financial statements on a consolidated basis in accordance with accounting principles generally accepted in Canada (“Canadian GAAP”)[...],” “Our auditors conduct their audit of our

financial statements in accordance with auditing standards generally accepted in Canada” and “Each of the foregoing reports or financial statements will be prepared in accordance with Canadian generally accepted accounting principles other than for reports prepared for financial periods commencing on or after January 1, 2011 [...]”;

- (b) In the June 2009 Offering Memorandum: “We prepare our financial statements on a consolidated basis in accordance with accounting principles generally accepted in Canada (“Canadian GAAP”)[...],” “Our auditors conduct their audit of our financial statements in accordance with auditing standards generally accepted in Canada,” “The audited and unaudited consolidated financial statements were prepared in accordance with Canadian GAAP,” “Our audited and consolidated financial statements for the years ended December 31, 2006, 2007 and 2008 and our unaudited interim consolidated financial statements for the three-month periods ended March 31, 2008 and 2009 have been prepared in accordance with Canadian GAAP”;
- (c) In the June 2009 Offering Memorandum: “We prepare our financial statements on a consolidated basis in accordance with accounting principles generally accepted in Canada (“Canadian GAAP”)[...],” “Our auditors conduct their audit of our financial statements in accordance with auditing standards generally accepted in Canada” and “The audited and unaudited consolidated financial statements were prepared in accordance with Canadian GAAP”; and
- (d) In the October 2010 Offering Memorandum: “We prepare our financial statements on a consolidated basis in accordance with accounting principles generally accepted in Canada (“Canadian GAAP”)[...],” “Our auditors conduct their audit of our financial statements in accordance with auditing standards generally accepted in Canada,” “The audited and unaudited consolidated financial statements were prepared in accordance with Canadian GAAP,” “Our audited and consolidated financial statements for the years ended December 31, 2007, 2008 and 2009 and our unaudited interim consolidated financial statements for the six-

month periods ended June 30, 2009 and 2010 have been prepared in accordance with Canadian GAAP.”

195. In the Class Period Management’s Reports, Chan and Horsley represented that Sino’s reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein.

196. In particular, Chan and Horsley misrepresented in those Management’s Reports that Sino’s financial statements were GAAP-compliant as follows:

- (a) In the annual statements filed on March 19, 2007 Chan and Horsley stated: “The consolidated financial statements contained in this Annual Report have been prepared by management in accordance with Canadian generally accepted accounting principles”;
- (b) In the annual financial statements filed on March 18, 2008 Chan and Horsley stated: “The consolidated financial statements contained in this Annual Report have been prepared by management in accordance with Canadian generally accepted accounting principles”;
- (c) In the annual financial statements filed on March 16, 2009 Chan and Horsley stated: “The consolidated financial statements contained in this Annual Report have been prepared by management in accordance with Canadian generally accepted accounting principles”;
- (d) In the annual financial statements filed on March 16, 2010 Chan and Horsley stated: “The consolidated financial statements contained in this Annual Report have been prepared by management in accordance with Canadian generally accepted accounting principles”; and
- (e) In the annual financial statements filed on March 15, 2011 Chan and Horsley stated: “The consolidated financial statements contained in this Annual Report

have been prepared by management in accordance with Canadian generally accepted accounting principles.”

(ii) *E&Y and BDO misrepresent that Sino complied with GAAP and that they complied with GAAS*

197. In each of Sino’s Class Period annual financial statements, E&Y or BDO, as the case may be, represented that Sino’s reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein. In addition, in each such annual financial statement, E&Y and BDO, as the case may be, represented that they had conducted their audit in compliance with GAAS, which was a misrepresentation because they did not in fact conduct their audits in accordance with GAAS.

198. In particular, E&Y and BDO misrepresented that Sino’s financial statements were GAAP-compliant and that they had conducted their audits in compliance with GAAS as follows:

- (a) In Sino’s annual financial statements filed on March 19, 2007, BDO stated: “We conducted our audit in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2006 and 2005 and the results of its operations and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles”;
- (b) In the June 2007 Prospectus, BDO stated: “We have complied with Canadian generally accepted standards for an auditor’s involvement with offering documents”;
- (c) In Sino’s annual financial statements filed on March 18, 2008, E&Y stated: “We conducted our audit in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at

December 31, 2007 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles. The financial statements as at December 31, 2006 and for the year then ended were audited by other auditors who expressed an opinion without reservation on those statements in their report dated March 19, 2007”;

- (d) In the July 2008 Offering Memorandum, BDO stated: “We conducted our audit in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2006 and 2005 and the results of its operations and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles” and E&Y stated “We conducted our audit in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2007 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles”;
- (e) In Sino’s annual financial statements filed on March 16, 2009, E&Y stated: “We conducted our audits in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2008 and 2007 and the results of its operations and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles”;
- (f) In Sino’s annual financial statements filed on March 16, 2010, E&Y stated: “We conducted our audits in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2009 and 2008 and the results of its operations and its cash flows

for the years then ended in accordance with Canadian generally accepted accounting principles”; and

- (g) In Sino’s annual financial statements filed on March 15, 2011, E&Y stated: “We conducted our audits in accordance with Canadian generally accepted auditing standards.” and “In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of Sino-Forest corporation as at December 31, 2010 and 2009 and the results of its operations and cash flows for the years then ended in accordance with Canadian generally accepted accounting principles.”

(iii) *The Market Relied on Sino’s Purported GAAP-compliance and E&Y’s and BDO’s purported GAAS-compliance in Sino’s Financial Reporting*

199. As a public company, Sino communicated the results it claimed to have achieved to the Class Members via quarterly and annual financial results, among other disclosure documents. Sino’s auditors, E&Y and BDO, as the case may be, were instrumental in the communication of Sino’s financial information to the Class Members. The auditors certified that the financial statements were compliant with GAAP and that they had performed their audits in compliance with GAAS. Neither was true.

200. The Class Members invested in Sino’s securities on the critical premise that Sino’s financial statements were in fact GAAP-compliant, and that Sino’s auditors had in fact conducted their audits in compliance with GAAS. Sino’s reported financial results were also followed by analysts at numerous financial institutions. These analysts promptly reported to the market at large when Sino made earnings announcements, and incorporated into their Sino-related analyses and reports Sino’s purportedly GAAP-compliant financial results. These analyses and reports, in turn, significantly affected the market price for Sino’s securities.

201. The market, including the Class Members, would not have relied on Sino's financial reporting had the auditors disclosed that Sino's financial statements were not reliable or that they had not followed the processes that would have amply revealed that those statements were reliable.

VII. CHAN'S AND HORSLEY'S FALSE CERTIFICATIONS

202. Pursuant to National Instrument 52-109, the defendants Chan, as CEO, and Horsley, as CFO, were required at the material times to certify Sino's annual and quarterly MD&As and Financial Statements as well as the AIFs (and all documents incorporated into the AIFs). Such certifications included statements that the filings "do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made" and that the reports "fairly present in all material respects the financial condition, results of operations and cash flows of the issuer."

203. As particularized elsewhere herein, however, the Impugned Documents contained the Representation, which was false, as well as the other misrepresentations alleged above. Accordingly, the certifications given by Chan and Horsley were false and were themselves misrepresentations. Chan and Horsley made such false certifications knowingly or, at a minimum, recklessly.

VIII. THE TRUTH IS REVEALED

204. On June 2, 2011, Muddy Waters issued its initial report on Sino, and stated in part therein:

Sino-Forest Corp (TSE: TRE) is the granddaddy of China RTO frauds. It has always been a fraud – reporting excellent results from one of its early joint ventures – even though, because of TRE’s default on its investment obligations, the JV never went into operation. TRE just lied.

The foundation of TRE’s fraud is a convoluted structure whereby it claims to run most of its revenues through “authorized intermediaries” (“AI”). AIs are supposedly timber trader customers who purportedly pay much of TRE’s value added and income taxes. At the same time, these AIs allow TRE a gross margin of 55% on standing timber merely for TRE having speculated on trees.

The sole purpose of this structure is to fabricate sales transactions while having an excuse for not having the VAT invoices that are the mainstay of China audit work. If TRE really were processing over one billion dollars in sales through AIs, TRE and the AIs would be in serious legal trouble. No legitimate public company would take such risks – particularly because this structure has zero upside.

[...]

On the other side of the books, TRE massively exaggerates its assets. TRE significantly falsifies its investments in plantation fiber (trees). It purports to have purchased \$2.891 billion in standing timber under master agreements since 2006 [...]

[...]

Valuation

Because TRE has \$2.1 billion in debt outstanding, which we believe exceeds the potential recovery, we value its equity at less than \$1.00 per share.

205. Muddy Waters’ report also disclosed that (a) Sino’s business is a fraudulent scheme; (b) Sino systemically overstated the value of its assets; (c) Sino failed to disclose various related party transactions; (d) Sino misstated that it had enforced high standards of governance; (e) Sino misstated that its reliance on the AIs had decreased; (f) Sino misrepresented the tax risk associated with the use of AIs; and (g) Sino failed to disclose the risks relating to repatriation of earnings from PRC.

206. After Muddy Waters’ initial report became public, Sino shares fell to \$14.46, at which point trading was halted (a decline of 20.6% from the pre-disclosure close of \$18.21). When

trading was allowed to resume the next day, Sino's shares fell to a close of \$5.23 (a decline of 71.3% from June 1).

207. On November 13, 2011 Sino released the Second Report in redacted form. Therein, the Committee summarized its findings:

B. Overview of Principal Findings

The following sets out a very high level overview of the IC's principal findings and should be read in conjunction with the balance of this report.

Timber Ownership

[...]

The Company does not obtain registered title to BVI purchased plantations. In the case of the BVIs' plantations, the IC has visited forestry bureaus, Suppliers and AIs to seek independent evidence to establish a chain of title or payment transactions to verify such acquisitions. The purchase contracts, set-off arrangement documentation and forestry bureau confirmations constitute the documentary evidence as to the Company's contractual or other rights. *The IC has been advised that the Company's rights to such plantations could be open to challenge. However, Management has advised that, to date, it is unaware of any such challenges that have not been resolved* with the Suppliers in a manner satisfactory to the Company.

Forestry Bureau Confirmations and Plantation Rights Certificates

Registered title, through Plantation Rights Certificates is not available in the jurisdictions (i.e. cities and counties) examined by the IC Advisors for standing timber that is held without land use/lease rights. *Therefore the Company was not able to obtain Plantation Rights Certificates for its BVIs standing timber assets in those areas.* In these circumstances, the Company sought confirmations from the relevant local forestry bureau acknowledging its rights to the standing timber.

The IC Advisors reviewed forestry bureau confirmations for virtually all BVIs assets and non-Mandra WFOE purchased plantations held as at December 31, 2010. The IC Advisors, in meetings organized by Management, met with a sample of forestry bureaus with a view to obtaining verification of the Company's rights to standing timber in those jurisdictions. The result of such meetings to date have concluded with the forestry bureaus or related entities having issued new confirmations as to the Company's contractual rights to the Company in respect of 111,177 Ha. as of December 31, 2010 and 133,040 Ha. as of March 31, 2011, and have acknowledged the issuance of existing confirmations issued to the

Company as to certain rights, among other things, in respect of 113,058 Ha. as of December 31, 2010.

Forestry bureau confirmations are not officially recognized documents and are not issued pursuant to a legislative mandate or, to the knowledge of the IC, a published policy. It appears they were issued at the request of the Company or its Suppliers. The confirmations are not title documents, in the Western sense of that term, although the IC believes they should be viewed as comfort indicating the relevant forestry bureau does not dispute SF's claims to the standing timber to which they relate and might provide comfort in case of disputes. The purchase contracts are the primary evidence of the Company's interest in timber assets.

In the meetings with forestry bureaus, the IC Advisors did not obtain significant insight into the internal authorization or diligence processes undertaken by the forestry bureaus in issuing confirmations and, as reflected elsewhere in this report, the IC did not have visibility into or complete comfort regarding the methods by which those confirmations were obtained. It should be noted that several Suppliers observed that SF was more demanding than other buyers in requiring forestry bureau confirmations.

Book Value of Timber

Based on its review to date, the IC is satisfied that the book value of the BVIs timber assets of \$2.476 billion reflected on its 2010 Financial Statements and of SP WFOE standing timber assets of \$298.6 million reflected in its 2010 Financial Statements reflects the purchase prices for such assets as set out in the BVIs and WFOE standing timber purchase contracts reviewed by the IC Advisors. Further, the purchase prices for such BVIs timber assets have been reconciled to the Company's financial statements based on set-off documentation relating to such contracts that were reviewed by the IC. However, *these comments are also subject to the conclusions set out above under "Timber Ownership" on title and other rights to plantation assets.*

The IC Advisors reviewed documentation acknowledging the execution of the set-off arrangements between Suppliers, the Company and AIs for the 2006-2010 period. *However, the IC Advisors were unable to review any documentation of AIs or Suppliers which independently verified movements of cash in connection with such set-off arrangements between Suppliers, the Company and the AIs used to settle purchase prices paid to Suppliers by AIs on behalf of SF.* We note also that the independent valuation referred to in Part VIII below has not yet been completed.

Revenue Reconciliation

As reported in its First Interim Report, the IC has reconciled reported 2010 total revenue to the sales prices in BVIs timber sales contracts, together with macro customer level data from other businesses. However, *the IC was unable to review any documentation of AIs or Suppliers which independently verified movements*

of cash in connection with set-off arrangements used to settle purchase prices paid, or sale proceeds received by, or on behalf of SF.

Relationships

- Yuda Wood: The IC is satisfied that Mr. Huang Ran is not currently an employee of the Company and that Yuda Wood is not a subsidiary of the Company. However, *there is evidence suggesting close cooperation (including administrative assistance, possible payment of capital at the time of establishment, joint control of certain of Yuda Wood's RMB bank accounts and the numerous emails indicating coordination of funding and other business activities)*. Management has explained these arrangements were mechanisms that allowed the Company to monitor its interest in the timber transactions. Further, *Huang Ran (a Yuda Wood employee) has an ownership and/or directorship in a number of Suppliers* (See Section VI.B). The IC Advisors have been introduced to persons identified as influential backers of Yuda Wood but were unable to determine the relationships, if any, of such persons with Yuda Wood, the Company or other Suppliers or AIs. *Management explanations of a number of Yuda Wood-related emails and answers to E&Y's questions are being reviewed by the IC and may not be capable of independent verification.*
- Other: The IC's review has identified other situations which require further review. *These situations suggest that the Company may have close relationships with certain Suppliers, and certain Suppliers and AIs may have cross-ownership and other relationships with each other.* The IC notes that in the interviews conducted by the IC with selected AIs and Suppliers, all such parties represented that they were independent of SF. Management has very recently provided information and analysis intended to explain these situations. The IC is reviewing this material from Management and intends to report its findings in this regard in its final report to the Board. Some of such information and explanations may not be capable of independent verification.
- Accounting Considerations: *To the extent that any of SF's purchase and sale transactions are with related parties for accounting purposes, the value of these transactions as recorded on the books and records of the Company may be impacted.*

[...]

BVI Structure

The BVI structure used by SF to purchase and sell standing timber assets could be challenged by the relevant Chinese authorities as the undertaking of "business activities" within China by foreign companies, which may only be undertaken by entities established within China with the requisite approvals. However, there is no clear definition of what constitutes "business activities" under Chinese law and there are different views among the IC's Chinese counsel and the Company's Chinese counsel as to whether the purchase and sale of timber in China as

undertaken by the BVIs could be considered to constitute “business activities” within China. In the event that the relevant Chinese authorities consider the BVIs to be undertaking “business activities” within China, they may be required to cease such activities and could be subject to other regulatory action. As regularization of foreign businesses in China is an ongoing process, the government has in the past tended to allow foreign companies time to restructure their operations in accordance with regulatory requirements (the cost of which is uncertain), rather than enforcing the laws strictly and imposing penalties without notice. See Section II.B.2

C. Challenges

Throughout its process, the IC has encountered numerous challenges in its attempts to implement a robust independent process which would yield reliable results. Among those challenges are the following:

(a) Chinese Legal Regime for Forestry:

- national laws and policies appear not yet to be implemented at all local levels;
- in practice, none of the local jurisdictions tested in which BVIs hold standing timber appears to have instituted a government registry and documentation system for the ownership of standing timber as distinct from a government registry system for the ownership of plantation land use rights;
- the registration of plantation land use rights, the issue of Plantation Rights Certificates and the establishment of registries, is incomplete in some jurisdictions based on the information available to the IC;
- as a result, *title to standing timber, when not held in conjunction with a land use right, cannot be definitively proven by reference to a government maintained register*; and
- Sino-Forest has requested confirmations from forestry bureaus of its acquisition of timber holdings (excluding land leases) as additional evidence of ownership. Certain forestry bureaus and Suppliers have indicated the confirmation was beyond the typical diligence practice in China for acquisition of timber holdings.

(b) Obtaining Information from Third Parties: For a variety of reasons, all of them outside the control of the IC, it is very difficult to obtain information from third parties in China. These reasons include the following:

- *many of the third parties from whom the IC wanted information (e.g., AIs, Suppliers and forestry bureaus) are not compellable by the Company or Canadian legal processes*;
- third parties appeared to have concerns relating to disclosure of information regarding their operations that could become public or fall into the hands of

Chinese government authorities: *many third parties explained their reluctance to provide requested documentation and information as being “for tax reasons” but declined to elaborate;* and

- awareness of MW allegations, investigations and information gathering by the OSC and other parties, and court proceedings; while not often explicitly articulated, third parties had an awareness of the controversy surrounding SF and a reluctance to be associated with any of these allegations or drawn into any of these processes.

[...]

(e) Corporate Governance/Operational Weaknesses: *Management has asserted that business in China is based upon relationships.* The IC and the IC Advisors have observed this through their efforts to obtain meetings with forestry bureaus, Suppliers and AIs and their other experience in China. The importance of relationships appears to have resulted in dependence on a relatively small group of Management who are integral to maintaining customer relationships, negotiating and finalizing the purchase and sale of plantation fibre contracts and the settlement of accounts receivable and accounts payable associated with plantation fibre contracts. This concentration of authority or lack of segregation of duties has been previously disclosed by the Company as a control weakness. As a result and as disclosed in the 2010 MD&A, senior Management in their ongoing evaluation of disclosure controls and procedures and internal controls over financial reporting, recognizing the disclosed weakness, determined that the design and controls were ineffective. The Chairman and Chief Financial Officer provided annual and quarterly certifications of their regulatory filings. Related to this weakness the following challenges presented themselves in the examination by the IC and the IC Advisors:

- operational and administration systems that are generally not sophisticated having regard to the size and complexity of the Company’s business and in relation to North American practices; including:
 - *incomplete or inadequate record creation and retention practices;*
 - contracts not maintained in a central location;
 - significant volumes of data maintained across multiple locations on decentralized servers;
 - *data on some servers in China appearing to have been deleted on an irregular basis, and there is no back-up system;*
 - no integrated accounting system: accounting data is not maintained on a single, consolidated application, which can require extensive manual procedures to produce reports; and

- a treasury function that was centralized for certain major financial accounts, but was not actively involved in the control or management of numerous local operations bank accounts;
- *no internal audit function* although there is evidence the Company has undertaken and continues to assess its disclosure controls and procedures and internal controls over financial reporting using senior Management and independent control consultants;
- *SF employees conduct Company affairs from time to time using personal devices and non-corporate email addresses* which have been observed to be shared across groups of staff and changed on a periodic and organized basis; this complicated and delayed the examination of email data by the IC Advisors; and
- lack of full cooperation/openness in the ICs examination from certain members of Management.

(f) Complexity, Lack of Visibility into, and Limitations of BVIs Model: *The use of AIs and Suppliers as an essential feature of the BVIs standing timber business model contributes to the lack of visibility into title documentation, cash movements and tax liability since cash settlement in respect of the BVIs standing timber transactions takes place outside of the Company's books.*

(g) Cooperation and openness of the Company's executives throughout the process: From the outset, the IC Advisors sought the full cooperation and support of Allen Chan and the executive management team. Initially, the executive management team appeared ill-prepared to address the IC's concerns in an organized fashion and there was perhaps a degree of culture shock as Management adjusted to the IC Advisors' examination. *In any event, significant amounts of material information, particularly with respect to the relationship with Yuda Wood, interrelationships between AIs and/or Suppliers, were not provided to the IC Advisors as requested.* In late August 2011 on the instructions of the IC, interviews of Management were conducted by the IC Advisors in which documents evidencing these connections were put to the Management for explanation. As a result of these interviews (which were also attended by BJ) the Company placed certain members of Management on administrative leave upon the advice of Company counsel. At the same time the OSC made allegations in the CTO of Management misconduct.

[...]

(h) Independence of the IC Process: *The cooperation and collaboration of the IC with Management (operating under the direction of the new Chief Executive Officer) and with Company counsel in completing certain aspects of the IC's mandate has been noted by the OSC and by E&Y. Both have questioned the degree of independence of the IC from Management as a result of this interaction.* The IC has explained the practical impediments to its work in the context of the distinct business culture (and associated issues of privacy) in the

forestry sector in China in which the Company operates. Cooperation of third parties in Hong Kong and China, including employees, depends heavily on relationships and trust. As noted above, the Company's placing certain members of Management on administrative leave, as well as the OSC's allegations in the CTO, further hampered the IC's ability to conduct its process. As a result, the work of the IC was frequently done with the assistance of, or in reliance on, the new Chief Executive Officer and his Management team and Company counsel. Given that Mr. Martin was, in effect, selected by the IC and BJ was appointed in late June 2011, the IC concluded that, while not ideal, this was a practical and appropriate way to proceed in the circumstances. As evidenced by the increased number of scheduled meetings with forestry bureaus, Suppliers and AIs, and, very recently, the delivery to the IC of information regarding AIs and Suppliers and relationships among the Company and such parties, it is acknowledged that Mr. Martin's involvement in the process has been beneficial. It is also acknowledged that in executing his role and assisting the IC he has had to rely on certain of the members of Management who had been placed on administrative leave.

[Emphasis added]

208. On January 31, 2012, Sino released the Final Report. In material part, it read:

This Final Report of the IC sets out the activities undertaken by the IC since mid-November, the findings from such activities and the IC's conclusions regarding its examination and review. The IC's activities during this period have been limited as a result of Canadian and Chinese holidays (Christmas, New Year and Chinese New Year) and the extensive involvement of IC members in the Company's Restructuring and Audit Committees, both of which are advised by different advisors than those retained by the IC. *The IC believes that, notwithstanding there remain issues which have not been fully answered, the work of the IC is now at the point of diminishing returns because much of the information which it is seeking lies with non-compellable third parties, may not exist or is apparently not retrievable from the records of the Company.*

In December 2011, the Company defaulted under the indentures relating to its outstanding bonds with the result that its resources are now more focused on dealing with its bondholders. This process is being overseen by the Restructuring Committee appointed by the Board. Pursuant to the Waiver Agreement dated January 18, 2012 between the Company and the holders of a majority of the principal amount of its 2014 Notes, the Company agreed, among other things, that the final report of the IC to the Board would be made public by January 31, 2012.

Given the circumstances described above, the IC understands that, with the delivery of this Final Report, its review and examination activities are terminated. the IC does not expect to undertake further work other than assisting with responses to regulators and the RCMP as required and engaging in such further specific activities as the IC may deem advisable or the Board may instruct. The

IC has asked the IC Advisors to remain available to assist and advise the IC upon its instructions.

[...]

II. RELATIONSHIPS

The objectives of the IC's examination of the Company's relationships with its AIs and Suppliers were to determine, in light of the MW allegations, if such relationships are arm's length and to obtain, if possible, independent verification of the cash flows underlying the set-off transactions described in Section II.A of the Second Interim Report. *That the Company's relationships with its AIs and Suppliers be arm's length is relevant to SF's ability under GAAP to:*

- *book its timber assets at cost in its 2011 and prior years' financial statements, both audited and unaudited*
- *recognize revenue from standing timber sales as currently reflected in its 2011 and prior years' financial statements, both audited and unaudited.*

A. Yuda Wood

Yuda Wood was founded in April 2006 and was until 2010 a Supplier of SF. Its business with SF from 2007 to 2010 totalled approximately 152,164 Ha and RMB 4.94 billion. Section VI.A and Schedule VI.A.2(a) of the Second Interim Report described the MW allegations relating to Yuda Wood, the review conducted by the IC and its findings to date. The IC concluded that Huang Ran is not currently an employee, and that Yuda Wood is not a subsidiary, of the Company. *However, there is evidence suggesting a close cooperation between SF and Yuda Wood which the IC had asked Management to explain.* At the time the Second Interim Report was issued, the IC was continuing to review Management's explanations of a number of Yuda Wood-related emails and certain questions arising therefrom.

Subsequent to the issuance of its Second Interim Report in mid-November, the IC, with the assistance of the IC Advisors, has reviewed the Management responses provided to date relating to Yuda Wood and has sought further explanations and documentary support for such explanations. This was supplementary to the activities of the Audit Committee of SF and its advisors who have had during this period primary carriage of examining Management's responses on the interactions of SF and Yuda Wood. *While many answers and explanations have been obtained, the IC believes that they are not yet sufficient to allow it to fully understand the nature and scope of the relationship between SF and Yuda Wood. Accordingly, based on the information it has obtained, the IC is still unable to independently verify that the relationship of Yuda Wood is at arm's length to SF.* It is to be noted that Management is of the view that Yuda Wood is unrelated to SF for accounting purposes. The IC remains satisfied that Yuda is not a subsidiary of SF. Management continues to undertake work related to Yuda

Wood, including seeking documentation from third parties and responding to e-mails where the responses are not yet complete or prepared. Management has provided certain banking records to the Audit Committee that the Audit Committee advises support Management's position that SF did not capitalize Yuda Wood (but that review is not yet completed). The IC anticipates that Management will continue to work with the Audit Committee, Company counsel and E&Y on these issues.

B. Other Relationships

Section VI.B.1 of the Second Interim Report described certain other relationships which had been identified in the course of the IC's preparation for certain interviews with AIs and Suppliers. *These relationships include (i) thirteen Suppliers where former SF employees, consultants or secondees are or have been directors, officers and/or shareholders (including Yuda Wood); (ii) an AI with a former SF employee in a senior position; (iii) potential relationships between AIs and Suppliers; (iv) set-off payments for BVI standing timber purchases being made by companies that are not AIs and other setoff arrangements involving non-AI entities; (v) payments by AIs to potentially connected Suppliers; and (vi) sale of standing timber to an AI potentially connected to a Supplier of that timber. Unless expressly addressed herein, the IC has no further update of a material nature on the items raised above.*

On the instructions of the IC, the IC Advisors gave the details of these possible relationships to Management for further follow up and explanation. Just prior to the Second Interim Report, Management provided information regarding AIs and Suppliers relationships among the Company and such parties.

This information was in the form of a report dated November 10, 2011, subsequently updated on November 21, 2011 and January 20, 2012 (the latest version being the "Kaitong Report") prepared by Kaitong Law Firm ("Kaitong"), a Chinese law firm which advises the Company. The Kaitong Report has been separately delivered to the Board. *Kaitong has advised that much of the information in the Kaitong Report was provided by Management and has not been independently verified by such law firm or the IC.*

[...]

The Kaitong Report generally describes certain relationships amongst AIs and Suppliers and certain relationships between their personnel and Sino-Forest, either identified by Management or through SAIC and other searches. The Kaitong Report also specifically addresses certain relationships identified in the Second Interim Report. The four main areas of information in the Kaitong Report are as follows and are discussed in more detail below:

(i) Backers to Suppliers and AIs: The Kaitong Report explains the concept of "backers" to both Suppliers and AIs. The Kaitong Report suggests that backers are individuals with considerable influence in political, social or business circles,

or all three. The Kaitong Report also states that such backers or their identified main business entities do not generally appear in SAIC filings by the Suppliers or AIs as shareholders thereof and, in most instances, in any other capacity.

(ii) *Suppliers and AIs with Former SF Personnel: The appendices to the Kaitong Report list certain Suppliers that have former SF personnel as current shareholders.*

(iii) Common Shareholders Between Suppliers and AIs: The Kaitong Report states that there are 5 Suppliers and 3 AIs with current common shareholders but there is no cross majority ownership positions between Suppliers and AIs.

(iv) Transactions Involving Suppliers and AIs that have Shareholders in common: The Kaitong Report states that, where SF has had transactions with Suppliers and AIs that have certain current shareholders in common as noted above, the subject timber in those transactions is not the same; that is, the timber which SF buys from such Suppliers and the timber which SF sells to such AIs are located in different counties or provinces.

The IC Advisors have reviewed the Kaitong Report on behalf of the IC. The IC Advisors liaised with Kaitong and met with Kaitong and current and former Management. A description of the Kaitong Report and the IC's findings and comments are summarized below. By way of summary, the Kaitong Report provides considerable information regarding relationships among Suppliers and AIs, and between them and SF, but much of this information related to the relationship of each backer with the associated Suppliers and AIs is not supported by any documentary or other independent evidence. *As such, some of the information provided is unverified and, particularly as it relates to the nature of the relationships with the backers, is viewed by the IC to be likely unverifiable by it.*

1. Backers to Suppliers and AIs

[...]

Given the general lack of information on the backers or the nature and scope of the relationships between the Suppliers or AIs and their respective backers and the absence of any documentary support or independent evidence of such relationships, the IC has been unable to reach any conclusion as to the existence, nature or importance of such relationships. *As a result, the IC is unable to assess the implications, if any, of these backers with respect to SF's relationships with its Suppliers or AIs. Based on its experience to date, including interviews with Suppliers and AIs involving persons who have now been identified as backers in the Kaitong Report, the IC believes that it would be very difficult for the IC Advisors to arrange interviews with either the AIs or Suppliers or their respective backers and, if arranged, that such interviews would yield very little, if any, verifiable information to such advisors.* The IC understands Management is continuing to seek meetings with its AIs and Suppliers with the objective of

obtaining information, to the extent such is available, that will provide further background to the relationships to the Audit Committee.

[...]

2. Suppliers and AIs with Former SF Personnel

The Appendices to the Kaitong Report list the Suppliers with former SF personnel as current shareholders. According to the information previously obtained by the IC Advisors, the identification of former SF personnel indicated in the Kaitong Report to be current shareholders of past or current Suppliers is correct.

(a) Suppliers with former SF personnel

The Kaitong Report, which is limited to examining Suppliers where ex-SF employees are current shareholders as shown in SAIC filings, does not provide material new information concerning Suppliers where former SF employees were identified by the IC in the Second Interim Report as having various past or present connections to current or former Suppliers except that the Kaitong Report provides an explanation of two transactions identified in the Second Interim Report. These involved purchases of standing timber by SF from Suppliers controlled by persons who were employees of SF at the time of these transactions. Neither of the Suppliers have been related to an identified backer in the Kaitong Report. The explanations are similar indicating that neither of the SF employees was an officer in charge of plantation purchases or one of SF's senior management at the time of the transactions. The employees in question were Shareholder #14 in relation to a RMB 49 million purchase from Supplier #18 in December 2007 (shown in SAIC filings to be 100% owned by him) and Shareholder #20 in relation to a RMB 3.3 million purchase from Supplier #23 (shown in SAIC filings to be 70% owned by him) in October 2007. ***The Kaitong Report indicates Shareholder #20 is a current employee of SF who then had responsibilities in SF's wood board production business.***

The IC is not aware that the employees' ownership positions were brought to the attention of the Board at the time of the transactions or, subsequently, until the publication of the Second Interim Report and understands the Audit Committee will consider such information.

(b) AIs with former SF personnel

The Kaitong Report indicates that no SF employees are listed in SAIC filing reports as current shareholders of AIs. Except as noted herein, the IC agrees with this statement. The Kaitong Report does not address the apparent role of an ex-employee Officer #3 who was introduced to the IC as the person in charge of AI #2 by Backer #5 of AI Conglomerate #1. Backer #5 is identified in the Kaitong Report as a backer of two AIs, including AI#2. (The Kaitong Report properly does not include AI #14, as an AI for this purpose, whose 100% shareholder is former SF employee Officer #3. However, the IC is satisfied that the activities of

this entity primarily relate to certain onshoring transactions that facilitated the transfer of SF BVI timber assets to SF WFOE subsidiaries.)

There was one other instance where a past shareholding relationship has been identified between an AI #10 and persons who were previously or are still shown on the SF human resources records, Shareholder #26 and Shareholder #27. Management has explained that such entity sold wood board processing and other assets to SF and that the persons associated with that company consulted with SF after such sale in relation to the purchased wood board processing assets. *Such entity subsequently also undertook material timber purchases as an AI of SF in 2007-2008 over a time period in which such persons are shown as shareholders of such AI in the SAIC filing reviewed (as to 47.5% for Shareholder #26 and as to 52.5% for Shareholder #27). That time period also intersects the time that Shareholder #26 is shown in such human resources records and partially intersects the time that Shareholder #27 is shown on such records. Management has also explained that Shareholder #26 subsequent to the time of such AI sales became an employee of a SF wood board processing subsidiary. Management has provided certain documentary evidence of its explanations. The IC understands that the Audit Committee will consider this matter.*

3. Common Shareholders between Supplier and AIs

The Kaitong Report states that there are 5 Suppliers and 3 AIs that respectively have certain common current shareholders but also states that there is no cross control by those current shareholders of such Suppliers or AIs based on SAIC filings. The Kaitong Report correctly addresses current cross shareholdings in Suppliers and AIs based on SAIC filings but does not address certain other shareholdings. With the exception of one situation of cross control in the past, the IC has not identified a circumstance in the SAIC filings reviewed where the same person controlled a Supplier at the time it controlled a different AI. *The one exception is that from April 2002 to February 2006, AI #13 is shown in SAIC filings as the 90% shareholder of Supplier/AI #14. AI #13 did business with SF BVIs from 2005 through 2007 and Supplier/AI #14 supplied SF BVIs from 2004 through 2006. However, the IC to date has only identified one contract involving timber bought from Supplier/AI #14 that was subsequently sold to AI #13. It involved a parcel of 2,379 Ha. timber sold to AI #13 in December 2005 that originated from a larger timber purchase contract with Supplier/AI #14 earlier that year. Management has provided an explanation for this transaction. The IC understands that the Audit Committee will consider this matter.*

4. Transactions involving Suppliers and AIs with Current Shareholders in Common

The Kaitong Report states that where SF has had transactions with 5 Suppliers and 3 AIs that have current shareholders in common (but no one controlling shareholder) as shown in SAIC filings, the subject timber in the transactions they

each undertook with SF is not the same; that is, the timber which SF buys from the Suppliers and the timber which SF sells to the AIs where the Supplier and AI have a current common shareholder were located in different areas and do not involve the same plots of timber. The Kaitong Report further states that where SF has had transactions with 5 Suppliers and 3 AIs with current shareholders in common as shown in SAIC filings, SF had transactions with those AIs prior to having transactions with those Suppliers, thus SF was not overstating its transactions by buying and selling to the same counterparties.

[...]

The Kaitong Report does not specifically address historical situations involving common shareholders and potential other interconnections between AIs and Suppliers that may appear as a result of the identification of backers. There is generally no ownership connection shown in SAIC filings between backers and the Suppliers and AIs associated with such backers in the Kaitong Report.

[...]

VI. OUTSTANDING MATTERS

As noted in Section I above, the IC understands that with the delivery of this report, its examination and review activities are terminated. The IC would expect its next steps may include only:

- (a) assisting in responses to regulators and RCMP as required; and
- (b) such other specific activities as it may deem advisable or the Board may instruct.

[Emphasis added]

IX. SINO REWARDS ITS EXPERTS

209. Bowland, Hyde and West are former E&Y partners and employees. They served on Sino's Audit Committee but purported to exercise oversight of their former E&Y colleagues. In addition, Sino's Vice-President, Finance (Corporate), Thomas M. Maradin, is a former E&Y employee.

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

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

212. Further, Andrew Fyfe, the former Asia-Pacific President for Pöyry Forestry Industry Ltd, was appointed Chief Operating Officer of Greenheart, and is the director of several Sino subsidiaries. Fyfe signed the Pöyry valuation report dated June 30, 2004, March 22, 2005, March 23, 2006, March 14, 2008 and April 1, 2009.

213. George Ho, Sino's Vice President, Finance (China), is a former Senior Manager of the BDO.

X. THE DEFENDANTS' RELATIONSHIP TO THE CLASS

214. By virtue of their purported accounting, financial and/or managerial acumen and qualifications, and by virtue of their having assumed, voluntarily and for profit, the role of gatekeepers, the Defendants had a duty at common law, informed by the Securities Legislation and/or the *CBCA*, to exercise care and diligence to ensure that the Impugned Documents fairly and accurately disclosed Sino's financial condition and performance in accordance with GAAP.

215. Sino is a reporting issuer and had an obligation to make timely, full, true and accurate disclosure of material facts and changes with respect to its business and affairs.

216. The Individual Defendants, by virtue of their positions as senior officers and/or directors of Sino, owed a duty to the Class Members to ensure that public statements on behalf of Sino were not untrue, inaccurate or misleading. The continuous disclosure requirements in Canadian securities law mandated that Sino provide the Impugned Documents, including quarterly and annual financial statements. These documents were meant to be read by Class Members who acquired Sino's Securities in the secondary market and to be relied on by them in making investment decisions. This public disclosure was prepared to attract investment, and Sino and the Individual Defendants intended that Class Members would rely on public disclosure for that purpose. With respect to Prospectuses and Offering Memoranda, these documents were prepared for primary market purchasers. They include detailed content as mandated under Canadian securities legislation, national instruments and OSC rules. They were meant to be read by the Class Members who acquired Sino's Securities in the primary market, and to be relied on by them in making decisions about whether to purchase the shares or notes under the Offerings to which these Prospectuses and Offering Memoranda related.

217. Chan and Horsley had statutory obligations under Canadian securities law to ensure the accuracy of disclosure documents and provided certifications in respect of the annual reports, financial statements and Prospectuses during the Class Period. The other Individual Defendants were directors of Sino during the Class Period and each had a statutory obligation as a director under the *CBCA* to manage or supervise the management of the business and affairs of Sino. These Individual Defendants also owed a statutory duty of care to shareholders under section 122 of the *CBCA*. In addition, Poon, along with Chan, co-founded Sino and has been its president since 1994. He is intimately aware of Sino's operations and as a long-standing senior officer, he

had an obligation to ensure proper disclosure. Poon authorized, permitted or acquiesced in the release of the Impugned Documents.

218. BDO and E&Y acted as Sino's auditors and provided audit reports in Sino's annual financial statements that were directed to shareholders. These audit reports specified that BDO and E&Y had conducted an audit in accordance with GAAS, which was untrue, and included their opinions that the financial statements presented fairly, in all material respects, the financial position of Sino, the results of operations and Sino's cash flows, in accordance with GAAP. BDO and E&Y knew and intended that Class Members would rely on the audit reports and assurances about the material accuracy of the financial statements.

219. Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD each signed one or more of the Prospectuses and certified that, to the best of its knowledge, information and belief, the particular prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. These defendants knew that the Class Members who acquired Sino's Securities in the primary market would rely on these assurances and the trustworthiness that would be credited to the Prospectuses because of their involvement. Further, those Class Members that purchased shares under these Prospectuses purchased their shares from these defendants as principals.

220. Credit Suisse USA, TD and Banc of America acted as initial purchasers or dealer managers for one or more of the note Offerings. These defendants knew that persons purchasing these notes would rely on the trustworthiness that would be credited to the Offering Memoranda because of their involvement.

XI. THE PLAINTIFFS' CAUSES OF ACTION

A. *Negligent Misrepresentation*

221. As against all Defendants except Pöyry and the Underwriters, and on behalf of all Class Members who acquired Sino's Securities in the secondary market, the Plaintiffs plead negligent misrepresentation for all of the Impugned Documents except the Offering Memoranda.

222. Labourers and Wong, on behalf of Class Members who purchased Sino Securities in one of the distributions to which a Prospectus related, plead negligent misrepresentation as against Sino, Chan, Horsley, Poon, Wang, Martin, Mak, Murray, Hyde, BDO, E&Y, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD for the Prospectuses.

223. Grant, on behalf of Class Members who purchased Sino Securities in one of the distributions to which an Offering Memorandum related, pleads negligent misrepresentation as against Sino, BDO and E&Y for the Offering Memoranda.

224. In support of these claims, the sole misrepresentation that the Plaintiffs plead is the Representation. The Representation is contained in the language relating to GAAP particularized above, and was untrue for the reasons particularized elsewhere herein.

225. The Impugned Documents were prepared for the purpose of attracting investment and inducing members of the investing public to purchase Sino securities. The Defendants knew and intended at all material times that those documents had been prepared for that purpose, and that the Class Members would rely reasonably and to their detriment upon such documents in making the decision to purchase Sino securities.

226. The Defendants further knew and intended that the information contained in the Impugned Documents would be incorporated into the price of Sino's publicly traded securities

such that the trading price of those securities would at all times reflect the information contained in the Impugned Documents.

227. As set out elsewhere herein, the Defendants, other than Pöyry, Credit Suisse USA and Banc of America, had a duty at common law to exercise care and diligence to ensure that the Impugned Documents fairly and accurately disclosed Sino's financial condition and performance in accordance with GAAP.

228. These Defendants breached that duty by making the Representation as particularized above.

229. The Plaintiffs and the other Class Members directly or indirectly relied upon the Representation in making a decision to purchase the securities of Sino, and suffered damages when the falsity of the Representation was revealed on June 2, 2011.

230. Alternatively, the Plaintiffs and the other Class Members relied upon the Representation by the act of purchasing Sino securities in an efficient market that promptly incorporated into the price of those securities all publicly available material information regarding the securities of Sino. As a result, the repeated publication of the Representation in these Impugned Documents caused the price of Sino's shares to trade at inflated prices during the Class Period, thus directly resulting in damage to the Plaintiffs and Class Members.

B. *Statutory Claims, Negligence, Oppression, Unjust Enrichment and Conspiracy*

(i) Statutory Liability— Secondary Market under the Securities Legislation

231. The Plaintiffs plead the claim found in Part XXIII.1 of the *OSA*, and, if required, the equivalent sections of the Securities Legislation other than the *OSA*, against all Defendants except the Underwriters.

232. Each of the Impugned Documents except for the December 2009 and October 2010 Offering Memoranda is a “Core Document” within the meaning of the Securities Legislation.

233. Each of these Impugned Documents contained one or more misrepresentations as particularized above. Such misrepresentations and the Representation are misrepresentations for the purposes of the Securities Legislation.

234. Each of the Individual Defendants was an officer and/or director of Sino at material times. Each of the Individual Defendants authorized, permitted or acquiesced in the release of some or all of these Impugned Documents.

235. Sino is a reporting issuer within the meaning of the Securities Legislation.

236. E&Y is an expert within the meaning of the Securities Legislation. E&Y consented to the use of its statements particularized above in these Impugned Documents.

237. BDO is an expert within the meaning of the Securities Legislation. BDO consented to the use of its statements particularize above in these Impugned Documents.

238. Pöyry is an expert within the meaning of the Securities Legislation. Pöyry consented to the use of its statements particularized above in these Impugned Documents.

239. At all material times, each of Sino, Chan, Poon and Horsley, BDO and E&Y knew or, in the alternative, was wilfully blind to the fact, that the Impugned Documents contained the Representation and that the Representation was false, and that the Impugned Documents contained other of the misrepresentations that are alleged above to have been contained therein.

(ii) Statutory Liability – Primary Market for Sino’s Shares under the Securities Legislation

240. As against Sino, Chan, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD, and on behalf

of those Class Members who purchased Sino shares in one of the distributions to which the June 2009 or December 2009 Prospectuses related, Labourers and Wong assert the cause of action set forth in s. 130 of the *OSA* and, if necessary, the equivalent provisions of the Securities Legislation other than the *OSA*.

241. Sino issued the June 2009 and December 2009 Prospectuses, which contained the Representation and the other misrepresentations that are alleged above to have been contained in those Prospectuses or in the Sino disclosure documents incorporated therein by reference.

(iii) Statutory Liability – Primary Market for Sino’s Notes under the Securities Legislation

242. As against Sino, and on behalf of those Class Members who purchased or otherwise acquired Sino’s notes in one of the offerings to which the July 2008, June 2009, December 2009, and October 2010 Offering Memoranda related, Grant asserts the cause of action set forth in s. 130.1 of the *OSA* and, if necessary, the equivalent provisions of the Securities Legislation other than the *OSA*.

243. Sino issued the July 2008, June 2009, December 2009 and October 2010 Offering Memoranda, which contained the Representation and the other misrepresentations that are alleged above to have been contained in those Offering Memoranda or in the Sino disclosure documents incorporated therein by reference.

(iv) Negligence Simpliciter – Primary Market for Sino’s Securities

244. Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, BDO, E&Y, Pöyry and the Underwriters (collectively, the “**Primary Market Defendants**”) acted negligently in connection with one or more of the Offerings.

245. As against Sino, Chan, Horsley, Poon, Wang, Martin, Mak, Murray, Hyde, BDO, E&Y, Pöyry, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD, and on

behalf of those Class Members who purchased Sino's Securities in one of the distributions to which those Prospectuses related, Labourers and Wong assert negligence simpliciter.

246. As against Sino, BDO, E&Y, Pöyry, Credit Suisse USA, Banc of America and TD, and on behalf of those Class Members who purchased Sino's Securities in one of the distributions to which the Offering Memoranda related, Grant asserts negligence simpliciter.

247. The Primary Market Defendants owed a duty of care to ensure that the Prospectuses and/or the Offering Memoranda they issued, or authorized to be issued, or in respect of which they acted as an underwriter, initial purchaser or dealer manager, made full, true and plain disclosure of all material facts relating to the Securities offered thereby, or to ensure that their opinions or reports contained in such Prospectuses and Offering Memoranda did not contain a misrepresentation.

248. At all times material to the matters complained of herein, the Primary Market Defendants ought to have known that such Prospectuses or Offering Memoranda and the documents incorporated therein by reference were materially misleading in that they contained the Representation and the other misrepresentations particularized above.

249. Chan, Poon, Horsley, Wang, Martin, Mak, Murray and Hyde were senior officers and/or directors at the time the Offerings to which the Prospectuses related. These Prospectuses were created for the purposes of obtaining financing for Sino's operations. Chan, Horsley, Martin and Hyde signed each of the Prospectuses and certified that they made full, true and plain disclosure of all material facts relating to the shares offered. Wang, Mak and Murray were directors during one or more of these Offerings and each had a statutory obligation to manage or supervise the management of the business and affairs of Sino. Poon was a director for the June 2007 share Offering and was president of Sino at the time of the June 2009 and December 2009 Offering.

Poon, along with Chan, co-founded Sino and has been the president since 1994. He is intimately aware of Sino's business and affairs.

250. The Underwriters acted as underwriters, initial purchasers or dealer managers for the Offerings to which the Prospectuses and Offering Memoranda related. They had an obligation to conduct due diligence in respect of those Offerings and ensure that those Securities were offering at a price that reflected their true value or that such distributions did not proceed if inappropriate. In addition, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD signed one or more of the Prospectuses and certified that to the best of their knowledge, information and belief, the Prospectuses constituted full, true and plain disclosure of all material facts relating to the shares offered.

251. E&Y and BDO acted as Sino's auditors and had a duty to maintain or to ensure that Sino maintained appropriate internal controls to ensure that Sino's disclosure documents adequately and fairly presented the business and affairs of Sino on a timely basis.

252. Pöyry had a duty to ensure that its opinions and reports reflected the true nature and value of Sino's assets. Pöyry, at the time it produced each of the 2008 Valuations, 2009 Valuations, and 2010 Valuations, specifically consented to the inclusion of those valuations or a summary at any time that Sino or its subsidiaries filed any documents on SEDAR or issued any documents pursuant to which any securities of Sino or any subsidiary were offered for sale.

253. The Primary Market Defendants have violated their duties to those Class Members who purchased Sino's Securities in the distributions to which a Prospectus or an Offering Memorandum related.

254. The reasonable standard of care expected in the circumstances required the Primary Market Defendants to prevent the distributions to which the Prospectuses or the Offering Memoranda related from occurring prior to the correction of the Representation and the other misrepresentations alleged above to have been contained in the Prospectuses or the Offering Memoranda, or in the documents incorporated therein by reference. Those Defendants failed to meet the standard of care required by causing the Offerings to occur before the correction of such misrepresentations.

255. In addition, by failing to attend and participate in Sino board and board committee meetings to a reasonable degree, Murray and Poon effectively abdicated their duties to the Class Members and as directors of Sino.

256. Sino, E&Y, BDO and the Individual Defendants further breached their duty of care as they failed to maintain or to ensure that Sino maintained appropriate internal controls to ensure that Sino's disclosure documents adequately and fairly presented the business and affairs of Sino on a timely basis.

257. Had the Primary Market Defendants exercised reasonable care and diligence in connection with the distributions to which the Prospectuses related, then securities regulators likely would not have issued a receipt for any of the Prospectuses, and those distributions would not have occurred, or would have occurred at prices that reflected the true value of Sino's shares.

258. Had the Primary Market Defendants exercised reasonable care and diligence in connection with the distributions to which the Offering Memoranda related, then those distributions would not have occurred, or would have occurred at prices that reflected the true value of Sino's notes.

259. The Primary Market Defendants' negligence in relation to the Prospectuses and the Offering Memoranda resulted in damage to Labourers, Grant and Wong, and to the other Class Members who purchased Sino's Securities in the related distributions. Had those Defendants satisfied their duty of care to such Class Members, then those Class Members would not have purchased the Securities that they acquired under the Prospectuses or the Offering Memoranda, or they would have purchased them at a much lower price that reflected their true value.

(v) *Unjust Enrichment of Chan, Martin, Poon, Horsley, Mak and Murray*

260. As a result of the Representation and the other misrepresentations particularized above, Sino's shares traded, and were sold by Chan, Martin, Poon, Horsley, Mak and Murray, at artificially inflated prices during the Class Period.

261. Chan, Martin, Poon, Horsley, Mak and Murray were enriched by their wrongful acts and omissions during the Class Period, and the Class Members who purchased Sino shares from such Defendants suffered a corresponding deprivation.

262. There was no juristic reason for the resulting enrichment of Chan, Martin, Poon, Horsley, Mak and Murray.

263. The Class Members who purchased Sino shares from Chan, Martin, Poon, Horsley, Mak and Murray during the Class Period are entitled to the difference between the price they paid to such Defendants for such shares, and the price that they would have paid had the Defendants not made the Representation and the other misrepresentations particularized above, and had not committed the wrongful acts and omissions particularized above.

(vi) *Unjust Enrichment of Sino*

264. Throughout the Class Period, Sino made the Offerings. Such Offerings were made via various documents, particularized above, that contained the Representation and the misrepresentations particularized above.

265. The Securities sold by Sino via the Offerings were sold at artificially inflated prices as a result of the Representation and the others misrepresentations particularized above.

266. Sino was enriched by, and those Class Members who purchased the Securities via the Offerings were deprived of, an amount equivalent to the difference between the amount for which the Securities offered were actually sold, and the amount for which such securities would have been sold had the Offerings not included the Representation and the misrepresentations particularized above.

267. The Offerings violated Sino's disclosure obligations under the Securities Legislation and the various instruments promulgated by the securities regulators of the Provinces in which such Offerings were made. There was no juristic reason for the enrichment of Sino.

(vi) *Unjust Enrichment of the Underwriters*

268. Throughout the Class Period, Sino made the Offerings. Such Offerings were made via the Prospectuses and the Offering Memoranda, which contained the Representation and the other misrepresentations particularized above. Each of the Underwriters underwrote one or more of the Offerings.

269. The Securities sold by Sino via the Offerings were sold at artificially inflated prices as a result of the Representation and the other misrepresentations particularized above. The Underwriters earned fees from the Class, whether directly or indirectly, for work that they never

performed, or that they performed with gross negligence, in connection with the Offerings, or some of them.

270. The Underwriters were enriched by, and those Class Members who purchased securities via the Offerings were deprived of, an amount equivalent to the fees the Underwriters earned in connection with the Offerings.

271. The Offerings violated Sino's disclosure obligations under the Securities Legislation and the various instruments promulgated by the securities regulators of the Provinces in which such Offerings were made. There was no juristic reason for the enrichment of the Underwriters.

272. In addition, some or all of the Underwriters also acted as brokers in secondary market transactions relating to Sino securities, and earned trading commissions from the Class Members in those secondary market transactions in Sino's Securities. Those Underwriters were enriched by, and those Class Members who purchased Sino securities through those Underwriters in their capacity as brokers were deprived of, an amount equivalent to the commissions the Underwriters earned on such secondary market trades.

273. Had those Underwriters who also acted as brokers in secondary market transactions exercised reasonable diligence in connection with the Offerings in which they acted as Underwriters, then Sino's securities likely would not have traded at all in the secondary market, and the Underwriters would not have been paid the aforesaid trading commissions by the Class Members. There was no juristic reason for that enrichment of those Underwriters through their receipt of trading commissions from the Class Members.

(vii) Oppression

274. The Plaintiffs and the other Class Members had a reasonable and legitimate expectation that Sino and the Individual Defendants would use their powers to direct the company for Sino's

Trustees of the Labourers' Pension Fund of Central and Eastern Canada,
et al. Plaintiffs and Sino-Forest Corporation,
et al. Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto
Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM
(NOTICE OF ACTION ISSUED JULY 20, 2011)

Siskinds LLP
Barristers & Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

A. Dimitri Lascaris (LSUC#: 50074A)
Tel: 519.660.7844
Fax: 519.660.7845
Charles M. Wright (LSUC#: 36599Q)
Tel: 519.660.7753
Fax: 519.660.7754
Michael G. Robb (LSUC#: 45787G)
Tel: 519.660.7872
Fax: 519.660.7873

Koskie Minsky LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

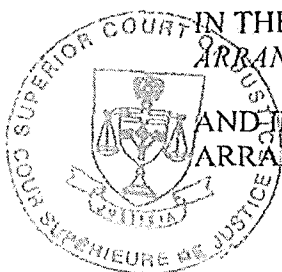
Kirk M. Baert (LSUC#: 30942O)
Tel: 416.595.2117
Fax: 416.204.2889
Jonathan Peak (LSUC#: 45773F)
Tel: 416-595.2149
Fax: 416.204.2903
Lawyers for the Plaintiffs

TAB 6

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	TUESDAY, THE 8 th
)	
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.

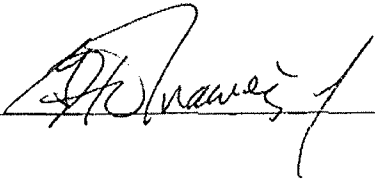
3. **THIS COURT ORDERS** that the Applicant is authorized to enter into agreements among the plaintiffs and defendants in the Ontario Class Action and in the action styled as Guining Liu v. Sino-Forest Corporation et al., bearing (Quebec) Court File No. 200-06-000132-111 (the “**Quebec Class Action**”), 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 A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



MAY 11 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 7



**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) through (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 or 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 or 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 or 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 or 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.

without
AG

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 by (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

quantification, (17) 461

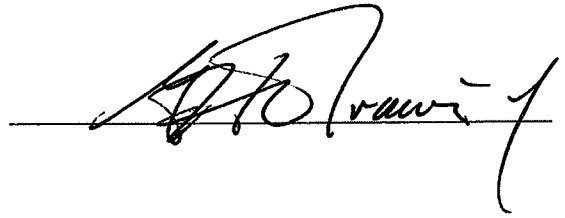
Claim and, if applicable, a single D&O Proof in respect of each of the National Class and the Quebec Class in these proceedings, and not for any other purpose. Without limiting the generality of the foregoing, the filing of any Proof of Claim or D&O Proof of Claim by the Ontario Plaintiffs or the Quebec 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.

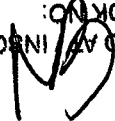
57. THIS COURT ORDERS that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers or other persons under any existing Director and Officers or other insurance policy or prevent or bar any Person from seeking recourse against or payment from the Applicant's insurance 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.



MAY 14 2012

ENTERED AT / INSCRIT A TORONTO
 ON / BOOK NO.
 LE / DANS LE REGISTRE NO.:



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

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

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DATED this _____ day of _____, 2012.

Name of Claimant: _____

Witness

Per: _____
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://cfcCanada.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 _____ Name of Contact _____
Address _____ Title _____

Phone # _____

Fax # _____
City _____ Prov / State _____ e-mail _____
Postal/Zip code _____

2. Assignee, if claim has been assigned

Full Legal Name of Assignee _____ Name of Contact _____
Address _____ Phone # _____

Fax # _____
City _____ Prov / State _____ e-mail _____
Postal/Zip code _____

3a. Amount of Claim

The Applicant 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
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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 _____

Signature _____

this ____ day of _____ 2012

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

-2-
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

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 8

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY, THE 17th DAY
JUSTICE PERELL) OF MAY, 2012

BETWEEN:

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

Plaintiffs

- and -

**SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly
known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON MARTIN,
KAI KIT POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES P. BOWLAND,
JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, GARRY J.
WEST, 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*

ORDER

THIS MOTION, made by the plaintiffs for an order i) setting a date for a hearing to consider approval of the settlement agreement between the plaintiffs and Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)") dated March 20, 2012 (the "Settlement

Approval Hearing”); ii) approving the form of notice to class members of the Settlement Approval Hearing (“Notice”); and iii) approving the plan of distribution of the Notice (“Notice Plan”) was heard on May 17, 2012, in Toronto, Ontario.

WHEREAS the plaintiffs and the defendant Pöyry (Beijing) have entered a settlement agreement in respect of claims against Pöyry (Beijing),

AND ON BEING ADVISED that the defendant Sino-Forest Corporation (“Sino-Forest”) has delivered to counsel for the plaintiffs a list of holders of Sino-Forest’s securities as of June 2, 2011 (the “June 2, 2011 Shareholder List”);

AND ON READING the materials filed, including the settlement agreement between the plaintiffs and Pöyry (Beijing) and the consent of Pöyry (Beijing), and on hearing submissions of counsel for the plaintiffs and counsel for Pöyry (Beijing),

1. **THIS COURT ORDERS** that the plaintiffs are granted leave to bring this motion.

2. **THIS COURT ORDERS** that the Settlement Approval Hearing shall be heard on Sept 21, 2012, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

3. **THIS COURT ORDERS** that the Notice substantially in the form attached as **Schedule “A”** be and hereby is approved and shall be published, subject to the right of the plaintiffs and Pöyry (Beijing) to make minor non-material amendments to such forms, by mutual agreement, as may be necessary or desirable.

4. **THIS COURT ORDERS** that notice shall be provided as follows:

SCHEDULE "A"

SINO-FOREST CLASS ACTION

TO CURRENT AND FORMER SINO SHAREHOLDERS AND NOTEHOLDERS

Notice of Tentative Settlement with Pöyry (Beijing) Consulting Company Limited

This notice is for any person, including non-Canadians, who acquired Sino-Forest Corporation ("Sino-Forest") securities in Canada or in a Canadian market between March 19, 2007 and June 2, 2011.

Background of Sino-Forest Class Action

In June and July of 2011, class actions were commenced in the Ontario Superior Court of Justice (the "Ontario Proceeding") and the Quebec Superior Court (the "Quebec Proceeding") against Sino-Forest, its senior officers and directors, its auditors, its underwriters and a consulting company, Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"). It is alleged that the public filings of Sino-Forest contained false and misleading statements about Sino-Forest's business and affairs.

Who Is Included In This Class Action

The proposed classes encompass the following individuals and entities:

All persons and entities, wherever they may reside, who acquired Sino-Forest Corporation common shares, notes or other securities, as defined in the Ontario *Securities Act*, during the period from and including March 19, 2007 to and including June 2, 2011:

- (a) by distribution in Canada or on the Toronto Stock Exchange or other secondary market in Canada, which includes securities acquired over-the-counter or
- (b) who are resident of Canada or were resident of Canada at the time of acquisition and who acquired Sino-Forest Corporation's securities outside of Canada,

excluding 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 a member of the immediate family of an individual defendant.

Who Acts For The Proposed Class

Koskie Minsky LLP, Siskinds LLP, and Siskinds Desmeules, sncrl ("Class Counsel") jointly represent the proposed classes in this case. If you want to be represented by another lawyer, you may hire one to appear in court for you at your own expense.

You will not have to pay any fees and expenses to Class Counsel. However, if this action succeeds or there is a monetary settlement, Class Counsel may seek to have their fees and expenses paid from any money obtained for the class or paid separately by the defendants.

Tentative Settlement with Pöyry (Beijing) Consulting Company Limited

There is a tentative settlement with one of the defendants, Pöyry (Beijing). The tentative settlement only settles the claims against Pöyry (Beijing) in both the Ontario and Quebec proceedings. Pöyry (Beijing) does not admit to any wrongdoing or liability. The settlement does not involve the resolution of any claims against Sino-Forest Corporation or any of the other defendants.

The Pöyry (Beijing) settlement provides that Pöyry (Beijing) will initially provide cooperation to the Plaintiffs in the form of information and, if the Pöyry (Beijing) settlement is approved by the Ontario and Quebec Courts, documents and other evidence, which the Plaintiffs believe will assist them in the continued litigation. Pöyry (Beijing) will contribute to the cost of providing notice, but will not otherwise provide monetary compensation to the Plaintiffs. In return for this assistance, the action will be dismissed against Pöyry (Beijing) and there will be an order barring claims against it ~~and all Releasees as defined in the settlement agreement.~~ ^{persons or entities related to Pöyry (Beijing) as described in the settlement agreement that are not named as parties in the Ontario Proceedings} ^{of Quebec} VPMP

Stay of Proceedings Against Sino-Forest and Partial Lifting of the Stay

On March 30, 2012, Sino-Forest obtained creditor protection under the Companies' Creditors Arrangement Act ("CCAA"). The initial order provided for an interim stay of proceedings against Sino-Forest. This and other materials can be found at the CCAA Monitor's website at <http://cfcanada.fticonsulting.com/sfc/>. The parties to this action have agreed to, and the Court has ordered, a partial lifting of the stay of proceedings for, among other things, the purpose of allowing the Court to consider the fairness of the settlement between the Plaintiffs and Pöyry (Beijing).

VPMP Hearings to Approve Settlement on September 21, 2012 in Toronto and on September 21, 2012 in Quebec City, Canada

✓ On September 21, 2012 at 10:00 a.m., there will be a settlement approval hearing before the Ontario Superior Court of Justice. The courthouse is located at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, Canada.

VPMP On September 21, 2012 at 10:00 a.m., there will be a settlement approval hearing before the Quebec Superior Court. The courthouse is located at 300 Boulevard Jean-Lesage, Quebec City, Quebec, Canada.

On these dates, the courts will decide whether to approve the Pöyry (Beijing) settlement. Also on these dates, the Plaintiffs will seek orders certifying or authorizing the class proceeding for settlement purposes only as against Pöyry (Beijing).

Former or current security holders may attend the hearings and ask to make submissions regarding the proposed settlement. Any person who wishes to object to the Pöyry (Beijing) settlement must provide written notice to Class Counsel at the addresses below by August, 2 2012. PMP

Further Information

If you would like additional information or to object to the Pöyry (Beijing) settlement, please contact Koskie Minsky LLP, Siskinds LLP, or Siskinds Desmeules LLP at the addresses below:

Koskie Minsky LLP
20 Queen St. West, Suite 900, Box 52, Toronto, ON, M5H 3R3
Re: Sino-Forest Class Action
Tel: 1.866.474.1739
Email: sinoforestclassaction@kmlaw.ca

Siskinds LLP
680 Waterloo Street, P.O. Box 2520 London, ON N6A 3V8
Re: Sino-Forest Class Action
Tel: 1.800.461.6166 x.2380
Email: nicole.young@siskinds.com

Siskinds Desmeules, sncrl
43 Rue Buade, Bureau 320, Quebec City, Quebec, G1R 4A2
Re: Sino-Forest Class Action
Tel: (418) 694-2009
Email: simon.hebert@siskindsdesmeules.com

A copy of the Pöyry (Beijing) settlement agreement and other information about this class action are available on Koskie Minsky LLP's website at www.kmlaw.ca/sinoforestclassaction and Siskinds LLP's website at www.classaction.ca.

PLEASE DO NOT CONTACT THE COURT OR THE REGISTRAR OF THE COURT ABOUT THIS CLASS ACTION. THEY ARE NOT ABLE TO ANSWER YOUR QUESTIONS.

The Trustees of the Labourer's Pension Fund
of Central and Eastern Canada, et al.

Sino-Forest corporation, et al.

and

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

Plaintiffs

Defendants

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceedings Under the *Class Proceedings Act, 1992*

Proceeding commenced at Toronto

ORDER

SISKINDS LLP

680 Waterloo Street, P.O. Box 2520
London ON N6A 3V8

Charles M. Wright (LSUC#: 36599Q)

Tel: (519) 660-7753

Fax: (519) 660-7754

A. Dimitri Lascaris (LSUC#: 50074A)

Tel: (519) 660-7844

Fax: (519) 660-7845

KOSKIE MINSKY LLP

20 Queen Street West, Suite 900, Box 52
Toronto ON M5H 3R3

Kirk M. Baert (LSUC#: 30942O)

Tel: (416) 595-2117

Fax: (416) 204-2889

Jonathan Bida (LSUC #: 54211D)

Tel: (416) 595-2072

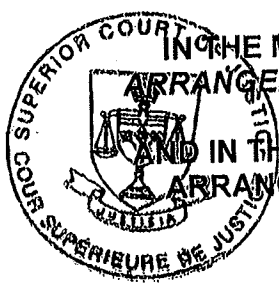
Fax: (416) 204-2907

Lawyers for the Plaintiffs

TAB 9

**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 facts 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.

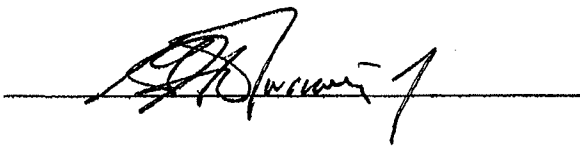
- 4. **THIS COURT ORDERS** that nothing in paragraph 3 determines whether this Order extends to the aspect of any Related Indemnity Claims that corresponds to defence costs in connection with the defence of any Shareholder Claims.

- 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.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG 03 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. *Gulning 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 Leopard 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

494

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

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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.

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[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".

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[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 Leopard 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,

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[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.

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[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.

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[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.

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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

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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,

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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.

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[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.

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

TAB 10

2. **THIS COURT ORDERS** the Applicant to make the documents listed in Schedule "A" hereto (the "Documents") available to the Moving Party and the other Mediation Parties (as defined in the order of this court dated July 25, 2012 (the "Mediation Order")), subject to: (i) the provisions of the Mediation Order applicable to information made available through the electronic data room referenced in the Mediation Order (the "Data Room"), including without limitation the requirement for confidentiality agreements; and (ii) any claims of privilege; and provided, for greater certainty, that the Applicant need not produce any audit-related documents created after June 2, 2011.

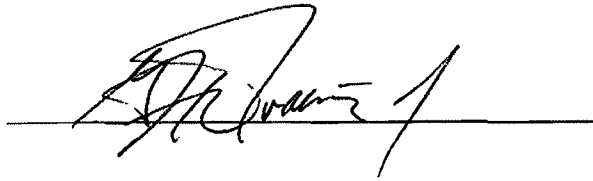
3. **THIS COURT ORDERS** that the Documents shall be added to the Data Room by the Applicant as and when they become available, but the Applicant shall make best efforts to add the Documents to the Data Room by August 16, 2012, and that, in any event, the Applicant shall add the Documents to the Data Room by no later than August 23, 2012.

4. **THIS COURT ORDERS** that, promptly following the addition of any Documents to the Data Room, the Applicant shall notify or shall cause to be notified, by email, those persons who have executed the Confidentiality Agreement pursuant to this Court's Mediation Order that such Documents have been added to the Data Room, but in no event shall the Applicant be required to provide such notification more than one time per day.


5. **THIS COURT ORDERS** that, to the extent that the Applicant withholds production of any Documents on the basis of a claim of privilege, the Applicant shall produce an itemized list describing each of the documents in the form of or substantially similar to a Schedule "B" of an affidavit of documents, with sufficient specificity to establish the Applicant's claim for privilege, including, without limitation, identifying information for each document, the nature of the privilege being asserted in respect of the document, and, if litigation privilege is being asserted, reasonable identifying

information regarding the litigation that gives rise to the privilege (the "Privilege Log"). The Applicant shall add the Privilege Log to the Data Room by August 27, 2012, unless the Court orders otherwise.

- 6. **THIS COURT ORDERS** that the Documents specified in clauses 1, 2(s), 3 and 4 of Schedule "A" hereto shall be in the English language.



REGISTERED AT / ENREGISTRÉ À TORONTO
 DE / BOOK NO.
 LE / DANS LE REGISTRE NO:
 JUL 30 2012

PER/PAR: 

Schedule "A"

1. the unconsolidated financial statements of Sino-Forest Corporation and its subsidiaries prepared prior to June 2, 2011;
2. the following documents relating to Sino-Forest audits, for each of the fiscal years 2006 through 2010, inclusive, for each audited entity:
 - a) Information request list for each year's audit, detailing the documents to be provided by the company to the auditor;
 - b) The Year End Communication or Report of the Auditor to the Audit Committee from BDO or E&Y, including:
 - i) Audit scope and findings report;
 - ii) Significant matters discussed with management;
 - iii) Management's analysis and response;
 - iv) Significant judgments and estimates;
 - v) Audit risks encountered/identified and audit response; and
 - vi) Summary of corrected and uncorrected financial statement misstatements;
 - c) Communications between the auditors and the company regarding any disagreements with management;
 - d) The unadjusted (pre-audit) trial balance;
 - e) Proposed Adjustments presented by the auditor following each year's audit (listing adjusting journal entries, analysis and explanations);
 - f) List of related parties provided to the auditor each year;
 - g) Correspondence with the auditor concerning related parties and related party transactions;
 - h) Accounting policy manuals or documented accounting policies of the company for each year;

- i) Process and procedure manuals of the company for each year, particularly pertaining to the sales cycle and purchase/acquisition cycle;
- j) Ledgers and subledgers for the following accounts:
 - i) Cash;
 - ii) Sales;
 - iii) Timber Inventory; and
 - iv) Cost of Goods Sold;
- k) Sale transaction documents provided to (requested by) the auditors in respect of timber transactions:
 - i) Sales order (or purchase order from customer) or Sales contract/agreement;
 - ii) Invoice; and
 - iii) Proof of collection;
- l) Purchase transaction documents provided to (requested by) the auditors in respect of timber transactions:
 - i) Purchase order (or contract/agreement);
 - ii) Invoice; and
 - iii) Proof of payment;
- m) Transaction documents provided to auditor in respect of Sino's "set-off" agreements on timber transactions;
- n) Correspondence with auditors regarding confirmation of transactions with authorized intermediaries and suppliers (or authorization provided to Auditors to confirm directly with the AIs and Suppliers);
- o) Documentation concerning the auditors' procedures to independently examine timber assets, including on-site physical inspection, inventory counts, examination of transaction documentation, etc.;

- p) Internal worksheets, analyses and calculations supporting the "related party transactions" disclosure in each year's financial statements (e.g., see Note 23 of the 2009 financial statements);
 - q) Any additional information provided to/requested by the auditor regarding related party transactions;
 - r) Drafts and correspondence regarding the preparation of the Cash Flow Statement;
 - s) A statement of the total fees paid to the Applicant's auditors in respect of each of the 2006-2010 fiscal years; in addition, the Applicant shall make best efforts to break down such fees by audit-related and non-audit-related work (if any), and if non-audit related work was performed by the Applicant's auditors in any such year, a reasonably detailed description of the non-audit-related work performed by the auditors in such year;
 - t) Minutes of all meetings in which the auditors and members of management participated; and
 - u) BDO and E&Y presentations to the board of directors and management.
3. a summary of the coverage positions of the insurers of the Applicant and its directors and officers, and an approximation of the remaining insurance coverage; and
4. the claims register as provided by the Monitor .

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at
TORONTO

ORDER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
250 University Avenue, Suite 501
Toronto, ON M5H 3E5
Ken Rosenberg / Massimo Starnino
Tel: 416-646-4300 Fax: 416-646-4301

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3
Kirk Baert / Jonathan Bida
Tel: 416-977-8353 Fax: 416-977-3316

SISKINDS LLP
680 Waterloo Street
London, ON N6A 3V8
A. Dimitri Lascaris / Charles M. Wright
Tel: 519-672-2121 Fax: 519-672-6065

Lawyers for the Ad Hoc Committee of Purchasers of
the Applicant's Securities, including the
Representative Plaintiffs in the Ontario Class Action

best interests and, in turn, in the interests of its security holders. More specifically, the Plaintiffs and the other Class Members had a reasonable expectation that:

- (a) Sino and the Individual Defendants would comply with GAAP, and/or cause Sino to comply with GAAP;
- (b) Sino and the Individual Defendants would take reasonable steps to ensure that the Class Members were made aware on a timely basis of material developments in Sino’s business and affairs;
- (c) Sino and the Individual Defendants would implement adequate corporate governance procedures and internal controls to ensure that Sino disclosed material facts and material changes in the company’s business and affairs on a timely basis;
- (d) Sino and the Individual Defendants would not make the misrepresentations particularized above;
- (e) Sino stock options would not be backdated or otherwise mispriced; and
- (f) the Individual Defendants would adhere to the Code.

275. Such reasonable expectations were not met as:

- (a) Sino did not comply with GAAP;
- (b) the Class Members were not made aware on a timely basis of material developments in Sino’s business and affairs;
- (c) Sino’s corporate governance procedures and internal controls were inadequate;
- (d) the misrepresentations particularized above were made;
- (e) stock options were backdated and/or otherwise mispriced; and
- (f) the Individual Defendants did not adhere to the Code.

276. Sino's and the Individual Defendants' conduct was oppressive and unfairly prejudicial to the Plaintiffs and the other Class Members and unfairly disregarded their interests. These defendants were charged with the operation of Sino for the benefit of all of its shareholders. The value of the shareholders' investments was based on, among other things:

- (a) the profitability of Sino;
- (b) the integrity of Sino's management and its ability to run the company in the interests of all shareholders;
- (c) Sino's compliance with its disclosure obligations;
- (d) Sino's ongoing representation that its corporate governance procedures met with reasonable standards, and that the business of the company was subjected to reasonable scrutiny; and
- (e) Sino's ongoing representation that its affairs and financial reporting were being conducted in accordance with GAAP.

277. This oppressive conduct impaired the ability of the Plaintiffs and other Class Members to make informed investment decisions about Sino's securities. But for that conduct, the Plaintiffs and the other Class Members would not have suffered the damages alleged herein.

(viii) Conspiracy

278. Sino, Chan, Poon and Horsley conspired with each other and with persons unknown (collectively, the "**Conspirators**") to inflate the price of Sino's securities. During the Class Period, the Conspirators unlawfully, maliciously and lacking bona fides, agreed together to, among other things, make the Representation and other misrepresentations particularized above, and to profit from such misrepresentations by, among other things, issuing stock options in respect of which the strike price was impermissibly low.

279. The Conspirators' predominant purposes in so conspiring were to:

- (a) inflate the price of Sino's securities, or alternatively, maintain an artificially high trading price for Sino's securities;
- (b) artificially increase the value of the securities they held; and
- (c) inflate the portion of their compensation that was dependent in whole or in part upon the performance of Sino and its securities.

280. In furtherance of the conspiracy, the following are some, but not all, of the acts carried out or caused to be carried out by the Conspirators:

- (a) they agreed to, and did, make the Representation, which they knew was false;
- (b) they agreed to, and did, make the other misrepresentations particularized above, which they knew were false;
- (c) they caused Sino to issue the Impugned Documents which they knew to be materially misleading;
- (d) as alleged more particularly below, they caused to be issued stock options in respect of which the strike price was impermissibly low; and
- (e) they authorized the sale of securities pursuant to Prospectuses and Offering Memoranda that they knew to be materially false and misleading.

281. Stock options are a form of compensation used by companies to incentivize the performance of directors, officers and employees. Options are granted on a certain date (the 'grant date') at a certain price (the 'exercise' or 'strike' price). At some point in the future, typically following a vesting period, an options-holder may, by paying the strike price, exercise the option and convert the option into a share in the company. The option-holder will make money as long as the option's strike price is lower than the market price of the security at the

moment that the option is exercised. This enhances the incentive of the option recipient to work to raise the stock price of the company.

282. There are three types of option grants:

- (a) 'in-the-money' grants are options granted where the strike price is lower than the market price of the security on the date of the grant; such options are not permissible under the TSX Rules and have been prohibited by the TSX Rules at all material times;
- (b) 'at-the-money' grants are options granted where the strike price is equal to the market price of the security on the date of the grant or the closing price the day prior to the grant; and
- (c) 'out-of-the-money' grants are options granted where the strike price is higher than the market price of the security on the date of the grant.

283. Both at-the-money and out-of-the-money options are permissible under the TSX Rules and have been at all material times.

284. The purpose of both at-the-money and out-of-the-money options is to create incentives for option recipients to work to raise the share price of the company. Such options have limited value at the time of the grant, because they entitle the recipient to acquire the company's shares at or above the price at which the recipient could acquire the company's shares in the open market. Options that are in-the-money, however, have substantial value at the time of the grant irrespective of whether the company's stock price rises subsequent to the grant date.

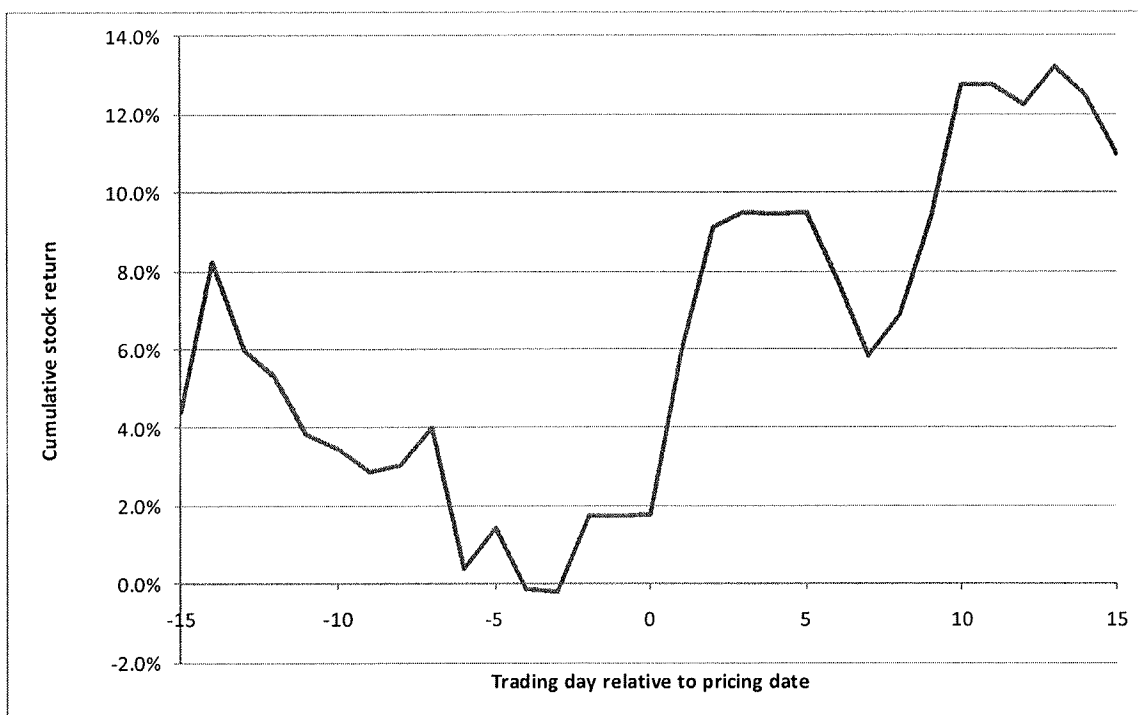
285. At all material times, the Sino Option Plan (the "**Plan**") prohibited in-the-money options.

286. The Conspirators backdated and/or otherwise mispriced Sino stock options, or caused the backdating and/or mispricing of Sino stock options, in violation of, inter alia: (a) the *OSA* and the rules and regulations promulgated thereunder; (b) the Plan; (c) GAAP; (d) the Code; (e) the TSX

Rules; and (f) the Conspirators' statutory, common law and contractual fiduciary duties and duties of care to Sino and its shareholders, including the Class Members.

287. The Sino stock options that were backdated or otherwise mispriced included those issued on June 26, 1996 to Chan, January 21, 2005 to Horsley, September 14, 2005 to Horsley, June 4, 2007 to Horsley and Chan, August 21, 2007 to Sino insiders other than the Conspirators, November 23, 2007 to George Ho and other Sino insiders, and March 31, 2009 to Sino insiders other than the Conspirators.

288. The graph below shows the average stock price returns for fifteen trading days prior and subsequent to the dates as of which Sino priced its stock options to its insiders. As appears therefrom, on average the dates as of which Sino's stock options were priced were preceded by a substantial decline in Sino's stock price, and were followed by a dramatic increase in Sino's stock price. This pattern could not plausibly be the result of chance.



289. The conspiracy was unlawful because the Conspirators knowingly and intentionally committed the foregoing acts when they knew such conduct was in violation of, *inter alia*, the *OSA*, the Securities Legislation other than the *OSA*, the Code, the rules and requirements of the TSX (the “**TSX Rules**”) and the *CBCA*. The Conspirators intended to, and did, harm the Class by causing artificial inflation in the price of Sino’s securities.

290. The Conspirators directed the conspiracy toward the Plaintiffs and the other Class Members. The Conspirators knew in the circumstances that the conspiracy would, and did, cause loss to the Plaintiffs and the other Class Members. The Plaintiffs and the Class Members suffered damages when the falsity of the Representation and other misrepresentations were revealed on June 2, 2011.

XII. THE RELATIONSHIP BETWEEN SINO’S DISCLOSURES AND THE PRICE OF SINO’S SECURITIES

291. 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 of the effect of Sino’s disclosure documents upon the price of its Sino’s securities.

292. The Impugned Documents were filed, among other places, with SEDAR and the TSX, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.

293. Sino routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of Sino securities. Sino provided either copies of the above referenced documents or links thereto on its website.

294. Sino regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including press releases on newswire services in Canada, the United States and elsewhere. Each time Sino communicated that new material information about Sino financial results to the public the price of Sino securities was directly affected.

295. Sino was the subject of analysts' reports that incorporated certain of the material information contained in the Impugned Documents, with the effect that any recommendations to purchase Sino securities in such reports during the Class Period were based, in whole or in part, upon that information.

296. Sino's securities were and are traded, among other places, on the TSX, which is an efficient and automated market. The price at which Sino's securities traded promptly incorporated material information from Sino's disclosure documents about Sino's business and affairs, including the Representation, which was disseminated to the public through the documents referred to above and distributed by Sino, as well as by other means.

XIII. VICARIOUS LIABILITY

A. *Sino and the Individual Defendants*

297. Sino is vicariously liable for the acts and omissions of the Individual Defendants particularized in this Claim.

298. The acts or omissions particularized and alleged in this Claim to have been done by Sino were authorized, ordered and done by the Individual Defendants and other agents, employees and representatives of Sino, while engaged in the management, direction, control and transaction of the business and affairs of Sino. Such acts and omissions are, therefore, not only the acts and omissions of the Individual Defendants, but are also the acts and omissions of Sino.

299. At all material times, the Individual Defendants were officers and/or directors of Sino. As their acts and omissions are independently tortious, they are personally liable for same to the Plaintiffs and the other Class Members.

B. E&Y

300. E&Y is vicariously liable for the acts and omissions of each of its officers, directors, partners, agents and employees as set out above.

301. The acts or omissions particularized and alleged in this Claim to have been done by E&Y were authorized, ordered and done by its officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs of E&Y. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of E&Y.

C. BDO

302. BDO is vicariously liable for the acts and omissions of each of its officers, directors, partners, agents and employees as set out above.

303. The acts or omissions particularized and alleged in this Claim to have been done by BDO were authorized, ordered and done by its officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs of BDO. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of BDO.

D. Pöyry

304. Pöyry is vicariously liable for the acts and omissions of each of its officers, directors, partners, agents and employees as set out above.

305. The acts or omissions particularized and alleged in this Claim to have been done by Pöyry were authorized, ordered and done by its officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs of Pöyry. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of Pöyry.

E. *The Underwriters*

306. The Underwriters are vicariously liable for the acts and omissions of each of their respective officers, directors, partners, agents and employees as set out above.

307. The acts or omissions particularized and alleged in this Claim to have been done by the Underwriters were authorized, ordered and done by each of their respective officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs such Underwriters. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of the respective Underwriters.

XIV. REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

308. The Plaintiffs plead that this action has a real and substantial connection with Ontario because, among other thing:

- (a) Sino is a reporting issuer in Ontario;
- (b) Sino's shares trade on the TSX which is located in Toronto, Ontario;
- (c) Sino's registered office and principal business office is in Mississauga, Ontario;
- (d) the Sino disclosure documents referred to herein were disseminated in and from Ontario;
- (e) a substantial proportion of the Class Members reside in Ontario;

- (f) Sino carries on business in Ontario; and
- (g) a substantial portion of the damages sustained by the Class were sustained by persons and entities domiciled in Ontario.

XV. SERVICE OUTSIDE OF ONTARIO

309. The Plaintiffs may serve the Notice of Action and Statement of Claim outside of Ontario without leave in accordance with rule 17.02 of the Rules of Civil Procedure, because this claim is:

- (a) a claim in respect of personal property in Ontario (para 17.02(a));
- (b) a claim in respect of damage sustained in Ontario (para 17.02(h));
- (c) a claim authorized by statute to be made against a person outside of Ontario by a proceeding in Ontario (para 17.02(n)); and
- (d) a claim against a person outside of Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario (para 17.02(o)); and
- (e) a claim against a person ordinarily resident or carrying on business in Ontario (para 17.02(p)).

XVI. RELEVANT LEGISLATION, PLACE OF TRIAL, JURY TRIAL AND HEADINGS

310. The Plaintiffs plead and rely on the *CJA*, the *CPA*, the Securities Legislation and *CBCA*, all as amended.

311. The Plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

312. The Plaintiffs will serve a jury notice.

313. The headings contained in this Statement of Claim are for convenience only. This Statement of Claim is intended to be read as an integrated whole, and not as a series of unrelated components.

~~April 18, 2012~~

Janag 26/12

Siskinds LLP
Barristers & Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

A. Dimitri Lascaris (LSUC#: 50074A)
Tel: 519.660.7844
Fax: 519.660.7845
Charles M. Wright (LSUC#: 36599Q)
Tel: 519.660.7753
Fax: 519.660.7754
Michael G. Robb (LSUC#: 45787G)
Tel: 519.660.7872
Fax: 519.660.7873

Koskie Minsky LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3
Kirk M. Baert (LSUC#: 30942O)
Tel: 416.595.2117
Fax: 416.204.2889
Jonathan Ptak (LSUC#: 45773F)
Tel: 416-595.2149
Fax: 416.204.2903

Lawyers for the Plaintiffs

**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**

**MOTION RECORD
(Motion Returnable August 28, 2012)**

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Ken Rosenberg / Massimo Starnino
Tel: 416.646.4300 / Fax: 416.646.4301

Koskie Minsky LLP
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3

Kirk Baert / Jonathan Bida
Tel: 416.977.8353 / Fax: 416.977.3316

Siskinds LLP
680 Waterloo Street
London, ON N6A 3V8

A. Dimitri Lascaris / Charles M. Wright
Tel: 519.672.2121 / Fax: 519.672.6065

Lawyers for the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the Representative Plaintiffs in the Ontario Class Action and the Quebec Class Action against the Applicant