

***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**

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**COMPENDIUM OF EVIDENCE OF THE UNDERWRITERS**  
(responding to the motion for leave to appeal  
from the Sanction Order)

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Lawyers for the Underwriters

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Court File No. \_\_\_\_\_

## **Sino-Forest Corporation**

### **PRE-FILING REPORT OF THE PROPOSED MONITOR**

**March 30, 2012**

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

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

**PRE-FILING REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS PROPOSED MONITOR**

**INTRODUCTION**

1. FTI Consulting Canada Inc. (“**FTI Canada**” or the “**Proposed Monitor**”) has been informed that Sino-Forest Corporation (the “**Company**”) intends to make an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and to seek an initial order (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), granting, *inter alia*, a stay of proceedings against the Company until April 29, 2012, (the “**Stay Period**”) and appointing FTI Canada as monitor of the Company’s CCAA Proceedings (defined below). The proceedings commenced by the Company under the CCAA, if granted, will be referred to herein as the “**CCAA Proceedings**”.
2. FTI Canada is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA. FTI Canada has provided its consent to act as Monitor.

### **Engagement of FTI Consulting and Preparation of this Report**

3. FTI was originally retained through its Hong Kong office, FTI Consulting (Hong Kong) Limited (“**FTI HK**” and together with FTI Canada, “**FTI Consulting**”) in October 2011. The purpose of FTI HK’s retainer was primarily in connection with the work being done to determine whether the Q3 Results (defined below) could be issued. The scope of FTI HK’s retention was expanded in January 2012. The expanded role of FTI HK included assisting management in the review and preparation of detailed cash flow forecasts and analysis of outstanding receivables, including collection options. FTI Canada has been formally retained since March 12, 2012. FTI HK and FTI Canada have worked together in advising the Company and in the preparation of this report.
4. Since its engagement, FTI Consulting has worked with the Company and its advisors extensively. Among other things, FTI Consulting has:
  - (a) Attended in-person meetings involving Houlihan (defined below), senior management including the chief executive officer, chief financial officer and Allen Chan (Sino-Forest’s founder and chief executive officer up to August 2011) and others in order to gain information regarding Sino-Forest and its situation;
  - (b) Attended in-person and telephone meetings with other stakeholders including the Ad Hoc Noteholders (defined below), the Board (defined below) and others;
  - (c) Engaged legal counsel in Canada who has also participated in certain of these meetings;
  - (d) Had a local team review certain Sino-Forest documents and engage in discussions with Sino-Forest in both Hong Kong and the PRC (defined below);
  - (e) Met with Sino-Forest finance personnel located in Canada, Hong Kong

and the PRC;

- (f) Obtained financial and other information produced by Sino-Forest relating to its operations, its cash flow forecasts and current financial situation;
  - (g) Reviewed redacted versions of the IC Reports (defined below);
  - (h) Reviewed certain of the books and records of the Company;
  - (i) Reviewed the Note Indentures (defined below) and related guarantee and security documents; and
  - (j) Reviewed various other documents and materials relevant to the Company and its business.
5. As a result of these efforts, FTI Consulting has become familiar with the Company's current state of affairs including the basis on which it is now seeking CCAA protection, and approval of the Sale Process (defined below).
6. Although this Report has been prepared in anticipation of FTI Canada's appointment as monitor of the Company, it has been prepared with the same duty and care and with the same level of diligence as though FTI Canada had already been appointed to such role.
7. In preparing this report, the Proposed Monitor has relied upon unaudited financial information of the Company, the Company's books and records, certain financial information prepared by the Company, the IC Reports (defined below) and discussions with the Company's management. Other than as described in paragraph 4 above, the Proposed Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Proposed Monitor expresses no opinion or other form of assurance on the information contained in this Report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this Report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.



## Purpose of this Report

8. The purpose of this report is to:
- (a) Inform the Court on the following:
    - (i) an overview of the Company and its current situation;
    - (ii) an outline of the Proposed Monitor's understanding of circumstances that have led to the Company's current request for relief;
    - (iii) the proposed restructuring activities of the Company including the Support Agreement (defined below);
    - (iv) the Sale Process to be undertaken for the business and assets of the Sino-Forest Companies (defined below);
    - (v) the Company's March 29 Forecast (defined below); and
  - (b) Support the Company's application and recommend that the Court grant the proposed Initial Order and Sale Process Order including the following relief:
    - (i) a stay of proceedings to April 29, 2012;
    - (ii) approval of certain payments during the CCAA Proceedings;
    - (iii) approval of a charge securing the fees and expenses of the Monitor, its counsel and counsel to the Company, counsel to the Board (defined below), Houlihan, FTI HK, counsel to the Ad Hoc Noteholders (defined below) and the financial advisor to the Ad Hoc Noteholders in the aggregate amount of CAD\$15 million (the "**Administration Charge**");
    - (iv) approval of a charge securing an indemnity in favour of the

directors and officers of the Company in the aggregate amount of CAD\$3.2 million (the “**Directors’ Charge**”);

- (v) approval of the engagement of Houlihan Lokey Capital, Inc. (“**Houlihan**”), pursuant to an engagement letter dated as of December 22, 2011, (the “**Financial Advisor Agreement**”);
  - (vi) approval of the Sale Process (defined below); and
  - (vii) authorizing and directing the Company and the Proposed Monitor to engage in certain procedures to notify the Company’s noteholders regarding certain issues related to the Support Agreement (defined below).
9. Unless otherwise stated, all monetary amounts contained herein are expressed in US Dollars.
10. The terms “**Sino-Forest Companies**” and “**Sino-Forest**” refer to the global enterprise as a whole but do not include references to the Greenheart Group (defined below).
11. This report focuses on the Company’s current situation and immediate need for court protection. This report should be read in conjunction with the affidavit of W. Judson Martin, vice-chairman and chief executive officer of the Company, sworn March 30, 2012 (the “**Martin Affidavit**”) which provides an overview as to Sino-Forest’s history, business and operations and is therefore not repeated herein.

## **BACKGROUND**

### **Overview of Sino-Forest**

12. Sino-Forest conducts business as a forest plantation operator in the People’s Republic of China (“**PRC**”). Its principal businesses include ownership and management of forest plantation trees, the sale of standing timber and wood logs

and complementary manufacturing of downstream engineered-wood products.

13. The Company is a public holding company whose common shares are listed on the Toronto Stock Exchange (“TSX”). Prior to August 26, 2011 (the date of the Cease Trade Order, defined below), the Company had 246,095,926 common shares issued and outstanding and trading under the trading symbol “TRE” on the TSX.
14. On June 2, 2011, Muddy Waters, LLC (“MW”), which held a short position on the Company’s shares, issued a report (the “MW Report”) alleging, among other things, that Sino-Forest is a “ponzi-scheme” and a “near total fraud”. The MW Report was issued publicly and immediately caught the attention of the media on a world-wide basis.
15. Since the issuance of the MW Report, the Company has devoted extensive time and resources to investigate and address the allegations in the MW Report as well as responding to additional inquiries from, among others, the Ontario Securities Commission (the “OSC”), the Royal Canadian Mounted Police (“RCMP”) and the Hong Kong Securities and Futures Commission (“HKSF”).
16. To carry out this work, on June 2, 2011, the Company’s board of directors (the “Board”) appointed a three (3) person independent committee (the “IC”) to investigate the allegations contained in the MW Report. The IC retained three (3) law firms in Canada, Hong Kong and the PRC as well as financial advisors to assist in the IC investigation.
17. The IC ultimately issued three (3) reports on August 10, 2011, November 13, 2011 and January 31, 2012 (the “First Interim Report” the “Second Report” and the “Final Report” and collectively, the “IC Reports”). The IC was able to reach many conclusions addressing many of the allegations contained in the MW Report. However, the IC was unable to make certain conclusions, particularly as it related to certain of Sino-Forest’s relationships with third party intermediaries and suppliers. The inability of the IC (and others) to have conclusively resolved those

issues has had an ongoing impact on the Company, namely the ability of the Company to issue its Q3 Results and the 2011 Financial Statements (both defined below).

18. With the issuance of its Final Report, the IC concluded its active investigation. However, the Board established a Special Restructuring Committee of the Board comprised exclusively of directors independent of management of the Company for the purpose of supervising, analyzing and managing strategic options available to the Company.
19. Despite the work that was done by the IC, the IC's advisors, the Company (including senior management) and others in the last nine months, it is apparent to the Proposed Monitor that the MW Report, the subsequent litigation and regulatory investigations and other issues continue to have a significant negative impact on the Company and have threatened the long term viability of Sino-Forest's operations. For the reasons discussed below, the Proposed Monitor is of the view that the events and occurrences over the last nine months have led the Company and the business into a stalemate that cannot be resolved without a Court supervised solution.

#### **Current State of Sino-Forest**

20. The Proposed Monitor understands that the current state of the Sino-Forest Companies is effectively as follows:
  - (a) Business impact:
    - (i) The ability of Sino-Forest to access new offshore capital injections for expansion has dried up and PRC funding has been substantially curtailed given the uncertainty around the Company;
    - (ii) The Proposed Monitor understands that operations in the trading and standing timber business outside the PRC and the standing timber business in the WFOEs are effectively frozen, the trading

business has stopped importing (other than the existing Thai Redwood transaction which is ongoing) and manufacturing is operating at lower levels than normal;

- (iii) Many customers have ceased paying their receivables despite concentrated efforts by Sino-Forest to collect on outstanding balances, which, the Proposed Monitor understands includes SFC's counsel in the PRC sending legal demand letters to 12 BVI trading companies for accounts receivable totalling approximately \$126 million and 5 WFOE companies totalling approximately RMB 224.5 million;
- (iv) Sino-Forest has had to reserve millions of dollars to pay suppliers for outstanding debts, in order to avoid litigation or further hostile situations from its suppliers and landlords/farmers (which the Proposed Monitor understands has historically involved threats of violence and occupation of Sino-Forest offices in Hunan);
- (v) The Company has been unable to release its financial results for the nine-month period ended September 30, 2011 (the "**Q3 Results**") and for reasons discussed below, is unlikely to be in a position to release such statements in the near term, if ever;
- (vi) The Company has been unable to release its 2011 audited financial statements for the year ended December 31, 2011 ("**2011 Financial Statements**") and for reasons discussed below, is unlikely to be in a position to release such statements in the near term, if ever;

(b) Financial situation:

- (i) As of March 23, 2012, the Company has approximately \$70.5 million in cash;

- (ii) The ability to repatriate funds from the PRC into off shore (i.e. non-PRC) companies is limited by many factors including the historic “BVI” corporate structure, state administration of foreign exchange (“SAFE”) regulations and other currency control issues (which are discussed extensively in the Martin Affidavit);
  - (iii) The Company has limited prospects of being able to raise further capital or debt in the near future;
  - (iv) Sino-Forest has not been able to secure or renew certain existing onshore banking facilities, has been unable to obtain offshore letters of credit to facilitate Sino-Forest’s trading business, and all offshore banking facilities have been repaid and frozen, or cancelled;
  - (v) Sino-Forest’s operating subsidiaries have lost access to capital injections, local bank financing and intercompany funding for expansion opportunities due to the Company’s financial situation;
  - (vi) Due to the business constraints above, Sino-Forest’s operations are now operating on a significant burn as they are being pressured to continue to honour payables while collecting minimal receivables and failing to generate significant new sales;
- (c) Legal and Regulatory Proceedings:
- (i) Sino-Forest continues to divert significant resources to address the ongoing regulatory and criminal investigations by the OSC and the RCMP as well as inquiries from the HKSFC;
  - (ii) Numerous class actions have been commenced in Canada and the US and more are threatened;
  - (iii) The OSC has issued a Cease Trade Order in respect of the Company’s shares, which is ongoing;

- (d) Default under the Note Indentures:
  - (i) As a result of the Company's failure to issue its Q3 Results, the Company is in default (the "**Financial Reporting Covenant Default**") under its four (4) series of issued notes (the "**Notes**") and is unlikely to be in a position to cure such default in the near term, if ever;
  - (ii) On January 12, 2012, the Company announced that holders of a majority of its 2014 Senior Notes and 2017 Senior Notes (who had issued default notices under their respective note indentures) had agreed to waive (the "**Waiver Agreements**") the Financial Reporting Covenant Default on certain terms and conditions (discussed below) including a covenant to make certain interest payments;
  - (iii) The Waiver Agreements terminate on the earlier of April 30, 2012 and any earlier termination of the Waiver Agreements in accordance with their terms;
  - (iv) The failure to deliver the 2011 Financial Statements by March 31, 2011 will constitute a further default under the Note Indentures (subject to a 30 day cure period);
  
- (e) Failure to Produce Q3 Results and 2011 Audited Statements
  - (i) As set out in the IC's Second Report, subsequent to August 26, 2011, a number of documents came to the IC's attention that required further investigation and review;
  - (ii) On or before November 15, 2011, the deadline for the release of the Q3 Results, the Board's audit committee recommended and the Board agreed that the Company should defer the release of the Q3 Results until certain issues could be resolved to the satisfaction of

the Board and the Company's external auditor;

- (iii) The issues included (A) determining the nature and scope of the relationships between Sino-Forest and certain of its AIs (defined below) and suppliers, as discussed in the Second Report, and (B) the satisfactory explanation and resolution of issues raised by certain documents identified by the IC's advisors, the Company's counsel, the Company's auditors, and/or by OSC staff;
- (iv) Although the Company (and the IC) continued to work to resolve these issues, the allegations set out in the MW Report and raised by the OSC, the Company subsequently announced that there was no assurance that it would be able to release the Q3 Results, or, if able, as to when such release would occur;
- (v) Those same issues outlined above remain gating items to the Company's ability to release 2011 Audited Financial Statements;
- (f) Political Factors:
  - (i) Sino-Forest requires ongoing support from all levels of the PRC government to operate its business in a manner that will be profitable;
  - (ii) To date, the PRC government has been supportive, but has recently expressed concern regarding the ongoing distress of the business and has indicated that it expects the Company to propose a viable solution in the near future; and
  - (iii) Loss of support from the PRC government would likely be fatal to any chance of success in restructuring the Company in a way that maximizes value for the Company's stakeholders.

21. In summary, Sino-Forest's state of affairs is such that it cannot maintain a status quo for much longer.



## **CIRCUMSTANCES OF THE CCAA APPLICATION**

22. The Martin Affidavit provides a detailed outline of Sino-Forest's corporate structure, business, reported assets and financial information. The Martin Affidavit also provides a detailed chronology of the Company and its actions since the issuance of the MW Report in June 2011 including the formation of the IC, the issuance and conclusions set out in the IC Reports, the Class Actions, the OSC, RCMP and HKSFC investigations and the defaults under the Notes.
23. This Report does not propose to repeat those details. Instead, the Proposed Monitor has focused on the following areas, which it believes are relevant for understanding the basis on which it is recommending the granting of the Initial Order and the approval of the Sale Process at this time:
  - (a) Sino-Forest's historical method of doing business and certain of the legal issues that are embedded within that structure;
  - (b) the role of the PRC government and the forestry industry in the PRC; and
  - (c) Sino-Forest's current options.

### **The Company's history**

24. Sino-Forest operates through two different corporate models – the “BVI” model and the “WFOE” model. It is significant to understand the corporate models used by Sino-Forest in its operations because of the corresponding issues associated with repatriating value offshore from each of those various entities.

#### *BVI Forestry Holding Companies (“BVIs”)*

25. Until 2004, Sino-Forest used the BVI model exclusively to invest in timber rights in the PRC. The Proposed Monitor understands that the BVI model essentially involves the use of a British Virgin Island company to invest in timber rights in the PRC. Due to the restrictions on foreign companies under PRC law which do not permit foreign companies to conduct business in the PRC without business

licenses granted by competent government authorities, BVIs must carry on their sale activities through authorized intermediaries (“AIs”) onshore. Further, BVIs are not permitted to have bank accounts in the PRC. It is the AIs who enter into the direct contracts for the sale of standing timber with end customers. AIs are also responsible for remitting taxes arising from sales to the relevant PRC tax authorities. Once money is in the BVI system, it has never been repatriated off shore and any profit has always been re-invested in further plantation timber rights. The only exception to that are in the small instances where Sino-Forest has tested its on-shoring strategy (discussed in further detail below).

26. The BVI model was the model used by Sino-Forest when it started operations in 1994 due to the restrictions on foreign business operations in the PRC. Over the years, the BVI model was therefore used to purchase significant amounts of Sino-Forest’s reported timber holdings (approximately 60% of its reported timber holdings). From an investor/creditor perspective, the model is problematic for a number of reasons including:
  - (a) BVIs are restricted from carrying on business directly in the PRC – as such, many of the title verification issues that were contained in the MW Report and arose during the IC investigation were due to the fact that when BVIs purchase timber, they are only purchasing the timber rights and not any underlying land use rights (which interests are capable of being registered in most parts of the PRC);
  - (b) BVIs must sell through the AIs. This has resulted in a certain lack of transparency in a number of issues that were the focus of the MW Report and the IC investigation – including the relationships between the AIs and certain of the suppliers, an inability to see into the books and records of the AIs to verify booked sales, and the extent to which the AIs had, in fact, remitted applicable taxes to relevant tax authorities; and
  - (c) The Proposed Monitor understands that for various reasons, but primarily related to the SAFE regulations, there is no way for a BVI to efficiently

repatriate cash off shore without giving rise to significant negative tax consequences - as such, since the businesses' inception, all profit has simply been further re-invested in the BVI model in new trees.

*WFOEs*

27. In 2004, the Ministry of Commerce for the PRC began allowing wholly foreign owned enterprises (“WFOEs”) to conduct business in the trading of timber on shore in the PRC. Post 2004, almost all of Sino-Forest’s new capital invested in timber assets has been employed through the WFOE model. The Proposed Monitor understands that the WFOE model is preferable for several reasons including:

- (a) WFOEs can conduct business on shore in the PRC and as such, they do not need to use the AI model. They can (and do) transact directly with customers;
- (b) Financial information as to the WFOE holdings on Sino-Forest’s books and records is more readily verifiable and therefore more transparent in nature;
- (c) WFOEs can acquire land use rights through pre-paid long term leases. The ability of WFOEs to invest in land use rights is advantageous because (i) for the most part, it appears that these rights can be registered and are therefore more easily verifiable; (ii) the WFOE can finance its business against its land rights; and (iii) it is viewed favourably by the PRC because it is evidence of Sino-Forest’s long term intentions within the forestry industry in the PRC; and
- (d) WFOEs are preferable from a foreign investor perspective because there is an identifiable process for the repatriation of funds off-shore to the foreign investor parent.

28. As of December 31, 2010, approximately 40% of Sino-Forest’s reported timber

holdings were held through the WFOE structure.

### *On-shoring*

29. As part of its long term strategy, the Company has been considering options to transition its BVI assets into WFOE assets. This process is referred to as “on-shoring”. The Proposed Monitor understands there is no single standard protocol for on-shoring Sino-Forest’s assets and that Sino-Forest is looking into various alternative methods of migrating the ownership of the BVI assets. At its root, on-shoring requires the creation of a new WFOE that is capitalized to receive timber rights from the BVIs and at the same time, acquire the accompanying underlying land use rights. The Proposed Monitor understands that the precise methods for successfully on-shoring varies on a county to county basis and requires extensive negotiations with various stakeholders including potentially the land owners and tax authorities. It could also involve the cooperation of suppliers and AIs.
30. The Proposed Monitor understands there are no assurances that on-shoring will be successful on a large scale basis and that, even if the Company is successful in on-shoring certain of its assets, that does not necessarily mean it will be successful in other regions. However, the Company has indicated that it believes there are incentives for parties to cooperate with an on-shoring process as it generally involves the promotion of business in more rural areas, the ongoing employment of individuals in those regions and cash injections to the land owners on the pre-paid leases.

### **The Role of the PRC Government**

31. Based on the conversations that the Proposed Monitor has had with members of senior management of the Company and various of its advisors, the Proposed Monitor understands that the PRC government has and will continue to play a key role in any successful restructuring.
32. The forestry industry in the PRC is subject to The Forestry Law which provides for a limited system pursuant to which verification as to legal ownership of timber

or land may be obtained. The Monitor has also been advised that it is not clear that the Forestry Law has been fully implemented on a nation-wide basis such that, in some instances, no verification from regional forestry bureaus may be available.

33. The Company has advised that the PRC has taken numerous steps in the last years to promote the timber plantation industry including opportunities for foreign investment. It is also apparent that navigating timber operations within the PRC has obvious political and state related implications due to the role of the Chinese government in business operations in China generally, the geographic location of many of the plantations, the reliance upon provincial and other registries for asset verification, and the uncertainty surrounding certain taxation and other laws in the PRC that could have significant implications on Sino-Forest's business structure and/or ability to expand.
34. Further, it is clear that in many instances, there is an emphasis put on "business relationships" among parties that is paramount to any contractual or legal relationship that may have been entered into by the parties. These relationships are relied upon for the conduct of business in this industry in the PRC. In the course of its investigation, the IC reported that it was apparent that integral to Sino-Forest's business model was its relationships with business partners.
35. The Company has advised the Proposed Monitor that it believes that the PRC has been and will continue to be supportive of Sino-Forest as an ongoing business. Sino-Forest is the largest private forestry operator in the PRC and it has complied with and promoted PRC policy in terms of growth and efficiency in the natural resource sector over its 18 years of business. All of these factors have resulted in Sino-Forest having a positive and encouraging relationship with the PRC government. Consequently, the PRC government has, by and large, been facilitative of Sino-Forest's business. Ongoing support will be required if this restructuring process is to be successful. Maintaining relations with the PRC government both nationally and locally will also be crucial to Sino-Forest's on-shoring strategy.

36. Through extensive discussions that the Proposed Monitor has had with the Company and various advisors to the Company, it has become apparent that much of Sino-Forest's historical success has been due to the leadership of Allen Chan. Although Mr. Chan resigned as CEO and chairman after the issuance of the MW Report, Mr. Chan has remained involved in Sino-Forest and, in particular, plays a key role in maintaining and building on existing PRC relations. The Martin Affidavit also contains further detail as to the importance of Mr. Chan in any restructuring.
37. It is equally clear to the Proposed Monitor that the PRC government has the ability to be a significant impediment to solutions that it does not view as favourable or in furtherance of PRC policy. The Company and Houlihan have both expressed the view that if attempts were made to break up the company, that could be viewed as being contrary to the general direction of, and have a significant impact on, the PRC's natural resource growth policies and would likely be viewed negatively by the PRC government. Further, the PRC government is cognizant of the location of many of the Sino-Forest plantations and their proximity to state run facilities and has expressed concern to the Company as to how these issues will be addressed going forward if ownership is to change hands.

### **The Company's Options**

38. The Proposed Monitor is aware that the Company, in consultation with its various advisors, has considered many alternatives to solve both the Company's current problems as well as to provide longer term solutions to the issues inherent in the BVI structure. For various reasons, the options of maintaining the status quo or attempting to liquidate the assets (i.e. timber) are not feasible options notwithstanding the guarantees and pledges that may have given the noteholders certain rights to do so. Some of the issues that would prohibit status quo or liquidation are as follows:

- (a) Status quo – as set out above and in the Martin Affidavit, the MW Report

and subsequent events have left the Sino-Forest business paralyzed and unable to continue. Sources of outside funding for expansion have dried up, sales have been halted while the business continues to burn money necessary to its operations. Further, the Company has advised that based on meetings between members of senior management and the PRC, the PRC is not content to allow Sino-Forest's current situation to continue indefinitely and has insisted that a path forward for Sino-Forest be proposed;

(b) Liquidation – It is not clear to the Proposed Monitor that a liquidation could even be achieved in this circumstance. However, even if it could be, liquidating the timber assets within the PRC is unlikely to achieve any desired result. As set out above, given the historical structural issues inherent within the BVI structure, it is doubtful that any proceeds of a liquidation could be moved off shore successfully.

39. The Proposed Monitor is aware that the Company and its advisors have engaged in extensive conversations and negotiations with an ad hoc committee of noteholders (the “**Ad Hoc Noteholders**”) for the past several months as to the various options available to Sino-Forest as well as the noteholders.

40. The Proposed Monitor understands that these extensive arm's length negotiations involved email, telephonic and in-person meetings between the various parties and have included, at different times, the Company's senior management (including Mr. Martin, the Company's chief financial officer, Mr. David Horsley and Mr. Chan), Houlihan, the Company's legal advisors, certain of the Ad Hoc Noteholders themselves and their legal and financial advisors. During the course of these meetings, the parties have explored the options available to both the Company and the noteholders including the liquidation option.

## **THE SUPPORT AGREEMENT AND PROPOSED RESTRUCTURING**

41. Following extensive arm's length negotiations, the Company and the Ad Hoc

Noteholders have reached agreement on the terms of a support agreement (the “**Support Agreement**”). The Proposed Support Agreement has been executed by holders of the Notes holding approximately 40% of the Notes. The Support Agreement contemplates (and provides incentive for) additional noteholders becoming party to the Support Agreement by way of Joinder Agreement. As set out below, it is contemplated that the Proposed Monitor will post a copy of the Support Agreement on its website. The material terms of the Support Agreement are set out in the Martin Affidavit.

42. The Proposed Monitor has reviewed the terms of the Support Agreement. The Proposed Monitor believes that the terms of the Support Agreement are reasonable in the circumstances. In reaching that conclusion, the Proposed Monitor first considered the fact that Sino-Forest’s situation is not that of a typical debtor. The Company’s options in terms of realizing value on its assets are limited given not only the legal impediments, but also the nature and location of the physical assets. Further, other considerations included the following:
- (a) Neither maintaining the status quo nor liquidation are realistic options;
  - (b) The debt outstanding under the Indentures constitutes an overwhelming majority of the Company’s overall debt;
  - (c) The Support Agreement proposes a solution through the use of a CCAA plan that provides for, among other things:
    - (i) a structured solution pursuant to which the business operations will be liberated from the existing legal challenges facing the Company (namely the extensive litigation and contingent claims) and put into a new structure which will ultimately be able to work to fix the structural issues in Sino-Forest’s business;
    - (ii) participation rights for certain junior constituents whose claims rank behind the noteholders;



- (iii) a framework for the litigation and/or resolution of the claims faced by the Company;
- (d) As discussed below, there are significant challenges to finding another buyer of the business;
- (e) Notwithstanding those challenges, the Support Agreement contemplates a Sale Process (defined and discussed below) to determine whether a higher or better option is available; and
- (f) As discussed above, neither maintaining the status quo nor liquidation are desirable or possibly viable options.

## **THE PROPOSED SALE PROCESS**

### **Sale Process Terms**

- 43. As contemplated under the Support Agreement, the Company is also seeking approval of certain sale process procedures (the “**Sale Process**”) and related relief. If approved, the Company, in consultation with the Proposed Monitor and Houlihan, will immediately commence a marketing process for the Sino-Forest business.
- 44. The material terms of the Sale Process are set out in the Martin Affidavit. The Proposed Monitor has been consulted in the development of the proposed Sale Process terms and believes they are reasonable in the circumstances.
- 45. The Company, the Proposed Monitor, Houlihan, and advisors to the Ad Hoc Noteholders have had extensive discussions as to the appropriate time frame in which the business may be marketed. The Proposed Monitor believes that it is appropriate for the Company to seek approval of the Sale Process as part of its initial application based on the following factors:
  - (a) As set out above, the growth of the forestry business and the trading business has effectively come to a halt and are rapidly burning cash;

- (b) The Sino-Forest business is extremely complicated – for any buyer, there will be significant legal, tax, regulatory, political and cultural considerations that will need to be addressed;
  - (c) Given the extensive negative publicity that has surrounded the business, buyers will likely require extensive due diligence and that may include not just document review, but meetings in HK as well as the PRC, site visits and other time intensive exercises;
  - (d) Timber is a seasonal business with the majority of sales taking place in Q3 and Q4 of each year – if a transaction is not completed before the end of Q3 of this year, that will effectively result in a further year with few or no sales; and
  - (e) The Company needs to be able to demonstrate to the PRC government, in the near future, that it has a clear path forward, absent which it risks losing its support.
46. The proposed Sale Process is intended to be a market test of the terms of the proposed restructuring set out in the Support Agreement. However, given the size of the business and the issues surrounding the business, both Houlihan and the Company have indicated that there is likely to be a limited landscape of potential buyers. The Proposed Monitor agrees that this may be the case but nonetheless believes that it is important as part of the CCAA Proceedings that the Sale Process be commenced to determine what other interest may exist.
47. Given the urgency described above, the Proposed Monitor is aware that Houlihan has already commenced certain efforts in respect of the proposed Sale Process. Given the circumstances of this situation, the Proposed Monitor is of the view that such actions by Houlihan have been prudent.

#### **Retention of Houlihan**

48. In anticipation of a potential filing and Sale Process, the Company retained

Houlihan pursuant to the terms of the Financial Advisor Agreement. The terms of the Financial Advisor Agreement, including the proposed fee structure, are set out in the Martin Affidavit. The Proposed Monitor is aware that the Company considered at least three (3) other candidates, all of whom are well-known international investment banks, prior to retaining Houlihan.

49. The Proposed Monitor understands that the Board's decision to retain Houlihan was based on Houlihan's experience in debt restructurings including working with noteholders as well as its extensive presence in North American and Asian markets.
50. The Proposed Monitor has reviewed the terms of the Financial Advisor Agreement. The Proposed Monitor believes that, in the circumstances, it is reasonable for the Company to have retained Houlihan and negotiated the terms contained in the Financial Advisor Agreement. Accordingly, the Proposed Monitor recommends the approval of the Financial Advisor Agreement.

## **THE COMPANY'S CASH FLOW FORECAST**

### **Cash Flow Projections**

51. The Company, with the assistance of the Proposed Monitor, has prepared consolidated 13-week cash flow projections of its receipts and disbursements (the "**March 29 Forecast**"). The March 29 Forecast, together with the management's report on the cash-flow statement as required by section 10(2)(b) of the CCAA, is attached hereto as Appendix A. The March 29 Forecast shows a negative net cash flow of approximately \$19.3 million in the period March 31 to June 29, 2012, and is summarized below:

	\$000 CAD
Cash inflow	
Interest Income	\$ 412
<b>Total cash inflows</b>	<b>\$ 412</b>
Cash outflow	
Payroll and Benefits	\$ 181
Board & Committee Fees	\$ 253
Travel	\$ 315
Rent, Communication & Utilities	\$ 60
Taxes & Other	\$ 195
<b>Total cash outflows</b>	<b>\$ 1,004</b>
<b>Net Operating Cashflow</b>	<b>\$ (591)</b>
<b>Restructuring Costs</b>	
Professional Fees	\$ 18,730
<b>Total Restructuring Costs</b>	<b>\$ 18,730</b>
<b>Net Cash Flow</b>	<b>\$ (19,321)</b>
Opening Cash Balance	\$ 67,846
Net Cash Balance	\$ (19,321)
Ending Cash Balance	\$ 48,525

52. It is anticipated that the Company's projected liquidity requirements throughout the CCAA Proceedings will be met by existing cash available to the Company.

**Proposed Monitor's Report on the Reasonableness of the Cash Flow Projections**

53. Section 23(1)(b) of the CCAA states that the Proposed Monitor shall:

“review the company's cash-flow statement as to its reasonableness and file a report with the court on the Proposed Monitor's findings;”

54. Pursuant to section 23(1)(b) of the CCAA and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1 (“CAIRP SOP 09-1”), the Proposed Monitor hereby reports as follows:

- (a) The March 29 Forecast has been prepared by the management of the

Applicant for the purpose described in Note 1, using the Probable and Hypothetical Assumptions set out in Notes 2 to 6;

- (b) The Proposed Monitor's review consisted of inquiries, analytical procedures and discussion related to information supplied by certain of the management and employees of the Company. Since Hypothetical Assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the March 29 Forecast. The Proposed Monitor has also reviewed the support provided by management of the Company for the Probable Assumptions, and the preparation and presentation of the Cash-Flow Statement;
- (c) Based on its review, nothing has come to the attention of the Proposed Monitor that causes it to believe that, in all material respects:
  - (i) the Hypothetical Assumptions are not consistent with the purpose of the March 29 Forecast;
  - (ii) as at the date of this report, the Probable Assumptions developed by management are not suitably supported and consistent with the plans of the Company or do not provide a reasonable basis for the March 29 Forecast, given the Hypothetical Assumptions; or
  - (iii) the March 29 Forecast does not reflect the Probable and Hypothetical Assumptions;
- (d) Since the March 29 Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the Hypothetical Assumptions occur, and the variations may be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the March 29 Forecast will be achieved. The Proposed Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon by the

Proposed Monitor in preparing this report; and

- (e) The March 29 Forecast has been prepared solely for the purpose described in Note 1 on the face of the March 29 Forecast and readers are cautioned that it may not be appropriate for other purposes.

## **RELIEF SOUGHT**

### **The Stay of Proceedings**

- 55. For the reasons set out herein, the Company requires a stay of proceedings while it carries out its proposed restructuring activities. The Monitor believes that the initial 30-day request is fair and reasonable in the circumstances.

### **Payments During the CCAA Proceedings**

- 56. The Company intends to make certain ordinary course payments during the course of the CCAA Proceedings in accordance with and as set out in the March 29 Forecast. The Monitor believes this course of action is fair and reasonable in the circumstances.

### **Administration Charge**

- 57. The Company is seeking an Administration Charge in the amount of CAD\$15 million with priority over all encumbrances against the Company's assets other than the Company's assets which are subject to *Personal Property Security Act* registrations (the "**Encumbered Property**"). Based on personal property registry searches that were conducted by the Proposed Monitor's counsel as of March 28, 2012, other than the Indenture Trustees under the Notes who have security in respect of the pledged shares of the Company's subsidiaries there was only one registration that appeared on its face to be with respect to specific equipment.
- 58. The beneficiaries of the Administration Charge if granted would be the Proposed Monitor, the Proposed Monitor's counsel, counsel to the Board, FTI HK, counsel to the Company, Houlihan, counsel to the Ad Hoc Noteholders and the financial

advisor to the Ad Hoc Noteholders.

59. The Proposed Monitor has reviewed the underlying assumptions upon which the Company has based the quantum of the proposed Administration Charge, the complexities of the CCAA Proceedings and the services to be provided by the beneficiaries of the Administration Charge and believes that the limit of CAD\$15 million is reasonable in the circumstances.
60. The Proposed Monitor also believes that it is appropriate that the other proposed beneficiaries of the Administration Charge be afforded the benefit of a charge as they will be undertaking a necessary and integral role in the CCAA Proceedings.

#### **The Directors' Charge**

61. The Company is seeking the Directors' Charge in the amount of CAD\$3.2 million with priority over all encumbrances on the Company's assets other than the Administration Charge and the Encumbered Property. The Proposed Monitor understands that the Board has insisted on the protection of the Directors' Charge in order to remain on the Board during the course of the CCAA Proceedings. The Martin Affidavit also sets out a summary of the current insurance policies that are available to the Board as well as the exclusions and possibility of non-renewal at the end of the term.

#### **The Financial Advisor Agreement**

62. Houlihan's engagement is reasonable given the Company's proposed Sale Process. As set out above, Houlihan was considered along with other international investment banks and selected on merit-based criteria.

#### **Publication of Notices Support Agreement**

63. The proposed initial order contemplates that the Monitor will, among other things,
  - (a) Without delay, post a copy of the Support Agreement on its website at <http://cfcanada.fticonsulting.com/sfc>; and

- (b) Publish a notice in the Globe and Mail and the Wall Street Journal (in form and substance satisfactory to the Company, the Monitor and counsel to the Ad Hoc Noteholders) notifying noteholders of the Support Agreement and the deadline of 5:00pm (Toronto time) on the Consent Date (as defined in the Support Agreement) by which any noteholders (other than an Initial Consenting Noteholder) who wishes to become entitled to the Early Consent Consideration pursuant to the Support Agreement must execute and return a Joinder Agreement.

### **The Sale Process**

- 64. As set out above, the proposed Sale Process is contemplated by the Support Agreement and is intended to test the market to determine whether a higher or better offer than the transaction contemplated under the Support Agreement is available. Further, given the circumstances and complexities of the situation as set out above, the Proposed Monitor recommends approval of the Sale Process Order on the date of this application.

### **CONCLUSION**

- 65. The Proposed Monitor is of the view that the relief requested by the Company is necessary, reasonable and justified. The Proposed Monitor is also of the view that granting the relief requested will provide the Company the best opportunity to undertake the CCAA Proceedings, to preserve value and maximize recoveries for the Company's stakeholders. As set out above, absent a restructuring, the Monitor is of the view that the business has little chance of viability. Further, given the circumstances, liquidation would likely destroy any stakeholder value.
- 66. Accordingly, the Proposed Monitor respectfully recommends that the Company's request for the Initial Order and the Sale Process Order.



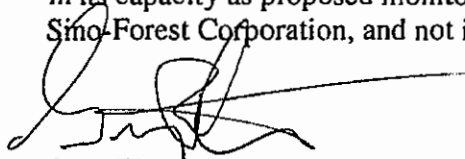
The Proposed Monitor respectfully submits to the Court this Pre-Filing Report.

Dated this 30<sup>th</sup> day of March, 2012.

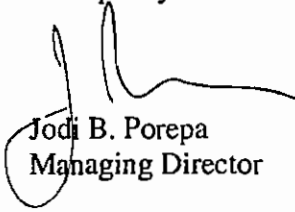
FTI Consulting Canada Inc.

In its capacity as proposed monitor of

Sino-Forest Corporation, and not in its personal capacity



Greg Watson  
Senior Managing Director



Jodi B. Porepa  
Managing Director

**APPENDIX A**

**Attached.**

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

(the "Applicants")

**REPORT ON CASH FLOW STATEMENT  
(paragraph 10.2(b) of the CCAA)**

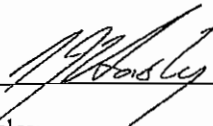
The management of Sino-Forest ("SFC" or the "Company") has developed the assumptions and prepared the attached statement of projected cash flow of SFC as of the 29th day of March 2012, consisting of a 13 week cash flow for the period March 31, 2012 to June 29, 2012 (the "March 29 Cash Flow").

The hypothetical assumptions are reasonable and consistent with the purpose of the projections as described in Note 1 to the cash flow, and the probable assumptions are suitably supported and consistent with the plans of SFC and provide a reasonable basis for the March 29 Cash Flow. All such assumptions are disclosed in Notes 2 to 6.

Since the March 29 Cash Flow is based on future events, actual results will vary from the information presented and the variations may be material.

The March 29 Cash Flow has been prepared solely for the purpose outlined in Note 1, using the probably and hypothetical assumptions set out in Notes 2 to 6. Consequently readers are cautioned that the March 29 Cash Flow may not be suitable for other purposes.

Dated at Hong Kong this 30<sup>th</sup> day of March 2012.

  
\_\_\_\_\_  
David Horsley  
Senior Vice President & Chief Financial Officer  
Sino-Forest Corporation

Sino-Forest Corporation  
13 Week Cash Flow Forecast  
(CAD \$000)

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Total
	6-Apr	13-Apr	20-Apr	27-Apr	4-May	11-May	18-May	25-May	1-Jun	8-Jun	15-Jun	22-Jun	29-Jun	13 Week Total
<b>Week Ending</b>														
<b>Cash inflow</b>														
Interest Income	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 412
<b>Total cash inflow</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 412
<b>Cash outflow</b>														
Payroll and Benefits	\$ -	\$ 30	\$ -	\$ -	\$ 30	\$ -	\$ 30	\$ -	\$ 30	\$ -	\$ 30	\$ -	\$ 30	\$ 181
Board & Committee Fees	\$ 71	\$ -	\$ -	\$ -	\$ 91	\$ -	\$ -	\$ -	\$ 91	\$ -	\$ -	\$ -	\$ -	\$ 253
Travel	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 315
Rent, Communication & Utilities	\$ 1	\$ 16	\$ 1	\$ 1	\$ 1	\$ 16	\$ 1	\$ 1	\$ 1	\$ 1	\$ 16	\$ 1	\$ 1	\$ 60
Taxes & Other	\$ 33	\$ 10	\$ 13	\$ 14	\$ 29	\$ 9	\$ 13	\$ 29	\$ 13	\$ 9	\$ 13	\$ 9	\$ 9	\$ 195
<b>Total cash outflow</b>	\$ 131	\$ 83	\$ 40	\$ 41	\$ 178	\$ 37	\$ 86	\$ 56	\$ 162	\$ 37	\$ 86	\$ 37	\$ 30	\$ 1,004
<b>Net Operating Cashflow</b>	\$ (131)	\$ (83)	\$ (40)	\$ (41)	\$ (178)	\$ (37)	\$ (86)	\$ (56)	\$ (162)	\$ (37)	\$ (86)	\$ (37)	\$ 382	\$ (591)
<b>Restructuring Costs</b>														
Professional Fees	\$ 1,910	\$ 1,101	\$ 929	\$ 2,859	\$ 929	\$ 929	\$ 945	\$ 2,875	\$ 945	\$ 945	\$ 945	\$ 945	\$ 2,475	\$ 18,730
<b>Total Restructuring Costs</b>	\$ 1,910	\$ 1,101	\$ 929	\$ 2,859	\$ 929	\$ 929	\$ 945	\$ 2,875	\$ 945	\$ 945	\$ 945	\$ 945	\$ 2,475	\$ 18,730
<b>Net Cash Flow</b>	\$ (2,041)	\$ (1,183)	\$ (969)	\$ (2,900)	\$ (1,107)	\$ (965)	\$ (1,031)	\$ (2,931)	\$ (1,107)	\$ (982)	\$ (1,031)	\$ (982)	\$ (2,093)	\$ (19,321)
<b>Operating Cash Balance</b>	\$ 67,846	\$ 65,804	\$ 64,621	\$ 63,653	\$ 60,753	\$ 59,646	\$ 58,681	\$ 57,650	\$ 54,719	\$ 53,612	\$ 52,630	\$ 51,599	\$ 50,617	\$ 67,846
<b>Net Cash Balance</b>	\$ (2,041)	\$ (1,183)	\$ (969)	\$ (2,900)	\$ (1,107)	\$ (965)	\$ (1,031)	\$ (2,931)	\$ (1,107)	\$ (982)	\$ (1,031)	\$ (982)	\$ (2,093)	\$ (19,321)
<b>Ending Cash Balance</b>	\$ 65,804	\$ 64,621	\$ 63,653	\$ 60,753	\$ 59,646	\$ 58,681	\$ 57,650	\$ 54,719	\$ 53,612	\$ 52,630	\$ 51,599	\$ 50,617	\$ 48,525	\$ 48,525

Notes

- 1 The purpose of this Cash Flow Forecast is to determine the liquidity requirements for Sino-Forest Corporation during the CCAA Proceedings.
- 2 Receipts have been forecast based on historical payment patterns.
- 3 Payroll costs and other operating expenses are forecast based on historical analysis and management forecast.
- 4 Board and Committee Fees are based on board resolutions passed to date.
- 5 Travel costs have been forecast based on expected travel costs to be incurred throughout the CCAA proceedings between Canada and Hong Kong.
- 6 Estimated restructuring costs are based on projected costs associated with legal and professional fees relating to the CCAA Proceedings.

**Court File No.:**

**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)

**PRE-FILING REPORT OF THE PROPOSED  
MONITOR, FTI CONSULTING CANADA INC.**

**GOWLING LAFLEUR HENDERSON LLP**  
Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

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Email: [jennifer.stam@gowlings.com](mailto:jennifer.stam@gowlings.com)

Lawyers for the Proposed Monitor,  
FTI Consulting Canada Inc.

**TAB 2**

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

**AFFIDAVIT OF REBECCA L. WISE  
(SWORN APRIL 23, 2012)**

I, Rebecca L. Wise, of the City of Toronto in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am an associate with the law firm of Torys LLP, lawyers for the Defendants, Credit Suisse Securities (Canada) Inc., Credit Suisse Securities (USA) LLC, TD Securities Inc., Dundee Securities Corporation, RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated (successor by merger to Banc of America Securities LLC), Canaccord Financial Ltd., and Maison Placements Canada Inc. (the "Underwriters") in *The Trustees of the Labourers' Pension Fund of Central and Eastern Canada et al. v. Sino-Forest Corporation et al.*, CV-11-431153-00CP, (the "Sino-Forest Class Action"), and, as such, have knowledge of the matters contained in this affidavit.

**The Sino-Forest Class Action**

2. The Plaintiffs in the Sino-Forest Class Action claim damages against various parties in connection with alleged misrepresentations made by Sino-Forest Corporation ("Sino-Forest") between 2006-2011.

3. The claims asserted by the Plaintiffs involve, in part, alleged misrepresentations made by Sino-Forest in its equity and note offerings in the primary market through prospectuses and offering memoranda.

4. In particular, the following prospectuses for three equity offerings are in issue in the Sino-Forest Class Action: Sino-Forest's Short Form Prospectuses, dated June 5, 2007, June 1, 2009, and December 10, 2009. The Plaintiffs claim general damages in respect of the June 2007 offering in the amount of \$175,835,000. The Plaintiffs claim general damages in respect of the June 2009 offering in the amount of \$330,000,000. Lastly, the Plaintiffs claim general damages in respect of the December 2009 offering in the amount of \$319,200,000.

5. In addition, the following offering and exchange offer memoranda for four note offerings are in issue in the Sino-Forest Class Action: Sino-Forest's Offering and Exchange Offer Memoranda, dated July 17, 2008, June 24, 2009, December 10, 2009 and October 14, 2010. The Plaintiffs claim general damages in the amount of US\$345,000,000 in respect of the July 17, 2008 offering. The Plaintiffs claim general damages in the amount of US\$400,000,000 in respect of the June 24, 2009 offering. The Plaintiffs claim general damages in the amount of US\$460,000,000 in respect of the December 10, 2009 offering. Finally, the Plaintiffs claim general damages in the amount of US\$600,000,000 in respect of the October 14, 2010 offering.

6. The alleged misrepresentations made by Sino-Forest in connection with these seven offerings in the primary market form the basis upon which general and other damages are claimed by the Plaintiffs against the Underwriters.

7. Not all of the Underwriters participated in each of the equity and note offerings at issue in the Sino-Forest Class Action. The Plaintiffs have therefore set out in their statement of claim against which Underwriters they claim damages for each offering.

#### **Indemnifications Provided to the Underwriters Under Agreements Related to the Offerings in Issue**

8. In connection with the three equity offerings described in paragraph 4 above, certain Underwriters have entered into related agreements with Sino-Forest and certain of its subsidiaries. In connection with the four note offerings described in paragraph 5 above, certain Underwriters (defined in the relevant agreements as either Initial Purchasers or Dealer Manager and Solicitation Agent) have entered into related agreements with Sino-Forest, as well as with certain of its subsidiaries, affiliates and/or related companies (the "Sino-Forest Subsidiary Companies"). These related agreements are as follows:



- (a) the Underwriting Agreement, dated May 28, 2007, in connection with the June 2007 equity offering, a copy of which is attached as Exhibit "A" hereto;
- (b) the Purchase Agreement, dated July 17, 2008, in connection with the July 2008 note offering, a copy of which is attached as Exhibit "B" hereto;
- (c) the Underwriting Agreement, dated May 22, 2009, in connection with the June 2009 equity offering, a copy of which is attached as Exhibit "C" hereto;
- (d) the Dealer Manager and Solicitation Agent Agreements, both dated June 24, 2009, in connection with June/July 2009 exchange note offering, copies of which are attached together as Exhibit "D" hereto;
- (e) the Purchase Agreement, dated December 10, 2009, in connection with the December 2009 note offering, a copy of which is attached as Exhibit "E" hereto;
- (f) the Underwriting Agreement, dated December 10, 2009, in connection with the December 2009 equity offering, a copy of which is attached as Exhibit "F" hereto; and
- (g) the Purchase Agreement, dated October 14, 2010, in connection with the October 2010 note offering, a copy of which is attached as Exhibit "G" hereto.

9. I refer below to the agreements described in subparagraphs 8(a)-(g) above as the "Related Agreements".

10. The Related Agreements among Sino-Forest, the Sino-Forest Subsidiary Companies and the Underwriters contain provisions in which Sino Forest (and, in the cases of the Related Agreements for the four note offerings, except for the Solicitation Agent Agreement, also the Sino-Forest Subsidiary Companies) have agreed to indemnify and hold harmless the Underwriters (the "Indemnities") in connection with an array of matters that could arise from the seven offerings described in paragraphs 4 and 5 above.

11. Schedule "1" to my affidavit lists in chart format the offerings, the relevant indemnity/contribution provisions in the Related Agreements, the specific Sino-Forest Subsidiary Companies, if any, in addition to Sino-Forest, that are parties to indemnity provisions

in each of the Related Agreements and the Underwriters that are parties to each of the Related Agreements.

12. In particular, Sino-Forest and the Sino-Forest Subsidiary Companies have jointly and severally agreed to indemnify and hold harmless the Underwriters that are parties to the following Related Agreements: the Purchase Agreements, dated July 17, 2008, December 10, 2009 and October 14, 2010, and the Dealer Manager Agreement, dated June 24, 2009, in connection with an array of matters that could arise from the four note offerings.

### **Stay of Proceedings**

13. On March 30, 2012, Sino-Forest sought and obtained from the Ontario Superior Court of Justice an Initial Order (the "Initial Order") under the *Companies' Creditors Arrangement Act* (the "CCAA"), which granted a stay of proceedings in respect of Sino-Forest (the "Stay of Proceedings") and other relief under the CCAA.

14. The Stay of Proceedings extends to, *inter alia*, Sino-Forest, as well as its directors and officers (the "D&Os"), who are also defendants in the Sino-Forest Class Action.

15. Subsequent to the Initial Order, Bennett Jones LLP, counsel for Sino-Forest and some of the individual defendants in the Sino-Forest Class Action wrote a letter (the "Bennett Jones Letter") to the Honourable Mr. Justice Paul M. Perell, the presiding judge in the Sino-Forest Class Action stating, *inter alia*, that, as a result of the Stay of Proceedings, Sino and all of the individual defendants do not intend to participate in the Sino-Forest Class Action. A copy of the Bennett Jones Letter is attached as Exhibit "H" hereto.

16. Further to the Bennett Jones Letter, Osler, Hoskin & Harcourt LLP, counsel for certain current and former directors of Sino-Forest in the Sino-Forest Class Action, namely Mr. William E. Ardell, Mr. James P. Bowland, Mr. James M.E. Hyde and Mr. Garry J. West (collectively, the "Directors"), wrote a letter (the "Osler Letter") to the Honourable Mr. Justice Paul M. Perell stating, *inter alia*, that, as a result of the Stay of Proceedings, the Directors do not intend to participate in the Sino-Forest Class Action. A copy of the Osler Letter is attached as Exhibit "P" hereto.

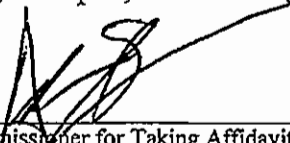
17. Also further to the Bennett Jones Letter, Miller Thomson LLP, counsel for Mr. Allen Chan, the former CEO of Sino-Forest, wrote a letter (the “Miller Thomson Letter”) to the Honourable Mr. Justice Paul M. Perell stating, *inter alia*, that, as a result of the Stay of Proceedings, Mr. Chan does not intend to participate in the Sino-Forest Class Action. A copy of the Miller Thomson Letter is attached as Exhibit “J” hereto.

18. If the Stay of Proceedings continues and is not extended to the Underwriters and the Sino-Forest Class Action proceeds, then (absent any further order) it appears that the effect of the Initial Order may be as follows:

- (a) Sino-Forest and the D&Os will have no obligation to make production of documents;
- (b) Sino-Forest and the D&Os will not be examined for discovery;
- (c) Sino-Forest and the D&Os will not attend any pre-trial and will therefore not participate in any court or private mediation associated with the pre-trial; and
- (d) Sino-Forest and the D&Os will not give evidence at trial.

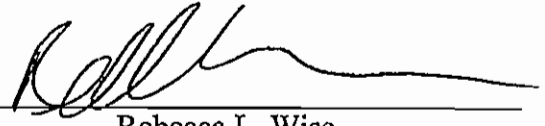
19. It is likely that the principal, though not the only, defences available to a defendant in a matter such as the Sino-Forest Class Action include demonstrating: (i) there were no misrepresentations of the kind alleged; and (ii) the defendant is not liable for any misrepresentations because it was duly diligent. Requiring the remaining defendants to develop either of these defences in a case where the public company and its directors and senior managers are absent (in the manner described in paragraph 18 above) will, based on the assumptions that the company and its directors and senior managers have evidence that bears upon these defences and would be expected to be the primary parties addressing the accuracy of disclosure, prejudice such remaining defendants (including the Underwriters) due to (without any further order): (a) the absence of relevant evidence with which to assess and prove defences; and (b) the absence of ongoing indemnification from Sino-Forest.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario  
this 23rd day of April, 2012



Commissioner for Taking Affidavits  
(or as may be)

**ADAM MÆRCUS SLAVENS**  
Barrister and Solicitor, Notary  
Public for the Province of Ontario  
My Commission is unlimited as to time.



Rebecca L. Wise

**SCHEDULE "1"**

**Summary of Indemnities Provided by Sino-Forest Corporation and the Sino Subsidiary Companies in the Note Offerings in Issue in the Sino-Forest Class Action**

<b><i>OFFERING IN ISSUE  US DOLLARS</i></b>	<b><i>INDEMNITY/ CONTRIBUTION SECTION(S) OF THE RELATED AGREEMENTS</i></b>	<b><i>SINO-FOREST CORPORATION- SIDE PARTIES TO THE INDEMNITY IN THE RELATED AGREEMENTS</i></b>	<b><i>UNDERWRITER PARTIES TO THE RELATED AGREEMENTS</i></b>
<p>July 17, 2008 \$345,000,000</p>	<p>Sections 7 and 8, Purchase Agreement dated July 17, 2008</p>	<p>Sino-Forest Corporation Sino-Panel Holdings Limited Sino-Panel (Asia) Inc. Sino-Panel (Gaoyao) Ltd. SFR (China) Inc. Sino-Wood Partners, Ltd. Sino-Forest Resources Inc. Suri-Wood Inc. Sino-Plantation Limited Sino-Wood (Guangxi) Limited Sino-Wood (Jiangxi) Limited Sino-Wood (Guangdong) Limited Sino-Global Holdings Inc. Sino-Panel (North East China) Limited Sinowin Investments Limited Sino-Panel [Hunan] Limited Sino-Panel [Xiangxi] Limited Sino-Panel Bio-Science Limited Sino-Panel (Guangzhou) Limited Sino-Panel [Suzhou] Limited Sino-Panel (Yunnan) Limited Sino-Panel (Guangxi) Limited Sino-Panel (Guizhou) Limited Sino-Panel (Qinzhou) Limited Sino-Panel (Shaoyang) Limited Sino-Panel (Yongzhou) Limited Sino-Panel (Fujian) Limited</p>	<p>Merrill, Lynch, Pierce, Fenner &amp; Smith Incorporated ("MLPFS")  Credit Suisse Securities (USA) LLC</p>
<p>June 24, 2009 \$212,330,000 of \$300,000,000 Exchanged</p>	<p>Section 12, Dealer Manager Agreement, dated June 24, 2009</p>	<p>Sino-Forest Corporation Sino-Panel Holdings Limited (BVI) Sino-Panel (Asia) Inc. (BVI) Sino-Panel (Gaoyao) Ltd. (BVI) SFR (China) Inc. (BVI) Sino-Wood Partners, Limited (HK) Sino-Forest Resources Inc. (BVI) Suri-Wood Inc. (BVI) Sino-Plantation Limited (HK) Sino-Wood (Guangxi) Limited (HK) Sino-Wood (Jiangxi) Limited (HK) Sino-Wood (Guangdong) Limited (HK)</p>	<p>Credit Suisse Securities (USA) LLC</p>

	<p>Section 11, Solicitation Agent Agreement, dated June 24, 2009</p>	<p>Sino-Wood (Fujian) Limited (HK) Sino-Forest Investments Limited (BVI) Sino-Global Holdings Inc. (BVI) Grandeur Winway Ltd. (BVI) Sinowin Investments Ltd. (BVI) Sino Limited (Cayman Islands) Sino-Forest Bio-Science Limited (formerly known as: Sino-Two Limited (BVI)) Express Point Holdings Limited (BVI) Smart Sure Enterprises Limited (BVI) Ace Supreme International Limited (BVI) Glory Billion International Limited (BVI) Amplemax Worldwide Limited (BVI) Expert Bonus Investment Limited (BVI) Sino-Panel (Yunnan) Limited (BVI) Sino-Panel (Guangxi) Limited (BVI) Sino-Panel (North East China) Limited (BVI) Sino-Panel (Xiangxi) Limited (formerly known as: Rich Base Worldwide Limited (BVI)) Sino-Panel (Hunan) Limited (formerly known as: Comtech Universal Limited (BVI)) Sino-Panel (Suzhou) Limited (formerly known as: Pacific Harvest Holdings Limited (BVI)) Sino-Panel (Guangzhou) Limited (BVI) Sino-Panel (North Sea) Limited (BVI) Sino-Panel (Guizhou) Limited (BVI) Sino-Panel (Huaihua) Limited (BVI) Sino-Panel (Qinzhou) Limited (formerly known as: Sino-Panel (Jiayu) Ltd. (BVI)) Sino-Panel (Yongzhou) Limited (BVI) Sino-Panel (Fujian) Limited (BVI) Sino-Panel (Shaoyang) Limited (BVI)</p> <p>Sino-Forest Corporation</p>	<p>Credit Suisse Securities (USA) LLC</p>
<p>December 10, 2009 \$460,000,000</p>	<p>Sections 7 and 8, Purchase Agreement, dated December 10, 2009</p>	<p>Sino-Forest Corporation Sino-Panel Holdings Limited (BVI) Sino-Panel (Asia) Inc. (BVI) Sino-Panel (Gaoyao) Ltd. (BVI) SFR (China) Inc. (BVI) Sino-Wood Partners, Limited (H.K.) Sino-Forest Resources Inc. (BVI) Suri-Wood Inc. (BVI) Sino-Plantation Limited (H.K.) Sino-Wood (Guangxi) Limited (H.K.) Sino-Wood (Jiangxi) Limited (H.K.) Sino-Wood (Guangdong) Limited (H.K.) Sino-Global Holdings Inc. (BVI) Sinowin Investments Limited (BVI) Sino-Panel (North East China) Limited (BVI) Sino-Panel [Hunan] Limited (BVI)</p>	<p>Credit Suisse Securities (USA) LLC MLPFS TD Securities Inc.</p>

		<p>Sino-Panel [Xiangxi] Limited (BVI)  Sino-Forest Bio-Science Limited (BVI)  (formerly known as: Sino-Two Limited)  Sino-Panel (Guangzhou) Limited (BVI)  Sino-Panel [Suzhou] Limited (BVI)  Sino-Panel (Yunnan) Limited (BVI)  Sino-Panel (Guangxi) Limited (BVI)  Sino-Panel (Guizhou) Limited (BVI)  Sino-Panel (Qinzhou) Limited (BVI)  Sino-Panel (Shaoyang) Limited (BVI)  Sino-Panel (Yongzhou) Limited (BVI)  Sino-Panel (Fujian) Limited (BVI)  Grandeur Winway Ltd. (BVI)  Sinowood Limited (Cayman Islands)  Sino-Forest Investments Limited (BVI)  Sino-Wood (Fujian) Limited (HK)  Sino-Panel (North Sea) Limited (BVI)  Sino-Panel (Huaihua) Limited (BVI)  Amplemax Worldwide Limited (BVI)  Ace Supreme International Limited (BVI)  Express Point Holdings Limited (BVI)  Glory Billion International Limited (BVI)  Smart Sure Enterprises Limited (BVI)  Expert Bonus Investment Limited (BVI)  Dynamic Profit Holdings Limited (BVI)</p>	
<p>October 14, 2010  \$600,000,000</p>	<p>Sections 7 and 8,  Purchase Agreement,  dated October 14,  2010</p>	<p>Sino-Forest Corporation  Sino-Panel Holdings Limited (BVI)  Sino-Panel (Asia) Inc. (BVI)  Sino-Panel (Gaoyao) Ltd. (BVI)  SFR (China) Inc. (BVI)  Sino-Wood Partners, Limited (H.K.)  Sino-Forest Resources Inc. (BVI)  Suri-Wood Inc. (BVI)  Sino-Plantation Limited (H.K.)  Sino-Wood (Guangxi) Limited (H.K.)  Sino-Wood (Jiangxi) Limited (H.K.)  Sino-Wood (Guangdong) Limited (H.K.)  Sino-Global Holdings Inc. (BVI)  Sinowin Investments Limited (BVI)  Sino-Panel (North East China) Limited (BVI)  Sino-Panel [Hunan] Limited (BVI) (formerly  known as: Comtech Universal Limited)  Sino-Panel [Xiangxi] Limited (BVI) (formerly  known as: Rich Base Worldwide Limited)  Sino-Forest Bio-Science Limited (BVI)  (formerly known as: Sino-Two Limited)  Sino-Panel (Guangzhou) Limited (BVI)  Sino-Panel [Suzhou] Limited (BVI) (formerly  known as: Pacific Harvest Holdings Limited)  Sino-Panel (Yunnan) Limited (BVI)  Sino-Panel (Guangxi) Limited (BVI)  Sino-Panel (Guizhou) Limited (BVI)  Sino-Panel (Qinzhou) Limited (BVI) (formerly  known as: Sino-Panel (Jiayu) Ltd.)</p>	<p>Credit Suisse Securities  (USA) LLC    Banc of America  Securities LLC  (now MLPFS)</p>

		<p>Sino-Panel (Shaoyang) Limited (BVI) Sino-Panel (Yongzhou) Limited (BVI) Sino-Panel (Fujian) Limited (BVI) Grandeur Winway Ltd. (BVI) Sinowood Limited (Cayman Islands) Sino-Forest Investments Limited (BVI) Sino-Wood (Fujian) Limited (HK) Sino-Panel (North Sea) Limited (BVI) Sino-Panel (Huaihua) Limited (BVI) Amplemax Worldwide Limited (BVI) Ace Supreme International Limited (BVI) Express Point Holdings Limited (BVI) Glory Billion International Limited (BVI) Smart Sure Enterprises Limited (BVI) Expert Bonus Investment Limited (BVI) Dynamic Profit Holdings Limited (BVI) Alliance Max Limited (BVI) Brain Force Limited (BVI) Cheer Gold Worldwide Limited (BVI) General Excel Limited (BVI) Harvest Wonder Worldwide Limited (BVI) Homix Limited (BVI) Mega Harvest International Limited (BVI) Poly Market Limited (BVI) Prime Kinetic Limited (BVI) Regal Win Capital Limited (BVI) Rich Choice Worldwide Limited (BVI) Sino-Forest International (Barbados) Corporation (Barbados) Sino-Global Management Consulting Inc. (BVI) Sino-Panel (China) Nursery Limited (BVI) Sino-Panel (Russia) Limited (BVI) Sino-Wood Trading Limited (BVI) Sino-Panel Trading Limited (BVI) Trillion Edge Limited (BVI) Value Quest International Limited (BVI) Well Keen Worldwide Limited (BVI)</p>	
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**Summary of Indemnities Provided by Sino-Forest Corporation in the  
Equity Offerings in Issue in the Sino-Forest Class Action**

<b><i>OFFERING IN ISSUE</i></b>	<b><i>INDEMNITY/ CONTRIBUTION SECTION OF THE RELATED AGREEMENTS</i></b>	<b><i>SINO-FOREST CORPORATION- SIDE PARTIES TO THE INDEMNITY</i></b>	<b><i>UNDERWRITER PARTIES TO THE RELATED AGREEMENTS</i></b>
June 5, 2007 \$201,135,000	Section 9, Underwriting Agreement, dated May 28, 2007	Sino-Forest Corporation	Dundee Securities Corporation CIBC World Markets Inc. Merrill Lynch Canada Inc. Credit Suisse Securities (Canada) Inc.  Also: UBS Securities Canada Inc. and Haywood Securities Inc.
June 1, 2009 \$379,500,000	Section 9, Underwriting Agreement, dated May 22, 2009	Sino-Forest Corporation	Credit Suisse Securities (Canada) Inc. Dundee Securities Corporation Merrill Lynch Canada Inc. Scotia Capital Inc. TD Securities Inc.
December 10, 2009 \$367,080,000	Section 9, Underwriting Agreement, December 10, 2009	Sino-Forest Corporation	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.

**TAB 3**

**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 IN THE MATTER OF SINO-FOREST  
CORPORATION**

**AFFIDAVIT OF ELIZABETH FIMIO  
(Sworn June 8, 2012)**

I, **ELIZABETH FIMIO**, of the City of Burlington, in the Regional Municipality of Halton, **MAKE OATH AND SAY:**

1. I am an assistant of Bennett Jones LLP, counsel for Sino-Forest Corporation ("SFC"). I therefore have personal knowledge of the matters set out below, except where otherwise stated. Where I do not possess personal knowledge, I have stated the source of my information and I believe such information to be true.
2. SFC and certain of its current and former officers, directors and employees, along with SFC's current and former auditors, technical consultants and various underwriters involved in prior equity and debt offerings, have been named as defendants in class actions in Ontario, Quebec, Saskatchewan and New York.
3. A copy of this Fresh as Amended Statement of Claim in the Ontario class action is attached as Exhibit "A".

4. Copies of the originating documents in the Quebec and Saskatchewan class actions are attached as Exhibits "B" and "C" respectively.

5. A copy of the complaint in the New York class action is attached as Exhibit "D".

**SUPPORT OF THE NOTEHOLDERS**

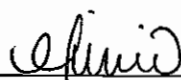
6. On June 8, 2012, SFC issued a press release advising that as of that date, noteholders holding in excess of \$1,296,000 and approximately 72% of the total debt of approximately \$1.8 billion of SFC's noteholder debt have executed written support agreements to support the plan outlined in the announced SFC CCAA plan dated March 30, 2012. A copy of the June 8, 2012 press release is attached as Exhibit "E".

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, this 8<sup>th</sup>  
day of June, 2012

  
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**Daniel Holden**  
*Barrister & Solicitor*

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**Elizabeth Fimio**

**TAB 4**



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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR.  
JUSTICE MORAWETZ

)  
)  
)

FRIDAY, THE 30<sup>th</sup>  
DAY OF MARCH, 2012

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

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

INITIAL ORDER

THIS APPLICATION, made by Sino-Forest Corporation (the "Applicant"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of W. Judson Martin sworn March 30, 2012 and the Exhibits thereto (the "Martin Affidavit") and the Pre-Filing Report of the Proposed Monitor, FTI Consulting Canada Inc. ("FTI") (the "Monitor's Pre-Filing Report"), and on being advised that there are no secured creditors who are likely to be affected by the charges created herein, and on hearing the submissions of counsel for the Applicant, the Applicant's directors, FTI, the *ad hoc* committee of holders of notes issued by the Applicant (the "Ad Hoc Noteholders"), and no one else appearing for any other party, and on reading the consent of FTI to act as the Monitor,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application, the Application Record and the Monitor's Pre-Filing Report is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

**APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

**PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

4. THIS COURT ORDERS that the Applicant shall be entitled to seek any ancillary or other relief from this Court in respect of any of its subsidiaries in connection with the Plan or otherwise in respect of these proceedings.

**POSSESSION OF PROPERTY AND OPERATIONS**

5. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses, whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;
- (c) the fees and disbursements of the directors and counsel to the directors, at their standard rates and charges; and
- (d) such other amounts as are set out in the March 29 Forecast (as defined in the Monitor's Pre-Filing Report and attached as Exhibit "DD" to the Martin Affidavit).

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;



- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

**RESTRUCTURING**

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Support Agreement (as defined below), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding US\$500,000 in any one transaction or US\$1,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business.

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the

disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### RESTRUCTURING SUPPORT AGREEMENT

14. THIS COURT ORDERS that the Applicant and the Monitor are authorized and directed to engage in the following procedures to notify noteholders of the restructuring support agreement dated as of March 30, 2012 (the "Support Agreement") between, among others, the Applicant and certain noteholders (the "Initial Consenting Noteholders"), appended as Exhibit "B" to the Martin Affidavit, to enable any additional noteholders to execute a Joinder Agreement in the form attached as Schedule "C" to the Support Agreement and to become bound thereby as Consenting Noteholders (as defined in the Support Agreement):

- (a) the Monitor shall without delay post a copy of the Support Agreement on its website at <http://cfoanada.fticonsulting.com/sfc> (the "Monitor's Website"); and
- (b) the notice to be published by the Monitor pursuant to paragraph 51 of this Order shall include a statement in form and substance acceptable to the Applicant, the Monitor and counsel to the Ad Hoc Noteholders, each acting reasonably, notifying noteholders of the Support Agreement and of the deadline of 5:00 p.m. (Toronto time) on May 15, 2012 (the "Consent Date") by which any noteholder (other than an Initial Consenting Noteholder) who wishes to become entitled to the Early Consent Consideration pursuant to the Support Agreement (if such Early Consent Consideration becomes payable pursuant to the terms thereof) must execute and return the Joinder Agreement to the Applicant, and shall direct noteholders to the Monitor's Website where a copy of the Support Agreement (including the Joinder Agreement) can be obtained.

15. THIS COURT ORDERS that any noteholder (other than an Initial Consenting Noteholder) who wishes to become a Consenting Noteholder and become entitled to the Early Consent Consideration (if such Early Consent Consideration becomes payable pursuant to the terms thereof, and subject to such noteholder demonstrating its holdings to the Monitor in accordance with the Support Agreement) must execute a Joinder Agreement and return it to the Applicant and the Noteholder Advisors (as defined below) in accordance with the instructions set out in the Support Agreement such that it is received by the Applicant and the Noteholder Advisors prior to the Consent Deadline and, upon so doing, such noteholder shall become a Consenting Noteholder and shall be bound by the terms of the Support Agreement.

16. THIS COURT ORDERS that as soon as practicable after the Consent Deadline, the Applicant shall provide to the Monitor copies of all executed Joinder Agreements received from noteholders prior to the Consent Deadline.

#### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

17. THIS COURT ORDERS that until and including April 29, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

18. THIS COURT ORDERS that until and including the Stay Period, no Proceeding shall be commenced or continued by any noteholder, indenture trustee or security trustee (each in respect of the notes issued by the Applicant, collectively, the "Noteholders") against or in respect of any of the Applicant's subsidiaries listed on Schedule "A" (each a "Subsidiary Guarantor", and collectively, the "Subsidiary Guarantors"), except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way by a Noteholder against or in respect of any Subsidiary Guarantors are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

19. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued, except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien, or (v) prevent the exercise of any termination rights of the Consenting Noteholders under the Support Agreement.

20. THIS COURT ORDERS that during the Stay Period, all rights and remedies of the Noteholders against or in respect of the Subsidiary Guarantors are hereby stayed and suspended and shall not be commenced, proceeded with or continued, except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower any Subsidiary Guarantor to carry on any business which such Subsidiary Guarantor is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien,

**NO INTERFERENCE WITH RIGHTS**

21. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

22. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant or exercising any other remedy provided under such agreement or arrangements, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

23. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

24. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such

obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the affected creditors of the Applicant or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

25. THIS COURT ORDERS that the Applicant shall (i) indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, and (ii) make payments of amounts for which its directors and officers may be liable as obligations they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

26. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property (other than the Applicant's assets which are subject to the Personal Property Security Act registrations on Schedule "B" hereto (the "Excluded Property")), which charge shall not exceed an aggregate amount of \$3,200,000, as security for the indemnity provided in paragraph 25 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

27. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 25 of this Order.

#### **APPOINTMENT OF MONITOR**

28. THIS COURT ORDERS that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor

in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

29. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its preparation of the Applicant's cash flow statements, as required from time to time;
- (d) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan, as applicable;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) carry out and fulfill its obligations under the Support Agreement in accordance with its terms; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.



30. THIS COURT ORDERS that without limiting paragraph 29 above, in carrying out its rights and obligations in connection with this Order, the Monitor shall be entitled to take such reasonable steps and use such services as it deems necessary in discharging its powers and obligations, including, without limitation, utilizing the services of FTI Consulting (Hong Kong) Limited ("FTI HK").

31. THIS COURT ORDERS that the Monitor shall not take possession of the Property (or any property or assets of the Applicant's subsidiaries) and shall take no part whatsoever in the management or supervision of the management of the Business (or any business of the Applicant's subsidiaries) and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof (or of any business, property or assets, or any part thereof, of any subsidiary of the Applicant).

32. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property (or any property of any subsidiary of the Applicant) that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property (or of any property of any subsidiary of the Applicant) within the meaning of any Environmental Legislation, unless it is actually in possession.

33. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any

responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

34. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicant, counsel to the directors, Houlihan Lokey Capital Inc. (the "Financial Advisor"), FTI HK, counsel to the Ad Hoc Noteholders and the financial advisor to the Ad Hoc Noteholders (together with counsel to the Ad Hoc Noteholders, the "Noteholder Advisors") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant, whether incurred prior to or subsequent to the date of this Order, as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicant, counsel to the directors, the Financial Advisor, FTI HK, and the Noteholder Advisors on a weekly basis or otherwise in accordance with the terms of their engagement letters.

36. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicant's counsel, counsel to the directors, the Financial Advisor, FTI HK, and the Noteholder Advisors shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property (other than the Excluded Property), which charge shall not exceed an aggregate amount of \$15,000,000 as security for their professional fees and disbursements incurred at their respective standard rates and charges in respect of such services, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

38. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as between them, shall be as follows:

First – Administration Charge (to the maximum amount of \$15,000,000); and

Second – Directors' Charge (to the maximum amount of \$3,200,000).

39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property (other than the Excluded Property) and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *part passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the beneficiaries of the Directors' Charge and the beneficiaries of the Administration Charge, or further Order of this Court.

42. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees"), shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or

other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

#### **APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

44. THIS COURT ORDERS that the letter agreement dated as of December 22, 2012 with respect to the Financial Advisor in the form attached as Exhibit "CC" to the Martin Affidavit (the "Financial Advisor Agreement") and the retention of the Financial Advisor under the terms thereof, including the payments to be made to the Financial Advisor thereunder, are hereby approved.

45. THIS COURT ORDERS that the Applicant is authorized and directed to make the payments contemplated in the Financial Advisor Agreement in accordance with the terms and conditions thereof.

**POSTPONEMENT OF ANNUAL GENERAL MEETING**

46. THIS COURT ORDERS that the Applicant be and is hereby relieved of any obligation to call and hold an annual meeting of its shareholders until further Order of this Court.

**FOREIGN PROCEEDINGS**

47. THIS COURT ORDERS that the Monitor is hereby authorized and empowered to act as the foreign representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside of Canada.

48. THIS COURT ORDERS that the Monitor is hereby authorized, as the foreign representative of the Applicant and of the within proceedings, to apply for foreign recognition of these proceedings, as necessary, in any jurisdiction outside of Canada, including as "Foreign Main Proceedings" in the United States pursuant to Chapter 15 of the *U.S. Bankruptcy Code*.

49. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Barbados, the British Virgin Islands, Cayman Islands, Hong Kong, the People's Republic of China or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

50. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and any other Order issued in these proceedings.

**SERVICE AND NOTICE**

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail and the Wall Street Journal a notice containing the information prescribed under the CCAA, (ii) within seven days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

52. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

53. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on the Monitor's Website.

**GENERAL**

54. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

55. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

56. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

57. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

APR 2 - 2012



## Schedule "A"

1. Sino-Panel Holdings Limited (BVI)
2. Sino-Global Holdings Inc. (BVI)
3. Sino-Wood Partners, Limited (HK)
4. Grandeur Winway Limited (BVI)
5. Sinowin Investments Limited (BVI)
6. Sinowood Limited (Cayman Islands)
7. Sino-Forest Bio-Science Limited (BVI)
8. Sino-Forest Resources Inc. (BVI)
9. Sino-Plantation Limited (HK)
10. Suri-Wood Inc. (BVI)
11. Sino-Forest Investments Limited (BVI)
12. Sino-Wood (Guangxi) Limited (HK)
13. Sino-Wood (Jiangxi) Limited (HK)
14. Sino-Wood (Guangdong) Limited (HK)
15. Sino-Wood (Fujian) Limited (HK)
16. Sino-Panel (Asia) Inc. (BVI)
17. Sino-Panel (Guangxi) Limited (BVI)
18. Sino-Panel (Yunnan) Limited (BVI)
19. Sino-Panel (North East China) Limited (BVI)
20. Sino-Panel [Xiangxi] Limited (BVI)
21. Sino-Panel [Hunan] Limited (BVI)
22. SFR (China) Inc. (BVI)
23. Sino-Panel [Suzhou] Limited (BVI)
24. Sino-Panel (Gaoyao) Ltd. (BVI)
25. Sino-Panel (Guangzhou) Limited (BVI)
26. Sino-Panel (North Sea) Limited (BVI)
27. Sino-Panel (Guizhou) Limited (BVI)
28. Sino-Panel (Huaihua) Limited (BVI)
29. Sino-Panel (Qinzhou) Limited (BVI)
30. Sino-Panel (Yongzhou) Limited (BVI)
31. Sino-Panel (Fujian) Limited (BVI)
32. Sino-Panel (Shaoyang) Limited (BVI)
33. Amplemax Worldwide Limited (BVI)
34. Ace Supreme International Limited (BVI)
35. Express Point Holdings Limited (BVI)
36. Glory Billion International Limited (BVI)
37. Smart Sure Enterprises Limited (BVI)
38. Expert Bonus Investment Limited (BVI)
39. Dynamic Profit Holdings Limited (BVI)
40. Alliance Max Limited (BVI)
41. Brain Force Limited (BVI)
42. General Excel Limited (BVI)
43. Poly Market Limited (BVI)
44. Prime Kinetic Limited (BVI)
45. Trillion Edge Limited (BVI)
46. Sino-Panel (China) Nursery Limited (BVI)



47. Sino-Wood Trading Limited (BVI)
48. Homix Limited (BVI)
49. Sino-Panel Trading Limited (BVI)
50. Sino-Panel (Russia) Limited (BVI)
51. Sino-Global Management Consulting Inc. (BVI)
52. Value quest International Limited (BVI)
53. Well Keen Worldwide Limited (BVI)
54. Harvest Wonder Worldwide Limited (BVI)
55. Cheer Gold Worldwide Limited (BVI)
56. Regal Win Capital Limited (BVI)
57. Rich Choice Worldwide Limited (BVI)
58. Sino-Forest International (Barbados) Corporation
59. Mandra Forestry Holdings Limited (BVI)
60. Mandra Forestry Finance Limited (BVI)
61. Mandra Forestry Anhui Limited (BVI)
62. Mandra Forestry Hubel Limited (BVI)
63. Sino-Capital Global Inc. (BVI)
64. Elite Legacy Limited (BVI)

# Schedule "B"

## PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM SEARCH RESULTS

Date Search Conducted: 3/29/2012

File Currency Date: 03/28/2012

Family(ies): 6

Page(s): 8

SEARCH : Business Debtor : SINO-FOREST CORPORATION

The attached report has been created based on the data received by Cyberbahn, a Thomson Reuters business from the Province of Ontario, Ministry of Government Services. No liability is assumed by Cyberbahn regarding its correctness, timeliness, completeness or the interpretation and use of the report. Use of the Cyberbahn service, including this report is subject to the terms and conditions of Cyberbahn's subscription agreement.

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
SEARCH RESULTS

Date Search Conducted: 3/29/2012  
File Currency Date: 03/28/2012  
Family(ies): 6  
Page(s): 8

SEARCH : Business Debtor : SINO-FOREST CORPORATION

FAMILY : 1 OF 6 ENQUIRY PAGE : 1 OF 8  
SEARCH : BD : SINO-FOREST CORPORATION

00 FILE NUMBER : 609324408 EXPIRY DATE : 27SEP 2015 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
REG NUM : 20040927 1631 1793 0430 REG TYP: P PPSA REG PERIOD: 10  
02 IND DOB : IND NAME:  
03 BUS NAME: SINO-FOREST CORPORATION

OCN :  
04 ADDRESS : 90 BURNHAMTHORPE ROAD WEST, SUITE 1208  
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B3C3  
05 IND DOB : IND NAME:  
06 BUS NAME:

OCN :  
07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
LAW DEBENTURE TRUST COMPANY OF NEW YORK

09 ADDRESS : 767 THIRD AVENUE, 31ST FLOOR  
CITY : NEW YORK PROV: NY POSTAL CODE: 10017  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
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GENERAL COLLATERAL DESCRIPTION

13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR PURSUANT TO  
14 A PLEDGE AGREEMENT AND SHARE CHARGE.

15

16 AGENT: AIRD & BERLIS LLP #2

17 ADDRESS : 181 BAY STREET, SUITE 1800  
CITY : TORONTO PROV: ON POSTAL CODE: M5J2T9

FAMILY : 1 OF 6  
SEARCH : BD : SINO-FOREST CORPORATION

ENQUIRY PAGE : 2 OF 8

FILE NUMBER 609324408

01 CAUTION : PAGE TOT REGISTRATION NUM REG TYPE  
001 OF 1 MV SCHED: 20090720 1614 1793 6085  
21 REFERENCE FILE NUMBER : 609324408  
22 AMEND PAGE: NO PAGE: CHANGE: A AMNDMNT REN YEARS: CORR PER:  
23 REFERENCE DEBTOR/ IND NAME:  
24 TRANSFEROR: BUS NAME: SINO-FOREST CORPORATION

25 OTHER CHANGE:  
26 REASON: TO AMEND SECURED PARTY ADDRESS AND TO AMEND GENERAL COLLATERAL  
27 /DESCR: DESCRIPTION TO DELETE THE WORDS "PURSUANT TO A PLEDGE AGREEMENT AND  
28 : SHARE CHARGE"  
02/05 IND/TRANSFEE:  
03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:  
CITY: PROV: POSTAL CODE:  
29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :  
LAW DEBENTURE TRUST COMPANY OF NEW YORK  
09 ADDRESS : 400 MADISON AVENUE, 4TH FLOOR  
CITY : NEW YORK PROV : NY POSTAL CODE : 10017  
CONS. MV DATE OF NO FIXED  
GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR  
14  
15  
16 NAME : AIRD & BERLIS LLP  
17 ADDRESS : 181 BAY STREET, SUITE 1800, BOX# 754  
CITY : TORONTO PROV : ON POSTAL CODE : M5J2T9

FAMILY : 1 OF 6  
SEARCH : BD : SINO-FOREST CORPORATION

ENQUIRY PAGE : 3 OF 8

FILE NUMBER 609324408

PAGE TOT REGISTRATION NUM REG TYPE  
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21 REFERENCE FILE NUMBER : 609324408  
22 AMEND PAGE: NO PAGE: CHANGE: B RENEWAL REN YEARS: 1 CORR PER:  
23 REFERENCE DEBTOR/ IND NAME:  
24 TRANSFEROR: BUS NAME: SINO-FOREST CORPORATION

25 OTHER CHANGE:  
26 REASON:  
27 /DESCR:  
28 :  
02/05 IND/TRANSFEREE:  
03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:  
CITY: PROV: POSTAL CODE:  
29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :  
CITY : PROV : POSTAL CODE :  
CONS. MV DATE OF NO FIXED  
GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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16 NAME : AIRD & BERLIS LLP  
17 ADDRESS : 181 BAY STREET, SUITE 1800, BOX# 754  
CITY : TORONTO PROV : ON POSTAL CODE : M5J2T9

FAMILY : 2 OF 6  
SEARCH : BD : SINO-FOREST CORPORATION

ENQUIRY PAGE : 4 OF 8

00 FILE NUMBER : 650314305 EXPIRY DATE : 03DEC 2013 STATUS :  
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02 IND DOB : IND NAME:  
03 BUS NAME: SINO-FOREST CORPORATION

OCN :

04 ADDRESS : 1208-90 BURNHAMTHORPE RD W  
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B3C3

05 IND DOB : IND NAME:

06 BUS NAME:

OCN :

07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
XEROX CANADA LTD

09 ADDRESS : 33 BLOOR ST. E. 3RD FLOOR  
CITY : TORONTO PROV: ON POSTAL CODE: M4W3H1

	CONS.	GOODS	INVTY.	EQUIP	ACCTS	OTHER	INCL	AMOUNT	DATE OF	OR	NO	FIXED
									MATURITY			MAT DATE
10		X				X						X
	YEAR MAKE					MODEL		V.I.N.				

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GENERAL COLLATERAL DESCRIPTION

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16 AGENT: XEROX CANADA LTD

17 ADDRESS : 33 BLOOR ST. E. 3RD FLOOR  
CITY : TORONTO PROV: ON POSTAL CODE: M4W3H1

FAMILY : 3 OF 6  
SEARCH : BD : SINO-FOREST CORPORATION

ENQUIRY PAGE : 5 OF 8

00 FILE NUMBER : 655022304 EXPIRY DATE : 20JUL 2015 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
REG NUM : 20090720 1615 1793 6086 REG TYP: P PPSA REG PERIOD: 6

02 IND DOB : IND NAME:  
03 BUS NAME: SINO-FOREST CORPORATION

OCN :

04 ADDRESS : 90 BURNHAMTHORPE ROAD WEST, SUITE 1208  
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B3C3

05 IND DOB : IND NAME:

06 BUS NAME:

OCN :

07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
LAW DEBENTURE TRUST COMPANY OF NEW YORK

09 ADDRESS : 400 MADISON AVENUE, 4TH FLOOR  
CITY : NEW YORK PROV: NY POSTAL CODE: 10017

CONS.	MV	DATE OF	OR NO	FIXED				
GOODS	INVTY.	EQUIP	ACCTS	OTHER	INCL	AMOUNT	MATURITY	MAT DATE

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	YEAR MAKE			MODEL		V.I.N.		

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12

GENERAL COLLATERAL DESCRIPTION  
13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR

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16 AGENT: AIRD & BERLIS LLP - SUSAN PAK

17 ADDRESS : 181 BAY STREET, SUITE 1800  
CITY : TORONTO PROV: ON POSTAL CODE: M5J2T9

FAMILY : 4 OF 6  
SEARCH : BD ; SINO-FOREST CORPORATION

ENQUIRY PAGE : 6 OF 8

00 FILE NUMBER : 659079036 EXPIRY DATE : 03FEB 2016 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
REG NUM : 20100203 1535 1793 2023 REG TYP: P PPSA REG PERIOD: 6  
02 IND DOB : IND NAME:  
03 BUS NAME: SINO-FOREST CORPORATION

OCN :

04 ADDRESS : 90 BURNHAMTHORPE ROAD WEST, SUITE 1208  
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B3C3  
05 IND DOB : IND NAME:  
06 BUS NAME:

OCN :

07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
LAW DEBENTURE TRUST COMPANY OF NEW YORK

09 ADDRESS : 400 MADISON AVENUE, 4TH FLOOR  
CITY : NEW YORK PROV: NY POSTAL CODE: 10017  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
10 YEAR MAKE X X MODEL V.I.N.

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12

GENERAL COLLATERAL DESCRIPTION

13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR

14

15

16 AGENT: AIRD & BERLIS LLP (SPAK - 102288)

17 ADDRESS : 181 BAY STREET, SUITE 1800  
CITY : TORONTO PROV: ON POSTAL CODE: M5J2T9



FAMILY : 5 OF 6  
SEARCH : BD : SINO-FOREST CORPORATION

ENQUIRY PAGE : 7 OF 8

00 FILE NUMBER : 665186985 EXPIRY DATE : 15OCT 2020 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
REG NUM : 20101015 1215 1793 1245 REG TYP: P PPSA REG PERIOD: 10  
02 IND DOB : IND NAME:  
03 BUS NAME: SINO-FOREST CORPORATION OCN :  
04 ADDRESS : 90 BURNHAMTHORPE ROAD WEST, SUITE 1208  
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B3C3  
05 IND DOB : IND NAME:  
06 BUS NAME: OCN :  
07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
LAW DEBENTURE TRUST COMPANY OF NEW YORK  
09 ADDRESS : 400 MADISON AVENUE, 4TH FLOOR  
CITY : NEW YORK PROV: NY POSTAL CODE: 10017  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
10 X X  
YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION  
13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR.

14  
15

16 AGENT: AIRD & BERLIS LLP (RMK-106760)  
17 ADDRESS : 181 BAY STREET, SUITE 1800  
CITY : TORONTO PROV: ON POSTAL CODE: M5J2T9

FAMILY : 6 OF 6  
SEARCH : BD : SINO-FOREST CORPORATION

ENQUIRY PAGE : 8 OF 8

00 FILE NUMBER : 665928963 EXPIRY DATE : 17NOV 2016 STATUS :  
01 CAUTION FILING ; PAGE : 01 OF 001 MV SCHEDULE ATTACHED :  
REG NUM : 20101117 1007 1462 0113 REG TYP; P PPSA REG PERIOD: 6

02 IND DOB : IND NAME:  
03 BUS NAME: SINO-FOREST CORPORATION

OCN :

04 ADDRESS : 1208-90 BURNHAMTHORPE RD W  
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B3C3

05 IND DOB : IND NAME:  
06 BUS NAME:

OCN :

07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
XEROX CANADA LTD

09 ADDRESS : 33 BLOOR ST. E. 3RD FLOOR  
CITY : TORONTO PROV: ON POSTAL CODE: M4W3H1

	CONS.	GOODS	INVTRY.	EQUIP	ACCTS	OTHER	INCL	AMOUNT	DATE OF	OR	NO	FIXED
									MATURITY		MAT	DATE
10		X				X						X

YEAR MAKE MODEL V.I.N.

11  
12

GENERAL COLLATERAL DESCRIPTION

13  
14  
15

16 AGENT: PPSA CANADA INC. - (3992)

17 ADDRESS : 110 SHEPPARD AVE EAST, SUITE 303  
CITY : TORONTO PROV: ON POSTAL CODE: M2N6Y8

Schedule "A"

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

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**INITIAL ORDER**

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

Robert W. Staley (LSUC #27115J)  
Kevin Zych (LSUC #33129T)  
Derek J. Bell (LSUC #43420J)  
Jonathan Bell (LSUC #55457P)  
Tel: 416-863-1200  
Fax: 416-863-1716

Lawyers for the Applicant

# TAB 5

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

**Sino-Forest Corporation**

**FOURTH REPORT OF THE MONITOR**

**July 10, 2012**

**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

**FOURTH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**INTRODUCTION**

1. On March 30, 2012 (the "**Filing Date**"), Sino-Forest Corporation (the "**Company**") filed for and obtained protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Pursuant to the Order of this Honourable Court dated March 30, 2012 (the "**Initial Order**"), FTI Consulting Canada Inc. was appointed as the Monitor of the Company (the "**Monitor**") in the CCAA proceedings. Pursuant to an Order of this Court made on May 31, 2012, this Court granted an Order extending the Stay Period (as defined in the Initial Order) to September 28, 2012. The proceedings commenced by the Company under the CCAA will be referred to herein as the "**CCAA Proceedings**".
2. On the Filing Date, the Court also issued an Order authorizing the Company to conduct a Sale Process (the "**Sale Process Order**"). A copy of the Sale Process Order is attached as Appendix A hereto.
3. The purpose of this Fourth Report of the Monitor (the "**Fourth Report**") is to provide this Honourable Court with an update as to the status of the Sale Process including the intended next steps of the Company as required by the endorsement

of Justice Morawetz made on May 31, 2012.

4. In preparing this Fourth Report, the Monitor has relied upon unaudited financial information of the Company, the Company's books and records, certain financial information prepared by the Company, the Reports of the Independent Committee of the Company's Board of Directors dated August 10, 2011, November 13, 2011, and January 31, 2012, and discussions with the Company's management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this Fourth Report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this Fourth Report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
5. Unless otherwise stated, all monetary amounts contained herein are expressed in US Dollars.
6. The term "**Sino-Forest**" refers to the global enterprise as a whole but does not include references to the Greenheart Group. "**Sino-Forest Subsidiaries**" refers to all of the direct and indirect subsidiaries of the Company, but does not include references to the Greenheart Group.
7. Other than with respect to the section labelled "UPDATE ON SALE PROCESS", capitalized terms not defined in this Fourth Report are as defined in the pre-filing report of the proposed monitor dated March 30, 2012 (the "**Pre-Filing Report**") and the affidavit of W. Judson Martin sworn March 30, 2012 (the "**Initial Order Affidavit**").

## GENERAL BACKGROUND

### Sino-Forest Business

8. Sino-Forest conducts business as a forest plantation operator in the People's

Republic of China (“**PRC**”). Its principal businesses include ownership and management of forest plantation trees, the sale of standing timber and wood logs, and complementary manufacturing of downstream engineered-wood products.

9. The Company is a public holding company whose common shares are listed on the Toronto Stock Exchange (“**TSX**”). Prior to August 26, 2011 (the date of the Cease Trade Order, defined below), the Company had 246,095,926 common shares issued and outstanding and trading under the trading symbol “**TRE**” on the **TSX**.
10. On June 2, 2011, Muddy Waters, LLC (“**MW**”), which held a short position on the Company’s shares, issued a report (the “**MW Report**”) alleging, among other things, that Sino-Forest is a “ponzi-scheme” and a “near total fraud”. The **MW Report** was issued publicly and immediately caught the attention of the media on a world-wide basis.
11. Subsequent to the issuance of the **MW Report**, the Company devoted extensive time and resources to investigate and address the allegations in the **MW Report** as well as responding to additional inquiries from, among others, the Ontario Securities Commission, the Royal Canadian Mounted Police and the Hong Kong Securities and Futures Commission.
12. In view of the **MW Report**, the subsequent litigation and regulatory investigations and other issues continue to have a significant negative impact on the Company and have threatened the long term viability of Sino-Forest’s operations. For the reasons discussed in the Pre-Filing Report and the Initial Order Affidavit, the Company and the business was placed into a stalemate that could not be resolved without the Court supervised solution offered by the CCAA Proceedings.
13. The Pre-Filing Report and the Initial Order Affidavit provide a detailed outline of Sino-Forest’s corporate structure, business, reported assets and financial information as well as a detailed chronology of the Company and its actions since the issuance of the **MW Report** in June 2011.



## UPDATE ON SALE PROCESS

14. Capitalized terms used in this section and not otherwise defined have the meaning given to them in the sale process procedures (“**SPP**”) approved pursuant to the Sale Process Order.
15. As set out in the Initial Order Affidavit and the Pre-Filing Report, the Company and a group of ad hoc noteholders (the “**Initial Consenting Noteholders**”) negotiated and entered into a restructuring support agreement (the “**Support Agreement**”) that provided for a restructuring transaction (the “**Restructuring Transaction**”) for the Company and its assets.
16. In connection with the commencement of the Proceedings, and as contemplated by the Support Agreement, the Company sought and obtained the Sale Process Order which provided for the implementation of a solicitation process in accordance with Court-approved sale process procedures.
17. The purpose of the SPP was to determine whether any parties were willing to purchase substantially all of Sino-Forest’s business operations for an amount provided for under the SPP. Under the terms of the Sale Process Order, the Company’s financial advisor, Houlihan Lokey (“**HL**”), conducted the Sale Process which is described in the following paragraphs.
18. Throughout the conduct of the SPP, the Monitor was advised and, in some cases, directly involved, in the steps being taken.
19. Upon the granting of the Sale Process Order, the following steps were taken:
  - (a) On April 5, 2012, the Monitor caused notice of the SPP to be published in the Globe and Mail and the Wall Street Journal. A copy of the publication notices were attached as Appendices F & G to the Monitor’s First Report;
  - (b) On March 30, 2012, the Company issued a press release regarding the SPP;

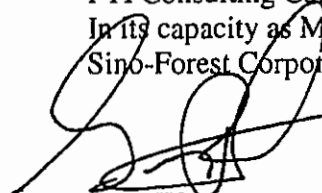
- (c) The Company, with the assistance of HL and the Monitor, prepared a “teaser” letter that was sent to potentially interested parties;
  - (d) HL, in consultation with the Company and the Monitor,
    - (i) Selected a group of eighty-five (85) of strategic and financial buyers (comprised of buyers who had either contacted HL or the Company or were otherwise chosen to be in the group) and provided those potentially interested parties with copies of the teaser letter;
    - (ii) Negotiated fourteen (14) confidentiality agreements (“CAs”) with those parties who indicated an interest in the business;
  - (e) Certain of these bidders were ultimately deemed to be “Phase I Qualified Bidders” in accordance with the SPP requirements;
  - (f) On or about June 28, 2012 (the “Phase I Bid Deadline”), a number of non binding letters of intent (the “LOIs”) were received by the Company.
20. Pursuant to the SPP, upon receipt of the LOIs the Company, in consultation with HL and the Monitor, was required to determine whether any such LOIs constituted “Qualified Letters of Intent” and to notify parties as to whether their LOI constituted a Qualified Letter of Intent within seven (7) business days of the Phase I Bid Deadline. If a Qualified Letter of Intent was received during Phase 1, the Company would continue to Phase 2 of the SPP.
21. The SPP provided that the Company would terminate the SPP at the end of Phase 1 if, *inter alia*, no Qualified Letters of Intent were received.
22. Upon receipt of the LOIs, the Company and HL, in consultation with the Monitor, reviewed the terms of the LOIs to determine whether any of them met the requirements of the SPP.
23. The Company has determined that none of the LOIs constitute a Qualified Letter

of Intent as provided for under the SPP. The Monitor understands that the advisors to the Ad Hoc Noteholders concur in this determination. As a result, on July 10, 2012, the Company issued a press release announcing the termination of the SPP. The Company also announced that it intends to proceed with the Restructuring Transaction as contemplated by the Support Agreement. As set out in the Support Agreement, the implementation of a Restructuring Transaction pursuant to a CCAA plan would be subject to all requisite Court approvals. A copy of the press release is attached as Appendix B hereto.

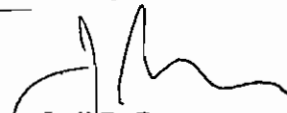
24. The Monitor has not included a summary of the LOIs due to the commercially sensitive nature of the contents of those LOIs. However, as set out above, the Monitor has independently reviewed the LOIs and is of the view, under the terms of the SPP, none of the LOIs constitute a Qualified Letter of Intent. In light of the fact that no Qualified Letters of Intent were received, the Monitor is of the view that the termination of the Sale Process is appropriate in the circumstances

Dated this 10<sup>th</sup> day of July, 2012.

FTI Consulting Canada Inc.  
In its capacity as Monitor of  
Sino-Forest Corporation, and not in its personal capacity



Greg Watson  
Senior Managing Director



Jodi B. Porepa  
Managing Director

# TAB 6

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

## **Sino-Forest Corporation**

### **SUPPLEMENTAL REPORT TO THE THIRTEENTH REPORT OF THE MONITOR**

**December 4, 2012**

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

**SUPPLEMENTAL REPORT TO THE  
THIRTEENTH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

1. The purpose of this Supplemental Report to the Thirteenth Report (the “**Supplemental Report**”) is to supplement the Thirteenth Report of the Monitor dated November 22, 2012 (the “**Thirteenth Report**”) by:
  - (a) Reporting on amendments to the Plan since the October 19 Plan (defined below) that was described in the Thirteenth Report;
  - (b) to report on the results of the Meeting (defined below); and
  - (c) to provide the Monitor’s recommendation that the Court approve the Plan.
2. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Plan and, if not defined in the Plan, the Thirteenth Report. Paragraphs 5 and 6 of the Thirteenth Report are incorporated herein by reference.
3. The following appendices have been attached to this Supplemental Report:
  - (a) Appendix A – The Plan of Compromise and Reorganization dated December 3, 2012 (the “**Plan**”)

- (b) Appendix B – Blackline of the October 19 Plan to the Plan
- (c) Appendix C – Blackline of the November 28 Plan to the Plan
- (d) Appendix D – Copy of the Company’s press releases dated November 28, 2012, November 30, 2012 and December 3, 2012
- (e) Appendix E – Copy of the Emails to the Service List dated November 28, 2012, November 30, 2012 and December 3, 2012
- (f) Appendix F – Voting Procedures
- (g) Appendix G - Form of Resolution
- (h) Appendix H – Copy of the Minutes of the Meeting including Scrutineer’s Report
- (i) Appendix I – OSC Notice of Hearing and Statement of Allegations against EY
- (j) Appendix J – Letter from Wardle Daley Bernstein re Claim of David Horsley dated November 29, 2012 and responding letter of Bennett Jones LLP dated November 30, 2012
- (k) Appendix K – Proof of Claim (excluding Tab 1 and 2) of David Horsley for vacation pay, termination and severance dated November 1, 2012
- (l) Appendix L - Letter from Davis LLP re Kai Kit Poon dated November 28, 2012 and responding letter of Gowling Lafleur Henderson LLP dated November 29, 2012

## **AMENDMENTS TO THE PLAN**

### *Changes to the Plan (Non-Third Party Defendants)*

4. As result of numerous negotiations which have occurred since the October 19 Plan was filed, a number of changes to the Plan have been agreed upon. Certain of those changes relate specifically to certain Third Party Defendants and those changes are summarized in

the next section below. A summary of certain of the other changes contained in the Plan is as follows:

- (a) Reserves (which are also discussed in more detail below):
  - (i) the amount of the Administration Charge Reserve will be \$500,000 or such other amount as may be agreed to by the Monitor and the ICNs;
  - (ii) there will be no Directors' Charge Reserve nor will there be any amount in the Unresolved Claims Reserve set aside for OSC claims against Directors and Officers;
  - (iii) the Unresolved Claims Reserve will now consist of Plan consideration sufficient to make potential distributions under the Plan in respect of the following in the event that they become Proven Claims: (a) indemnity claims of Third Party Defendants for Indemnified Noteholder Class Action Claims up to the Indemnified Noteholder Class Action Limit; (b) Defence Costs Claims of up to \$12 million<sup>1</sup> or such other amount as may be agreed by the Monitor and the ICNs; and (c) other unresolved Affected Creditor Claims of up to \$500,000 or such other amount as may be agreed by the Monitor and the ICNs;
  - (iv) the Monitor's Post-Implementation Charge Reserve will be \$5 million or such other amount as may be agreed to by the Monitor and the ICNs; and
  - (v) The Unaffected Claims Reserve will be \$1.5 million or such other amount as may be agreed to by the Monitor, the Company and the ICNs.
- (b) Matters relating to the Litigation Trust:
  - (i) the amount of the Litigation Funding Amount is \$1 million; and

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<sup>1</sup> Please see the section below entitled "Additional Information Relating to the Reserves" for the Monitor's report on the adjustment to the calculation of the Defence Costs Claims Limit (defined below).



- (ii) at any date prior to the Plan Implementation Date, the Company and the ICNs may agree to exclude one or more claims, actions or causes of action from the Litigation Trust Claims that would otherwise be assigned to the Litigation Trust on Plan Implementation (“**Excluded Litigation Trust Claims**”).
- (c) Certain provisions relating to the creation of “Newco II” in connection with the implementation of the restructuring transaction have been incorporated throughout the Amended Plan. Newco II will be a wholly-owned subsidiary of Newco to which Newco will transfer the SFC Assets on the Plan Implementation Date. Following implementation of the Plan, Newco II will own the SFC Assets.
- (d) Unaffected Claims no longer includes Claims for termination pay or severance pay payable by the Company to any Person who ceased to be an employee, director or officer of the Company prior to the date of the Plan. Any claims in this regard will now be treated as Unresolved Claims.
- (e) Persons with Unresolved Claims shall have standing in any proceeding in respect of the determination or status of any Unresolved Claims and Goodmans LLP shall have standing in any such proceeding on behalf of the ICNs.
- (f) The due diligence condition precedent in favour of the ICNs now extends to the Plan Implementation Date with respect to any new material information or events arising or discovered on or after the date of the Sanction Hearing provided that any “new material information or events” does not include any information or events disclosed prior to the date of the Sanction Hearing in a press release or affidavit of the Company or a report of the Monitor that has been filed with the Court.
- (g) Within three (3) business days of the Plan Implementation Date, a foreign representative of the Company will commence a proceeding in the United States for the purpose of seeking recognition of the Plan and the Sanction Order and shall use its reasonable best efforts to obtain such recognition.

*Changes to the Plan (Third Party Defendants)*

5. In addition to the foregoing changes, the Plan was also amended to incorporate changes that relate specifically to the Underwriters and Ernst & Young as well as additional changes to provide a mechanism for a Plan release in the event that the Underwriters and BDO enter into settlements with the Class-Action Plaintiffs or the Litigation Trustee (on behalf of the Litigation Trust), all of which is discussed below.
6. Changes relating to the Underwriters:
  - (a) Claims of the Underwriters against the Company for indemnification in respect of any Noteholder Class Action Claims (other than claims against them for fraud or criminal conduct) shall, for the purposes of the Plan, be deemed to be valid and enforceable Class Action Indemnity Claims against the Company.
  - (b) The Underwriters shall not be entitled to any distributions under the Plan.
  - (c) All Causes of Action against the Underwriters by the Company or the Trustees are deemed to be Excluded Litigation Trust Claims.
  - (d) Any portion or amount of liability of the Underwriters for the Noteholder Class Action Claims (other than such claims for fraud or criminal conduct) that exceeds the Indemnified Noteholder Class Action Limit is released under the Plan.
  - (e) The Underwriters are Named Third Party Defendants (as discussed and defined below).
7. Changes relating to Ernst & Young (as defined in the Plan):
  - (a) Any and all indemnification rights and entitlements of Ernst & Young and any indemnification agreement between Ernst & Young and the Company shall be deemed to be valid and enforceable in accordance with their terms for the purposes of determining whether the Claims of Ernst & Young for

indemnification in respect of the Noteholder Class Action Claims are valid and enforceable within the meaning of section 4.4(b) the Plan.<sup>2</sup>

- (b) Ernst & Young shall not be entitled to any distributions under the Plan.
- (c) The Sanction Order shall contain a stay against Ernst & Young between the Plan Implementation Date and the earlier of the Ernst & Young Settlement Date (as defined in the Plan) or such other date as may be ordered by the Court on a motion to the Court.
- (d) In addition to the foregoing, Ernst & Young has now entered into a settlement with the Ontario Plaintiffs and the Quebec Plaintiffs, which is still subject to several conditions and approval of the Ernst & Young Settlement itself, does not form part of the Sanction Order. Section 11.1 of the Plan contains provisions that provide a framework pursuant to which a release of the Ernst & Young Claims<sup>3</sup> under the Plan would happen if several conditions were met. That release will only be granted if all conditions are met including further Court approval. A summary of those terms is as follows:
  - (i) Notwithstanding anything to the contrary in the Plan, subject to (A) the granting of the Sanction Order; (B) the issuance of the Settlement Trust Order (as may be modified in a manner satisfactory to the parties to the Ernst & Young Settlement and the Company (if occurring on or prior to the Plan Implementation Date), the Monitor and the ICNs, as applicable, to the extent, if any, that such modifications affect the Company, the Monitor or the ICNs, each acting reasonably); (C) the granting of an Order under Chapter 15 of the United States Bankruptcy Code recognizing and enforcing the Sanction Order and the Settlement Trust Order in the United States; (D) any other order necessary to give effect to the Ernst & Young

<sup>2</sup> Section 4.4(b) of the Plan, among other things, establishes the Indemnified Noteholder Class Action Limit.

<sup>3</sup> "Ernst & Young Claims" has the definition given to it in the Plan and does not include any proceedings or remedies that may be taken against Ernst & Young by the Ontario Securities Commission or by staff of the Ontario Securities Commission and the jurisdiction of the Ontario Securities Commission is expressly preserved.

Settlement (the orders referenced in (C) and (D) being collectively the “**Ernst & Young Orders**”); (E) the fulfillment of all conditions precedent in the Ernst & Young Settlement and the fulfillment by the Ontario Class Action Plaintiffs of all of their obligations thereunder; and (F) the Sanction Order, the Settlement Trust Order and all Ernst & Young Orders being final orders and not subject to further appeal or challenge, Ernst & Young shall pay the settlement amount as provided in the Ernst & Young Settlement to the trust established pursuant to the Settlement Trust Order (the “**Settlement Trust**”);

- (ii) Upon receipt of a certificate from Ernst & Young confirming it has paid the settlement amount to the Settlement Trust in accordance with the Ernst & Young Settlement and the trustee of the Settlement Trust confirming receipt of such settlement amount, the Monitor shall deliver to Ernst & Young the Monitor’s Ernst & Young Settlement Certificate. The Monitor shall thereafter file the Monitor’s Ernst & Young Settlement Certificate with the Court;
- (iii) Notwithstanding anything to the contrary in the Plan, upon receipt by the Settlement Trust of the settlement amount in accordance with the Ernst & Young Settlement: (A) all Ernst & Young Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, barred and deemed satisfied and extinguished as against Ernst & Young; (B) section 7.3 of the Plan shall apply to Ernst & Young and the Ernst & Young Claims *mutatis mutandis* on the Ernst & Young Settlement Date; and (C) none of the plaintiffs in the Class Actions shall be permitted to claim from any of the other Third Party Defendants that portion of any damages that corresponds to the liability of Ernst & Young, proven at trial or otherwise, that is the subject of the Ernst & Young Settlement; and
- (iv) In the event that the Ernst & Young Settlement is not completed in accordance with its terms, the Ernst & Young Release will not become

effective (and any claims against Ernst & Young will be assigned to the Litigation Trust).

8. Changes relating to Named Third Party Defendants:

- (a) The Plan now provides a mechanism that would provide the framework for any Eligible Third Party Defendants<sup>4</sup> to become a “Named Third Party Defendant” with the consent of such Third Party Defendant, the Monitor, the ICNs, counsel to the Ontario Plaintiffs and, if occurring prior to the Plan Implementation Date, the Company. As set out above, the Underwriters have become Named Third Party Defendants pursuant to the Plan.
- (b) The deadline for an Eligible Third Party Defendant to become a Named Third Party Defendant is 10am on December 6, 2012 or such later date as may be consented to by the Monitor, the Company (if on or prior to the Plan Implementation Date) and the ICNs. As set out above, the Underwriters have become Named Third Party Defendants.
- (c) Any Named Third Party Defendants will not be entitled to any distributions under the Plan.
- (d) If an Eligible Third Party Defendant becomes a Named Third Party Defendant, then any indemnification rights and entitlements of such party and any indemnity agreements between such party and by the Company shall be deemed valid and enforceable in accordance with their terms for the purpose of determining whether the Claims of that Named Third Party Defendant for indemnification in respect of the Noteholder Class Action Claims are valid and enforceable within the meaning of section 4.4(b) the Plan.

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<sup>4</sup> The Eligible Third Party Defendants are the Underwriters, BDO and, if the Ernst & Young Settlement is not completed, Ernst & Young.

- (e) The Plan now provides the framework pursuant to which a Named Third Party Defendant Settlement would be approved and such Named Third Party Defendant would obtain a release under the Plan as follows:
- (i) Notwithstanding anything to the contrary in the Plan, subject to: (A) the granting of the Sanction Order; (B) the granting of the applicable Named Third Party Defendant Settlement Order; and (C) the satisfaction or waiver of all conditions precedent contained in the applicable Named Third Party Defendant Settlement, the applicable Named Third Party Defendant Settlement shall be given effect in accordance with its terms;
  - (ii) Upon receipt of a certificate (in form and in substance satisfactory to the Monitor) from each of the parties to the applicable Named Third Party Defendant Settlement confirming that all conditions precedent thereto have been satisfied or waived, and that any settlement funds have been paid and received, the Monitor shall deliver to the applicable Named Third Party Defendant a Monitor's Named Third Party Defendant Settlement Certificate stating that (A) each of the parties to such Named Third Party Defendant Settlement has confirmed that all conditions precedent thereto have been satisfied or waived; (B) any settlement funds have been paid and received; and (C) immediately upon the delivery of the Monitor's Named Third Party Settlement Certificate, the applicable Named Third Party Defendant Release will be in full force and effect in accordance with the Plan. The Monitor shall thereafter file the Monitor's Named Third Party Settlement Certificate with the Court; and
  - (iii) Notwithstanding anything to the contrary in the Plan, upon delivery of the Monitor's Named Third Party Settlement Certificate, any claims and Causes of Action shall be dealt with in accordance with the terms of the applicable Named Third Party Defendant Settlement, the Named Third Party Defendant Settlement Order and the Named Third Party Defendant Release. To the extent provided for by the terms of the applicable Named

Third Party Defendant Release: (A) the applicable Causes of Action against the applicable Named Third Party Defendant shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, barred and deemed satisfied and extinguished as against the applicable Named Third Party Defendant; and (B) section 7.3 of the Plan shall apply to the applicable Named Third Party Defendant and the applicable Causes of Action against the applicable Named Third Party Defendant *mutatis mutandis* on the effective date of the Named Third Party Defendant Settlement.

*Other Changes that Relate to the Third Party Defendants*

9. Indemnified Noteholder Class Action Limit:

- (a) It has been clarified that in the event that a Third Party Defendant is found to be liable for or agrees to a settlement in respect of Noteholder Class Action Claims (other than for fraud or criminal conduct), and such amounts are paid by the Third Party Defendant, then the amount of the Indemnified Noteholder Class Action Limit applicable to the remaining Third Party Defendants shall be reduced by the amount of such judgement or settlement.<sup>5</sup>

10. Document Preservation.

- (a) Prior to Plan Implementation, the Company shall:<sup>6</sup>
  - (i) preserve or cause to be preserved copies of any documents (as such term is defined in the *Rules of Civil Procedure* (Ontario)) that are relevant to the issues raised in the Class Actions; and
  - (ii) make arrangements acceptable to SFC, the Monitor, the ICNs, counsel to Ontario Class Action Plaintiffs, counsel to Ernst & Young, counsel to the Underwriters and counsel to any other Eligible Third Party Defendant if

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<sup>5</sup> Section 4.4(b)(iii)

<sup>6</sup> Section 8.2(x)

they become a Named Third Party Defendants to provide the parties to the Class Actions with access thereto, subject to customary commercial confidentiality, privilege or other applicable restrictions, including lawyer-client privilege, work product privilege and other privileges or immunities, and to restrictions on disclosure arising from s. 16 of the *Securities Act* (Ontario) and comparable restrictions on disclosure in other relevant jurisdictions, for purposes of prosecuting and/or defending the Class Actions, as the case may be, provided that nothing in the foregoing reduces or otherwise limits the parties' rights to production and discovery in accordance with the *Rules of Civil Procedure* (Ontario) and the *Class Proceedings Act, 1992* (Ontario).

## ADDITIONAL INFORMATION RELATING TO THE RESERVES

### *The Cash Reserves*

11. Information relating to the purpose of the Administration Charge, the Unaffected Claims Reserve and the Monitor's Post-Implementation Reserve was contained in the Thirteenth Report. The Plan now provides for the amounts of these Reserves as follows:
  - (a) *Administration Charge Reserve (\$500,000)*. The Plan now provides for the payment of the final invoices of the beneficiaries of the Administration Charge Reserve as a condition to the implementation of the Plan. The amount of \$500,000 has been allocated to the Administration Charge Reserve as a safeguard in the event that there are miscellaneous amounts which are inadvertently missed upon the final payments prior to Plan implementation.
  - (b) *Monitor's Post-Implementation Reserve (\$5,000,000)*. The Monitor's Post-Implementation Reserve is intended to capture costs in administering the SFC estate and the Claims Process post-implementation.
  - (c) *The Unaffected Claims Reserve (\$1,500,000)*. Pursuant to the Plan, the following categories of Claims are Unaffected Claims under the Plan: (i) Claims secured by the Administration Charge; (ii) Government Priority Claims; (iii) Employee



Priority Claim; (iv) Lien Claims; (iv) any other Claims of any employee, former employee, Director or Officer of SFC in respect of wages, vacation pay, bonuses, termination pay, severance pay or other remuneration payable to such Person by SFC, other than any termination pay or severance pay payable by SFC to a Person who ceased to be an employee, Director or Officer of SFC prior to the date of this Plan; (v) Trustee Claims; and (vi) any trade payables that were incurred by SFC (A) after the Filing Date but before the Plan Implementation Date; and (B) in compliance with the Initial Order or other Order issued in the CCAA Proceeding. The Monitor and the Company have reviewed the categories of Unaffected Claims (other than those that are covered by the Administration Charge Reserve) taking into consideration the Company's incurred expenses post-filing, Lien Claims which may be asserted by parties with personal property security registrations, the fact that the Trustees are expected to be paid prior to Plan Implementation (see section 9.1(ee) of the Plan) and the maximum estimated employee related Claims for employees who did not cease to be an employee prior to the date of the Plan. Based on the foregoing, the Monitor and the Company estimate that any such Claims would not exceed \$1.5 million in the aggregate.

*The Unresolved Claims Reserve*

12. The Unresolved Claims Reserve now accounts for three categories of Unresolved Claims:
  - (a) Class Action Indemnity Claims by the Third Party Defendants in respect of Indemnified Noteholder Class Action Claims up to \$150 million (being the Indemnified Noteholder Class Action Limit). In light of the fact that the Plan provides for a release of any Third Party Defendants for any Indemnified Noteholder Class Action Claims beyond the Indemnified Noteholder Class Action Limit, the total potential maximum liability of the Company for any resulting Indemnified Noteholder Class Action Claims is thereby also limited to the Indemnified Noteholder Class Action Limit.

- (b) Defence Costs Claims of up to \$12 million (the “**Defence Costs Claims Limit**”). The basis for the calculation of the Defence Costs Claims Limit is discussed in the following paragraphs.
- (c) Other Affected Creditor Claims that are Unresolved Claims up to \$500,000 which represents the amount of Affected Creditor Claims as set out in the proofs of claims filed that are Unresolved Claims and not otherwise accounted for in the Unresolved Claims Reserve or otherwise provided for in the Plan.

*Basis for Calculating Reserve for Defence Costs Claims*

- 13. In accordance with the process established under the Claims Procedure Order, a number of claims have been filed by persons who seek indemnification for Defence Costs Claims<sup>7</sup> (in this capacity, “**Cost Claim Defendants**”). In light of the recent changes to the Plan which release the right of EY or the Underwriters to any distribution under the Plan, the amount of the Unresolved Claims Reserve to address Defence Costs Claims has been reduced to \$12 million.
- 14. As set out above, the Defence Costs Claims Limit has been established as part of the Unresolved Claims Reserve for Defence Costs Claims. All remaining Defence Costs Claims will be treated as Unresolved Claims until such time as they are disposed of or may become Proven Claims for Plan purposes.
- 15. The Company has requested the Monitor’s views concerning the quantum of the reserve for remaining Defence Costs Claims.
- 16. In considering this issue, the Monitor has taken account of a number of factors, including but not limited to the following:
  - (a) the amounts claimed as having been actually incurred;

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<sup>7</sup> Pursuant to section 4.8 of the Plan, Claims for “Defence Costs” are all Claims against SFC for indemnification of defence costs incurred by any Person (other than a Named Director or Officer) in connection with defending against Shareholder Claims (as defined in the Equity Claims Order), Noteholder Class Action Claims or any other claims of any kind relating to SFC or the Subsidiaries.

- (b) the specific nature of the claims to which the Cost Claim Defendants are responding;
  - (c) the anticipated synergies arising where multiple Cost Claim Defendants in similar legal and factual circumstances are represented by the same counsel;
  - (d) the experience of counsel to the Monitor in relation to the costs of other class proceedings;
  - (e) costs previously claimed as having been incurred and costs awarded by courts in other class proceedings, both on certification motions and following trial;
  - (f) the overlap in subject area between the class proceedings and regulatory or other proceedings in which the Cost Claim Defendants are involved; and
  - (g) the difficulties inherent in estimating costs to be incurred in the future which are contingent upon the actions of other parties and the course of complex litigation that is currently at an early stage.
17. Having weighed these factors, it is the Monitor's view that the aggregate amount of \$12 million would constitute a reasonable reserve for costs claimed in connection with the class proceedings by the Cost Claim Defendants (excluding EY, the Underwriters and the Named Directors and Officers who have waived any right to distributions under the Plan).
18. In forming its views concerning the amount to be reserved in connection with the Defence Costs Claims, the Monitor has made the following basic assumptions:
- (a) certification will be contested by all defendants, but ultimately granted;
  - (b) the Ontario class proceeding will be the only class proceeding to go to trial; and
  - (c) except for defendants represented by the same counsel, there will be no general cost sharing arrangements between defendants.

19. The establishment of the Unresolved Claims Reserve is not an admission by the Company, the Monitor or any other party (including the ICNs) as to the validity of any such Claims and all rights to dispute such Claims are reserved.

## THE MEETING

### *Meeting Date*

20. On November 28, 2012, the Company issued a press release (Appendix D) announcing it had further amended its plan dated October 19, 2012 (the “**October 19 Plan**”) and that, to provide creditors with time to review this amended plan (the “**November 28 Plan**”), the Meeting would be postponed to 10am on Friday November 30, 2012. The Company also announced the change in location of the meeting to the offices of Gowling Lafleur Henderson LLP (“**Gowlings**”) at 1 First Canadian Place, 100 King Street West, Suite 1600, Toronto, Ontario. The Monitor provided notice of these changes to the service list and posted the revised plan and the new time for the Meeting on its website (Appendix E).
21. On November 30, 2012, the Company issued a further press release (Appendix D) announcing that the Meeting would be postponed to 10am on Monday, December 3, 2012. The Monitor provided notice of the postponement of the Meeting to the service list and posted notice of the new time for the Meeting on its website (Appendix E).
22. On December 3, 2012, the Company issued a further press release (Appendix D) that it had further amended the November 28 Plan with the Plan. The Monitor provided a copy of the Plan to the CCAA service list (Appendix E) and the press release stated that the Plan would be posted on the Monitor’s website but that in the meantime, parties could contact the Monitor for a copy of the Plan.

### *Summary of Meeting*

23. The Meeting was held at Gowlings office on December 3, 2012, starting shortly after 10am.

24. In accordance with the Meeting Order, Greg Watson, an officer of FTI Consulting Canada Inc., acted as chair (the “**Chair**”) of the Meeting. Stephen McKersie of Gowlings acted as secretary of the Meeting and Jodi Porepa of FTI Consulting Canada Inc. acted as scrutineer (the “**Scrutineer**”).
25. Quorum for the purposes of the Meeting was one Affected Creditor with a Voting Claim present at the Meeting (in person or by proxy). The Scrutineer confirmed that there was at least one (1) Affected Creditor with a Voting Claim present at the Meeting (in person or by proxy). Accordingly, the Chair declared that the Meeting was properly constituted.
26. The Chair then provided an overview of the process for providing notice of the Plan and dispensed with the reading of the Notice to Affected Creditors (as set out in the Meeting Order) asked whether there was any person present with a Voting Claim or Unresolved Claim who had not submitted a proxy and who wished to vote at the Meeting. No such person responded.
27. The Chair then provided a brief overview of the CCAA proceedings and summarized the amendments to the Plan since the October 19 Plan. Upon conclusion of the summary of the Plan, the Chair asked whether anyone who was entitled to speak had any questions regarding the Plan. Ken Dekker of Affleck Greene McMurtry LLP, counsel for BDO, asked a question regarding the timeframe for further detail surrounding the mechanics regarding the implementation of the Plan and the continuation of the Class Actions including matters relating to documentary discovery and the impact of the release. Derrick Tay of Gowlings, counsel for the Monitor, replied that while discussions may take place prior to the Sanction Hearing, it was unlikely that all such issues would be resolved prior to the Sanction Hearing.
28. Upon conclusion of the discussion of the Plan, the Chair reviewed the process for voting on the Plan as set out in the Voting Procedures (Appendix F). The Chair then confirmed that: (a) the result of the proxy count would be announced after proposal and consideration of the motion and that results of both Voting Claims and Unresolved Claims would be announced; and (b) the CCAA requires a majority in number and 2/3 in

value of the voting class (present at the Meeting in person or by proxy) for approval of the Plan.

29. The Chair then read out the proposed resolution (Appendix G), as follows:
- (a) *"The plan of compromise and reorganization (the "CCAA Plan") under the Companies' Creditors Arrangement Act (Canada) and the Canada Business Corporations Act concerning, affecting and involving Sino-Forest Corporation ("SFC"), substantially in the form dated December 3, 2012 (as such CCAA Plan may be amended, varied or supplemented by SFC from time to time in accordance with its terms) and the transactions contemplated therein be and it is hereby accepted, approved, agreed to and authorized;*
  - (b) *Notwithstanding the passing of this resolution by each Affected Creditor Class (as defined in the CCAA Plan) or the passing of similar resolutions or approval of the Ontario Superior Court of Justice (the "Court"), the board of directors of SFC, without further notice to, or approval of, the Affected Creditors (as defined in CCAA Plan), subject to the terms of the CCAA Plan, may decide not to proceed with the CCAA Plan or may revoke this resolution at any time prior to the CCAA Plan becoming effective, provided that any such decision after the issuance of a sanction order shall require the approval of the Monitor and the Court; and*
  - (c) *Any director or officer of SFC be and is hereby authorized, for and on behalf of SFC, to execute and deliver, or cause to be executed and delivered, any and all documents and instruments and to take or cause to be taken such other actions as he or she may deem necessary or desirable to implement this resolution and the matters authorized hereby, including the transactions required by the CCAA Plan, such determination to be conclusively evidenced by the execution and delivery of such documents or other instruments or taking of any such actions."*
30. Robert Chadwick of Goodmans LLP, holder of a number of proxies on behalf of Noteholders, then proposed the motion.
31. The Monitor then advised that it had tabulated the proxies indicating votes received for both Voting Claims and Unresolved Claims in connection with the Plan (as amended up to December 3, 2012). The following tables show:
- (a) the number of Voting Claims and their value for and against the Plan (table 1):

	Number of Votes	%	Value of Votes	%
Total Claims Voting For	250	98.81%	\$ 1,465,766,204	99.97%
Total Claims Voting Against	3	1.19%	\$ 414,087	0.03%
Total Claims Voting	253	100.00%	\$ 1,466,180,291	100.00%

- (b) the number of votes for and against the Plan in connection with Class Action Indemnity Claims in respect of Indemnified Noteholder Class Action Claims up to the Indemnified Noteholder Limit (table 2):

	Vote For	Vote Against	Total Votes
Class Action Indemnity Claims	4	1	5

- (c) the number of Defence Costs Claims votes for and against the Plan and their value (table 3):

	Number of Votes	%	Value of Votes	%
Total Claims Voting For	12	92.31%	\$ 8,375,016	96.10%
Total Claims Voting Against	1	7.69%	\$ 340,000	3.90%
Total Claims Voting	13	100.00%	\$ 8,715,016	100.00%

- (d) the overall impact on the approval of the Plan if the count were to include Total Unresolved Claims (including Defence Costs Claims) and if the entire \$150 million of the Indemnified Noteholder Class Action Limit had been voted a “no” vote (table 4):

	Number of Votes	%	Value of Votes	%
Total Claims Voting For	263	98.50%	\$ 1,474,149,082	90.72%
Total Claims Voting Against	4	1.50%	\$ 150,754,087	9.28%
Total Claims Voting	267	100.00%	\$ 1,624,903,169	100.00%

32. A copy of the Minutes of the Meeting including a copy of the scrutineer’s report is attached as Appendix H.
33. The motion was carried and Meeting was terminated at approximately 10:34am.

## ADDITIONAL UPDATES

### *OSC Proceedings regarding EY*

34. On December 3, 2012, the OSC issued a statement of allegations and notice of hearing against EY (Appendix I). The hearing was set for January 7, 2013.

### *Appeal of the Equity Decision*

35. On November 28, 2012, the Underwriters provided notice of their intention to seek leave of the Supreme Court of Canada to appeal the Ontario Court of Appeal's decision dismissing the appeal of the Equity Claims Decision. The Underwriters have now advised of their decision to not further pursue leave of the Supreme Court of Canada.

#### **REMAINING OBJECTIONS TO THE PLAN**

36. The Company and the ICNs have made significant progress in resolving issues relating to the Plan such that, neither the Ontario Plaintiffs nor the Quebec Plaintiffs are opposed to the Plan; and both Ernst & Young and the Underwriters are supportive of the Plan. As of the date of this Report, the Monitor is aware of objections to the Plan from only from BDO and one former director and one former officer. The Company and the ICNs intend to continue to work to see if the objections of BDO can be resolved prior to the Sanction Hearing.
37. As of the date of this Supplemental Report, the former director and former officer referred to above have written letters indicating their intention to object to the Plan. For the reference of the Court, attached are the following documents:
- (a) Letter from Wardle Daley Bernstein re Claim of David Horsley dated November 29, 2012 and responding letter of Bennett Jones LLP dated November 30, 2012 (Appendix J);
  - (b) Proof of Claim (excluding Tab 1 and 2) of David Horsley for vacation pay, termination and severance pay dated November 1, 2012 (Appendix K); and
  - (c) Letter from Davis LLP re Kai Kit Poon dated November 28, 2012 and responding letter of Gowling Lafleur Henderson LLP dated November 29, 2012 (Appendix L).
38. Additionally, the Monitor is aware that an individual, Mr. Lam, who the Monitor understands was a purchaser of shares after the release of the MW Report (and therefore not part of the Class Actions) has requested changes to the Plan to, among other things, expressly preserve his claims against the Third Party Defendants. The Monitor has



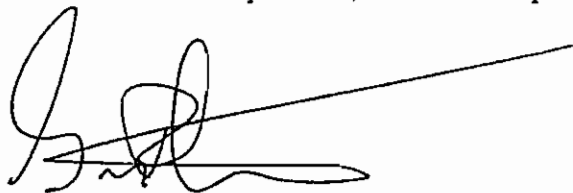
written to Mr. Lam and indicated that it was not prepared to recommend any of the changes requested.

### **RECOMMENDATION AND CONCLUSIONS**

39. The Thirteenth Report contained the Monitor's analysis as to the reasonableness of the Plan. The Monitor remains of the view that liquidation or bankruptcy would not be more beneficial to the Company's Affected Creditors.
40. As set out above, a number of outstanding objections to the Plan have now been settled and an overwhelming majority in number and in value of Affected Creditors with Voting Claims present in person or by proxy at the Meeting voted in favour of the Plan.
41. Accordingly, for the reasons set out in the Thirteenth Report and this Supplemental Report, the Monitor believes that the Plan is fair and reasonable and respectfully recommends that this Honourable Court grant the Company's request for sanction of the Plan.

Dated this 4<sup>th</sup> day of December, 2012.

FTI Consulting Canada Inc.  
In its capacity as Monitor of  
Sino-Forest Corporation, and not in its personal capacity



Greg Watson  
Senior Managing Director



Jodi Porepa  
Managing Director

TAB 7

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

**Sino-Forest Corporation**

**FIFTEENTH REPORT OF THE MONITOR**

**January 28, 2013**

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

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 MURRY, 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

**FIFTEENTH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

## INTRODUCTION

1. On March 30, 2012 (the “**Filing Date**”), Sino-Forest Corporation (the “**Company**” or “**SFC**”) filed for and obtained protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant to the Order of this Honourable Court dated March 30, 2012 (the “**Initial Order**”), FTI Consulting Canada Inc. was appointed as the Monitor of the Company (the “**Monitor**”) in the CCAA proceedings. By Order of this Court dated April 20, 2012, the powers of the Monitor were expanded in order to, among other things, provide the Monitor with access to information concerning the Company’s subsidiaries.
2. On December 10, 2012, the Court granted an Order (the “**Sanction Order**”) approving the Company’s Plan of Compromise and Reorganization dated December 3, 2012 (the “**Plan**”).
3. The following appendices have been attached to this Fifteenth Report:
  - (a) Appendix A - the Minutes of Settlement (as defined below);
  - (b) Appendix B - the Plan;
  - (c) Appendix C - the Monitor’s Thirteenth Report dated November 22, 2012 (the “**Thirteenth Report**”) (without appendices);
  - (d) Appendix D - the Monitor’s Supplemental Report to the Thirteenth Report dated December 4, 2012 (the “**Supplemental Report**”) (without appendices);
  - (e) Appendix E - the Monitor’s Second Supplemental Report to the Thirteenth Report dated December 6, 2012 (the “**Second Supplemental Report**”) (without appendices);
  - (f) Appendix F - the Claims Procedure Order;
  - (g) Appendix G - the Mediation Order;
  - (h) Appendix H - the Meeting Order;

- (i) Appendix I - Notice of Appearance of Kim Orr;
  - (j) Appendix J - the Sanction Order;
  - (k) Appendix K - Endorsement of Justice Morawetz re Sanction Hearing;
  - (l) Appendix L - Notice of Motion re Leave to Appeal the Sanction Order;
  - (m) Appendix M - (i) letter from Bennett Jones to Kim Orr dated January 3, 2013; (ii) letter from Kim Orr to Bennett Jones dated January 3, 2013; (iii) letter from Lenczner Slaght to Kim Orr dated January 3, 2013;
  - (n) Appendix N - E&Y Notice Order (as defined below);
  - (o) Appendix O - Company's press release dated January 24, 2013; and
  - (p) Appendix P - (i) letter from Gowling Lafleur Henderson dated January 11, 2013 regarding the addition of Allen Chan and Kai Kit Poon as Named Third Party Defendants; (ii) letter from Gowling Lafleur Henderson dated January 21, 2013 regarding the addition of David Horsley as a Named Third Party Defendant.
4. The objections received to the Ernst & Young Settlement up to January 21, 2013 have been filed separately in the Monitor's fourteenth report dated January 22, 2013 (the "**Fourteenth Report**"). Any subsequent Notices of Objection or other correspondence expressing objections have or will be attached in a supplement or supplements to the Fourteenth Report.
5. The proceedings commenced by the Company under the CCAA will be referred to herein as the "**CCAA Proceedings**".
6. The purpose of this Fifteenth Report is to report on certain matters relating to the Ernst & Young Settlement.
7. In preparing this Fifteenth Report, the Monitor has relied upon unaudited financial information of Sino-Forest, Sino-Forest's books and records, certain financial information prepared by Sino-Forest, the Reports of the Independent Committee of the

Company's Board of Directors dated August 10, 2011, November 13, 2011, and January 31, 2012, and discussions with Sino-Forest's management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. In addition, the Monitor notes that on January 10, 2012, the Company issued a press release cautioning that the Company's historic financial statements and related audit reports should not be relied upon. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this Fifteenth Report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this Fifteenth Report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

8. Unless otherwise stated, all monetary amounts referred to herein are expressed in CDN Dollars.
9. The term "**Sino-Forest**" refers to the global enterprise as a whole but does not include references to Greenheart (as defined in the Plan). "Sino-Forest Subsidiaries" refers to all of the direct and indirect subsidiaries of the Company, but does not include references to Greenheart.
10. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Plan, the Thirteenth Report, the Supplemental Report and/or the Second Supplemental Report.<sup>1</sup>

<sup>1</sup> See Appendices B, C, D and E for copies of the Plan, the Thirteenth Report, the Supplemental Report and the Second Supplemental Report.



## BACKGROUND

### *Overview of the CCAA Proceedings*

11. The description of the Company's business as well as the background to these proceedings has all been set out in previous reports of the Monitor as well as affidavits filed by the Company in connection with the CCAA Proceedings and is therefore not repeated herein.
12. A brief chronology of certain of the significant events in the CCAA Proceedings to date is as follows:
  - (a) On March 30, 2012, the Company sought and the Court granted the Initial Order the terms of which included a stay of proceedings (the "Stay") against the Company, its directors and officers and the Sino-Forest Subsidiaries. The Stay has been extended from time to time and is currently extended through to February 1, 2013.
  - (b) As part of its application for the Initial Order, the Company advised that it had entered into the RSA which provided for the terms on which certain Initial Consenting Noteholders would consent to a restructuring transaction.
  - (c) On the same day, the Court granted the Sale Process Order pursuant to which the Company was authorized to conduct a sale process, in part, as a market test of the transactions contemplated under the RSA.
  - (d) On April 20, 2012, the Court granted an Order expanding the Monitor's powers in these proceedings.
  - (e) On May 8, 2012, on a motion by the Company (the "Third Party Stay Motion"), the Court granted an Order confirming that the Stay extended to the Third Party Defendants (as defined below) in the Class Actions.

- (f) On May 14, 2012, the Court granted the Claims Procedure Order which provided for the calling of claims against the Company, its directors and officers and the Sino-Forest Subsidiaries and established a claims bar date.
- (g) On June 26, 2012 the Company brought a motion relating to a determination on “equity claims” and on July 27, 2012, the Court granted the motion and issued the Equity Claims Order. An appeal from the Equity Claims Order was dismissed by the Ontario Court of Appeal on November 23, 2012.
- (h) On July 25, 2012, the Monitor sought and the Court granted the Mediation Order, directing a mediation of the Class Action Claims against the Company and the Third Party Defendants. The Mediation took place over the course of September 4 and 5, 2012. While no settlements were reached during the Mediation, settlement discussions among parties to the Mediation continued following the Mediation.
- (i) On August 31, 2012, the Company sought and the Court granted the Meeting Order which provided for the filing of the Plan and the calling of a meeting of creditors.
- (j) On October 28, 2012, the Ontario Class Action Plaintiffs brought a motion seeking a lifting of the stay against Ernst & Young, BDO, the Underwriters, Allen Chan and Kai Kit Poon. The motion was not opposed by the Company or the Monitor. In an endorsement released on November 6, 2012, the Court dismissed the motion without prejudice to the Ontario Class Action Plaintiffs to renew their request on December 10, 2012 (which was the scheduled date for the Sanction Hearing).
- (k) On December 3, 2012, the Meeting took place at which time the Plan was approved by the Required Majority (also discussed in more detail below).
- (l) On December 7, 2012, the Company sought the Sanction Order, which was granted by the Court on December 10, 2012. A notice of motion for leave to appeal the Sanction Order has been served by counsel to a group of shareholders

(“**Kim Orr**”). To date, Kim Orr has not perfected its leave motion nor has leave been granted by the Ontario Court of Appeal.

(m) On December 21, 2012, the Court granted an Order approving the notice process for the approval of the Ernst & Young Settlement.

13. As of the date of this Fifteenth Report, the Company is continuing to work towards the implementation of the Plan, the details of which are discussed in more detail below.

### **THE CLAIMS PROCESS, MEDIATION AND PARTICIPATION OF THE CLASS ACTION PLAINTIFFS IN THE CCAA PROCEEDINGS**

#### *Claims, the Class Actions and the Mediation*

14. From the outset of the CCAA Proceedings, it was apparent that addressing the contingent claims against the Company (and related claims against the Sino-Forest Subsidiaries) would be important given the extent of the litigation against the Company and resulting indemnification claims from others named in the Class Actions. To further that process, on May 14, 2012, the Company obtained the Claims Procedure Order,<sup>2</sup> which provided for the calling of claims against the Company, its directors and officers and its subsidiaries. The call for Claims included a call for “equity claims”. Claims (other than Restructuring Claims) and D&O Claims (as such terms are defined in the Claims Procedure Order) were to be filed prior to June 20, 2012 (the “**Claims Bar Date**”). Any Claim not filed by the Claims Bar Date is now forever barred.

15. In developing the terms of the Claims Procedure Order, the Company and the Monitor were both cognizant of the relatively unique nature of the claims that were anticipated to be asserted in the claims process. As set out above, as a holding company, unlike many CCAA debtors, the Company does not have many, if any, trade creditors. Instead, aside from the claims in respect of the Notes, it was anticipated that most or all of the remaining claims filed would be in connection with the Class Actions either directly by

<sup>2</sup> See Appendix F for a copy of the Claims Procedure Order.

the plaintiffs in the Class Actions or by way of indemnity claims from the Third Party Defendants.

16. In that regard, the Company and the Monitor had extensive discussions with class action counsel for the Ontario Class Action Plaintiffs and the Quebec Class Action Plaintiffs (collectively, the “**Canadian Plaintiffs**”) (among others) as to certain terms of the Claims Procedure Order. Ultimately, numerous changes were made to the Claims Procedure Order that was proposed to the Court including paragraphs ordering that the Canadian Plaintiffs were entitled to file representative Proofs of Claim and D&O Proofs of Claim (as both terms are defined in the Claims Procedure Order) in respect of the substance of the Ontario Class Action and the Quebec Class Action, respectively (collectively, the “**Canadian Class Actions**”).<sup>3</sup>
17. On June 26, 2012, the Company brought a motion seeking a direction that Claims by the plaintiffs in the Class Actions in respect of the purchase of securities<sup>4</sup> and resulting indemnification claims by the Third Party Defendants constituted “equity claims” pursuant to section 2(1) of the CCAA. The motion as opposed by Ernst & Young, BDO and the Underwriters. The motion was not opposed by the Canadian Plaintiffs who conceded that their Class Action claims in respect of the purchase of securities were “equity claims”.<sup>5</sup>
18. On July 27, 2012, the Court issued its decision determining that such claims did constitute “equity claims” under section 2(1) of the CCAA (the “**Equity Claims Decision**”). The Equity Claims Decision was appealed by Ernst & Young, BDO and the Underwriters. The appeal was heard by the Ontario Court of Appeal on November 13, 2012. On November 23, 2012, the Ontario Court of Appeal issued its reasons and dismissed the appeal. The Equity Claims Decision was not appealed to the Supreme Court of Canada.

<sup>3</sup> See paragraphs 27 and 28 of the Claims Procedure Order.

<sup>4</sup> The motion did not deal with claims in respect of the purchase of debt securities.

<sup>5</sup> Kim Orr did not appear at or in any way oppose the motion on the Equity Claims Decision.

19. Early in the CCAA Proceedings, it became apparent to the Monitor that the nature, complexity and number of parties involved in the litigation claims surrounding the Company had the potential to cause extensive delay and additional costs in the CCAA Proceedings. As such, it was the view of the Monitor (with the agreement of the Company) that there was merit in a global resolution of not only the Class Action Claims against the Company, but also against the other defendants named in the Class Actions other than Pöyry Beijing (the “**Third Party Defendants**”).<sup>6</sup>
20. On July 25, 2012 the Court granted an order (the “**Mediation Order**”), directing a mediation (the “**Mediation**”) of the class action claims against the Company and the Third Party Defendants.<sup>7</sup> The parties directed to participate in the mediation were the Company, the Canadian Plaintiffs, the Third Party Defendants, the Monitor, the Initial Consenting Noteholders and relevant insurers. The Monitor is aware and believes that the parties took the Mediation seriously and relied on the ability of those in attendance to bind their respective constituents as was required by the Mediation Order. The Mediation was conducted on September 4 and 5, 2012. No settlements were reached during the Mediation.
21. Although no settlements were reached during the Mediation, the Monitor was aware that many of the Third Party Defendants remained focused on determining whether a resolution within the CCAA Proceedings was possible. Specifically, the Monitor notes the description of the ongoing settlement discussions between the Canadian Plaintiffs and Ernst & Young in the affidavit of Charles Wright sworn January 10, 2013 (the “**Wright Affidavit**”), which ultimately resulted in the Ernst & Young Settlement.

<sup>6</sup> The Third Party Defendants are: EY, BDO, the Underwriters, Allen Chan, Judson Martin, Kai Kit Poon, David Horsley, William Ardell, James Bowland, James Hyde, Edmund Mak, Simon Murray, Peter Wang and Garry West.

<sup>7</sup> See Appendix G for a copy of the Mediation Order.

## THE PLAN, MEETING OF CREDITORS AND SANCTION ORDER

### *The Plan and the Plan Filing and Meeting Order*

22. On August 14, 2012, the Company announced that it had filed a draft plan of compromise and reorganization (the “**August 14 Draft Plan**”) with the Court.<sup>8</sup> On August 15, 2012, the Company filed a draft information circular with the Court. In connection with the filing of the August 14 Draft Plan, the Company also brought a motion seeking approval of a plan filing and meeting order (the “**Meeting Order**”) which, among other things, provided for the calling of a meeting of creditors (the “**Meeting**”).<sup>9</sup> It was agreed that the Meeting Date would be subsequent to the completion of the Mediation.
23. The motion for the Meeting Order was returnable on August 28, 2012. Due to concerns raised by certain of the Third Party Defendants, the motion was postponed to determine whether the parties could agree to changes that would result in a mutually satisfactory proposed order, which was ultimately achieved. On August 31, 2012, the Court granted the Meeting Order.
24. On October 19, 2012, the Company filed a revised plan of compromise and reorganization and information statement. Further revised versions of the Plan were filed on November 28, 2012 and December 3, 2012. The December 3, 2012 version of the Plan (being the final version of the Plan that was put to creditors at the Meeting and the Court at the Sanction Hearing) included amendments relating to the Third Party Defendants including the new Article 11.1 which provided for a mechanism through which the release contemplated by the Ernst & Young Settlement could be achieved.<sup>10</sup>

### *The Meeting*

25. The details regarding the calling of the Meeting as well as the conduct of the Meeting are set out in detail in the Supplemental Report and therefore not repeated herein. Briefly, the Meeting Order provided for:

<sup>8</sup> A further draft of the Plan dated August 27, 2012 was filed prior to the return of the motion for the Meeting Order.

<sup>9</sup> See Appendix H for a copy of the Meeting Order.

<sup>10</sup> See Appendix B for a copy of the Plan.

- (a) notice and mailing of the Company's plan, supplements and amendments thereto;
  - (b) the solicitation of proxies;
  - (c) the calling of a meeting of creditors; and
  - (d) those Persons who were entitled to attend and vote on the plan at the meeting – specifically, holders of equity claims were not (in such capacity) entitled to attend the Meeting, nor were they entitled to vote on the Plan.
26. The Meeting was held at Gowlings' office on December 3, 2012, starting shortly after 10am. By the time the Meeting was conducted, the Company (with the assistance of others) had made considerable progress in obtaining support for its Plan. Notably, with those holding Voting Claims, there were only three (3) votes against the Plan (representing approximately .03% in value) and there was only one vote against the Plan in respect of Unresolved Claims (namely, BDO).
27. In accordance with the Meeting Order, persons who were entitled to vote submitted their proxies which were used to vote on the Plan in the form presented at the Meeting. As a result, the Plan received overwhelming approval by creditors with Voting Claims who voted in person or by proxy (99.96% in value and 98.81% in number) and even if the results of the votes on the Unresolved Claims counted towards the Required Majority, the Plan still would have received overwhelming approval (90.72% in value and 98.5% in number).<sup>11</sup> Further, as discussed below, subsequent to the Meeting and prior to the Sanction Hearing, BDO (the only party with Unresolved Claims that voted "no"), became a Named Third Party Defendant under the Plan and supported approval of the Plan at the Sanction Hearing. Lastly, as set out above, holders of equity claims (including the Canadian Plaintiffs) were not entitled to attend the Meeting or vote on the Plan.

#### *The Sanction Order*

28. The Sanction Hearing was held on December 7, 2012. At the Sanction Hearing, there were no claimants who filed Claims, D&O Claims or D&O Indemnity Claims (all as

<sup>11</sup> See paragraph 31 of the Supplemental Report (Appendix D) for a full summary of the voting results.

defined in the Claims Procedure Order) under the Claims Procedure Order and/or who voted at the Meeting who opposed the sanctioning of the Plan. Specifically, the following parties were supportive of the Plan:

- (a) the Company;
- (b) the Company's board of directors;
- (c) the Monitor;
- (d) the Initial Consenting Noteholders;
- (e) Ernst & Young;
- (f) the Underwriters; and
- (g) BDO.

29. There were also a number of parties, including counsel for the Canadian Plaintiffs and the U.S. Plaintiffs, who did not oppose the sanctioning of the Plan. The only parties who expressed any opposition to the sanctioning of the Plan were three shareholders of the Company, Invesco Canada Ltd., Northwest & Ethical Investments L.P. and Comité Syndical National De Retraite Batirente Inc. (collectively, the “**Objecting Shareholders**”), which were represented by Kim Orr, who served a notice of appearance on December 6, 2012, one (1) day prior to the Sanction Hearing in these CCAA Proceedings.<sup>12</sup> Notwithstanding the fact that Kim Orr acknowledged during the Sanction Hearing that it had been monitoring the CCAA Proceedings on behalf of its clients, none of the Objecting Shareholders had previously objected to the Claims Procedure Order, the Mediation Order, nor did any of them file Claims or D&O Claims under the Claims Procedure Order independent of the representative Claims and D&O Claims that were filed by the Canadian Plaintiffs as authorized by paragraphs 27 and 28 of the Claims

<sup>12</sup> See Appendix I for a copy of the notice of appearance of Kim Orr.



Procedure Order. The Court issued its endorsement on the Sanction Hearing and the Sanction Order was granted on December 10, 2012.<sup>13</sup>

30. A notice of motion for leave to appeal the Sanction Order has been served by Kim Orr.<sup>14</sup> However, in an exchange of correspondence between the Company and Kim Orr, Kim Orr confirmed that they did not intend to seek a stay of the implementation of the Plan pending appeal.<sup>15</sup>

#### *Plan Implementation*

31. Since the granting of the Sanction Order, the Company, with the assistance of the Monitor and the Initial Consenting Noteholders, has worked towards fulfilling all of the conditions precedent to the implementation of the Plan. On January 24, 2013, the Company announced that it anticipated that the Plan Implementation Date will occur on or about January 29, 2013 and, in any event, prior to the end of January 2013.<sup>16</sup>

32. Subsequent to the Sanction Order being granted,
- (a) Allen Chan, Kai Kit Poon and David Horsley have been added as “Named Third Party Defendants” to the Plan which means, among other things, that none of those three individuals will be entitled to receive any distributions under the Plan;<sup>17</sup>
  - (b) As a result of the addition of Mr. Chan, Mr. Poon and Mr. Horsley as Named Third Party Defendants to the Plan, the Unresolved Claims Reserve was reduced from Plan consideration sufficient to address \$162.5 million of Unresolved Claims to Plan consideration sufficient to address \$1.2 million of Unresolved Claims;

<sup>13</sup> See Appendices J and K for copies of the Sanction Order the Court’s endorsement.

<sup>14</sup> See Appendix L for a copy of the notice of motion seeking leave to appeal the Sanction Order.

<sup>15</sup> See Appendix M copies of correspondence from Bennett Jones to Kim Orr; a responding letter from Kim Orr to Bennett Jones; and a responding letter from Lenczner Slaght to Kim Orr all dated January 3, 2013.

<sup>16</sup> See Appendix O for a copy of the Company’s press release announcing that it anticipates that Plan implementation will occur on or about January 29, 2013.

<sup>17</sup> See Appendix P for letters dated January 11, 2013 and January 21, 2013.

- (c) On January 15, 2013, the Company obtained an Order of the Court with respect to certain document retention matters (the “**Document Retention Protocol Order**”); and
- (d) On January 21, 2013, the Company obtained an Order to approve certain administrative changes to the Plan including providing for the creation of an additional escrow to be maintained by the Monitor in connection with certain Hong Kong stamp duty matters.

## **THE ERNST & YOUNG SETTLEMENT**

### *The Ernst & Young Settlement and Article 11 of the Plan*

- 33. As set out above, Ernst & Young is one of the Third Party Defendants named in the Canadian Class Actions (as well as the class action proceeding commenced in the U.S.). In turn, in connection with the claims process conducted pursuant to the Claims Procedure Order, Ernst & Young filed both Claims and D&O Claims against the Company, the Sino-Forest Subsidiaries and numerous individuals for indemnity, contractual damages and other matters. The Monitor notes that the Proof of Claim and D&O Proof of Claim (each as defined in the Claims Procedure Order) filed by Ernst & Young are attached as Exhibits C and D to the affidavit of Mike P. Dean sworn January 11, 2013.
- 34. Prior to the Meeting, the Canadian Plaintiffs reached a settlement with Ernst & Young pursuant to certain minutes of settlement dated November 29, 2012 (the “**Minutes of Settlement**”).<sup>18</sup> The Minutes of Settlement provided for the settlement of all claims against Ernst & Young and, in turn, resulted in amendments to the Plan and, in that context, Ernst & Young agreed, among other things, that it would not receive any consideration under the Plan, waived all rights to appeal and also resulted in Ernst & Young being supportive of and voting in favour of the Plan.

<sup>18</sup> See Appendix A for a copy of the Minutes of Settlement.

35. A detailed outline of the Ernst & Young Settlement is set out in the affidavit of Charles Wright sworn January 10, 2013 and therefore not repeated herein. In general terms, the Ernst & Young Settlement provides for the payment by Ernst & Young to a settlement trust of a \$117 million settlement amount (the “**Settlement Fund**”) upon the satisfaction of certain conditions including: (a) approval of the court of the Ernst & Young Settlement (the “**Ernst & Young Settlement Approval Order**”); and (b) recognition by the U.S. court of the Ernst & Young Settlement Approval Order pursuant to chapter 15 of title 11 of the United States Code.
36. In exchange for payment of the Settlement Fund, the Minutes of Settlement provide for the requirement that Ernst & Young receive a full release of all claims against it to be effected pursuant through the CCAA Plan mechanism. As such, amendments to the November 28 Plan were required in order to incorporate this structure. Details of the changes to the Plan relating to Ernst & Young are set out in the Supplemental Report. A brief description is as follows:
- (a) Any and all indemnification rights and entitlements of Ernst & Young and any indemnification agreement between Ernst & Young and the Company shall be deemed to be valid and enforceable in accordance with their terms for the purposes of determining whether the Claims of Ernst & Young for indemnification in respect of the Noteholder Class Action Claims are valid and enforceable within the meaning of section 4.4(b) the Plan.<sup>19</sup>
  - (b) Ernst & Young shall not be entitled to any distributions under the Plan.
  - (c) The Sanction Order shall contain a stay against Ernst & Young between the Plan Implementation Date and the earlier of the Ernst & Young Settlement Date (as defined in the Plan) or such other date as may be ordered by the Court on a motion to the Court.

<sup>19</sup> Section 4.4(b) of the Plan, among other things, establishes the Indemnified Noteholder Class Action Limit.

- (d) Section 11.1 of the Plan contains provisions that provide a framework pursuant to which a release of the Ernst & Young Claims<sup>20</sup> under the Plan would happen if several conditions were met. That release will only be granted if all conditions are met including further court approval. A summary of those terms is as follows:
- (i) Notwithstanding anything to the contrary in the Plan, subject to (A) the granting of the Sanction Order; (B) the issuance of the Settlement Trust Order (as may be modified in a manner satisfactory to the parties to the Ernst & Young Settlement and the Company (if occurring on or prior to the Plan Implementation Date), the Monitor and the Initial Consenting Noteholders, as applicable, to the extent, if any, that such modifications affect the Company, the Monitor or the Initial Consenting Noteholders, each acting reasonably); (C) the granting of an Order under Chapter 15 of the United States Bankruptcy Code recognizing and enforcing the Sanction Order and the Settlement Trust Order in the United States; (D) any other order necessary to give effect to the Ernst & Young Settlement (the orders referenced in (C) and (D) being collectively the “**Ernst & Young Orders**”); (E) the fulfillment of all conditions precedent in the Ernst & Young Settlement and the fulfillment by the Ontario Class Action Plaintiffs of all of their obligations thereunder; and (F) the Sanction Order, the Settlement Trust Order and all Ernst & Young Orders being final orders and not subject to further appeal or challenge, Ernst & Young shall pay the settlement amount as provided in the Ernst & Young Settlement to the trust established pursuant to the Settlement Trust Order (the “**Settlement Trust**”);
  - (ii) Upon receipt of a certificate from Ernst & Young confirming it has paid the settlement amount to the Settlement Trust in accordance with the Ernst & Young Settlement and the trustee of the Settlement Trust confirming

<sup>20</sup> “Ernst & Young Claims” has the definition given to it in the Plan and does not include any proceedings or remedies that may be taken against Ernst & Young by the Ontario Securities Commission or by staff of the Ontario Securities Commission and the jurisdiction of the Ontario Securities Commission is expressly preserved.

receipt of such settlement amount, the Monitor shall deliver to Ernst & Young the Monitor's Ernst & Young Settlement Certificate. The Monitor shall thereafter file the Monitor's Ernst & Young Settlement Certificate with the Court;

- (iii) Notwithstanding anything to the contrary in the Plan, upon receipt by the Settlement Trust of the settlement amount in accordance with the Ernst & Young Settlement: (A) all Ernst & Young Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, barred and deemed satisfied and extinguished as against Ernst & Young; (B) section 7.3 of the Plan shall apply to Ernst & Young and the Ernst & Young Claims *mutatis mutandis* on the Ernst & Young Settlement Date; and (C) none of the plaintiffs in the Class Actions shall be permitted to claim from any of the other Third Party Defendants that portion of any damages that corresponds to the liability of Ernst & Young, proven at trial or otherwise, that is the subject of the Ernst & Young Settlement; and
- (iv) In the event that the Ernst & Young Settlement is not completed in accordance with its terms, the Ernst & Young Release will not become effective (and any claims against Ernst & Young will be assigned to the Litigation Trust).

37. The focus of Kim Orr's objections at the Sanction Hearing related to the inclusion of Article 11.1 relating to the Ernst & Young Settlement. At the Sanction Hearing, it was made clear by all parties that approval of the Ernst & Young Settlement (including the potential for a release under Article 7 of the Plan) was not being sought on that date and would be the subject of a further motion. However, the Company (and others) did take the view that the Plan, as a whole (not in part), was being considered for Court approval. Ultimately, the Court, in the Sanction Order, approved the Plan, in its entirety. In his endorsement, Justice Morawetz notes:

The Plan was presented to the meeting with Article 11 in place. This was the Plan that was subject to the vote and this is the Plan that is the subject

of this motion. The alternative proposed by the Funds was not considered at the meeting and, in my view, it is not appropriate to consider such an alternative on this motion.

38. The Monitor participated in the development of the Plan as a whole and is of the view that it is clearly reflected in the Court's endorsement that the Plan, as a whole, be approved.

*The E&Y Notice Order*

39. The parties took the view that this Court was the appropriate court for hearing the motion to approve the Ernst & Young Settlement. Upon direction from the Regional Senior Justice on December 13, 2012, it was determined that the Court would hear the motion for approval of the Ernst & Young Settlement. On December 21, 2012, the Court granted an order (the "**E&Y Notice Order**") approving the notice process regarding the approval of the Ernst & Young Settlement and scheduled the motion date for the Ernst & Young Settlement Motion to be February 4, 2013.<sup>21</sup>
40. The E&Y Notice Order set out the required methods for providing notice of the Ernst & Young Settlement as well as an objection process pursuant to which any person wishing to object to the approval of the Ernst & Young Settlement at the Ernst & Young Settlement Motion was required to file a notice of objection in the prescribed form on or prior to January 18, 2013. The Monitor was also required to attach all objections received to a report to court.
41. The Monitor has filed its Fourteenth Report that contained all Notices of Objections or other correspondence expressing objections received up to the date of the Fourteenth Report. The Monitor has or will provide any further Notices of Objection or other correspondence expressing objections in further supplements to the Fourteenth Report.

*The Benefits of Ernst & Young Settlement to the Company and the CCAA Proceedings*

<sup>21</sup> See Appendix N for a copy of the E&Y Notice Order.

42. Although the Ernst & Young Settlement resolves class action litigation claims against Ernst & Young, the settlement was reached in the context of the Company's CCAA Proceedings and has provided a benefit to the Company, the Plan and the CCAA Proceedings for the following reasons. In particular:
- (a) It eliminated the chance that Ernst & Young would seek leave to appeal the Equity Claims Decision to the Supreme Court of Canada which might have been costly and time consuming;
  - (b) Given that the Equity Claims Decision did not address the entirety of Ernst & Young's indemnity claims, the settlement results in the elimination of further litigation relating to the acceptance, disallowance or revision of the Claim and D&O Claim filed by Ernst & Young, which litigation could have been extensive, lengthy and costly;
  - (c) Ernst & Young has agreed to forego any distributions under the Plan which; and
  - (d) It eliminated the possibility that Ernst & Young would vote against the Plan, object to the Sanction Hearing and appeal the Sanction Order which could have caused delay in implementing the Plan and result in significant additional cost to the estate.
43. Further, the Monitor has consistently recognized the potential benefit of settlement within the CCAA Proceedings of the litigation claims surrounding the Company, including those against the Third Party Defendants. This view was evident not only in the Monitor's Reports but also through the Monitor's support of the Third Party Stay Motion as well as the bringing of the motion for Mediation. The Monitor has, throughout, encouraged the settlement of these claims within the CCAA framework which, in the Monitor's view, provides for an efficient legal regime through which such settlements may be effected.
44. The Monitor has also consistently expressed its views regarding urgency in the CCAA Proceedings and is of the view that the Ernst & Young Settlement has assisted in eliminating a potential delay in the implementation of the Plan.

**MONITOR'S RECOMMENDATION**

45. For the reasons set out above, the Monitor recommends approval of the Ernst & Young Settlement including the granting of the proposed release as set out in Articles 7 and 11 of the Plan.

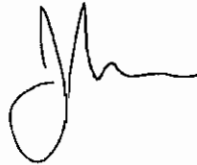


Dated this 28<sup>th</sup> day of January, 2013.

FTI Consulting Canada Inc.  
In its capacity as Monitor of  
Sino-Forest Corporation, and not in its personal capacity



Greg Watson  
Senior Managing Director



Jodi Porepa  
Managing Director

# TAB 8

**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**

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**FACTUM OF THE UNDERWRITERS  
NAMED IN CLASS ACTIONS  
(motion for a Sanction Order,  
returnable December 7 and 10, 2012)**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

**FACTUM OF THE UNDERWRITERS  
NAMED IN CLASS ACTIONS**

(motion for a Sanction Order,  
returnable December 7 and 10, 2012)

1. This brief factum is filed by the Underwriters<sup>1</sup> in connection with the motion of Sino-Forest Corporation (“SFC”) for an order (the “Sanction Order”), among other things, sanctioning the Plan of Compromise and Reorganization pursuant to the *Companies' Creditors Arrangement Act* and the *Canada Business Corporations Act* concerning, affecting and involving SFC (the “Plan”).<sup>2</sup>
2. The Underwriters are among the Third Party Defendants in the Class Actions, with enforceable rights of indemnification against SFC and its subsidiaries in respect of claims in the Class Actions made by certain Noteholders (i.e., the “Noteholder Class Action Claims”).
3. The Underwriters consent to the granting of the Sanction Order in respect of the Plan. This position is based on, among other things, the following features of the Plan and, where applicable, corresponding provisions in the Sanction Order:

*The “Cap” on Noteholder Class Action Claims*

- (a) The Plan includes a “cap” on the liability that Underwriters and other Third Party Defendants have in the Class Actions in respect of the Noteholder Class Action Claims.

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<sup>1</sup> The Underwriters are 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. (now known as Canaccord Genuity Corp.), Maison Placements Canada Inc., Credit Suisse Securities (USA) LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated, successor by merger to Banc of America Securities LLC.

<sup>2</sup> Unless otherwise defined, capitalized terms used herein have the meanings attributed to those terms in the Plan.

- (b) The collective aggregate amount of all rights and claims asserted or that may be asserted against the Third Party Defendants in respect of any Noteholder Class Action Claims for which any there is a valid and enforceable Class Action Indemnity Claim against SFC shall not exceed, in the aggregate, the Indemnified Noteholder Class Action Limit of \$150 million, and all Persons shall be permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, from seeking to enforce any liability in respect of the Indemnified Noteholder Class Action Claims that exceeds the Indemnified Noteholder Class Action Limit.
- (c) The “cap” is also subject to downward adjustment. In the event that any Third Party Defendant is found to be liable for or agrees to a settlement in respect of a Noteholder Class Action Claim (other than a Noteholder Class Action Claim for fraud or criminal conduct) and amounts are paid by or on behalf of the applicable Third Party Defendant, then the amount of the Indemnified Noteholder Class Action Limit applicable to the remaining Third Party Defendants will be reduced.
- (d) To ensure the “cap” is effective, it is agreed that the Claims of the Underwriters for indemnification in respect of any Noteholder Class Action Claims (other than Noteholder Class Action Claims against the Underwriters for fraud or criminal conduct) shall, for purposes of the Plan, be deemed to be valid and enforceable Class Action Indemnity Claims against SFC, and that: (i) any and all indemnification rights and entitlements of Ernst & Young at common law and any and all indemnification agreements between Ernst & Young and SFC shall be deemed to be valid and enforceable in accordance with their terms for the purpose of determining whether the Claims of Ernst & Young for indemnification in respect of Noteholder Class Action Claims are valid and enforceable; and (ii) any and all indemnification rights and entitlements of BDO Limited at common law and any and all indemnification agreements between BDO Limited and SFC shall be deemed to be valid and enforceable in accordance with their terms for the purpose of determining whether the Claims of BDO Limited for indemnification in respect of Noteholder Class Action

Claims are valid and enforceable. In addition, all indemnification rights and entitlements of the Named Third Party Defendants at common law and any and all indemnification agreements between the Named Third Party Defendants and SFC shall be deemed to be valid and enforceable in accordance with their terms for the purpose of determining whether the Claims of the Named Third Party Defendants for indemnification in respect of Noteholder Class Action Claims are valid and enforceable.

*Release of Noteholder Class Action Claims Against the Underwriters in Excess of the "Cap"*

- (e) Noteholder Class Action Claims that exceed the "cap" are released as against the Underwriters.
- (f) Any portion or amount of liability of the Underwriters for the Noteholder Class Action Claims (other than any Noteholder Class Action Claims against the Underwriters for fraud or criminal conduct), on a collective, aggregate basis in reference to all Noteholder Class Action Claims together, that exceeds the Indemnified Noteholder Class Action Limit shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date.

*Release from Litigation Trust Claims*

- (g) The Underwriters are released from Litigation Trust Claims, and therefore face no litigation opposite the Litigation Trust (and claims it will have from Noteholders or SFC), subject only to claims for fraud or criminal conduct.
- (h) Litigation Trust Claims exclude Causes of Action (other than claims for fraud or criminal conduct) against the Underwriters by SFC or the Trustees (on behalf of the Noteholders), and all such Causes of Action shall be deemed to be Excluded Litigation Trust Claims that are fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date.

- (i) Excluded Litigation Trust Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date.
- (j) The Underwriters, together with their respective present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns, excluding any Director or Officer and successors, administrators, heirs and assigns of any Director or Officer in their capacity as such, are Named Third Party Defendants.
- (k) Upon delivery of a Monitor's Named Third Party Settlement Certificate and to the extent provided for by the terms of the applicable Named Third Party Defendant Release, the applicable Causes of Action against the applicable Named Third Party Defendant shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, barred and deemed satisfied and extinguished as against the applicable Named Third Party Defendant.

*Document Preservation*

- (l) SFC has document preservation obligations to protect the Underwriters in their defence of the Class Actions.
- (m) Prior to the Effective Time, SFC shall: (i) preserve or cause to be preserved copies of any documents (as such term is defined in the *Rules of Civil Procedure* (Ontario)) that are relevant to the issues raised in the Class Actions; and (ii) make arrangements acceptable to SFC, the Monitor, the Initial Consenting Noteholders, counsel to Ontario Class Action Plaintiffs, counsel to Ernst & Young, counsel to the Underwriters and counsel to the Named Third Party Defendants to provide the parties to the Class Actions with access thereto, subject to customary commercial confidentiality, privilege or other applicable restrictions, including lawyer-client privilege, work product privilege and other privileges or immunities, and to restrictions on disclosure arising from s. 16 of the *Securities Act* (Ontario) and comparable restrictions on disclosure in other relevant

jurisdictions, for purposes of prosecuting and/or defending the Class Actions, as the case may be, provided that nothing in the foregoing reduces or otherwise limits the parties' rights to production and discovery in accordance with the *Rules of Civil Procedure* (Ontario) and the *Class Proceedings Act, 1992* (Ontario).

- (n) The Underwriters will seek discovery rights as against Ernst & Young if the Ernst & Young Settlement of the Class Actions is subsequently approved by the court. The discovery rights the Underwriters will seek will be at least as expansive as those ordered in respect of an earlier settlement of the Class Actions.

#### *Chapter 15 Recognition*

- (o) The Plan contemplates an application for Chapter 15 recognition of the Plan and Sanction Order.
- (p) As promptly as practicable, but in no event later than the third Business Day following the Plan Implementation Date, a foreign representative of SFC (as agreed by SFC, the Monitor and the Initial Consenting Noteholders) shall commence a proceeding in a court of competent jurisdiction in the United States seeking recognition of the Plan and the Sanction Order and confirming that the Plan and the Sanction Order are binding and effective in the United States, and the Foreign Representative shall use its best efforts to obtain such recognition order.

#### *The Ernst & Young Settlement and the Underwriters' Class Action Defence*

- (q) The Plan preserves the Underwriters' right to apportion liability in respect of Ernst & Young's fault as proven in trial or otherwise in the Class Actions.
- (r) To the extent that the Third Party Defendants are found to have any liability, the Underwriters are entitled to seek to have liability apportioned to Ernst & Young to reduce the damages the Underwriters may be required to pay, subject to the limitation on the right of the plaintiffs in the Class Actions to collect any damages from Ernst &



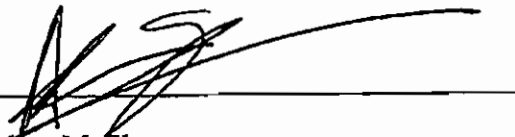
Young in excess of the amount paid by way of the Ernst & Young Settlement. The Underwriters will also require that this be a term of any approval of the Ernst & Young Settlement by the court.

4. On the basis of the foregoing, the Underwriters consent to the granting of the Sanction Order. The Underwriters' position may change if the Plan is amended in any manner prejudicial to their interests.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

 David Bish per ATB

David Bish

 Adam M. Slavens

Adam M. Slavens

Lawyers for the Underwriters  
named in Class Actions

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)

Proceeding commenced at Toronto

**FACTUM OF THE UNDERWRITERS  
NAMED IN CLASS ACTIONS**  
(motion for a Sanction Order,  
returnable December 7 and 10, 2012)

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Lawyers for the Underwriters  
named in Class Actions

TAB 9

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

**SUPERIOR COURT OF JUSTICE – ONTARIO  
(COMMERCIAL LIST)**

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

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

**BEFORE: MORAWETZ J.**

**COUNSEL: Robert W. Staley, Kevin Zych, Derek J. Bell and Jonathan Bell, for Sino-  
Forest Corporation**

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

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

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

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

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

**Peter Greene and Ken Dekkar, for BDO Limited**

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

**John Pirie and David Gadsden, for Poyry (Beijing)**

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

**David Bish, for the Underwriters**

**Simon Bieber and Erin Pleet, for David Horsley**

**James Grout, for the Ontario Securities Commission**

Emily Cole and Joseph Marin, for Allen Chan

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

Paul Emerson, for ACE/Chubb

Sam Sasso, for Travelers

**HEARD: DECEMBER 7, 2012**

**ENDORSED: DECEMBER 10, 2012**

**REASONS: DECEMBER 12, 2012**

### ENDORSEMENT

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

#### **Overview**

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

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

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

[5] The defined terms have been taken from the motion record.

[6] SFC’s counsel submits that the Plan represents a fair and reasonable compromise reached with SFC’s creditors following months of negotiation. SFC’s counsel submits that the Plan, including its treatment of holders of equity claims, complies with CCAA requirements and is consistent with this court’s decision on the equity claims motions (the “Equity Claims Decision”) (2012 ONSC 4377, 92 C.B.R. (5th) 99), which was subsequently upheld by the Court of Appeal for Ontario (2012 ONCA 816).

[7] Counsel submits that the classification of creditors for the purpose of voting on the Plan was proper and consistent with the CCAA, existing law and prior orders of this court, including the Equity Claims Decision and the Plan Filing and Meeting Order.

[8] The Plan has the support of the following parties:

- (a) the Monitor;
- (b) SFC's largest creditors, the Ad Hoc Committee of Noteholders (the "Ad Hoc Noteholders");
- (c) Ernst & Young LLP ("E&Y");
- (d) BDO Limited ("BDO"); and
- (e) the Underwriters.

[9] The Ad Hoc Committee of Purchasers of the Applicant's Securities (the "Ad Hoc Securities Purchasers Committee", also referred to as the "Class Action Plaintiffs") has agreed not to oppose the Plan. The Monitor has considered possible alternatives to the Plan, including liquidation and bankruptcy, and has concluded that the Plan is the preferable option.

[10] The Plan was approved by an overwhelming majority of Affected Creditors voting in person or by proxy. In total, 99% in number, and greater than 99% in value, of those Affected Creditors voting favoured the Plan.

[11] Options and alternatives to the Plan have been explored throughout these proceedings. SFC carried out a court-supervised sales process (the "Sales Process"), pursuant to the sales process order (the "Sales Process Order"), to seek out potential qualified strategic and financial purchasers of SFC's global assets. After a canvassing of the market, SFC determined that there were no qualified purchasers offering to acquire its assets for qualified consideration ("Qualified Consideration"), which was set at 85% of the value of the outstanding amount owing under the notes (the "Notes").

[12] SFC's counsel submits that the Plan achieves the objective stated at the commencement of the CCAA proceedings (namely, to provide a "clean break" between the business operations of the global SFC enterprise as a whole ("Sino-Forest") and the problems facing SFC, with the aspiration of saving and preserving the value of SFC's underlying business for the benefit of SFC's creditors).

#### **Facts**

[13] SFC is an integrated forest plantation operator and forest products company, with most of its assets and the majority of its business operations located in the southern and eastern regions of the People's Republic of China ("PRC"). SFC's registered office is located in Toronto and its principal business office is located in Hong Kong.

[14] SFC is a holding company with six direct subsidiaries (the "Subsidiaries") and an indirect majority interest in Greenheart Group Limited (Bermuda), a publicly-traded company. Including SFC and the Subsidiaries, there are 137 entities that make up Sino-Forest: 67 companies incorporated in PRC, 58 companies incorporated in British Virgin Islands, 7 companies incorporated in Hong Kong, 2 companies incorporated in Canada and 3 companies incorporated elsewhere.

[15] On June 2, 2011, Muddy Waters LLC ("Muddy Waters"), a short-seller of SFC's securities, released a report alleging that SFC was a "near total fraud" and a "Ponzi scheme". SFC subsequently became embroiled in multiple class actions across Canada and the United States and was subjected to investigations and regulatory proceedings by the Ontario Securities Commission ("OSC"), Hong Kong Securities and Futures Commission and the Royal Canadian Mounted Police.

[16] SFC was unable to file its 2011 third quarter financial statements, resulting in a default under its note indentures.

[17] Following extensive arm's length negotiations between SFC and the Ad Hoc Noteholders, the parties agreed on a framework for a consensual resolution of SFC's defaults under its note indentures and the restructuring of its business. The parties ultimately entered into a restructuring support agreement (the "Support Agreement") on March 30, 2012, which was initially executed by holders of 40% of the aggregate principal amount of SFC's Notes. Additional consenting noteholders subsequently executed joinder agreements, resulting in noteholders representing a total of more than 72% of aggregate principal amount of the Notes agreeing to support the restructuring.

[18] The restructuring contemplated by the Support Agreement was commercially designed to separate Sino-Forest's business operations from the problems facing the parent holding company outside of PRC, with the intention of saving and preserving the value of SFC's underlying business. Two possible transactions were contemplated:

- (a) First, a court-supervised Sales Process to determine if any person or group of persons would purchase SFC's business operations for an amount in excess of the 85% Qualified Consideration;
- (b) Second, if the Sales Process was not successful, a transfer of six immediate holding companies (that own SFC's operating business) to an acquisition vehicle to be owned by Affected Creditors in compromise of their claims against SFC. Further, the creation of a litigation trust (including funding) (the "Litigation Trust") to enable SFC's litigation claims against any person not otherwise released within the CCAA proceedings, preserved and pursued for the benefit of SFC's stakeholders in accordance with the Support Agreement (concurrently, the "Restructuring Transaction").

[19] SFC applied and obtained an initial order under the CCAA on March 30, 2012 (the "Initial Order"), pursuant to which a limited stay of proceedings ("Stay of Proceedings") was also granted in respect of the Subsidiaries. The Stay of Proceedings was subsequently extended

by orders dated May 31, September 28, October 10, and November 23, 2012, and unless further extended, will expire on February 1, 2013.

[20] On March 30, 2012, the Sales Process Order was granted. While a number of Letters of Intent were received in respect of this process, none were qualified Letters of Intent, because none of them offered to acquire SFC's assets for the Qualified Consideration. As such, on July 10, 2012, SFC announced the termination of the Sales Process and its intention to proceed with the Restructuring Transaction.

[21] On May 14, 2012, this court granted an order (the "Claims Procedure Order") which approved the Claims Process that was developed by SFC in consultation with the Monitor.

[22] As of the date of filing, SFC had approximately \$1.8 billion of principal amount of debt owing under the Notes, plus accrued and unpaid interest. As of May 15, 2012, Noteholders holding in aggregate approximately 72% of the principal amount of the Notes, and representing more than 66.67% of the principal amount of each of the four series of Notes, agreed to support the Plan.

[23] After the Muddy Waters report was released, SFC and certain of its officers, directors and employees, along with SFC's former auditors, technical consultants and Underwriters involved in prior equity and debt offerings, were named as defendants in a number of proposed class action lawsuits. Presently, there are active proposed class actions in four jurisdictions: Ontario, Quebec, Saskatchewan and New York (the "Class Action Claims").

[24] *The Labourers v. Sino-Forest Corporation Class Action* (the "Ontario Class Action") was commenced in Ontario by Koskie Minsky LLP and Siskinds LLP. It has the following two components: first, there is a shareholder claim (the "Shareholder Class Action Claims") brought on behalf of current and former shareholders of SFC seeking damages in the amount of \$6.5 billion for general damages, \$174.8 million in connection with a prospectus issued in June 2007, \$330 million in relation to a prospectus issued in June 2009, and \$319.2 million in relation to a prospectus issued in December 2009; second, there is a \$1.8 billion noteholder claim (the "Noteholder Class Action Claims") brought on behalf of former holders of SFC's Notes. The noteholder component seeks damages for loss of value in the Notes.

[25] The Quebec Class Action is similar in nature to the Ontario Class Action, and both plaintiffs filed proof of claim in this proceeding. The plaintiffs in the Saskatchewan Class Action did not file a proof of claim in this proceeding, whereas the plaintiffs in the New York Class Action did file a proof of claim in this proceeding. A few shareholders filed proofs of claim separately, but no proof of claim was filed by the Funds.

[26] In this proceeding, the Ad Hoc Securities Purchasers Committee - represented by Siskinds LLP, Koskie Minsky, and Paliare Roland Rosenberg Rothstein LLP - has appeared to represent the interests of the shareholders and noteholders who have asserted Class Action Claims against SFC and others.

[27] Since 2000, SFC has had the following two auditors ("Auditors"): E&Y from 2000 to 2004 and 2007 to 2012 and BDO from 2005 to 2006.



[28] The Auditors have asserted claims against SFC for contribution and indemnity for any amounts paid or payable in respect of the Shareholder Class Action Claims, with each of the Auditors having asserted claims in excess of \$6.5 billion. The Auditors have also asserted indemnification claims in respect the Noteholder Class Action Claims.

[29] The Underwriters have similarly filed claims against SFC seeking contribution and indemnity for the Shareholder Class Action Claims and Noteholder Class Action Claims.

[30] The Ontario Securities Commission ("OSC") has also investigated matters relating to SFC. The OSC has advised that they are not seeking any monetary sanctions against SFC and are not seeking monetary sanctions in excess of \$100 million against SFC's directors and officers (this amount was later reduced to \$84 million).

[31] SFC has very few trade creditors by virtue of its status as a holding company whose business is substantially carried out through its Subsidiaries in PRC and Hong Kong.

[32] On June 26, 2012, SFC brought a motion for an order declaring that all claims made against SFC arising in connection with the ownership, purchase or sale of an equity interest in SFC and related indemnity claims to be "equity claims" (as defined in section 2 of the CCAA). These claims encapsulate the commenced Shareholder Class Action Claims asserted against SFC. The Equity Claims Decision did not purport to deal with the Noteholder Class Action Claims.

[33] In reasons released on July 27, 2012, I granted the relief sought by SFC in the Equity Claims Decision, finding that the "the claims advanced in the shareholder claims are clearly equity claims." The Auditors and Underwriters appealed the decision and on November 23, 2012, the Court of Appeal for Ontario dismissed the appeal.

[34] On August 31, 2012, an order was issued approving the filing of the Plan (the "Plan Filing and Meeting Order").

[35] According to SFC's counsel, the Plan endeavours to achieve the following purposes:

- (a) to effect a full, final and irrevocable compromise, release, discharge, cancellation and bar of all affected claims;
- (b) to effect the distribution of the consideration provided in the Plan in respect of proven claims;
- (c) to transfer ownership of the Sino-Forest business to Newco and then to Newco II, in each case free and clear of all claims against SFC and certain related claims against the Subsidiaries so as to enable the Sino-Forest business to continue on a viable, going concern basis for the benefit of the Affected Creditors; and
- (d) to allow Affected Creditors and Noteholder Class Action Claimants to benefit from contingent value that may be derived from litigation claims to be advanced by the litigation trustee.

[36] Pursuant to the Plan, the shares of Newco ("Newco Shares") will be distributed to the Affected Creditors. Newco will immediately transfer the acquired assets to Newco II.

[37] SFC's counsel submits that the Plan represents the best available outcome in the circumstances and those with an economic interest in SFC, when considered as a whole, will derive greater benefit from the implementation of the Plan and the continuation of the business as a going concern than would result from bankruptcy or liquidation of SFC. Counsel further submits that the Plan fairly and equitably considers the interests of the Third Party Defendants, who seek indemnity and contribution from SFC and its Subsidiaries on a contingent basis, in the event that they are found to be liable to SFC's stakeholders. Counsel further notes that the three most significant Third Party Defendants (E&Y, BDO and the Underwriters) support the Plan.

[38] SFC filed a version of the Plan in August 2012. Subsequent amendments were made over the following months, leading to further revised versions in October and November 2012, and a final version dated December 3, 2012 which was voted on and approved at the meeting. Further amendments were made to obtain the support of E&Y and the Underwriters. BDO availed itself of those terms on December 5, 2012.

[39] The current form of the Plan does not settle the Class Action Claims. However, the Plan does contain terms that would be engaged if certain conditions are met, including if the class action settlement with E&Y receives court approval.

[40] Affected Creditors with proven claims are entitled to receive distributions under the Plan of (i) Newco Shares, (ii) Newco notes in the aggregate principal amount of U.S. \$300 million that are secured and guaranteed by the subsidiary guarantors (the "Newco Notes"), and (iii) Litigation Trust Interests.

[41] Affected Creditors with proven claims will be entitled under the Plan to: (a) their *pro rata* share of 92.5% of the Newco Shares with early consenting noteholders also being entitled to their *pro rata* share of the remaining 7.5% of the Newco Shares; and (b) their *pro rata* share of the Newco Notes. Affected Creditors with proven claims will be concurrently entitled to their *pro rata* share of 75% of the Litigation Trust Interests; the Noteholder Class Action Claimants will be entitled to their *pro rata* share of the remaining 25% of the Litigation Trust Interests.

[42] With respect to the indemnified Noteholder Class Action Claims, these relate to claims by former noteholders against third parties who, in turn, have alleged corresponding indemnification claims against SFC. The Class Action Plaintiffs have agreed that the aggregate amount of those former noteholder claims will not exceed the Indemnified Noteholder Class Action Limit of \$150 million. In turn, indemnification claims of Third Party Defendants against SFC with respect to indemnified Noteholder Class Action Claims are also limited to the \$150 million Indemnified Noteholder Class Action Limit.

[43] The Plan includes releases for, among others, (a) the subsidiary; (b) the Underwriters' liability for Noteholder Class Action Claims in excess of the Indemnified Noteholder Class Action Limit; (c) E&Y in the event that all of the preconditions to the E&Y settlement with the Ontario Class Action plaintiffs are met; and (d) certain current and former directors and officers of SFC (collectively, the "Named Directors and Officers"). It was emphasized that non-released

D&O Claims (being claims for fraud or criminal conduct), conspiracy claims and section 5.1 (2) D&O Claims are not being released pursuant to the Plan.

[44] The Plan also contemplates that recovery in respect of claims of the Named Directors and Officers of SFC in respect of any section 5.1 (2) D&O Claims and any conspiracy claims shall be directed and limited to insurance proceeds available from SFC's maintained insurance policies.

[45] The meeting was carried out in accordance with the provisions of the Plan Filing and Meeting Order and that the meeting materials were sent to stakeholders in the manner required by the Plan Filing and Meeting Order. The Plan supplement was authorized and distributed in accordance with the Plan Filing and Meeting Order.

[46] The meeting was ultimately held on December 3, 2012 and the results of the meeting were as follows:

(a) the number of voting claims that voted on the Plan and their value for and against the Plan;

(b) The results of the Meeting were as follows:

a. the number of Voting Claims that voted on the Plan and their value for and against the Plan:

	Number of Votes	%	Value of Votes	%
Total Claims Voting For	250	98.81%	\$ 1,465,766,204	99.97%
Total Claims Voting Against	3	1.19%	\$ 414,087	0.03%
Total Claims Voting	253	100.00%	\$ 1,466,180,291	100.00%

b. the number of votes for and against the Plan in connection with Class Action Indemnity Claims in respect of Indemnified Noteholder Class Action Claims up to the Indemnified Noteholder Limit:

	Vote For	Vote Against	Total Votes
Class Action Indemnity Claims	4	1	5

c. the number of Defence Costs Claims votes for and against the Plan and their value:

	Number of Votes	%	Value of Votes	%
Total Claims Voting For	12	92.31%	\$ 8,375,016	96.10%
Total Claims Voting Against	1	7.69%	\$ 340,000	3.90%
Total Claims Voting	13	100.00%	\$ 8,715,016	100.00%

d. the overall impact on the approval of the Plan if the count were to include Total Unresolved Claims (including Defence Costs Claims) and, in order to demonstrate the "worst case scenario" if the entire \$150 million of the Indemnified Noteholder Class Action Limit had been voted a "no" vote (even

though 4 of 5 votes were "yes" votes and the remaining "no" vote was from BDO, who has now agreed to support the Plan):

	Number of Votes	%	Value of Votes	%
Total Claims Voting For	263	98.50%	\$ 1,474,149,082	90.72%
Total Claims Voting Against	4	1.50%	\$ 150,754,087	9.28%
Total Claims Voting	267	100.00%	\$ 1,624,903,169	100.00%

[47] E&Y has now entered into a settlement ("E&Y Settlement") with the Ontario plaintiffs and the Quebec plaintiffs, subject to several conditions and approval of the E&Y Settlement itself.

[48] As noted in the endorsement dated December 10, 2012, which denied the Funds' adjournment request, the E&Y Settlement does not form part of the Sanction Order and no relief is being sought on this motion with respect to the E&Y Settlement. Rather, section 11.1 of the Plan contains provisions that provide a framework pursuant to which a release of the E&Y claims under the Plan will be effective if several conditions are met. That release will only be granted if all conditions are met, including further court approval.

[49] Further, SFC's counsel acknowledges that any issues relating to the E&Y Settlement, including fairness, continuing discovery rights in the Ontario Class Action or Quebec Class Action, or opt out rights, are to dealt with at a further court-approval hearing.

#### Law and Argument

[50] Section 6(1) of the CCAA provides that courts may sanction a plan of compromise if the plan has achieved the support of a majority in number representing two-thirds in value of the creditors.

[51] To establish the court's approval of a plan of compromise, the debtor company must establish the following:

- (a) there has been strict compliance with all statutory requirements and adherence to previous orders of the court;
- (b) nothing has been done or purported to be done that is not authorized by the CCAA; and
- (c) the plan is fair and reasonable.

(See *Re Canadian Airlines Corporation*, 2000 ABQB 442, leave to appeal denied, 2000 ABCA 238, aff'd 2001 ABCA 9, leave to appeal to SCC refused July 21, 2001, [2001] S.C.C.A. No. 60 and *Re Nelson Financial Group Limited*, 2011 ONSC 2750, 79 C.B.R. (5th) 307).

[52] SFC submits that there has been strict compliance with all statutory requirements.

[53] On the initial application, I found that SFC was a "debtor company" to which the CCAA applies. SFC is a corporation continued under the *Canada Business Corporations Act* ("CBCA") and is a "company" as defined in the CCAA. SFC was "reasonably expected to run out of

liquidity within a reasonable proximity of time” prior to the Initial Order and, as such, was and continues to be insolvent. SFC has total claims and liabilities against it substantially in excess of the \$5 million statutory threshold.

[54] The Notice of Creditors’ Meeting was sent in accordance with the Meeting Order and the revised Noteholder Mailing Process Order and, further, the Plan supplement and the voting procedures were posted on the Monitor’s website and emailed to each of the ordinary Affected Creditors. It was also delivered by email to the Trustees and DTC, as well as to Globic who disseminated the information to the Registered Noteholders. The final version of the Plan was emailed to the Affected Creditors, posted on the Monitor’s website, and made available for review at the meeting.

[55] SFC also submits that the creditors were properly classified at the meeting as Affected Creditors constituted a single class for the purposes of considering the voting on the Plan. Further, and consistent with the Equity Claims Decision, equity claimants constituted a single class but were not entitled to vote on the Plan. Unaffected Creditors were not entitled to vote on the Plan.

[56] Counsel submits that the classification of creditors as a single class in the present case complies with the commonality of interests test. See *Re Canadian Airlines Corporation*.

[57] Courts have consistently held that relevant interests to consider are the legal interests of the creditors hold *qua* creditor in relationship to the debtor prior to and under the plan. Further, the commonality of interests should be considered purposively, bearing in mind the object of the CCAA, namely, to facilitate reorganizations if possible. See *Stelco Inc.* (2005), 78 O.R. (3d) 241 (Ont. C.A.), *Re Canadian Airlines Corporation*, and *Re Nortel Networks Corporation* (2009) O.J. No. 2166 (Ont. S.C.). Further, courts should resist classification approaches that potentially jeopardize viable plans.

[58] In this case, the Affected Creditors voted in one class, consistent with the commonality of interests among Affected Creditors, considering their legal interests as creditors. The classification was consistent with the Equity Claims Decision.

[59] I am satisfied that the meeting was properly constituted and the voting was properly carried out. As described above, 99% in number, and more than 99% in value, voting at the meeting favoured the Plan.

[60] SFC’s counsel also submits that SFC has not taken any steps unauthorized by the CCAA or by court orders. SFC has regularly filed affidavits and the Monitor has provided regular reports and has consistently opined that SFC is acting in good faith and with due diligence. The court has so ruled on this issue on every stay extension order that has been granted.

[61] In *Nelson Financial*, I articulated relevant factors on the sanction hearing. The following list of factors is similar to those set out in *Re Camvest Global Communications Corporation*, 2010 ONSC 4209, 70 C.B.R. (5th) 1:

1. The claims must have been properly classified, there must be no secret arrangements to give an advantage to a creditor or creditor; the approval of the plan by the requisite majority of creditors is most important;
2. It is helpful if the Monitor or some other disinterested person has prepared an analysis of anticipated receipts and liquidation or bankruptcy;
3. If other options or alternatives have been explored and rejected as workable, this will be significant;
4. Consideration of the oppression rights of certain creditors; and
5. Unfairness to shareholders.
6. The court will consider the public interest.

[62] The Monitor has considered the liquidation and bankruptcy alternatives and has determined that it does not believe that liquidation or bankruptcy would be a preferable alternative to the Plan. There have been no other viable alternatives presented that would be acceptable to SFC and to the Affected Creditors. The treatment of shareholder claims and related indemnity claims are, in my view, fair and consistent with CCAA and the Equity Claims Decision.

[63] In addition, 99% of Affected Creditors voted in favour of the Plan and the Ad Hoc Securities Purchasers Committee have agreed not to oppose the Plan. I agree with SFC's submission to the effect that these are exercises of those parties' business judgment and ought not to be displaced.

[64] I am satisfied that the Plan provides a fair and reasonable balance among SFC's stakeholders while simultaneously providing the ability for the Sino-Forest business to continue as a going concern for the benefit of all stakeholders.

[65] The Plan adequately considers the public interest. I accept the submission of counsel that the Plan will remove uncertainty for Sino-Forest's employees, suppliers, customers and other stakeholders and provide a path for recovery of the debt owed to SFC's non-subordinated creditors. In addition, the Plan preserves the rights of aggrieved parties, including SFC through the Litigation Trust, to pursue (in litigation or settlement) those parties that are alleged to share some or all of the responsibility for the problems that led SFC to file for CCAA protection. In addition, releases are not being granted to individuals who have been charged by OSC staff, or to other individuals against whom the Ad Hoc Securities Purchasers Committee wishes to preserve litigation claims.

[66] In addition to the consideration that is payable to Affected Creditors, Early Consent Noteholders will receive their *pro rata* share of an additional 7.5% of the Newco Shares ("Early Consent Consideration"). Plans do not need to provide the same recovery to all creditors to be considered fair and reasonable and there are several plans which have been sanctioned by the courts featuring differential treatment for one creditor or one class of creditors. See, for example, *Camvest Global* and *Re Armbro Enterprises Inc.* (1993), 22 C.B.R. (3d) 80 (Ont. Gen.

Div.). A common theme permeating such cases has been that differential treatment does not necessarily result in a finding that the Plan is unfair, as long as there is a sufficient rational explanation.

[67] In this case, SFC's counsel points out that the Early Consent Consideration has been a feature of the restructuring since its inception. It was made available to any and all noteholders and noteholders who wished to become Early Consent Noteholders were invited and permitted to do so until the early consent deadline of May 15, 2012. I previously determined that SFC made available to the noteholders all information needed to decide whether they should sign a joinder agreement and receive the Early Consent Consideration, and that there was no prejudice to the noteholders in being put to that election early in this proceeding.

[68] As noted by SFC's counsel, there was a rational purpose for the Early Consent Consideration. The Early Consent Noteholders supported the restructuring through the CCAA proceedings which, in turn, provided increased confidence in the Plan and facilitated the negotiations and approval of the Plan. I am satisfied that this feature of the Plan is fair and reasonable.

[69] With respect to the Indemnified Noteholder Class Action Limit, I have considered SFC's written submissions and accept that the \$150 million agreed-upon amount reflects risks faced by both sides. The selection of a \$150 million cap reflects the business judgment of the parties making assessments of the risk associated with the noteholder component of the Ontario Class Action and, in my view, is within the "general range of acceptability on a commercially reasonable basis". See *Re Ravelston Corporation*, (2005) 14 C.B.R. (5<sup>th</sup>) 207 (Ont. S.C). Further, as noted by SFC's counsel, while the New York Class Action Plaintiffs filed a proof of claim, they have not appeared in this proceeding and have not stated any opposition to the Plan, which has included this concept since its inception.

[70] Turning now to the issue of releases of the Subsidiaries, counsel to SFC submits that the unchallenged record demonstrates that there can be no effective restructuring of SFC's business and separation from its Canadian parent if the claims asserted against the Subsidiaries arising out of or connected to claims against SFC remain outstanding. The Monitor has examined all of the releases in the Plan and has stated that it believes that they are fair and reasonable in the circumstances.

[71] The Court of Appeal in *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corporation*, 2008 ONCA 587, 45 C.B.R. (5<sup>th</sup>) 163 stated that the "court has authority to sanction plans incorporating third party releases that are reasonably related to the proposed restructuring".

[72] In this case, counsel submits that the release of Subsidiaries is necessary and essential to the restructuring of SFC. The primary purpose of the CCAA proceedings was to extricate the business of Sino-Forest, through the operation of SFC's Subsidiaries (which were protected by the Stay of Proceedings), from the cloud of uncertainty surrounding SFC. Accordingly, counsel submits that there is a clear and rational connection between the release of the Subsidiaries in the Plan. Further, it is difficult to see how any viable plan could be made that does not cleanse the Subsidiaries of the claims made against SFC.

[73] Counsel points out that the Subsidiaries who are to have claims against them released are contributing in a tangible and realistic way to the Plan. The Subsidiaries are effectively contributing their assets to SFC to satisfy SFC's obligations under their guarantees of SFC's note indebtedness, for the benefit of the Affected Creditors. As such, counsel submits the releases benefit SFC and the creditors generally.

[74] In my view, the basis for the release falls within the guidelines previously set out by this court in *ATB Financial, Re Nortel Networks*, 2010 ONSC 1708, and *Re Kitchener Frame Limited*, 2012 ONSC 234, 86 C.B.R. (5th) 274. Further, it seems to me that the Plan cannot succeed without the releases of the Subsidiaries. I am satisfied that the releases are fair and reasonable and are rationally connected to the overall purpose of the Plan.

[75] With respect to the Named Directors and Officers release, counsel submits that this release is necessary to effect a greater recovery for SFC's creditors, rather than having those directors and officers assert indemnity claims against SFC. Without these releases, the quantum of the unresolved claims reserve would have to be materially increased and, to the extent that any such indemnity claim was found to be a proven claim, there would have been a corresponding dilution of consideration paid to Affected Creditors.

[76] It was also pointed out that the release of the Named Directors and Officers is not unlimited; among other things, claims for fraud or criminal conduct, conspiracy claims, and section 5.1 (2) D&O Claims are excluded.

[77] I am satisfied that there is a reasonable connection between the claims being compromised and the Plan to warrant inclusion of this release.

[78] Finally, in my view, it is necessary to provide brief comment on the alternative argument of the Funds, namely, the Plan be altered so as to remove Article 11 "Settlement of Claims Against Third Party Defendants". The Plan was presented to the meeting with Article 11 in place. This was the Plan that was subject to the vote and this is the Plan that is the subject of this motion. The alternative proposed by the Funds was not considered at the meeting and, in my view, it is not appropriate to consider such an alternative on this motion.

### **Disposition**

[79] Having considered the foregoing, I am satisfied that SFC has established that:

- (i) there has been strict compliance with all statutory requirements and adherence to the previous orders of the court;
- (ii) nothing has been done or purported to be done that is not authorized by the CCAA; and
- (iii) the Plan is fair and reasonable.



[80] Accordingly, the motion is granted and the Plan is sanctioned. An order has been signed substantially in the form of the draft Sanction Order.



MORAWETZ J.

**Date:** December 12, 2012

# TAB 10



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

**MONITOR'S CERTIFICATE  
(Plan Implementation)**

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Plan of Compromise and Reorganization of Sino-Forest Corporation ("**SFC**") dated December 3, 2012 (the "**Plan**"), which is attached as Schedule "A" to the Order of the Honourable Mr. Justice Morawetz made in these proceedings on the 10<sup>th</sup> day of December, 2012 (the "**Order**"), as such Plan may be further amended, varied or supplemented from time to time in accordance with the terms thereof.

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

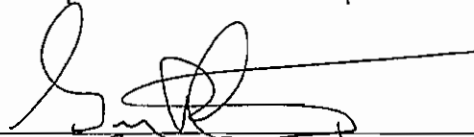
1. The Monitor has received written notice from SFC and Goodmans LLP (on behalf of the Initial Consenting Noteholders) that the conditions precedent set out in section 9.1 of the Plan have been satisfied or waived in accordance with the terms of the Plan; and

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

**DATED** at the City of Toronto, in the Province of Ontario, this 30<sup>th</sup> day of January, 2013.

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

By:

  
Name: Gregory P. Watson

Title: Senior Managing Director

<p><b>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</b></p>	<p>Court File No. CV-12-9667-00CL</p>
<p><b>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</b></p> <p>Proceedings commenced in Toronto</p>	
<p><b>MONITOR'S CERTIFICATE</b></p>	
<p><b>GOWLING LAFLEUR HENDERSON LLP</b> First Canadian Place 100 King Street West, Suite 1600 Toronto, Ontario M5X 1G5</p> <p><b>Jennifer Stam (LSUC#: 46735J)</b> Tel: (416) 862-5697 Fax: (416) 862-7661 E-mail: <a href="mailto:jennifer.stam@gowlings.com">jennifer.stam@gowlings.com</a></p> <p>Lawyers for FTI Consulting Canada Inc., in its capacity as Monitor of the within proceedings.</p>	

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

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***COURT OF APPEAL FOR ONTARIO***

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**COMPENDIUM OF EVIDENCE  
OF THE UNDERWRITERS**

(responding to the motion for leave to appeal  
from the Sanction Order)

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Lawyers for the Underwriters