

Antitrust Complaint  
And  
Petition for Administrative Adjudication Granting Injunctive Relief

United States Department of Justice  
Antitrust Division

Moody's Investors Service, Inc.,  
A Subsidiary of Moody's Corporation

And

Standard & Poor's Credit Rating Services,  
A Subsidiary of the McGraw-Hill Companies

Constituted as an Industry Duopoly

And

Fitch Ratings,  
A Subsidiary of Fitch Group Inc. and Fimalac, S.A.

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Collectively Referenced as the Three Primary Credit Rating Agencies  
Constituted as an Industry Oligopoly

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September 15, 2010

Prepared and Submitted by Sovereign Advisers, Inc.,  
Complainant and Trustee of the Starwood Trust,  
On Behalf of all Similarly Situated Defaulted Creditors  
Holding Full Faith and Credit Sovereign Obligations of the Chinese Government

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**TABLE OF CONTENTS**

	<b>Page</b>
COMPLAINANT’S STATEMENT .....	9
I. INTRODUCTION.....	9
II. PARTIES .....	10

STATEMENT OF FACTS

III. THE ACTIONS OF THE CHINESE GOVERNMENT AND THE SYNDICATE BANKS IN THE CREATION OF THE SUBJECT DEBT AND THE ROLE OF THE PEOPLE’S REPUBLIC OF CHINA IN THE <i>CAPITALIST CHINA</i> ENTERPRISE.....	13
A. The Creation, Sale and Subsequent Default of the Chinese Government’s Full Faith and Credit External Sovereign Debt.....	13
1. The Internationally Recognized Chinese Governments Contracted for the Creation and Sale of Full Faith and Credit Sovereign Debt.....	13
2. The Chinese Government’s Default on Repayment of its Full Faith and Credit External Sovereign Debt.....	15
3. The Debt Remains an Outstanding Unpaid Obligation of the Chinese Government .....	16
4. The People’s Republic of China is the Internationally Recognized Government of China and Refuses to Repay the Debt.....	17
B. No U.S. Judicial Recourse for Persons Suffering a Taking by a Foreign Government Prior to the 1952 “Tate Letter”.....	19
1. The Prevailing U.S. Doctrine of Absolute Sovereign Immunity Prevented U.S. Persons from Obtaining Judicial Redress Through U.S. Courts.....	19
2. The “Tate Letter” Articulated a New Policy of Limited Sovereign Immunity and Did Not Provide for Retroactive Application of the Newly Articulated Policy of Limited Sovereign Immunity.....	19
C. The Actions of The People’s Republic of China Prior to International Recognition with Respect to the Chinese Government’s Defaulted Full Faith and Credit External Sovereign Debt.....	20

1.	After its Establishment in 1949, The People’s Republic of China Ignored the Chinese Government’s Defaulted Full Faith and Credit External Sovereign Debt.....	20
2.	The People’s Republic of China Issued a Proclamation that it “Cannot Repay” the Chinese Government’s Defaulted Full Faith and Credit External Sovereign Debt.....	21
3.	The People’s Republic of China Took No Positive Action Affecting the Defaulted Creditors’ Rights Prior to Achieving International Recognition.....	22
D.	The claims of U.S. Persons Remained Barred from Judicial Redress Through U.S. Courts.....	24
1.	The United States Government’s Policy of Sovereign Immunity Continued to Bar Judicial Redress Through U.S. Courts for Pre-1952 Takings by Foreign Governments.....	24
E.	The Actions of The People’s Republic of China Subsequent to International Recognition with Respect to the Chinese Government’s Defaulted Full Faith and Credit External Sovereign Debt.....	25
1.	The Actions of The People’s Republic of China Upon Acceding As Obligor of the Debt Under Settled International Law.....	25
F.	U.S. Persons Continued to Remained Barred from Seeking Judicial Redress Through U.S. Courts.....	28
1.	The U.S. Foreign Sovereign Immunities Act of 1976 Codified Specific Exemptions to Sovereign Immunity Accorded to Foreign Governments by United States Courts and Did Not Provide for Retroactivity to Pre-Enactment Takings by Foreign Governments.....	28
G.	The People’s Republic of China, as the Internationally Recognized Government of China, Sought to Re-Enter the International Financial Markets.....	30
1.	Subsequent to Achieving International Recognition as the Government of All China, The People’s Republic of China Sought (1) to Re-Enter the International Financial Markets, and (2) to Do So in Such a Manner as to Enable it to Escape its Repayment Obligation of the Chinese Government’s Defaulted Full Faith and Credit External Sovereign Debt.....	30

2.	Having Gained Re-Entry into the International Financial Markets Without Honoring the Repayment of the Chinese Government’s Defaulted Full Faith and Credit Sovereign Debt, The People’s Republic of China Repudiates the Debt, for Which it is Now the Obligor Under Settled International Law as the Internationally Recognized Government of China.....	32
H.	The Role of The People’s Republic of China in the <i>Capitalist China</i> Enterprise.....	36
1.	The People’s Republic of China and the International Financial Markets Gatekeepers Created the <i>Capitalist China</i> Enterprise to Obtain Unjust Enrichment from the Creation and Sale of New International Sovereign Debt of the Chinese Government.....	36
I.	Subject Matter Jurisdiction Now Exists for U.S. Courts.....	38
1.	United States Supreme Court Precedent Enables the Application of Limited Sovereign Immunity to Pre-1952 Takings by Foreign Governments in Violation of International Law.....	38
J.	Complainant’s Claims are Not Time Barred.....	38
1.	Jurisdictional Immunity.....	38
2.	Acknowledgment by Act of Repudiation.....	39
3.	Acknowledgment by Continuation of Negotiations .....	40
4.	Partial Payment to U.K. Bondholders.....	42
5.	Physical Assets and Revenues Held in Constructive Trust.....	46
6.	Unjust Enrichment Continues in Effect.....	47
K.	The Syndicate Banks are Contractually Obligated to Establish and Maintain Sinking Funds for the Subject Debt.....	49
1.	The Syndicate Banks Which Created the Debt Obligations Agreed, and Then Failed, to Establish and Maintain Sinking Funds for the Benefit and Protection of the Holders of the Debt.....	49

IV.	THE ROLE OF THE CREDIT RATING AGENCIES IN THE CREATION OF THE <i>CAPITALIST CHINA</i> ENTERPRISE.....	50
A.	The Importance of Credit Ratings and the Control of the Credit Rating Industry by the Three Dominant Nationally Recognized Statistical Rating Organizations.....	50
1.	Overview of the Credit Rating Industry and the Incentive for Abuse by the Three Dominant Firms Which Control the Industry.....	50
2.	Evolution of the Three Primary Credit Rating Agencies From Publishers into Market Actors.....	55
3.	Sovereign Credit Ratings.....	59
4.	Incentive for Manipulation of Sovereign Credit Ratings by the Three Primary Credit Rating Agencies.....	62
5.	Findings of the SEC Investigation into the Practices of the Three Primary Credit Rating Agencies.....	63
B.	The Three Primary Credit Rating Agencies Helped Create and are Crucial to the Operation of the <i>Capitalist China</i> Enterprise.....	67
1.	Creation of the <i>Capitalist China</i> Enterprise.....	67
	<u>Phase I</u> - Construction of the Artifice Upon Which to Operate the <i>Capitalist China</i> Enterprise: Deliberate Assignment, Publication, and Distribution of Demonstrably False International Sovereign Credit Rating Classifications by the Three Primary Credit Rating Agencies Concealing the Existence of Defaulted Full Faith and Credit Sovereign Debt of the Chinese Government Which is the Repayment Obligation of The People’s Republic of China as the Internationally Recognized Government of China and Which The People’s Republic of China Refuses to Repay.....	67
V.	THE COMPLICIT ROLES OF THE CREDIT RATING AGENCIES, DEBT UNDERWRITERS, LAW FIRMS, CLEARING AGENTS, AND PAYING AGENTS IN THE OPERATION OF THE <i>CAPITALIST CHINA</i> ENTERPRISE.....	85
A.	The Credit Rating Agencies and the Debt Underwriters Actively Assist the Chinese Government to Obtain Access to New International Capital on Favorable Terms and Thereby Escape its Repayment Obligation of the Defaulted Debt.....	85

1.	Operation of the <i>Capitalist China</i> Enterprise: Creation and Sale of New International Sovereign Debt of The People’s Republic of China.....	85
	<u>Phase II</u> – The Credit Rating Agencies and the Debt Underwriters Conspired to Exploit the International Sovereign Credit Rating Artifice Constructed by Standard & Poor’s and to Profit from the Creation and Sale of New International Sovereign Debt of the Chinese Government.....	85
B.	The Law Firms Have Actively Assisted, and Continue to Actively Assist the Chinese Government in Obtaining Access to New International Capital on Favorable Terms and, Thereby, to Escape its Repayment Obligation of the Defaulted Debt.....	105
1.	The Law Firm of Skadden Arps Slate Meagher & Flom LLP Joined and Helped to Operate the Capitalist China Enterprise to Manage the Creation and sale of New International Sovereign Debt of the Chinese Government.....	106
2.	In 2001, or earlier, and in 2003, and in 2004, and in 2005, the Law Firm of Sidley Austin Brown & Wood, LLP, now Sidley Austin LLP, Joined the <i>Capitalist China</i> Enterprise.....	107
3.	The Law Firm of Sullivan & Cromwell LLP Joined the <i>Capitalist China</i> Enterprise.....	112
4.	The Law Firm of Davis Polk & Wardwell LLP Joined the <i>Capitalist China</i> Enterprise.....	113
5.	Sovereign Disclosure Obligation: Prohibition Against Half-Truths.....	114
C.	The Clearing Agents Actively Assist the Chinese Government to Obtain Access to New International Capital on Favorable Terms Free from a Default Penalty, and Thereby Escape its Repayment Obligation of the Defaulted Debt.....	119
1.	The Chase Manhattan Bank Joined the <i>Capitalist China</i> Enterprise as a Clearing Agent.....	119
2.	The Depository Trust Company Joined the <i>Capitalist China</i> Enterprise as a Clearing Agent.....	119
3.	Euroclear Bank Joined the <i>Capitalist China</i> Enterprise as a Clearing Agent.....	119

4.	Clearstream Banking, S.A. Joined the <i>Capitalist China</i> Enterprise as a Clearing Agent.....	120
D.	The Paying Agents Actively Assist the Chinese Government to Obtain Access to New International Capital on Favorable Terms Free from a Default Penalty, and Thereby Escape its Repayment Obligation of the Defaulted Debt.....	120
1.	JP Morgan Chase Bank (formerly the Chase Manhattan Bank N.A.) Joined the <i>Capitalist China</i> Enterprise as a Paying Agent.....	120
2.	The Depository Trust Company Joined the <i>Capitalist China</i> Enterprise as a Paying Agent.....	122
E.	Effect of the Actions of the Participants in the <i>Capitalist China</i> Enterprise on the Defaulted Creditors Holding the Defaulted Bonded Debt: The Actions of the Participants in the <i>Capitalist China</i> Enterprise Have Destroyed the Incentive of The People’s Republic of China, as the Obligor of the Chinese Government’s Defaulted Sovereign Debt, to Repay the Debt and Have Thereby Constructively Taken Complainant’s Rights in Property.....	122
1.	The Debt Underwriters and the Law Firms and the Clearing Agents Continue to Create and Sell New International Sovereign Debt of the Chinese Government in Reliance Upon Artificial Sovereign Credit Rating Classifications Assigned to China by the Three Primary Credit Rating Agencies Which Intentionally Exclude China’s Defaulted Full Faith and Credit Sovereign Debt and the Paying Agents Continue Making Discriminatory and Exclusionary Payments To Selected Equally-Ranked General Obligation Creditors of The Chinese Government.....	122
VI.	PRAYER FOR RELIEF.....	128
A.	Petition for Antitrust Investigation and Enforcement Action by the United States Department of Justice Antitrust Division into the Injurious Practices of the Three Primary Credit Rating Agencies and Administrative Adjudication Granting Injunctive Relief.....	128
1.	Statement of Antitrust Injury.....	128
2.	Statement of Civil Racketeering Injury.....	129
VII.	COMPLAINANT’S VERIFICATION.....	130

APPENDIX

SCHEDULE A

INDEX OF EXHIBITS

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## **Complainant's Statement of Complaint**

Complainant, Sovereign Advisers, Inc., as the duly appointed Trustee of the Starwood Trust, for its Antitrust Complaint against The McGraw-Hill Companies, Inc., and Harold McGraw III, and Deven Sharma, and Moody's Investors Service, Inc., and Moody's Investors Service, Ltd., and Raymond McDaniel, and Fitch Inc., and Fitch Ratings Ltd., and Stephen Joynt, and Fimalac, S.A., and Marc Ladreit Lacharriere, states as follows:

### **I. Introduction**

1. This is a Complaint referencing an antitrust injury resulting from third party tortfeasance, including interference with the enforcement of commercial debt contracts and which interference, including the intentional aiding and abetting of the debt obligor's efforts to evade repayment of the debt, has the effect of the taking of the Complainant's rights in property, and which have caused the Complainant to be injured in its property.

2. This is also a Complaint alleging a pattern of civil racketeering under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Section 1961 *et seq.*, ("RICO"), and further alleges that the named parties obtained unjust enrichment from their wrongful actions in assisting China in the shedding of its foreign debt obligation owed to the Complainant, and which actions were intentionally designed, constructed, and operated as a continuing enterprise which was specifically and intentionally designed to enrich the named parties at the expense of the Complainant and all other persons similarly situated.

3. The actions of the named credit rating agencies, empowered by their privileged dominion over, and control of, the industry within which they operate and

enabled the named credit rating agencies to reap windfall profits from their evolution from publishers into market actors and participants in the business, which has caused the Complainant and all other persons similarly situated to suffer an antitrust injury.

## **II. Parties**

4. Complainant, Sovereign Advisers, Inc., an Arizona corporation, is the duly appointed Trustee of the Starwood Trust (the “Trust”), a revocable grantor trust organized pursuant to the laws of the State of Arizona, and which owns and holds on assignment various series, quantities, and denominations of the full faith and credit sovereign debt obligations of the Chinese Government (the “Subject Debt”). Specimen images of two of the various series of obligations comprising the Subject Debt are included as Appendix Exhibit 1. The Trust is organized for the purpose of consolidating the claims and rights of the individual persons who are the beneficial holders of the various bonded debt obligations which were sold by the Chinese Government and its authorized agents and representatives in the United States and in other countries, and for collecting the repayment of the Debt which The People’s Republic of China, refuses to repay in violation of settled international law.

5. The People’s Republic of China (“The People’s Republic of China” or the “Chinese Communist Government” or “Communist China” or “China”), is the internationally recognized Government of China and as such, is the successor government to the predecessor Chinese governments, including the Imperial Chinese Government and the Republic of China.

6. The McGraw-Hill Companies, Inc. (“McGraw-Hill”) is a corporation causing an occurrence in the United States. The McGraw-Hill Companies, Inc. owns and operates Standard & Poor’s Credit Rating Services (“Standard & Poor’s” or “S&P” or, collectively with the Moody’s Investors Service, Inc. subsidiary of Moody’s Corporation and the Fitch, Inc. subsidiary of Fimalac, S.A., as the “Three Primary Credit Rating Agencies”). Standard & Poor’s is a credit rating agency.

7. Harold McGraw III (“McGraw”) is the Chairman of the Board of Directors, President, and the Chief Executive Officer of The McGraw-Hill Companies, Inc. McGraw is an individual person.

8. Deven Sharma (“Sharma”) is President of Standard & Poor’s, a division of The McGraw-Hill Companies, Inc. Sharma is an individual person.

9. Moody’s Corporation (“Moody’s” or, collectively with the Standard & Poor’s division of The McGraw-Hill Companies, Inc. and the Fitch, Inc. subsidiary of Fimalac, S.A., as the “Three Primary Credit Rating Agencies”) is a corporation causing an occurrence in the United States. Moody’s owns and operates Moody’s Investors Service, Inc. and Moody’s Investors Service, Ltd. Moody’s is a credit rating agency.

10. Raymond McDaniel (“McDaniel”) is the Chairman of the Board of Directors and the Chief Executive Officer of Moody’s Corporation. McDaniel is an individual person.

11. Fimalac, S.A. (“Fimalac”) is a corporation causing an occurrence in the United States. Fimalac owns and operates Fitch Ratings Ltd. and Fitch Group Inc., which owns and operates Fitch Ratings (“Fitch” or, collectively with the Standard & Poor’s division of The McGraw-Hill Companies, Inc. and the Moody’s Investors Service, Inc.

subsidiary of Moody's Corporation, as the "Three Primary Credit Rating Agencies"). Fitch is a credit rating agency.

12. Stephen Joynt ("Joynt") is the Chief Executive Officer of Fitch Group, Inc. Joynt is an individual person.

13. Marc Ladreit de Lacharriere ("Lacharriere") is the Chief Executive Officer of Fimalac, S.A. Lacharriere is an individual person.

14. The Goldman Sachs Group, Inc. ("Goldman Sachs" or a "Credit Rating Adviser") is a corporation causing an occurrence in the United States. It is a financial institution.

15. Lloyd Blankfein ("Blankfein") is Chairman of the Board of Directors and Chief Executive Officer of The Goldman Sachs Group, Inc. Blankfein is an individual person.

16. The Morgan Stanley Group ("Morgan Stanley" or a "Credit Rating Adviser") is a corporation causing an occurrence in the United States. It is a financial institution.

17. James Gorman ("Gorman") is President and Chief Executive Officer of The Morgan Stanley Group. Gorman is an individual person.

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**III. The Actions of the Chinese Government and the Syndicate Banks in the Creation of the Subject Debt and the Role of The People’s Republic of China in the *Capitalist China* Enterprise**

**A. The Actions of the Pre-1949 Chinese Governments with Respect to the Creation, Sale and Subsequent Default of the Chinese Government’s Full Faith and Credit External Sovereign Debt**

1. The Internationally Recognized Successive Chinese Governments Contracted for the Creation and International Sale of Full Faith and Credit External Sovereign Debt

18. Between about 1911 until about 1942, the internationally recognized Imperial Chinese Government and then the Republic of China, the successive internationally recognized Chinese Government, contracted with foreign financial institutions to create and sell full faith and credit external sovereign debt in the international financial markets including the various sovereign obligations comprising the Subject Debt.

19. The debt was and remains a full faith and credit obligation of the Chinese Government, and in certain instances is secured by specific revenues including maritime customs revenue, various taxes including mining taxes, and railway revenue.

20. An example of a specific class of the various sovereign obligations comprising the Subject Debt is “The Chinese Government Five Per Cent Reorganization Gold Loan of 1913” (the “Reorganization Gold Loan”), which loan agreement states that the obligation is intended to be “a binding engagement upon the Republic of China and its successors.” The loan was contracted by the internationally recognized Republic of

China and was scheduled to mature in 1960. The Republic of China serviced and paid currently on the loan for a period of approximately 26 consecutive years until the event of default. The primary causality of the default was the invasion and subsequent control of Chinese territory by the armed forces of the Empire of Japan.

21. The Subject Debt was publicly advertised, offered, sold, and quoted in the United States at the time of sale as it was in other countries (Appendix Exhibit 2).

22. Since coupons and drawn bonds (i.e., bonds drawn by lottery for early redemption) were payable at any of the issuing centers, provision was made for processing those coupons and drawn bonds payable “in countries other than those in which they were issued.” The procedure the issuing banks agreed upon was that the Hongkong and Shanghai Bank act as Central Agency, or Clearing-House for coupons and drawn bonds paying in countries “in its own market” other than those in which they were issued, and so had an obvious direct effect within the United States.<sup>1</sup>

23. Various sovereign debt obligations of the pre-1949 Chinese Governments, including obligations comprising the Subject Debt, were offered and sold within the United States by U.S. companies including J.P. Morgan and Kuhn Loeb & Co., and by the U.S. offices of foreign companies including the Hongkong and Shanghai Banking Corporation, and interest payments were made in the United States to holders of the debt (Appendix Exhibits 3 and 4).<sup>2</sup>

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<sup>1</sup> Source: Letter of Agreement regarding Procedure for Payment of Coupons and Drawn Bonds in Countries other than those of Issue, April 26, 1913, signed by the representatives of the five syndicate banks and acknowledged by the Chinese Minister of Finance, Chou Hsueh Hsi (as reprinted in “Treaties and Agreements with and Concerning China 1894-1919”, at 1037-1038 (Oxford University Press, 1921, John Van Antwerp MacMurray ed., included as the last two pages of Appendix Exhibit 25).

<sup>2</sup> Between about 1941 and about 1945, the United States Government attempted to prevent hostile interests from trading securities and thereby funding war efforts. Such actions had the unintended consequence of inadvertently blocking payment and trading within the United States of the securities of persons from such nations. The U.S. Department of the Treasury addressed this problem through certification, an expedient

24. Article IV of the Loan Agreement for the Reorganization Gold Loan specified payment of the silver equivalent, and the sale of the debt obligations comprising the Reorganization Gold Loan caused a direct effect on the United States market for silver bullion (Appendix Exhibit 5).

25. The New York Branch of the Bank of China acted as the fiscal agent for the Chinese Government with respect to several series of the Chinese Government's sovereign debt obligations sold and serviced within the United States, including obligations comprising the Debt, e.g., "Liberty Bonds" and "Victory Bonds" (Appendix Exhibit 6).

26. For a period of over two decades the Chinese Government's sovereign debt obligations were advertised for sale and the prices were quoted both in U.S. publications and in international publications.

27. The proceeds from the creation of the Debt were utilized to fund the construction of railroads and various other economic development activities and assets accruing to the benefit of the Chinese Government and the Chinese people.

28. The Chinese Government and the Chinese people obtained the economic benefit of the assets financed by the Debt, e.g., the Lung-Tsing-U-Hai Railway and the Hukuang Railway, which remain in operation by the Chinese Government today.

2. The Chinese Government's Default on Repayment of its Full Faith and Credit External Sovereign Debt

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similar to the European practice of affixing tax stamps to legitimately acquired obligations. The form utilized by the Department of the Treasury to certify obligations is the Form TFEL-2, which was affixed to securities if the owners could prove that they were free from any blocked interest. Bearer instruments upon which Treasury Form TFEL-2 was affixed were eligible to receive payments within the United States and could be freely exchanged among non-hostile foreign nationals resident within the United States during World War II.

29. Between about 1939 and about 1942, the Chinese Government serially defaulted on its full faith and credit sovereign debt which had been offered and sold to persons situated in various nations including persons within the United States.

30. In about 1939, subsequent to the beginning of its default on the Chinese Government's full faith and credit external sovereign debt, the Chinese Government pledged its intent to honor repayment in full when economic conditions permit.

31. After about 1942, no further payments were made on the Debt, with few if any known exceptions.<sup>3</sup>

32. On or about August 13, 1947, the Chinese Government again expressed its intention to resume repayment of its full faith and credit external sovereign obligations and a spokesperson for the Chinese Ministry of Finance issued a statement that "China pledges her honourable intention to repay these external loans..."

3. The Debt Remains an Outstanding Unpaid Full Faith and Credit Sovereign Obligation of the Chinese Government

33. The Debt contracts comprising several of the various series of China's pre-1949 full faith and credit external sovereign debt obligations are assigned International Securities Identification Numbers ("ISINs"), denoting their status as valid, legally binding and exchangeable financial instruments.

34. The Debt contracts comprising several of the various series of China's pre-1949 full faith and credit external sovereign debt obligations are quoted and traded on

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<sup>3</sup> The Foreign Claims Settlement Commission of the United States reported that it obtained evidence which suggests that the 4% Liberty Bond of 1937 had been "invalidated" as of April 1, 1949 (but does not define its interpretation of the word "invalidated" in reference to the Bond), and servicing of the Allied Victory U.S. Dollar Loan of 1942 and Reconstruction Gold Loan of 1940 was suspended in September 1948.

the NYSE Euronext Exchange, a major international financial markets exchange (Inset Exhibit 1).

4. The People's Republic of China is the internationally recognized successor government of all China and refuses to repay the Subject Debt.

35. Complainant delivered a demand through its attorneys, Phillips, Moeller & Conway, P.L.L.C., for repayment of the Subject Debt to The People's Republic of China by a letter dated November 24, 2009.

36. The People's Republic of China ignored and continues to ignore Complainant's demand for repayment of the Subject Debt.

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## Exhibit 1

### Pre-1949 Chinese Government Debt Contracts Listed and Quoted on the NYSE Euronext Exchange (France) with Assigned International Securities Identification Number (“ISIN”) Codes <sup>4</sup>

Debt Contract Title	NYSE Euronext Contract Name	Contract ISIN Code	NYSE Euronext Contract Trading Code
Gouvernement Imperial de Chine Emprunt Chinoise 5% Or 1903 (Pien Lo) (Kaifeng Honanfu) (Fr. 500)	CHINE 5% 1903	CN0001265163	CN0001265163
5% (4.5%) Anglo French 1908 (£100)	CHINE 4,50% 1908	CN0001265205	CN0001265205
The Imperial Chinese Government 5% Hukuang Railways Sinking Fund Gold Loan of 1911 (£100)	CHINE 5 1911 100L	CN0001265320	CN0001265320
The Imperial Chinese Government 5% Hukuang Railways Sinking Fund Gold Loan of 1911 (£100)	CHINE 5% 1911 100	QS0018235794	QS0018235794
The Imperial Chinese Government 5% Hukuang Railways Sinking Fund Gold Loan of 1911 (£20)	CHINE 5% 1911 20	QS0018235802	QS0018235802
	CHINE 5% 1911 UNIT	QS0018235786	QS0018235786
The Chinese Government 5% Reorganisation Gold Loan of 1913	CHINE 5% 1913 REOG	XC0004573405	XC0004573405
The Chinese Government 5% Reorganisation Gold Loan of 1913	CHINE 5% 1913 REOG	QS0018236107	QS0018236107
Republique Chinoise 5% Gold Bond 1925 (French Boxer Indemnity)	CHINE 5% 1925	CN0001265502	CN0001265502
	CHINE LUNG HAI EST	QS0018235844	QS0018235844
Lung-Tsing-U-Hai Railway 5% (£20)	CHINE5%13 LUNG HAI	CN0001265361	CN0001265361

<sup>4</sup> Source: NYSE Euronext website (last accessed on May 25, 2010):  
[http://www.euronext.com/quicksearch/0\\_5371,1679\\_4794711,00.html?searchTarget=quote&path=%2Fquicksearch&fromsearchbox=true&matchpattern=chine](http://www.euronext.com/quicksearch/0_5371,1679_4794711,00.html?searchTarget=quote&path=%2Fquicksearch&fromsearchbox=true&matchpattern=chine)

**B. No Judicial Recourse for Takings by Foreign Governments Prior to the 1952 “Tate Letter”<sup>5</sup>**

1. The United States Government’s Previous Doctrine of Absolute Sovereign Immunity Prevented U.S. Persons From Obtaining Judicial Redress Through United States Courts

37. Prior to the issuance of the Tate Letter by the United States Department of State, the policy of the United States Government had been interpreted by the courts as conferring absolute sovereign immunity to foreign governments in regard to takings of rights in property of U.S. persons by such foreign governments in violation of international law.

38. U.S. persons were thus barred from seeking judicial redress of their claims through U.S. courts for takings by foreign governments occurring prior to 1952.

2. The Tate Letter Articulated a New Policy of Limited Sovereign Immunity and Did Not Provide for Retroactive Application of the Newly Articulated Policy of Limited Sovereign Immunity

39. The 1952 Tate Letter articulated the United States Government’s recognition of the doctrine of limited sovereign immunity toward foreign governments in regard to takings of rights in property of U.S. persons in violation of international law by such foreign governments.

40. The Tate Letter made no provision for the retroactive application of the newly articulated doctrine of conferring limited sovereign immunity to foreign

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<sup>5</sup> Letter of Jack B. Tate, Acting Legal Advisor, Department of State, to Acting Attorney General Philip B. Perlman, May 19, 1952 (“1952 Tate Letter”), reprinted in 26 Dep’t State Bull. 984-985 (1952).

governments in regard to takings of rights in property of U.S. persons in violation of international law by such foreign governments when such takings occurred prior to 1952.

41. Until recently, the Tate Letter was consistently recognized by U.S. courts as the event which first established the United States Government's adoption of the doctrine of limited sovereign immunity to foreign governments in regard to takings of rights in property of U.S. persons in violation of international law by such foreign governments.

42. Subsequent to the Tate Letter and until recently, a judicial remedy through U.S. courts continued to remain unavailable to U.S. persons suffering a taking of rights in property in violation of international law by a foreign government when such taking occurred prior to 1952.<sup>6</sup>

**C. The Actions of the Post-1949 Chinese Communist Government, the People's Republic of China, in Regard to the Chinese Government's Defaulted Full Faith and Credit Sovereign Debt Prior to Achieving International Recognition as the Government of All China**

1. After its Establishment in 1949, The Chinese Communist Government, The People's Republic of China, Ignored the Chinese Government's Defaulted Full Faith and Credit Sovereign Debt

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<sup>6</sup> The action comprising the immediate instance is distinguished by several material factors from previous judicial actions involving attempts to recover repayment of the Chinese Government's defaulted full faith and credit sovereign debt, e.g., *Jackson v. People's Republic of China* (794 F.2d 1490, U.S. Court of Appeals, 11<sup>th</sup> Cir., July 25, 1986), wherein the appellate court found that there was no authority for the retroactive application of the doctrine of limited sovereign immunity to pre-1952 takings and the court therefore did not have subject matter jurisdiction under the Foreign Sovereign Immunities Act of 1976 (28 U.S.C. § § 1330, 1602-1611). The appellate court's reasoning in *Jackson* barring the retroactive application of the FSIA to pre-1952 takings by foreign sovereigns has since been rejected by the United States Supreme Court in its decision in *Republic of Austria v. Maria V. Altmann* (541 U.S. 677, June 7, 2004).

43. The People’s Republic of China was established on or about October 1, 1949.

44. The People’s Republic of China obtained the physical possession of, and dominion over, the diverse collateral assets and revenues securing the various full faith and credit external sovereign loans to the Chinese Government which remained unpaid and in a state of default.

45. The successor government doctrine of settled international law affirms the continuity of obligations among internationally-recognized successive governments.<sup>7</sup>

46. The Chinese Communist Government, The People’s Republic of China, ignored the fact of the Chinese Government’s defaulted full faith and credit external sovereign debt.

## 2. The People’s Republic of China Issues a Proclamation that it

### “Cannot Repay” the Chinese Government’s Defaulted Sovereign Debt

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<sup>7</sup> *Restatement (Third) of the Foreign Relations Law of the United States* (1986), Section 712(2) and “Creditors Claims in International Law”, *The International Lawyer*, Volume 34, page 235, Spring 2000. Pieter H. F. Bekker, *The Legal Status of Foreign Economic Interests in Occupied Iraq*, American Society of International Law (July 2003). International decisions have recognized that it does not matter that the former Government represented a dictatorship, e.g., the Tinoco Case (Gr. Br. V. Costa Rica), *U.N. Reports of International Arbitral Awards*, Vol. I, 369, 375 (1923), reprinted in 18 AJIL 147 (1924). The decision held that the new Government of Costa Rica was bound by concessions and bank notes given by Tinoco, the former dictator of Costa Rica, to British companies, and dismissed as irrelevant that Tinoco’s regime was unconstitutional under Costa Rican law and had not been recognized by several states. The United Nations Security Council has never declared null and void the contracts of a former Government of a U.N. member state and its authority to do so would be questionable. Article 46 of the Hague Regulations makes clear that “private property”, which can be said to include proprietary rights granted in a state contract, “must be respected”. Paragraph 17 of the United Nations Security Council Resolution 687 (1991), whereby the Council decided that Iraqi statements repudiating its foreign debt were null and void. United Nations General Assembly Resolution V (Dec. 2, 1950) acknowledged the status of contractual rights as property (“No one shall be deprived of property, including contractual rights, without due process of law and without payment of just and effective compensation”). The court’s reasoning in *Pravin Banker Associates v. Banco Popular Del Peru*, 1997 WL 134390 (2nd Cir NY), as cited in “*Collection of Sovereign Debt*”, Robert S. Rendell, *International Financial Law Review*, June 1997, noted that courts will not extend comity to foreign proceedings when doing so would be contrary to the policies or prejudicial to the interests of the United States. The court further noted that the United States steadfastly maintains the policy of ensuring the enforceability of valid debts under principles of contract law. The Second Circuit affirmed the District Court’s ruling that Pravin’s claims should be recognized notwithstanding international comity considerations.

47. On or about August 26, 1955, presumably in response to inquiries from individual persons holding the Chinese Government’s defaulted sovereign debt, situated in various nations, the Fifth Office of State Council of The People’s Republic of China issued a proclamation that it “cannot repay” the public debt of the predecessor Chinese Governments, evidencing its financial inability to honor repayment of the debt.<sup>8</sup>

48. Under international law, The Chinese Communist Government, The People’s Republic of China, had no legal obligation to repay the debt in 1955, as it had not yet achieved recognition as the internationally recognized government of all China, and so could not have authoritatively repudiated the debt.<sup>9</sup>

3. The People’s Republic of China Took No Positive Action Affecting the Defaulted Creditors’ Rights Prior to Achieving International Recognition

49. On or about March 11, 1971, the Foreign Claims Settlement Commission of the United States (the “Commission”), an independent quasi-judicial federal agency organized administratively as a separate agency within the United States Department of Justice, determined that there was no evidence of any positive action by The People’s Republic of China affecting the rights of holders of the Chinese Government’s defaulted full faith and credit sovereign debt as of such date.

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<sup>8</sup> The proclamation was reiterated in a joint communiqué dated January 18, 1982 addressed to Chinese embassies around the world, presumably in response to continued inquiries from persons holding the Chinese Government’s defaulted sovereign debt, entitled “Notice of Ministry of Finance and Ministry of Foreign Affairs on resolving Problems of Public Bonds Issued by the Former Chinese Governments”, (82) CAI WAIZI No. 21 (January 18, 1982), again stating that the People’s Republic of China “cannot repay” the debt.

<sup>9</sup> The truth of this fact stands in stark contrast to Sidley Austin LLP’s deliberate attempt to mislead the district court in *Marvin L. Morris, Jr. v. The People’s Republic of China, et al.*, S.D.N.Y., 478 F. Supp. 2d 561; 2007 U.S. Dist. LEXIS 20784 (March 21, 2007).

50. A government-to-government claims settlement agreement between the United States and the Chinese Communist Government, The People’s Republic of China, did not yet exist.

51. In the absence of a government-to-government claims settlement agreement, the authority of the Commission to accept claims for settlement was governed by Title V of the International Claims Settlement Act of 1948, which did not provide the Commission with the authority to accept claims arising from takings by foreign governments prior to such date. The related claims of U.S. persons were outside the scope of the Commission’s authority and the Commission excluded such claims from eligibility for inclusion in the initial China claims settlement proceedings which pre-dated the later government-to-government claims settlement agreement between the United States and The People’s Republic of China.<sup>10</sup>

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<sup>10</sup> The Commission's primary mission is to determine the validity and monetary value of claims of United States nationals for loss of property or for personal injury in foreign countries, as authorized by Congress, upon referral by the Secretary of State, or following government-to-government claims settlement agreements. The Commission was vested with the authority for adjudicating claims against the Chinese Communist regime arising since 1949, although no federal statute explicitly states that the jurisdiction granted to the Commission to determine claims is exclusive. The Commission does not have, nor has it ever had, the authority to settle any claims against the government of China arising prior to 1949, including any claims related to the Chinese Government’s defaulted full faith and credit sovereign debt arising prior to 1949. The Commission conducted two phases of claims settlement proceedings with respect to China: “China I” and “China II”. China I claims encompassed the period of October 1, 1949 through November 6, 1966 and were adjudicated by the Commission between July 6, 1969 and July 6, 1972, which preceded the Agreement Between The Government Of The United States Of America And The Government Of The People’s Republic of China Concerning The Settlement Of Claims, dated May 11, 1979, 30 U.S.T. 1957 (1979), also referred to as the “1979 U.S.-China Treaty”. Claims submitted to the Commission during the China I claims settlement hearings were adjudicated pursuant to Title V of the International Claims Settlement Act of 1949, which vests the Commission with the authority to accept only those claims arising as a result of positive actions of the post-1949 Chinese Government and did not provide the Commission with the authority to settle pre-1949 claims. As of the final date of the China I claims settlement period, the claims of U.S. persons were ineligible for settlement under Title V were therefore rejected by the Commission on that basis as recorded by the Final Decision of the Commission in *Carl Marks & Co., Inc.*, Foreign Claims Settlement Commission, Claim No. CN-0420; Decision No. CN-472, March 11, 1971: “... a claim based upon such bonds does not come within the purview of Title V of the International Claims Settlement Act of 1949, as amended.” A second phase of claims of U.S. persons were adjudicated by the Commission during the China II hearings (August 31, 1979 to July 31, 1981) which were conducted subsequent to the 1979 U.S.-China Treaty. Claims submitted to the Commission during the China II claims settlement hearings were adjudicated pursuant to Title I of the International Claims Settlement Act of 1949,

52. About May 1971, Chou En-lai, the Premier of The People's Republic of China, along with several other Chinese Government officials hosted a group of visiting American scientists, and reportedly emphasized that "China had...no external debt...".<sup>11</sup>

53. Chou En-lai's reported statement was truthful; as of the date of his reported statement, the Chinese Communist Government, The People's Republic of China, was not the internationally-recognized government of all China and so had not yet inherited the repayment obligation of the Chinese Government's full faith and credit sovereign debt.

**D. The Claims of U.S. Persons Remained Barred from Judicial Redress Through U.S. Courts**

1. The United States Government's Policy of Sovereign Immunity Continued to Bar Judicial Redress Through U.S. Courts for Pre-1952 Takings by Foreign Governments

54. The United States Government's doctrine of limited sovereign immunity, articulated for the first time in the 1952 Tate Letter, had been consistently interpreted by

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which vests the Commission with the authority to accept claims which are eligible pursuant to an existing claims agreement concluded between the United States and a foreign government, which in the immediate instance is the 1979 U.S.-China Treaty. As the Agreement was constructed pursuant to Title V of the above Act, the pre-1949 claims of U.S. persons were excluded from settlement under the Agreement, and so the Commission had no authority to accept the claims of U.S. persons related to the debt during the China II phase of hearings and such claims were therefore denied, e.g., *In the Matter of the Claim of Carl Marks & Co. Inc.* (Claim No. CN-0420; Decision No. CN-472, entered as a Proposed Decision on June 17, 1970 and reaffirmed as the Final Decision of the Commission on March 11, 1971); *In the Matter of the Claim of Catharine E. Olive* (Claim No. CN-2-012; Decision No. CN-2-058, entered as a Proposed Decision on October 17, 1979 and reaffirmed as the Final Decision of the Commission on Nov. 21, 1979); and *In the Matter of the Claim of Welthy Kiang Chen* (Claim No. CN-2-015; Decision No. CN-2-066, entered as a Proposed Decision on October 17, 1979 and reaffirmed as the Final Decision of the Commission on April 1, 1981).

<sup>11</sup> Source: Ninety-Second United States Congress (First Session), hearings on the United States' relations with the People's Republic of China, pages 114-115 (June 24, 1971). "After 1965, the People's Republic of China began to brag about its lack of external debt (ignoring but not repudiating the debt of its legal predecessors) not only in Chinese journals but also in statements on all possible occasions, thereby often pointing out the heavy foreign debts of other nations, not in Peking's favour like India and the Soviet Union." Source: "China's Foreign Debt", Kuhlmann (1982), page 6.

U.S. courts not to have antedated the date of the 1952 letter and therefore to be non-retroactive in application.

55. Notwithstanding the United States Government's doctrine of absolute sovereign immunity accorded to foreign governments as regards pre-1952 takings, U.S. persons could not have sued The People's Republic of China through U.S. courts since the United States, *de jure*, did not recognize The People's Republic of China's existence as a legal entity.

**E. The Actions of the Post-1949 Chinese Communist Government, The People's Republic of China, in Regard to the Chinese Government's Defaulted Full Faith and Credit Sovereign Debt Subsequent to Achieving International Recognition as the Government of All China**

1. The Actions of the Chinese Communist Government, The People's Republic of China, Upon Acceding as Obligor of the Debt Under Settled International Law

56. The Chinese Communist Government, The People's Republic of China, gained membership in the United Nations upon passage by the General Assembly of Resolution 2758 on October 25, 1971 which withdrew recognition of the Republic of China (Taiwan) as the legitimate government of China, and recognized The People's Republic of China as the sole legitimate government of China.<sup>12</sup>

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<sup>12</sup> In reference to the passage of United Nations Resolution 2758, the Embassy of China to the United States issued the following statement: "This resolution confirmed that the government of the People's Republic of China is the sole legal government representing the whole China and embodied the common will of the international community" (statement by Wang Baodong, press counselor and spokesperson for the Embassy of China to the United States). The Republic of China on Taiwan publicly renounced any claim to the government of all China in 1991.

57. Pursuant to the successor government doctrine of settled international law affirming continuity of obligations among internationally-recognized successive governments, the Chinese Communist Government, The People’s Republic of China, inherited the repayment obligation of the predecessor Chinese Governments’ defaulted full faith and credit sovereign debt on October 25, 1971, the date upon which it attained international recognition as the sole legitimate government of all China and thereby became the obligor of the debt.

58. Upon achieving international recognition as the sole legitimate government of all China, the Chinese Communist Government, The People’s Republic of China, failed to resume repayment of the Chinese Government’s defaulted full faith and credit sovereign debt and so refused to acknowledge the accepted principal under settled international law of the continuity of obligations among internationally recognized successive governments.

59. On January 1, 1979, the United States Government transferred diplomatic recognition from the Republic of China (Taiwan) to The People’s Republic of China in the “Joint Communiqué on the Establishment of Diplomatic Relations”.<sup>13</sup>

60. Subsequent to achieving international recognition as the government of all China, The People’s Republic of China continued to take no positive action with respect to the Chinese Government’s defaulted full faith and credit sovereign debt.

61. On May 11, 1979, the United States and The People’s Republic of China entered into an accord concerning the settlement of the mutual claims of their respective nationals (the “Agreement Between The Government Of The United States Of America

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<sup>13</sup> The United States Government reiterated the Shanghai Communiqué’s statement of the Chinese position that there is only one China and that Taiwan is a part of China, acknowledging that the United States recognized that there is only one China and that the Republic of China (Taiwan) is a part of China.

And The Government Of The People’s Republic of China Concerning The Settlement Of Claims, dated May 11, 1979” or the “1979 U.S.-China Treaty”). (Appendix Exhibit 7).

62. Because The People’s Republic of China had taken no positive action with respect to the Chinese Government’s defaulted full faith and credit external sovereign debt as of the date of the Treaty, the claims of U.S. persons were excluded from the scope of the 1979 U.S.-China Treaty and remained unsettled (Appendix Exhibits 8 and 9).<sup>14</sup>

63. The Chinese Communist Government, The People’s Republic of China, refused and continues to refuse to negotiate settlement of the claims of U.S. persons

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<sup>14</sup> Claims presented to the United States Foreign Claims Settlement Commission subsequent to the date of the 1979 U.S.-China Treaty were decided on the basis of the Treaty, which only included those claims which were determined to be eligible under Title V of the International Claims Settlement Act of 1949. *Ibid.* That settlement of the debt was excluded from the 1979 Treaty is explicitly stated in the letter dated December 11, 1979, authored by J. Brian Atwood, Assistant Secretary for Congressional Relations, United States Department of State, addressed to the Honorable Charles A. Vanik, Chairman, Subcommittee on Trade, Committee on Ways and Means, United States House of Representatives, acknowledging that the claims of U.S. persons were outside the scope of the 1979 Treaty because the People’s Republic of China had not repudiated the debt as of the date of the Treaty, and referring United States claimants to the U.S. Foreign Bondholders Protective Council, a private, non-profit public service organization established at the request of the United States Secretaries of State and Treasury and the Chairman of the Federal Trade Commission for the purpose of assisting U.S. citizens in recovery of repayment of defaulted obligations issued by foreign governments. The exclusion of the claims of U.S. persons in regard to the debt from the 1979 Treaty is also explicitly referenced in the letter dated November 27, 1979 authored by Mr. John Petty, President, Foreign Bondholders Protective Council and addressed to the Honorable Abraham A. Ribicoff, Chairman, Subcommittee on International Trade, United States Senate, which states, “The Foreign Bondholders Protective Council, Inc. wishes to bring to the Subcommittee’s attention and to express concern that the Claims Settlement Agreement between the United States and People’s Republic of China dated May 11, 1979 fails to settle any of the claims by U.S. citizens with respect to the defaulted obligations of the Government of China with which the Council is concerned and that China is unwilling to negotiate separately on this particular class of claims.” The exclusion of the claims of U.S. persons from the 1979 Treaty was reiterated in another letter from the President of the Foreign Bondholders Protective Council dated July 11, 1979 and addressed to His Excellency Chai-Zemin, Ambassador of the People’s Republic of China, which states, “During our discussion, I mentioned that the claims arising from the defaulted Government bonds were specifically excluded from the Claim Settlement. In particular, the Council understands that the claims of holders of the publicly issued defaulted obligations of the Government of China with which the counsel (*sic*) is concerned and which are described in the attached Aide Memoire are not claims settled pursuant to Article I(a) of the Agreement because all such obligations were in default prior to October 1, 1949 and the subsequent failure on the part of the People’s Republic of China to reaffirm such obligations does not constitute any ‘nationalization, expropriation, intervention and other taking of, or special measures directed against, property of nationals of the USA on or after October 1, 1949 ...’ within the meaning of Article I(a)” (Appendix Exhibit 8). The People’s Republic of China refused to negotiate with the Foreign Bondholders Protective Council for the settlement of claims of U.S. persons and the defaulted sovereign debt which is not secured by property remains an unpaid general obligation of the Chinese Government.

related to the Chinese Government’s defaulted full faith and credit sovereign debt, including settlement of Complainant’s claims.

**F. Subsequent to International Recognition of the People’s Republic of China, U.S. Persons Remained Barred from Seeking Judicial Redress Through U.S. Courts**

1. The U.S. Foreign Sovereign Immunities Act of 1976 (the “FSIA”) Codified Specific Exemptions to Sovereign Immunity Accorded to Foreign Governments by United States Courts and Did Not Provide for Retroactivity to Pre-Enactment Takings by Foreign Governments

64. The FSIA provides for certain exceptions to jurisdictional immunity from U.S. courts of foreign governments, including actions which cause a direct effect in the United States in connection with a commercial activity, and the taking of rights in property in violation of international law (e.g., expropriation).<sup>15</sup>

65. The FSIA did not provide for retroactive application of the codified exemptions to sovereign immunity to the pre-enactment (i.e., pre-1976) actions of foreign governments, and so persons, including Complainant, holding the defaulted full faith and

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<sup>15</sup> Title 28, Part IV, Chapter 97, § 1605. § 1605 states the general exceptions to the jurisdictional immunity of a foreign state: (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case (1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver; (2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States; (3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States...”. The sale of sovereign debt obligations by a foreign government is considered a “commercial activity” pursuant to the FSIA. If such sale occurs either within or outside the United States and causes a direct effect in the United States, e.g., an effect on the U.S. silver bullion market, the foreign government issuing the debt obligations would not be accorded sovereign immunity by U.S. courts.

credit sovereign obligations of the Chinese Government remained barred from bringing suit in United States courts against The People’s Republic of China

66. The People’s Republic of China remained immune from suit in U.S. courts for repayment of the debt, as the prevailing convention of absolute sovereign immunity, and thus jurisdictional immunity by U.S. courts, for pre-1952 takings by foreign governments prevented U.S. persons from successfully obtaining judicial recovery through U.S. courts against The People’s Republic of China (Appendix Exhibit 10).<sup>16</sup>

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<sup>16</sup> The classic interpretation of absolute jurisdictional immunity involving pre-1952 takings by foreign governments was cited by the appellate court in *Russell Jackson et al. v. The People’s Republic of China*, 596 F. Supp. 386 (N.D. Al. 1984), affirmed 11<sup>th</sup> Circuit U.S. Court of Appeals, 794 F. 2d. 1490 (1986), in which the Court denied relief to U.S. persons holding defaulted full faith and credit sovereign debt of the pre-1949 Chinese Government on the basis that the Court lacked subject matter jurisdiction for a pre-1952 taking by a foreign government. The Foreign Sovereign Immunities Act of 1976 (“FSIA”), Pub. L. 94-583, 90 Stat. 2891, 28 U.S.C. Sec. 1330, 1332(a), 1391(f) and 1601-1611, codified the doctrine of limited sovereign immunity and established a set of exemptions to absolute immunity pursuant to which U.S. persons suffering injury from the actions of a foreign government are entitled to seek relief through U.S. courts when such injury results from a foreign government’s actions involving commercial activity within the United States, rights in property taken in violation of international law, rights in property in the United States, and tortious acts occurring in the United States. The language of the FSIA makes no provision for the retroactive application of the exemptions from absolute immunity prescribed under the Act to pre-enactment takings by foreign governments and in the absence of a clear indication from Congress that it intended the retroactive application of the Act, a presumption exists against retroactive legislation, i.e., a statute does not operate retrospectively, and thus impermissibly, simply because it applies to conduct antedating the statute’s enactment. Thus, the enactment of the FSIA did not afford a judicial remedy through U.S. courts to U.S. persons suffering injury from a pre-1952 taking by a foreign government until the United States Supreme Court determined the retroactivity of the FSIA to pre-1952 takings by foreign governments in its decision in *Maria V. Altmann v. Republic of Austria*, 541 U.S. 677 (June 7, 2004). The Supreme Courts’ decision rejected the prevailing convention of absolute sovereign immunity accorded foreign governments for pre-1952 takings, thereby rejecting as well the basis of the final decision by the District Court, affirmed by the 11<sup>th</sup> Circuit Court of Appeals, in *Jackson*. The U.S. Supreme Court’s decision in *Altmann* established a precedent enabling U.S. persons to seek redress of their claims through U.S. courts. Subsequent to the Supreme Court’s decision in *Altmann*, two separate civil suits seeking repayment of the Chinese Government’s defaulted sovereign debt were filed against the People’s Republic of China in the Southern District of New York, *Marvin L. Morris, Jr. v. The People’s Republic of China, et al.*, S.D.N.Y., 478 F. Supp. 2d 561; 2007 U.S. Dist. LEXIS 20784 (March 21, 2007) and *Gloria Bolanos Pons, et al. v. The People’s Republic of China, et al.*, (06 Civ. 13221, S.D.N.Y., October 27, 2009), and were consolidated and later dismissed by the District Court which concluded that it lacked subject matter jurisdiction over the Complainants’ claims due to the Complainants’ failure to provide evidence of a direct effect within the United States occurring in connection with the subject debt, and also found that the Complainants failed to show sufficient cause to re-toll the statute of limitations, e.g., evidence of an acknowledgment of the debt by the People’s Republic of China. The presiding judge, the Hon. Richard J. Holwell, failed to disclose a material conflict of interest (i.e., Justice Holwell’s continuing financial ties to his former law firm of White & Case LLP, which boasts of its representation of the People’s Republic of China on the firm’s website) and failed to recuse himself in the face of such conflict (Appendix Exhibit 11). In seeking dismissal of the case, Sidley Austin quotes a statement alleged to have been made by Geert

**G. As the Internationally Recognized Government of All China, the Chinese Communist Government, The People’s Republic of China, Sought Re-Entry into the International Financial Markets**

1. Subsequent to Achieving International Recognition as the Government of All China, The People’s Republic of China Sought (1) to Re-Enter the International Financial Markets, and (2) to Do So in Such a Manner as to Enable it to Escape its Repayment Obligation of the Chinese Government’s Defaulted Full Faith and Credit Sovereign Debt

67. In order to finance national economic development and create access to international debt financing by domestic Chinese corporations, the Chinese Communist Government, The People’s Republic of China, needed to regain access to the international financial markets.<sup>17</sup>

68. The Chinese Communist Government, The People’s Republic of China, sought to regain access to the international financial markets in such a manner as to

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Rouwenhorst, a professor at Yale University’s International Center for Finance, dismissing the substance of bondholders’ claims. Interestingly, Yale University was recently bestowed the privileged status of Qualified Foreign Institutional Investor (“QFII”) by the Chinese Government, enabling Yale to become the first and only foreign university to be granted access to China’s tightly restricted domestic securities market. According to the Associated Press (“*China Allows Yale to Invest in Domestic Markets*”, April 19, 2006), the approval by the Chinese Government “...allows Yale’s endowment investors to tap one of the world’s fastest growing economies.” The A.P. article states that China’s domestic market is restricted to “...Chinese investors and a select group of approved foreign institutions.” Yale President Richard Levin is quoted as stating “Its an opportunity to participate in the growth of the Chinese economy.” The report describes Yale’s relationship with China as dating to 1854, and states that Yale’s President has dramatically expanded the relationship in recent years, and that Yale maintains “...more than 80 academic collaborations with Chinese institutions.” It is not unreasonable to suppose that the statement attributed to Professor Rouwenhorst may have been influenced by his relationship with his employer.

<sup>17</sup> The importance of foreign capital to China is succinctly acknowledged in the following statement by Sir Evelyn de Rothschild, referencing the recent establishment of a NM Rothschild & Sons representative office in China, “[T]he Chinese...know that in the long run they have got to have foreign capital”. Source: “*Rothschilds to China*” by Anthony Boyd, Banking Editor, Banking Section, The Australian Financial Review (July 28, 1994). In early 1979, the first commercial bank loan handled by a Western bank was granted: \$175 million extended by the Midland & International Banks (now owned by HSBC). Source: “*China’s Foreign Debt*”, Kuhlmann (1982), page 7

escape its repayment obligation of the Chinese Government's defaulted full faith and credit sovereign debt.

69. About January 1980, The People's Republic of China tried and subsequently failed in a surreptitious attempt to gain re-entry into the international financial markets under the guise of provincial debt to be issued in Hong Kong and guaranteed by Fukien (now Fujian) province.<sup>18</sup>

70. About 1982, The People's Republic of China, in furtherance of its quest to surreptitiously gain re-entry into the international financial markets in such a manner as would allow it to escape its repayment obligation of the Chinese Government's defaulted full faith and credit sovereign debt, again tried to create and sell a sovereign debt obligation of the Chinese Government and on this attempt succeeded by privately contracting an external debt obligation with Japanese institutions by which action The People's Republic of China selectively defaulted on the Chinese Government's pre-1949 full faith and credit sovereign debt. The new debt accord was privately executed in Tokyo with approximately thirty (30) Japanese institutions by the China International

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<sup>18</sup> This event was the People's Republic of China's first known attempt at gaining re-entry into the international financial markets and do so in such a manner so as to escape its repayment obligation on the Chinese Government's full faith and credit external sovereign debt. The attempt is thusly described by an expert commentator: "The People's Republic of China's First Trial to Launch an External Bond Issue. Probably in an attempt to gauge public opinion, the province of Fukien (now Fujian) – certainly not without Peking's consent – announced in Jan. 1980, that it was considering placing a renminbi-denominated bond issue in Hong Kong or elsewhere, aimed at overseas Chinese and any other potential investors. The purpose of this contemplated loan was very similar to the private placement successfully launched exactly 2 years later in Tokyo... About 6 months later, it was made known, that the Fukien government had withdrawn plans to issue bonds for the time being. Obviously in the course of negotiations about the placement in Hong Kong, the question of the bonds outstanding had been brought up and made the Fukien ambitions disappear, while the Central Government saved face." Source: "China's Foreign Debt", Kuhlmann (1982), page 8.

Trust and Investment Company (“CITIC”), a state-owned and controlled instrumentality of The People’s Republic of China, and was dated January 22, 1982.<sup>19</sup>

71. Upon The People’s Republic of China’s action of selective default, the existing debt holders, who preceded the new creditors, suffered the involuntary subordination of their claims.

2. Having Gained Re-Entry into the International Financial Markets Without Honoring the Repayment of the Chinese Government’s Defaulted Full Faith and Credit Sovereign Debt, The People’s Republic of China Repudiates the Predecessor Chinese Governments’ Full Faith and Credit External Sovereign Debt for Which it is the Obligor Under Settled International Law as the Internationally Recognized Government of All China

72. About 1983, four years after concluding the 1979 U.S.-China Treaty and after ignoring repeated demands for repayment and then selectively defaulting on the Chinese Government’s pre-1949 full faith and credit sovereign debt, the Chinese Communist Government, The People’s Republic of China, repudiated the defaulted debt, both generally and specifically in respect to defaulted obligations held by U.S. persons.<sup>20</sup>

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<sup>19</sup> The People’s Republic of China, undoubtedly cognizant that the actions of the predecessor Japanese Government, the Empire of Japan as the WWII aggressor nation responsible for the destruction of many millions of dollars of Chinese property and the extensive loss of life of Chinese persons, would have manifested a pervasive sense of national guilt in Japan and therefore an obligation to provide the Chinese Government with the requested loan in atonement for past actions, exploited Japan’s cultural sensitivity concerning its wartime actions in its efforts to obtain subscription of its new and unrated external debt. It may be reasonably construed that the new loan constituted a form of private sector war reparations to China.

<sup>20</sup> See Aide Memoire dated February 2, 1983 issued by the Chinese Ministry of Foreign Affairs, included as pages 81-82 of the American Society of International Law, International Legal Materials, 221.L.M75 (1983), wherein the People’s Republic of China explicitly repudiated the Chinese Government’s full faith and credit sovereign debt and declared, “The Chinese Government recognizes no external debts incurred by the defunct Chinese Governments and has no obligation to repay them...”. The People’s Republic of China reiterated its refusal to repay the Chinese Government’s defaulted full faith and credit sovereign debt in a

That The People's Republic of China recognized its repayment obligation is evident from its act of repudiation; had there been no repayment obligation, there would have been no need for repudiation.

73. By its action of repudiation of the defaulted debt, the Chinese Communist Government, The People's Republic of China, expropriated the diverse collateral assets and revenues securing the various full faith and credit external sovereign obligations of the Chinese Government which remain unpaid and in a state of default.

74. About 1987, four years after repudiating the debt, The People's Republic of China concluded an exclusionary debt settlement accord with the Government of the United Kingdom on behalf of debt holders situated in the United Kingdom and did thereby obtain the removal of capital markets sanctions imposed by the British Government on The People's Republic of China for its refusal to honor repayment of its defaulted full faith and credit sovereign debt obligation to British citizens.

75. The People's Republic of China expressly required, as a condition of the 1987 Claims Settlement Treaty with Great Britain, that an apportionment of the monies paid to the Government of the United Kingdom by The People's Republic of China in settlement of claims between the citizens of both nations be applied to settlement of the debt and allocated to paying claims of debt holders situated in the U.K. and the Government of Great Britain acceded to this requirement.<sup>21</sup>

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letter dated November 12, 2006, in which the Ministry of Finance specifically rejected the claims of U.S. persons. The People's Republic of China's discrimination against the claims of U.S. persons is further evidenced by the provisions of the 1987 Treaty between the People's Republic of China and Great Britain which provided for the settlement of the claims of British citizens and did not address the settlement of claims of U.S. persons. The United States Department of State continues to refer inquiries by U.S. persons regarding settlement of the debt to the Foreign Bondholders Protective Council and does not pretend that such claims were settled by the 1979 Treaty.

<sup>21</sup> The truth of this fact again stands in stark contrast to another of Sidley Austin LLP's deliberate attempts to mislead the district court in *Morris*.

76. In order for The People's Republic of China to successfully gain re-entry into the international financial markets and engage in the creation and sale of new external sovereign debt publicly on favorable terms in the face of its refusal to honor repayment of its defaulted full faith and credit sovereign debt, The People's Republic of China required the complicity of the gatekeeper firms and needed to obtain an international sovereign credit rating from at least one of the Three Primary Credit Rating Agencies which hid the truth, i.e., concealed both the existence of the Chinese Government's defaulted full faith and credit sovereign debt and which also hid The People's Republic of China's actions in regard to evading its repayment obligation of the defaulted debt, including the actions of selective default, discriminatory settlement and repudiation.

77. On or about May 12, 1988, The People's Republic of China reportedly sought, and then denied seeking, an international sovereign credit rating which would enable it to re-enter the international financial markets without honoring its repayment obligation of its defaulted full faith and credit sovereign debt. Morgan Stanley was reported by the Reuters News Service to have acted as the Adviser to The People's Republic of China in procuring the sovereign credit rating which would hide the truth of its actions including the action of selective default (Appendix Exhibit 12).<sup>22</sup>

78. On or about May 23, 1988, The People's Republic of China procured an international sovereign credit rating from Moody's Investors Service which concealed the actions of The People's Republic of China and enabled The People's Republic of China

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<sup>22</sup> Morgan Stanley was also reportedly the main consignee of the Chinese Government's \$1 billion of new international debt sold in 2001.

to escape its repayment obligation to the defaulted creditors of the Chinese Government's defaulted full faith and credit sovereign debt.

79. On or about July 27, 1988, The People's Republic of China procured an international sovereign credit rating from Standard & Poor's Ratings Service which concealed the actions of The People's Republic of China and enabled The People's Republic of China to escape its repayment obligation to the defaulted creditors of the Chinese Government's defaulted full faith and credit sovereign debt.

80. About 1993, and in reliance on the artificial international sovereign credit ratings procured from both Moody's and Standard & Poor's, The People's Republic of China resumed the international public offer and sale of full faith and credit sovereign debt obligations of the Chinese Government, and did so without honoring its repayment obligation of the Chinese Government's defaulted full faith and credit sovereign debt, including the Debt held by the Complainant.

81. About 2006, The People's Republic of China acknowledged and accepted the principle of a resumption of negotiations with the French Government on matters of compensation for their respective nationals, including the repayment of the Chinese Government's pre-1949 defaulted full faith and credit sovereign debt held by French persons.<sup>23</sup>

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<sup>23</sup> On June 13, 2006, the Journal Officiel, the official publication of the laws, conventions and regulations of the Government of the French Republic, reported that the then-Minister of the Economy, Finance and Industry of France informed that the People's Republic of China acknowledged and accepted the principle of a resumption of negotiations on matters of compensation including the repayment of the Chinese Government's pre-1949 full faith and credit sovereign debt held by French persons and the establishment of a panel of experts, which met in Paris in July, 2004. On June 3, 2005, the French finance journal La Vie Financiere reported that a committee of French and Chinese government officials have met regularly on the matter since July 2004. The above reports are confirmed in a letter authored by Thierry Breton, the then-Minister of the Economy, Finance and Industry of the Government of France in a letter dated November 29, 2006 addressed to Patrick Beaudouin, a deputy governing official of the Val-de-Marne region of France (Appendix Exhibit 14).

82. By a letter dated November 12, 2006, the Ministry of Finance of The People's Republic of China issued a statement addressed to the Embassy of the United States of America in China reiterating its repudiation of the Chinese Government's defaulted full faith and credit sovereign debt and specifically referencing the claims of U.S. persons. The statement made no pretense of the claims having been settled by the 1979 Treaty (Appendix Exhibit 13).

83. The Chinese Communist Government, The People's Republic of China, maintains physical possession of the assets and revenues securing the Subject Debt and holds such assets and revenues in a constructive trust.

84. The Chinese Communist Government, The People's Republic of China, continues to derive and enjoy the economic benefit provided by the various loans on which it remains in default, e.g., the diverse assets financed by the debt such as the Huakuang and Lung-Tsing-U-Hai railways which the Chinese Government continues to operate.

#### **H. The Role of the Chinese Communist Government, The People's Republic of China, in the *Capitalist China* Enterprise**

1. The Chinese Communist Government, The People's Republic of China and the International Financial Markets Gatekeepers Created the *Capitalist China* Enterprise to Obtain Unjust Enrichment From the Creation and International Sale of New External Sovereign Debt of the Chinese Government

85. The People's Republic of China joined the *Capitalist China* enterprise and is an active and willing participant in the *Capitalist China* enterprise and has obtained

and invested the economic benefit accruing from the ongoing creation and sale of new external sovereign debt of the Chinese Government and the continued making of exclusionary payments to China's post-1981 creditors.

86. The People's Republic of China has publicly offered and sold international foreign currency denominated sovereign debt obligations on at least 20 occasions through the operation of the *Capitalist China* enterprise, beginning in 1993 and continuing unimpeded through the present, while escaping its repayment obligation of the Chinese Government's defaulted full faith and credit sovereign debt.

87. At the heart of the *Capitalist China* enterprise is an orchestrated pattern of concerted and deliberate actions by capital markets gatekeepers to reap unjust enrichment from the creation and sale of new international debt of both The People's Republic of China and domestic Chinese corporations at the expense of holders of the Chinese Government's defaulted full faith and credit sovereign debt, including Complainant, and whose actions are intentionally designed to enable The People's Republic of China to avoid its repayment obligation.

88. Defaulted holders of the Chinese Government's defaulted full faith and credit sovereign debt, including Complainant, continue to suffer the taking of rights in property from the ongoing operation of the *Capitalist China* enterprise including the involuntary subordination of their claims.

89. The continuing operation of the *Capitalist China* enterprise by the participants enables The People's Republic of China to continue to evade honoring repayment of the Chinese Government's defaulted full faith and credit sovereign debt to

the Complainant and The People’s Republic of China continues to evade honoring repayment in violation of settled international law.

90. The People’s Republic of China has been unjustly enriched by the operation of the *Capitalist China* Enterprise.

**I. Subject Matter Jurisdiction Now Exists for U.S. Courts**

1. United States Supreme Court Precedent Enables the Application of Limited Sovereign Immunity to Pre-1952 Takings by Foreign Governments in Violation of International Law

91. On or about June 7, 2004, the United States Supreme Court’s decision in *Maria V. Altmann v. Republic of Austria*, 541 U.S. 677 (June 7, 2004) established a precedent enabling the retroactive application of the FSIA exceptions to jurisdictional immunity of foreign governments from U.S. courts for pre-enactment actions and enabling such exceptions to jurisdictional immunity to be retroactively applied to the pre-1952 actions of foreign governments, thereby providing United States courts with subject matter jurisdiction for adjudication of the claims of U.S. persons arising from pre-1952 takings of rights in property by foreign governments in violation of international law and enabling U.S. persons to seek redress and recovery of their associated claims through U.S. Courts (Appendix Exhibit 15). The Supreme Court’s decision stated:

“*Held*: The FSIA applies to conduct, like Complainants’ alleged wrongdoing, that occurred prior to the Act’s 1976 enactment and even prior to the United States’ 1952 adoption of the so-called “restrictive theory” of sovereign immunity.”

**J. Complainant’s Claims Are Not Time-Barred**

1. Jurisdictional Immunity

92. Prior to recognition of the Chinese Communist Government, The People's Republic of China, by the United States Government, U.S. persons could not have successfully brought suit in U.S. courts against the Chinese Communist Government since the United States, *de jure*, did not recognize The People's Republic of China's existence as a legal entity.

93. Prior to the U.S. Supreme Court's decision in *Altmann*, which established a judicial precedent enabling the retrospective application of the FSIA to pre-1952 takings by foreign governments, a presumption for retrospective application of the FSIA to pre-enactment takings by foreign governments did not exist.

94. Thus, prior to the United States Supreme Court's decision in *Altmann*, the various Chinese Governments, including The People's Republic of China enjoyed absolute jurisdictional immunity from suit in U.S. courts.

95. In light of the jurisdictional immunity afforded the various Chinese Governments, including The People's Republic of China a right of action did not accrue previous to June 7, 2004, and such right of action will expire on or about June 6, 2024.<sup>24</sup>

## 2. The Chinese Communist Government Acknowledged Responsibility for the Debt by its Act of Repudiation

96. The Chinese Communist Government repudiated the Subject Debt in a written statement as recently as November 12, 2006, in a letter sent by the Ministry of Finance of The People's Republic of China to the Embassy of the United States of America in China.

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<sup>24</sup> The typical statutory period during which a claimant may assert a claim in connection with bonded debt, i.e., debt which exists in the form of a bond or under seal, is twenty years. The Subject Debt is bonded debt under seal (Appendix Exhibit 16).

97. It would have been unnecessary for China to have repudiated the Debt, had there been no obligation by the Chinese Communist Government to repay the Debt.

98. Generally, actions upon causes of action which would be barred by the statute of limitations but for part payment or a written acknowledgment shall be brought on the original cause of action and the part payment or written acknowledgment shall be evidence to prevent the bar of the statute of limitations.

99. Thus, the act of repudiation of the Debt by the Chinese Communist Government in 2006 constituted an implicit written acknowledgment of its responsibility for repayment of the Debt and thus acted to re-toll the statute of limitations from such date until on or about November 11, 2026.<sup>25</sup>

3. The Chinese Communist Government, by its Acceptance of the Principle of the Resumption of Negotiations with the Government of France, Acknowledged its Responsibility for the Debt Held by French Bondholders

100. On or about 1980, the Chinese Communist Government offered a payment to the Government of France to settle the claims of French citizens (Appendix Exhibit 17).

101. The payment offer by the Chinese Communist Government was considered inadequate by the French Government to settle the outstanding claims of French persons.

102. The Chinese Communist Government and the Government of France mutually agreed in principle on or about November, 2007 to engage in a fifth round of negotiations concerning the settlement of the claims of French citizens, which at the

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<sup>25</sup> Id.

insistence of the Government of France include claims related to China's bonded external sovereign debt.

103. The acceptance by The People's Republic of China of the principle of resumption of negotiations with the French Government for the settlement of claims of French nationals, which at the insistence of the French Government includes the repayment of China's bonded external sovereign debt held by French persons, constitutes an implicit acknowledgment of responsibility for the debt by The People's Republic of China and re-tolls the statute of limitations with respect to the Subject Debt.

104. The Chinese Communist Government's offer to the Government of France was again deemed inadequate by the French Government.

105. The Government of France has stated its expectation that the negotiations between the Chinese Communist Government and the Government of France regarding the settlement of the claims of French persons will continue, with a probable meeting of a joint commission expected to occur during the first half of 2010.

106. The normal course of negotiations between the Chinese Communist Government and the Government of France would have involved an exchange of written communications between the parties.

107. Generally, actions upon causes of action which would be barred by the statute of limitations but for part payment or a written acknowledgment shall be brought on the original cause of action and the part payment or written acknowledgment shall be evidence to prevent the bar of the statute of limitations.

108. Accordingly, the statute of limitations would have tolled on or about November, 2007, to on or about November, 2027.<sup>26</sup>

4. The Chinese Communist Government Provided Partial Payment of the Debt to British Bondholders

109. In its 1984 annual report, the Corporation of Foreign Bondholders, an advocacy organization established in Great Britain to protect the rights of British citizens holding debt instruments issued by foreign governments, reported that the sterling bonded debt of the Chinese Government, which totaled nearly £61,000,000.00 in 1939, excluding interest, remained outstanding in a state of default in 1984 (Appendix Exhibit 18).<sup>27</sup>

110. On June 5, 1987, the Government of Great Britain and the Chinese Communist Government concluded a mutual claims settlement agreement: the “Agreement Between The Government Of The United Kingdom of Great Britain And Northern Ireland And the Government Of The People’s Republic of China Concerning The Settlement Of Mutual Historical Property Claims” (the “Claims Settlement Agreement”) (Appendix Exhibit 19).

111. The Claims Settlement Agreement made eligible for settlement the claims of British subjects holding the various series of the Chinese Government’s pre-1949 defaulted full faith and credit sovereign bonds.

112. The language of the Claims Settlement Agreement explicitly states:

“The Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as “the Government of the United Kingdom”) and the Government of the People’s Republic of China (hereinafter referred to as “the Chinese Government”),

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<sup>26</sup> Id.

<sup>27</sup> The Chinese Government’s defaulted pre-1949 full faith and credit sovereign bonded debt comprises predominantly £20- and £100-denominated certificates. The principal sum of £61,000,000.00 equates with the quantity of 3,050,000 £20-equivalent certificates.

Wishing to reach a final and comprehensive settlement of all mutual historical property claims between the two countries arising before 1 January 1980,

Have agreed as follows:

### ARTICLE 3

The Government of the United Kingdom undertakes that it shall neither on its own behalf nor on behalf of natural and juridical persons of the United Kingdom pursue with the Chinese Government or support any property claims arising before 1 January 1980 and, in particular, the following historical claims:

1. Claims in respect of any foreign debts incurred before 1 October 1949 by the successive former Chinese governments, including debts in respect of which bonds were issued or guaranteed by them;
2. Claims in respect of any property formerly owned in the territory of China by United Kingdom nationals of which they lost title or enjoyment as a result of a direct or indirect intervention of the Chinese Government and in respect of certain bank accounts owned by United Kingdom nationals and referred to in consultations between the two Governments in 1986;”

113. The explicit inclusion of China’s external bonded sovereign debt in a negotiated agreement, as stated in the agreement and requiring the mutual consent of both Governments, defeats any disingenuous attempt to assert the pretense that the inclusion of China’s bonded sovereign debt was at the unilateral discretion of the British Government, e.g., at the discretion of the U.K. Foreign Compensation Commission (Appendix Exhibit 20).

114. That the inclusion of China’s external bonded sovereign debt in the Claims Settlement Agreement was mutually agreed to by both Governments is further evidenced by the language of a letter dated 15 April 1988, sent by the U.K. Foreign Compensation Commission to BAT Industries Ltd., a prospective claimant, captioned

“Foreign Compensation (People’s Republic of China) Order 1987”, wherein the letter states, “As you may be aware, an agreement has now been reached between the Governments of United Kingdom and of the People’s Republic of China in respect of compensation for claims in respect of bonds and property” (Appendix Exhibit 21).

115. Subsequent to the execution of the Claims Settlement Agreement, the U.K. Foreign Compensation Commission produced and distributed a leaflet entitled, “Chinese Compensation”, and which stated, “Claims may be made: • in respect of bonds issued or guaranteed by the Chinese authorities before 1 October 1949, claimants will need to show that they were British and the beneficial owner of the bonds on 4 June 1987;” (Appendix Exhibit 22).

116. According to the Hansard (the “Official Report”) record of the proceedings of both Houses of the British Parliament, “Of the 1,717 bond claimants to whom offer of an interim payment had been made, 1,592 had accepted the offer as of 29 September, 1989” (Appendix Exhibit 23).

117. The acceptance of the offer by the 1,592 bond claimants constituted a legally enforceable contract, comprising offer, acceptance, and consideration, separate and apart from the Loan Agreement under which the debt comprising the bonds was contracted.

118. The Claims Settlement Agreement required that bonds be included in the settlement of claims, although there was no requirement that all of the bonds be settled, and further required that the Government of Great Britain shall be responsible for distributing the payment(s) to the bondholders from the sum received from the Chinese Government for the settlement of claims.

119. On March 19, 1990, the Secretary for Foreign Affairs advised of an interim payment from the China Fund to the participating British bondholders.

120. The distribution of the final payments to the participating British bondholders commenced on April 2, 1991, and the participating holders of China's pre-1949 bonded debt began receiving final payments of the bonded debt during the month of April, 1991. The final payments from the China Fund to the participating British bondholders exhausted the balance of the monies received from China to settle the claims of the participating British bondholders (Appendix Exhibit 24).

121. The distribution of the final payments to the participating British bondholders did not settle all of the claims, i.e., all of the bonds, including those bonds held by non-British persons and the bonds held by those persons who were eligible to participate in the settlement but declined to do so.

122. The Subject Debt was publicly offered and sold internationally in the form of public treasury bonds, and the debt was contracted by various loan agreements whose terms vary according to the specific series of loans.

123. A common clause appearing in the various loan agreements is also found in Article IX of the Chinese Government Five Per Cent Reorganization Gold Loan Agreement dated April 26, 1913 (the "Loan Agreement"), which provides that only "When the loan has been fully repaid this Agreement will immediately become null and void" (Appendix Exhibit 25).<sup>28</sup>

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<sup>28</sup> The Chinese Government Reorganization Gold Loan Agreement contained twenty-one Articles and six Annexes, "A" through "F", and is considered to be "a binding engagement upon the Republic of China and its successors."

124. According to the terms of Article IX of the Loan Agreement, the Loan Agreement remains in force until the loan is fully repaid. The same condition prevails in regard to the other series of loans which loan agreements contain a similar provision.

125. The settlement between the British and Chinese Governments did not relieve the Chinese Government of its obligation to repay the debt to the ineligible bondholders (e.g., non-British subjects) or those British bondholders whom declined to participate in the settlement, and the bonded debt remain a binding obligation upon the Chinese Government, which is The People's Republic of China as the internationally recognized Government of China.

126. The partial payment of a debt is generally considered an acknowledgment of the debt for purposes of tolling the statute of limitations.

127. Generally, actions upon causes of action which would be barred by the statute of limitations but for part payment or a written acknowledgment shall be brought on the original cause of action and the part payment or written acknowledgment shall be evidence to prevent the bar of the statute of limitations.

128. Accordingly, the statute of limitations tolled when the final payments to the participating bondholders commenced on April 2, 1991, and will expire on or about April 1, 2011.<sup>29</sup>

5. The Physical Assets and Revenues Securing the Subject Debt Are Held in Constructive Trust by The People's Republic of China

129. The Chinese Communist Government exercises dominion over the physical assets and revenues securing the Subject Debt, and possesses and controls such assets and revenues.

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<sup>29</sup> Id. at 24.

130. By its action of repudiation of the Debt, the Chinese Communist Government expropriated the physical assets and revenues securing the bonded debt obligations.

131. The Chinese Communist Government's expropriation of the assets and revenues securing the debt constitutes a taking of rights in property in violation of international law pursuant to the FSIA.

132. The People's Republic of China holds such physical assets and revenues in constructive trust on behalf of Complainant.

#### 6. Unjust Enrichment Continues in Effect

133. The People's Republic of China Obtains Unjust Enrichment From its Continuing Actions and Complainant Continues to Suffer Injury From The People's Republic of China's Continuing Actions.

134. The Chinese Communist Government, The People's Republic of China, has obtained and continues to obtain unjust enrichment from the unimpeded creation and sale of new external sovereign debt obligations of the Chinese Government and has obtained and continues to obtain the economic benefit of such newly created debt, while refusing the repayment of the Debt in violation of international law.

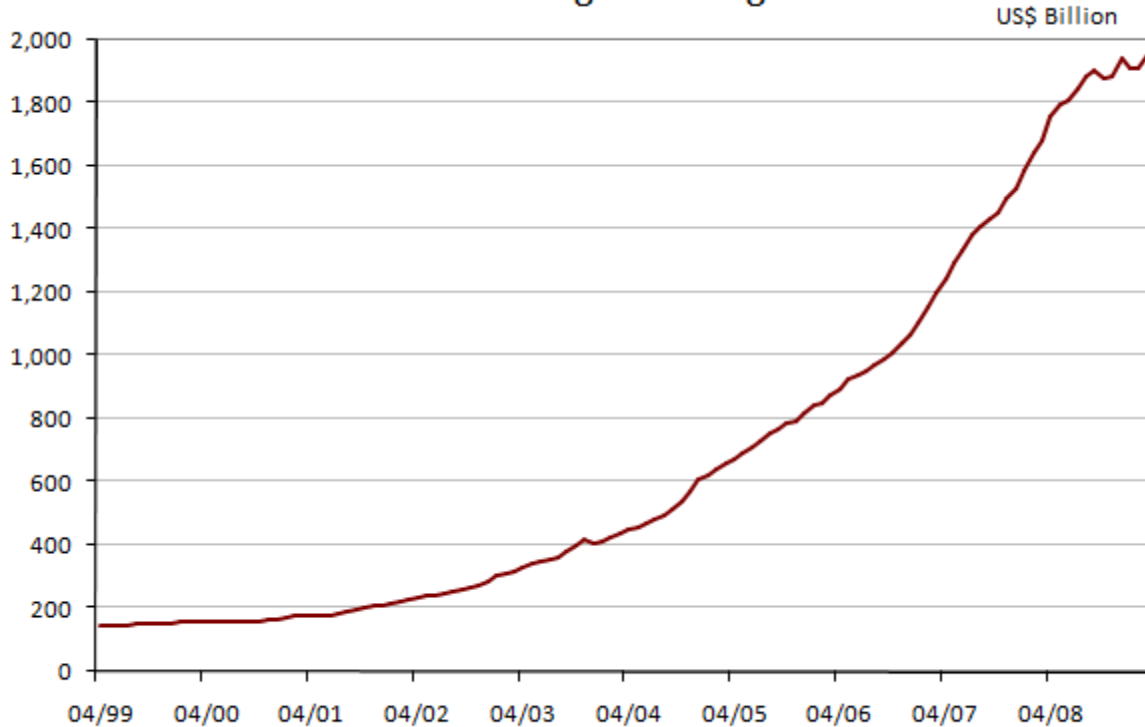
135. The claims of United States persons holding the defaulted sovereign debt of the government of China, including the Debt held by Complainant, have not been settled and remain unresolved.<sup>30</sup>

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<sup>30</sup> The U.S. Department of State has articulated in writing the position that the Department of State supports the resolution of claims in instances in which U.S. persons have suffered a taking of rights in property in violation of international law by a foreign government pursuant to the actions of either repudiation or discrimination. U.S. persons have suffered and continue to suffer injury from both actions, i.e., repudiation and discrimination by the People's Republic of China and are therefore routinely referred by the Department of State to the Foreign Bondholders Protective Council (the "FBPC") for assistance, and

136. The People's Republic of China has the ability to repay the defaulted debt (Inset Exhibit 1), yet has refused Complainant's demands (Appendix Exhibit 26).

**Exhibit 2**  
**Foreign Exchange Reserves of The People's Republic of China**<sup>31</sup>  
**Chinese Gold and Foreign Exchange Reserves**



Source: People's Bank of China

137. Complainant has suffered and continues to suffer the taking of rights in property and is injured in its property by the wrongful actions of the named parties including the actions of The People's Republic of China and is unable to enforce the Debt contracts in the face of the continuing actions of the *Capitalist China* enterprise which continue to deprive Complainant of its rights.

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no pretext is asserted by the Department of State that the claims of U.S. persons were either addressed or settled by the 1979 U.S.-China Treaty (Id. at 14; J. Brian Atwood Letter). The FBPC has been unsuccessful in its attempts to negotiate with the People's Republic of China for the resolution of U.S. persons' claims.

<sup>31</sup> Source: People's Bank of China, as reproduced on the Sovereign Wealth Fund Institute website: <http://www.swfinstitute.org/images/chinesereservesmar.png>

**K. The Syndicate Banks Are Contractually Obligated by the Various Loan Agreements to Establish and Maintain Sinking Funds for Various Series of the Debt Obligations**

1. The Syndicate Banks Which Created the Debt Obligations Agreed to Establish and Maintain Sinking Funds for the Benefit and Protection of the Holders of the Debt

138. The Syndicate Banks which created the various series of debt obligations pursuant to the various loan agreements are contractually obligated to establish and maintain amortization sinking funds for the benefit and protection of the holders of the debt.

139. The Syndicate Banks failed to perform this duty as required by the various loan agreements and no monies were ever paid into the sinking funds (Appendix Exhibit 27).

140. The Syndicate Banks which are known to the Complainant to have failed in this duty include HSBC Holdings, as successor to the Hongkong and Shanghai Bank; Deutsche Bank, as successor to the Deutsch-Asiatische Bank; Credit Agricole, as successor to the Banque De L'Indochine; Bank of Tokyo, as successor to the Yokohama Specie Bank; J.P. Morgan Chase & Co., as successor to JP Morgan; and Citigroup, as successor to the National City Bank of New York.

141. The identities of all of the financial institutions which are obligated by the various loan agreements to establish and maintain sinking funds in connection with the various series of the debt obligations, and which have failed in this duty, is not yet known to the Complainant.

**IV. The Role of the Credit Rating Agencies in the Creation of the *Capitalist China Enterprise***

**A. The Importance of Credit Ratings and the Control of the Credit Rating Industry by the Three Dominant Nationally Recognized Statistical Rating Organizations**

1. Overview of the Credit Rating Industry and the Incentive for Abuse by the Three Dominant Firms Which Control the Industry

142. The Credit Rating Agencies which are the subject of this action are Standard & Poor's Financial Services L.L.C., a subsidiary of The McGraw-Hill Companies, Inc. ("Standard & Poor's" or "S&P"), Moody's Investors Service, Inc. ("Moody's") and Fitch, Inc. D.B.A. Fitch Ratings ("Fitch").<sup>32</sup>

143. The three firms named above dominate the credit rating industry and collectively control over 95% of the ratings market, essentially constituting themselves as the industry. The three firms are therefore referenced collectively herein as "the Three Primary Credit Rating Agencies" and are synonymous with references to the "Credit Rating Industry" (Inset Exhibit 3).

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<sup>32</sup> Each of the Credit Rating Agencies which is a party to this action is a private sector, for-profit entity.

**Exhibit 3**  
**Global Credit Rating Industry**  
 Percentage Market Share (2005)<sup>33</sup>

Credit Rating Agency	(%) Share of Total Market
Standard & Poor's	40%
Moody's Investors Service	39%
Fitch Ratings	15%

144. The dominance within the credit rating industry by the Three Primary Credit Rating Agencies is so pervasive that the credit rating business is described by one competitor as “an absolutely closed shop industry”.<sup>34</sup>

145. Each of the Three Primary Credit Rating Agencies is designated by the United States Securities and Exchange Commission (the “SEC”) as a Nationally Recognized Statistical Rating Organization.

146. The SEC has codified extensive investment regulations which define certain permissible and impermissible actions of regulated financial institutions (e.g., federally insured depository institutions, insurance companies, municipalities, and

<sup>33</sup> Source: “*Senate Panel Backs Expansion of Credit-Rating Competition*”, financial news article by James Tyson, Bloomberg News (August 3, 2006). The article cites reference to calculations derived from company filings. The article states that according to Senate Banking Committee Chairman Richard C. Shelby, “*By increasing competition, the bill will protect investors by improving ratings quality and providing greater transparency and accountability.*” According to the article, Committee Chairman Shelby further explained, “*The thrust behind all this is competition, which is desperately needed.*” Another financial news article entitled “*Flawed Credit Ratings Reap Profits as Regulators Fail*” by David Evans and Caroline Salas, Bloomberg News (April 29, 2009), states that according to the United States Securities and Exchange Commission, Standard & Poor's, Moody's and Fitch control 98% of the market for debt ratings in the U.S.

<sup>34</sup> Statement by Sean Egan, Managing Director of Egan-Jones Ratings. The duopoly is comprised of Standard and Poor's Ratings Service and Moody's Investors Service, which jointly control approximately 80% of the credit rating industry. The inclusion of Fitch Ratings constitutes an oligopoly comprised of the three primary NRSROs. An expert on the credit rating industry, Mr. Egan testified before the United States Congress on October 21, 2008, stating that “the single greatest cause” of the current global financial crisis which began in 2007 is the conflict of interest inherent in the “issuer pay” business model employed by the Three Primary Credit Rating Agencies, and stated that “[T]he current credit rating system is designed for failure.” Mr. Egan further testified that all the major financial companies that have “failed or nearly failed” have done so “to a great extent because of...inaccurate...unsound, and possibly fraudulent” ratings.

pension funds including defined benefit plans) by reference to the credit ratings assigned, published and distributed by the Three Primary Credit Rating Agencies.

147. The designation of privileged NRSRO status of the Three Primary Credit Rating Agencies by the SEC in conjunction with the extensive codification of investment regulations acts to imbue the ratings assigned, published and distributed by the Three Primary Credit Rating Agencies with the force and effect of law, and has done so in the absence of regulatory supervision (Appendix Exhibit 28).

148. The privileged NRSRO status bestowed upon the Three Primary Credit Rating Agencies helped entrench their position within, and ensure their control of, the credit rating industry.

149. The Three Primary Credit Rating Agencies have exploited and continue to exploit their privileged NRSRO status and their dominant position in, and control of the market to obtain unjust enrichment.

150. Each of the Three Primary Credit Rating Agencies is also registered with the SEC as a Registered Investment Adviser pursuant to the Investment Advisers Act of 1940 (the “Advisers Act”).<sup>35</sup>

151. The Advisers Act prohibits unethical business practices by registrants, including engaging in any act, practice or course of business which is fraudulent, deceptive, or manipulative.<sup>36</sup>

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<sup>35</sup> Investment Advisers Act of 1940 as amended. August 22, 1940. 54 Stat. 847, 15 U.S. Code §80b-1-80b-21, as amended.

<sup>36</sup> The language of Section 206 of the Advisers Act, captioned “Prohibited Transactions by Investment Advisers” states: “It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly: (1) To employ any device, scheme, or artifice to defraud any client or prospective client; (2) To engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; ... (4) To engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.”

152. The SEC has not enforced the provisions of the Advisers Act governing prohibited practices against the Three Primary Credit Rating Agencies and continues to ignore the actions of the Three Primary Credit Rating Agencies which continue to engage in such prohibited practices.

153. The Three Primary Credit Rating Agencies derive the vast majority of their revenue in the form of compensation from the companies and governments for which they publish credit ratings, which typically pay for the assigned ratings.<sup>37</sup>

154. The “issuer pay” business model acts as an incentive for the Three Primary Credit Rating Agencies to exploit their control of the industry, resulting in manipulation and inflation of credit ratings, by which immense financial benefit accrues to the Three Primary Credit Rating Agencies.

155. The SEC has failed to adopt a proposed rule requiring NRSROs to use "systematic procedures designed to ensure credible and reliable ratings" and the Three Primary Credit Rating Agencies continue to operate free of a regulatory regime over their activities and business practices and remain free to consider their own profit when developing and distributing credit ratings.<sup>38</sup>

156. In light of the enforcement failure by the SEC, the United States Congress has attempted on multiple occasions, and has as yet failed, to develop and enact legislation which would effectively restrain the wrongful actions of the Three Primary

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<sup>37</sup> The business model utilized by the Three Primary Credit Rating Agencies is known as the “issuer pay” model.

<sup>38</sup> The SEC proposed to adopt rule § 240.3b-10 of Title 17 of the Code of Federal Regulations (April 19, 2005). The language of § 240.3b-10(c) of the proposed rule states, in reference to NRSROs, “Uses systematic procedures designed to ensure credible and reliable ratings, manage potential conflicts of interest...” The SEC subsequently failed to adopt the proposed rule, which remains reserved.

Credit Rating Agencies and prevent them from continuing to engage in wrongful and injurious practices.<sup>39</sup>

157. In the absence of oversight, the potential for ratings abuse is manifest in the industry, as evidenced by the recent credit crisis which resulted from artificial ratings assigned to subprime mortgages by the Three Primary Credit Rating Agencies in an effort to increase the marketability of structured financial products and therefore increase the demand for such products, with the consequential effect of increasing the ratings revenue received by the Three Primary Credit Rating Agencies.

158. The lack of accountability for the credit ratings assigned, published and distributed by the Three Primary Credit Rating Agencies has resulted in the loss of hundreds of millions, and even billions of dollars by investors worldwide (excluding falsely-rated subprime mortgages), and an estimated \$1.7 trillion in additional losses since early 2007 resulting from falsely-rated subprime mortgage obligations sold to

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<sup>39</sup> Examples of attempts by the United States Congress to achieve remediation of the matter which is the subject of this action include Senate Concurrent Resolution 78 and House Resolution 1179 introduced in the 110<sup>th</sup> United States Congress (Second Session) expressing the sense of the Congress that the “Selective Default” status of the Chinese Government’s defaulted debt obligations and the refusal of the People’s Republic of China to honor its repayment obligation of the defaulted debt should be disclosed, and the letter dated May 24, 2005 authored by the Hon. Jim Saxton, then-Chairman of the Joint Economic Committee of the United States Congress, addressed to the Hon. William Donaldson, then-Chairman of the United States Securities and Exchange Commission, requesting the SEC to open an investigation into the false sovereign credit ratings assigned by the Three Primary Credit Rating Agencies to the People’s Republic of China. The SEC subsequently refused to open an investigation on the basis that it lacked jurisdiction over the actions of the credit rating agencies. Other recent legislative initiatives include the Credit Rating Agency Duopoly Relief Act (H.R. 2990 introduced in the 109<sup>th</sup> United States Congress) and the Credit Rating Agency Reform Act of 2006 (passed by the 109<sup>th</sup> United States Congress and signed into law on September 29, 2006 as Public Law No: 109-291), which expressly restricted the SEC from regulating the substance of credit ratings or the procedures and methodologies employed to develop credit ratings. These initiatives are merely cosmetic in nature and have not addressed the “issuer pay” business model which incentivizes ratings inflation and manipulation by the Three Primary Credit Rating Agencies which remain the principal market actors in control of the industry. In order to ensure that their business practices remain free of regulatory supervision and intervention, and to remain free from the constraint of issuing “credible and reliable” ratings, the Three Primary Credit Rating Agencies collectively spent, according to data obtained from the Center for Responsive Politics, in excess of \$5 million in lobbyist fees since 2005, the date upon which the matter comprising this action became widely known via published accounts in the financial news media. Standard & Poor’s engaged Patton Boggs as the firm’s lobbyist, which firm also represents the People’s Republic of China as its U.S. lobbyist.

investors on the basis of the high credit rating classifications assigned by the Three Primary Credit Rating Agencies (Inset Exhibit 4).

**Exhibit 4**  
**Examples of Ratings Failures (Excluding China)**  
**By the Three Primary Credit Rating Agencies<sup>40</sup>**

2008	Misstated the risk and misled investors re: Lehman Brothers Holdings Inc. collapse
2007	Misstated the risk and misled investors re: U.S. sub-prime mortgages
2002	Misstated the risk and misled investors re: Worldcom collapse
2001	Misstated the risk and misled investors re: Enron collapse
1997	Misstated the risk and misled investors re: Asian debt crisis, including the governments of Thailand and Korea
1994	Misstated the risk and misled investors re: Orange County debt crisis
1983	Misstated the risk and misled investors re: Washington State Public Power Supply System default
1975	Misstated the risk and misled investors re: New York City financial crisis
1970	Misstated the risk and misled investors re: Penn Central debt default

2. Evolution of the Three Primary Credit Rating Agencies from Publishers to Market Actors

159. Historically, the Three Primary Credit Rating Agencies operated as conservative institutions and acted as publishers, rather than as market actors. The Three Primary Credit Rating Agencies often likened themselves to reporters because in the past they provided unsolicited “opinions” on the creditworthiness of corporations and had a “subscription-based” business model. Their evaluations were often derived from publicly available information such as financial filings with various regulatory agencies.

<sup>40</sup> Primary source: Article entitled, “Unchecked Power”, *Washington Post* (November 22, 2004); article entitled, “Shaping the Wealth of Nations”, *Washington Post* (November 23, 2004); article entitled, “Flexing Business Muscle”, *Washington Post* (November 24, 2004).

160. With the advent of the privileged NRSRO status conveyed upon the Three Primary Credit Rating Agencies by the SEC, the extensive codification of their rating classifications into institutional investment policies and financial regulations by governments worldwide, the lack of regulation, and their dominant position within the industry, the Three Primary Credit Rating Agencies evolved into market actors, whose actions exert a profound effect upon the international financial markets.

161. Standard & Poor's and Moody's have recently been accurately described as a "government-sponsored duopoly" which, with the inclusion of Fitch, constitutes an oligopoly which provides the Three Primary Credit Rating Agencies with the ability to dominate and control the industry.<sup>41</sup>

162. The Three Primary Credit Rating Agencies have evolved into "gatekeeper" firms that provide a layer of verification or certification above and beyond a primary entity's own claims about itself. In this regard, they resemble auditors. The need for such secondary verification or certification arises in significant part from the recognition that the primary entity may find it in its interest to misrepresent itself. As Professor John C. Coffee explains:

"[G]atekeepers are reputational intermediaries who provide verification and certification services to investors. These services can consist of verifying a company's financial statements (as the independent auditor does), evaluating the creditworthiness of the company (as the debt rating agency does), assessing the company's business and financial prospects vis-à-vis its rivals (as the securities analyst does), or appraising the fairness of a specific transaction (as the investment banker does in delivering a fairness opinion)...Characteristically, the professional gatekeeper essentially assesses or vouches for the corporate client's own statements about itself or a specific transaction. This duplication is necessary because the market recognizes that the gatekeeper has a lesser

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<sup>41</sup> Statement of Mr. Alex J. Pollock, Resident Fellow, American Enterprise Institute, before the United States Securities and Exchange Commission in the Roundtable on Credit Rating Agency Oversight (April 15, 2009).

incentive to lie than does its client and thus regards the gatekeeper's assurance or evaluation as more credible.”<sup>42</sup>

163. Over time, the Three Primary Credit Rating Agencies earned the trust of the marketplace for their evaluation of an issuer's creditworthiness and willingness to repay debt. In 1975 the SEC, an agency of the United States government, designated the Three Primary Credit Rating Agencies as “nationally recognized statistical rating organizations” or NRSROs. According to the SEC, the “single most important criterion” to granting NRSRO status is that “the rating organization is recognized in the United States as an issuer of credible and reliable ratings by the predominant users of securities ratings” and that an important consideration in awarding the NRSRO designation hinges on “the rating organization's independence from the companies it rates.”

164. The two largest credit rating agencies, S&P and Moody's have become privileged institutions which enjoy an exclusive industry duopoly (constituted as an oligopoly with the inclusion of Fitch, the third largest agency), whose ratings convey extraordinary influence over the operation of the international financial markets and act to direct the flow of capital, thereby affecting a debt issuer's cost of capital, a debtor's incentive to repay existing debt, and even the eligibility of regulated institutions (e.g., banks, pension funds and insurance companies) to hold certain types of debt.

165. In the pursuit of windfall profits and their overarching quest to enrich themselves, the Three Primary Credit Rating Agencies have abjectly failed in their role as gatekeepers to the international financial markets and have transcended their former role as publishers and have established and re-constituted themselves as market actors.

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<sup>42</sup> Source: “*Understanding Enron: It's About the Gatekeepers, Stupid*”. John C. Coffee, Jr., Business Lawyer (August 2002).

166. According to SEC Commissioner Kathleen Casey:

*“Ratings agencies just abjectly failed in serving the interests of investors.”*<sup>43</sup>

167. The Attorneys General for the State of California and the State of Ohio have recently filed lawsuits against the Three Primary Credit Rating Agencies alleging misconduct, and the Attorney General for the State of Connecticut has opened an investigation into the practices of the Three Primary Credit Rating Agencies.

168. According to the Hon. Richard Cordray, Attorney General for the State of Ohio, Standard & Poor’s, Moody’s and Fitch conspired with issuers to give top ratings.

He is quoted as stating:

*“We believe that the credit rating agencies, in exchange for fees, departed from their objective, neutral role as arbiters. At minimum, they were aiding and abetting misconduct by issuers.”*<sup>44</sup>

*“In other words, the credit rating agencies sold out, and they sold us out. They traded in their objectivity and in exchange received massive profits.”*<sup>45</sup>

*“It’s one thing to simply offer an opinion. That might well be protected by the First Amendment. When you are actively working with the issuers..., we believe you are a participant in the business at that point.”*<sup>46</sup>

169. As market actors, the Three Primary Credit Rating Agencies are not afforded First Amendment protection for their wrongful and injurious actions.

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<sup>43</sup> Source: *“Flawed Credit Ratings Reap Profits as Regulators Fail”* by David Evans and Caroline Salas, Bloomberg News (April 29, 2009).

<sup>44</sup> Source: *“Ohio Sues Credit Rating Agencies for Role in Crisis”* by Nick McMaster, Newser (November 20, 2009). Mr. Cordray reportedly alleges that the Three Primary Credit Rating Agencies conspired with issuers to give top ratings to products fraught with risk.

<sup>45</sup> Source: *“Ohio Sues Big Credit Rating Units Over Losses”* by Jim Provance, Toledo Blade (November 21, 2009).

<sup>46</sup> Source: Id.

### 3. Sovereign Credit Ratings

170. Each of the Three Primary Credit Rating Agencies assign, publish and distribute sovereign credit ratings for government borrowers, both for domestic borrowing and for international borrowing.<sup>47</sup>

171. Each of the Three Primary Credit Rating Agencies also publish their methodologies for developing sovereign credit ratings, including the specific metrics which are evaluated, e.g., the evaluation of a government's ability and willingness (*emphasis added*) to repay debt.

172. Each of the Three Primary Credit Rating Agencies also publish the definitions of their various credit rating classifications, i.e., the unique set of extant facts that a comprise the circumstances of a specific borrower and thus determine the borrower's credit rating classification and therefore the ability and terms upon which the borrower may obtain access to new capital.

173. A favorable credit rating assigned by one or both of the two largest NRSROs, i.e., Standard & Poor's and Moody's which collectively control 80% of the credit rating industry, is essential to a sovereign government's ability to access the international financial markets on favorable terms.

174. The privileged, exclusive, influential and select position of the Three Primary Credit Rating Agencies within the industry constitutes such firms in a "gatekeeper" role with respect to governments, just as in the case of private issuers of

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<sup>47</sup> References to "sovereign credit rating" and "international sovereign credit rating" in this complaint are intended to refer to the long-term foreign currency credit rating assigned to a specific country (e.g., China) by each of the Three Primary Credit Rating Agencies, and have the same meaning and definition as the "Issuer Credit Rating" assigned by Standard & Poor's, the "Foreign Currency Government Bond Rating" and the "Foreign Currency Country Ceiling" assigned by Moody's, and the "Issuer Default Rating" assigned by Fitch.

debt, empowering the Three Primary Credit Rating Agencies with the unique ability and responsibility to select which sovereign issuers will be admitted into the international financial markets and on what terms.<sup>48</sup> This ability is described in the following statement appearing in a scholarly research monograph published by Cambridge University Press:

“Recent decades have witnessed the remarkable rise of a kind of market authority almost as centralized as the state itself – two credit rating agencies, Moody’s and Standard & Poor’s. These agencies derive their influence from two sources. The first is the information content of their ratings. The second source is both more profound and vastly more problematic: Ratings are incorporated into financial regulations in the United States and around the world...their ratings are given the force of law. Moody’s and Standard & Poor’s are based in New York but have an increasingly global reach. Ratings agencies exercise significant and increasing influence over private capital movements (see Sinclair 2005). No sovereign government would dare to issue debt without being rated by one or both of the agencies.” (Emphasis added, illustrating that the assignment of an international sovereign credit rating by at least one of the Three Primary Credit Rating Agencies is requisite to a government’s ability to resume international financing). “A small number of rating agencies are literally, and legally, the ‘gatekeepers’ to the vast U.S. investing public. The U.S. government thus has put these unregulated firms in the position to express their interpretation of good economic policy to sovereign governments through the process of rating them. Issuers came to see the agencies as points of access to international capital flows. In this paper, we seek...to describe the host of problems that arise when their ratings are given the force of law through incorporation into financial and prudential regulation. Given the degree of reliance the markets and regulators place on credit ratings...the major credit rating agencies’ fortunes have risen, fallen, and risen again in tandem with private capital flows. From their origin in 1909, the agencies grew as the bond market expanded from railroad bonds to include issues by utilities, manufacturers, and sovereign

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<sup>48</sup> According to Alex Pollock, former president of the Federal Home Loan Bank in Chicago and now a resident fellow at the American Enterprise Institute: “The rating agencies are an SEC-created cartel. Usually, issuers need at least two ratings, so they don’t even have to compete. With no ratings, you can’t sell your debt.” Source: “*Flawed Credit Ratings Reap Profits as Regulators Fail*” by David Evans and Caroline Salas, Bloomberg News (April 29, 2009). The same article quotes Eric Dinallo, the insurance regulator for the State of New York, as stating, “We’ve hung the entire global economy on ratings”, and reports that Mr. Dinallo proposes a government takeover of the credit rating industry as a means of ending the abuses continually perpetrated by the Three Primary Credit Rating Agencies.

governments. The agencies' spectacular expansion since the 1970s has, again, effectively mirrored the growth in private capital flows over recent decades. Among the issuers that have taken part in the rapid expansion of the global bond market are a growing number of sovereign governments. The increasingly central role that a small number of prominent rating agencies have come to play in capital markets as they step into the information-gathering role previously played by banks."<sup>49</sup>

175. The foregoing statements by expert observers of the credit rating industry further illustrate the power, influence and operation of the rating classifications assigned, published and distributed by the three primary international credit rating agencies and further corroborate the proximity and causality of injury resulting from the publication of false and misleading rating classifications.

176. A serialized investigative report on the Three Primary Credit Rating Agencies conducted and subsequently published by the *Washington Post*, entitled "Borrowers Find System Open to Conflicts, Manipulation" (comprised of three investigative reports entitled, "Unchecked Power", "Shaping the Wealth of Nations", and "Flexing Business Muscle"), revealed, among other findings, that industry insiders report that (1) the rating system has proved vulnerable to subjective judgment, manipulation and conflicts of interest; that (2) the credit raters often have more sway over foreign fiscal policy than the U.S. government; and (3) that the lack of oversight has left the rating companies free to set their own rules and practices which have led to abuses, and cited examples involving sovereign governments (Inset Exhibit 5 and Appendix Exhibit 29).<sup>50</sup>

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<sup>49</sup> Source: Academic research monograph entitled, *"To Judge Leviathan: Sovereign Credit Ratings, National Law, and the World Economy"*. Christopher M. Bruner and Rawi Abdelal, Harvard Business School. Published by Cambridge University Press (2005).

<sup>50</sup> The complete investigative report by the Washington Post is accessible on the world wide web: <http://www.washingtonpost.com/wp-dyn/articles/A2858-2004Nov21.html>

**Exhibit 5**  
**Washington Post Special Feature**  
 Serial Installment - Investigation into the  
 Business Practices of the International Credit Rating Agencies

Monday November 22 2004	<p><b>Unchecked Power:</b> The world's three big credit-rating companies have come to dominate an important sector of global finance without formal oversight. The rating system has proved vulnerable to subjective judgment, manipulation and conflicts of interest, people inside and outside the industry say.</p> <ul style="list-style-type: none"> <li>• <b>Moody's Close Connections</b></li> <li>• <b>When Interests Collide</b></li> <li>• <b>Graphic: The Rating Game</b></li> </ul>
Tuesday November 23 2004	<p><b>Shaping the Wealth of Nations:</b> As more countries rely on the bond markets to raise capital, they have been forced to accommodate the three top rating firms. The credit raters often have more sway over foreign fiscal policy than the U.S. government.</p> <ul style="list-style-type: none"> <li>• <b>Transcript: Post Writer Alec Klein</b></li> <li>• <b>Smoothing Way for Debt Markets</b></li> <li>• <b>Graphic: Moody's Expansion</b></li> </ul>
Wednesday November 24 2004	<p><b>Flexing Business Muscle:</b> Lack of oversight has left the rating companies free to set their own rules and practices, which some corporations say has led to abuses. The credit raters have rated companies against their wishes and ratcheted up their fees without negotiation.</p> <ul style="list-style-type: none"> <li>• <b>Graphic: Raters' Big Misses</b></li> </ul>

4. Incentive for Manipulation of Sovereign Credit Ratings by the  
 Three Primary Credit Rating Agencies

177. By operation of the “sovereign ceiling” convention, the ability of the Three Primary Credit Rating Agencies to derive profits from the private borrowers situated within a specific nation is directly dependent upon the sovereign credit rating classification assigned, published and distributed by the Three Primary Credit Rating Agencies for that nation, which constrains the upper limit for non-sovereign credit rating classifications assigned to borrowers situated within the specific nation.<sup>51</sup>

178. If the credit rating agencies assign a “default” sovereign credit classification to a specific nation, they would then be expected to rate any and all

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<sup>51</sup> Private, non-sovereign borrowers, e.g., corporations, are subordinate to the sovereign government having jurisdiction over the location where such borrowers are domiciled; accordingly, the credit rating agencies do not normally assign a credit rating classification to a private or sub-sovereign public borrower within a specific nation that is higher than the rating assigned to that nation’s government. This practice is described as the “sovereign ceiling” convention, whereby the sovereign ceiling sets and constrains the upper limit for private and sub-sovereign borrowers within the rated country.

corporate borrowers within such nation as “defaults”. As a consequence, the credit rating agencies would be deprived of the rating fees from every single corporate borrower within that nation, thus automatically forfeiting the potential revenue stream from the entire country.

179. The conflict of interest motivation is therefore much more powerful than in the case of “structured products” ratings, e.g., falsely-rated subprime mortgage products, since assigning a negative rating to a sovereign deprives an agency of the revenue flow from an entire country, instead of an isolated structured product arranger.

180. In consideration of the issuer-pay business model and in order to avoid depriving themselves of the rating revenues from private and sub-sovereign borrowers within a specific rated nation, the Three Primary Credit Rating Agencies are incentivized to assign inflated and therefore artificial sovereign credit rating classifications to the governments of those nations which offer the potential for large-scale private or sub-sovereign borrowing, and which thereby represent immense potential profit to the Three Primary Credit Rating Agencies.<sup>52</sup>

5. Findings of the SEC Investigation into the Practices of the Three Primary Credit Rating Agencies

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<sup>52</sup> See the Congressional testimony of Sean Egan, Managing Director of Egan-Jones Ratings Company, who testified before the House Committee on Oversight and Government Reform in regard to the SEC proposal to amend NRSRO regulations that, *“they proceed from the erroneous premise that the major rating agencies are in the business of providing timely and accurate ratings for the benefit of investors when, in fact, these companies have, for the last 35 years, been in the business of facilitating the issuance of securities for the benefit of corporate issuers and underwriters, i.e., the entities which pay for them.”* (October 22, 2008). Mr. Egan has also noted that issuers of securities account for 80% of the total revenue of Moody’s, S&P, and Fitch. In Moody’s previous incarnation as a publisher, Edmund Vogelius, the Vice President of the firm, declared in 1957: “We obviously cannot ask payment for rating a bond. To do so would attach a price to the process, and we could not escape the charge, which would undoubtedly come, that our ratings are for sale.”

181. Three separate divisions of the SEC, including the Office of Inspections, Compliance and Examinations, the Division of Trading and Markets, and the Office of Economic Analysis, recently conducted an independent investigation into the business practices of the Three Primary Credit Rating Agencies.

182. The findings of the ten month investigation by the various divisions of the SEC were published in a report entitled, “Summary Report of Issues Identified in the Commission Staff’s Examinations of Select Credit Rating Agencies” dated July 2008.

183. The findings of the investigation included numerous instances in which the Three Primary Credit Rating Agencies, among other suspect practices, violated conflict of interest guidelines and considered the firms’ profits when developing credit ratings. The report made reference to numerous electronic mail communications between the staff of the credit rating agencies, and cited as an example a communications which stated the following:

*“I am trying to ascertain whether we can determine at this point if we will suffer any loss of business because of our decision and if so, how much?”*

184. The same electronic mail communication also stated that the Ratings Analyst was aware that some staff disagreed with a recommended rating, *“because they believed it would negatively impact business.”*

185. The conflicts of interest, profit motive, overall truthfulness of published ratings, and standard of care employed by the Three Primary Credit Rating Agencies may best be evidenced by the following electronic mail communication contained in the SEC’s report, and sent by an Analytical Manager at Standard & Poor’s to a Senior Analytical Manager at the same firm:

*“Let’s hope we are all wealthy and retired by the time this house of cards falters.”*

186. According to recent reports, people both formerly and presently employed within the credit rating industry have claimed that the wrongful practices engaged in by the Three Primary Credit Rating Agencies are continuing in effect and unabated.<sup>53</sup>

187. The House Committee on Oversight and Government Reform recently conducted a series of hearings on the credit ratings agencies, during which the committee chairman stated:

*“The story of the credit rating agencies is a story of colossal failure.”*

188. According to the Hon. Richard Blumenthal, Attorney General for the State of Connecticut, in a letter to Federal Reserve Chairman Ben Bernanke referring to the prospect of the Three Primary Credit Rating Agencies profiting from the recent federal government bailout of large financial institutions:

*“It rewards the very incompetence of Standard & Poor’s, Moody’s and Fitch that helped cause our current financial crisis. It enables those specific credit rating agencies to profit from their own self-enriching malfeasance.”<sup>54</sup>*

189. A candid assessment of the state of the credit rating industry, dominated and controlled by the Three Primary Credit Rating Agencies, is provided by Frank Partnoy, a law professor at the University of San Diego School of Law and author of several textbooks on modern finance, and who has also written law review articles on the credit rating industry for over a decade:

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<sup>53</sup> For example, Eric Kolchinsky, a former Moody’s managing director and ratings analyst, reportedly provided testimony to the United States Congress that inflated ratings and opinions “*known to be wrong*” continue to be issued by Moody’s. Source: “*Congress Takes On Ratings Firms*” by Serena Ng and Aaron Lucchetti, Wall Street Journal (September 23, 2009).

<sup>54</sup> Source: “*Flawed Credit Ratings Reap Profits as Regulators Fail*” by David Evans and Caroline Salas, Bloomberg News (April 29, 2009).

*“This problem is really like a cancer that has spread throughout the entire investment system. You’ve got a body filled with little tumors, and you’ve got to go through and find them and cut them out.”<sup>55</sup>*

190. Another assessment of the business practices of the Three Primary Credit Rating Agencies is offered by a recent interview with Michael Lewis, an acclaimed author and former Wall Street Bond Trader, entitled *“Inside the Collapse”* and produced by the CBS News television program “60 Minutes” (broadcast nationally on March 14, 2010), in which CBS news anchor Steve Kroft asked the question, in reference to the cause of the current financial crisis which began in 2007 and has thus far resulted in an estimated \$1.75 trillion in losses:

*“What role did the credit ratings agencies play in this?”*

Mr. Lewis replied:

*“They were handmaidens to Wall Street. The ratings agencies get paid by Wall Street, by Merrill Lynch, by Citigroup, by Morgan Stanley, by Goldman Sachs, to rate the bonds that Wall Street creates. This creates a certain moral hazard.”<sup>56</sup>* Mr. Lewis then responded in reference to a question pertaining to the need for regulatory reform:

*“But for example, one of the things at the bottom of this crisis was we had these ratings agencies that called a lot of things ‘AAA’, gold-plated securities, that were worthless. And the ratings agencies are paid, of course, by the Wall Street firms for their ratings. Why is that allowed? Why can you buy a rating?”*

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<sup>55</sup> Id. Frank Partnoy is the George E. Barrett Professor of Law and Finance and is the director of the Center on Corporate and Securities Law at the University of San Diego. He is one of the world’s leading experts on the complexities of modern finance and financial market regulation.

<sup>56</sup> According to Richard Gugliada, former S&P Managing Director, S&P is involved in a “market share war where criteria were relaxed” and that McGraw-Hill management “mandated” that S&P executives “find a way to issue positive” ratings. “I knew it was wrong at the time” Mr. Gugliada is quoted as saying, adding that “[I]t was either that or skip the business. That wasn’t my mandate. My mandate was to find a way. Find the way.” Source: “Rating McGraw-Hill”, by William D. Cohan, Fortune Magazine (April 17, 2009). Speaking publicly in regard to an SEC-sponsored conference on reforming the credit rating industry, Jim Kaitz, President and Chief Executive Officer of the Association for Finance Professionals, which represents 16,000 finance professionals, stated, “[I]ncremental changes unfortunately have not worked. Hopefully this will be an opportunity for a real discussion on how to make some dramatic changes to the ratings process.” Source: “Rating the Rating Agencies” by David Ellis, CNNMoney.com (April 14, 2009).

**B. The Three Primary Credit Rating Agencies Helped Create and are Crucial to the Operation of the *Capitalist China* Enterprise**

1. Creation of the *Capitalist China* Enterprise

Phase I – Construction of the Artifice Upon Which to Operate the *Capitalist China* Enterprise: Deliberate Assignment, Publication, and Distribution of Demonstrably False International Sovereign Credit Rating Classifications by the Three Primary Credit Rating Agencies Concealing the Existence of Defaulted Full Faith and Credit Sovereign Debt of the Chinese Government Which is the Repayment Obligation of The People’s Republic of China as the Internationally Recognized Government of China and Which The People’s Republic of China Refuses to Repay

191. In order to finance national economic development and create access to international debt financing by domestic Chinese corporations, The People’s Republic of China needed to regain access to the international financial markets.<sup>57</sup>

192. The People’s Republic of China sought to regain access to the international financial markets in such a manner as to escape its repayment obligation of the Chinese Government’s defaulted full faith and credit sovereign debt.

193. In 1982, The People’s Republic of China, in furtherance of its quest to strategically gain re-entry into the international financial markets in such a manner as would allow it to escape its repayment obligation of the Chinese Government’s defaulted full faith and credit sovereign debt, privately contracted an external debt obligation with Japanese institutions by which action The People’s Republic of China selectively defaulted on the Chinese Government’s pre-1949 full faith and credit sovereign debt. The new debt accord was concluded in Tokyo with approximately thirty (30) Japanese institutions by the China International Trust and Investment Company (“CITIC”), a state-

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<sup>57</sup> Id. at 18.

owned and controlled instrumentality of The People's Republic of China, and was dated January 22, 1982.<sup>58</sup>

194. In 1983, four years after concluding the 1979 U.S.-China Treaty and after ignoring repeated demands for repayment and then selectively defaulting on the Chinese Government's pre-1949 full faith and credit sovereign debt, The People's Republic of China repudiated the defaulted debt, both generally and specifically in respect to defaulted obligations held by U.S. persons.<sup>59</sup>

195. That The People's Republic of China recognized its repayment obligation is evident from its act of repudiation; had there been no repayment obligation, there would have been no need for repudiation.

196. In 1987, four years after repudiating the debt, The People's Republic of China concluded an exclusionary debt settlement accord with the Government of the United Kingdom and did thereby obtain the removal of capital markets sanctions imposed

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<sup>58</sup> The CITIC Group is a state-owned investment company of the People's Republic of China. Until July 26, 2006, the CITIC Group was chaired by Mr. Wang Jun, who simultaneously served as chairman of Poly Technologies, a subsidiary of China Poly Group Corporation, founded and controlled by the People's Liberation Army. In May 1996, Poly Technologies attempted to smuggle 2,000 fully automatic AK-47 assault rifles into the United States for distribution to West Coast drug rings and street gangs. The attempt was exposed in a sting operation jointly conducted by the U.S. Customs Service and the Federal Bureau of Alcohol, Tobacco and Firearms, and resulted in the largest seizure of fully operational automatic weapons in U.S. history. In addition to the assault rifles, the participants in the scheme allegedly sought to smuggle shoulder-launched surface-to-air missiles into the United States. Source: "*Anatomy of a Sting*" published by Time Magazine (June 3, 1996). Poly Technologies was also involved in an attempt to deliver weapons to Zimbabwe during the 2008 election crisis. The ship transporting the weapons was refused entry into South African Ports shortly before docking. Source: "*Zimbabwe Arms Shipped by China Spark an Uproar*" published by the New York Times (April 19, 2008).

<sup>59</sup> See Aide Memoire dated February 2, 1983 issued by the Chinese Ministry of Foreign Affairs, included as pages 81-82 of the American Society of International Law, International Legal Materials, 221.L.M75 (1983), wherein the People's Republic of China explicitly repudiated the Chinese Government's full faith and credit sovereign debt and declared, "The Chinese Government recognizes no external debts incurred by the defunct Chinese Governments and has no obligation to repay them...". The People's Republic of China reiterated its refusal to repay the Chinese Government's defaulted full faith and credit sovereign debt in a letter dated November 12, 2006, in which the Ministry of Finance specifically rejected the claims of U.S. persons. The People's Republic of China's discrimination against the claims of U.S. persons is further evidenced by the provisions of the 1987 Treaty between the People's Republic of China and Great Britain which provided for the settlement of the claims of British citizens and did not address the settlement of claims of U.S. persons.

by the British Government on The People's Republic of China for its refusal to honor repayment of its defaulted full faith and credit sovereign debt obligation to British citizens.

197. In order for The People's Republic of China to successfully gain re-entry into the international financial markets and engage in the creation and public sale of new external sovereign debt on favorable terms in the face of its refusal to honor repayment of China's defaulted full faith and credit sovereign debt, The People's Republic of China needed to obtain an international sovereign credit rating from at least one of the Three Primary Credit Rating Agencies which would hide the truth, i.e., conceal both the existence of the Chinese Government's defaulted full faith and credit sovereign debt and also either hide the actions of The People's Republic of China, or mitigate the effect of such actions in regard to evading its repayment obligation of the defaulted debt including the actions of selective default, discriminatory settlement and repudiation.

198. The ability of The People's Republic of China to obtain a favorable sovereign credit rating which would hide the truth of its actions including the action of selective default required the willing cooperation of at least one of the Three Primary Credit Rating Agencies, without which it would not be possible for The People's Republic of China to gain re-entry into the international financial markets on favorable terms.

199. On May 12, 1988, The People's Republic of China reportedly sought, and then denied seeking, an international sovereign credit rating which would enable it to re-enter the international financial markets without honoring its repayment obligation of its defaulted full faith and credit sovereign debt. Morgan Stanley was reported by the

Reuters News Service to have acted as the Adviser to The People’s Republic of China in procuring the sovereign credit rating which would hide the truth of its actions including the action of selective default.<sup>60</sup>

200. The importance of the sovereign ceiling convention to the ability of the Three Primary Credit Rating Agencies to capture future revenue from the Chinese market, in combination with the immense profitability potential of rating domestic Chinese corporations by operation of the issuer pay model, compromised the independence of the Three Primary Credit Rating Agencies and provided a significant incentive for them to function in the role of market actors, i.e., as participants in the business, rather than solely in their historical role as publishers.<sup>61</sup>

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<sup>60</sup> Morgan Stanley was also reportedly the main consignee of the Chinese Government’s \$1 billion of new international debt sold in 2001.

<sup>61</sup> The following instance reveals the substantial influence that the prospect of future government and corporate business has on the assignment and publication of sovereign rating classifications is not without historical precedent: “In early 2000 controversy erupted over the major rating agencies’ respective assessment of Mexico’s economic prospects. It was alleged that the respective competitive positions of S&P and Moody’s in the Mexican ratings business could perhaps explain their very different assessments of the country’s debt service prospects. Moody’s had put the country’s long term foreign currency debt under review for a possible upgrade from junk to investment grade status, citing Mexico’s improving debt service burden and reflecting analysts’ perceptions of reduced risk. Standard and Poor’s rated Mexico’s long-term foreign currency debt as non-investment grade, one notch below Moody’s, and indicated that it would not be considering an upgrade until after the Presidential elections in July 2000. Mexican presidential elections have frequently coincided with substantial economic and financial turmoil and policy changes. Moody’s announcement was widely praised by the Mexican government and sparked a rally in local bond and equity markets, bolstering Moody’s chances of winning mandates for a long queue of government entities and corporates planning to issue bonds in the ensuing months. Moody’s denied that its aggressive selling effort had anything to do with the unexpected upgrade six months before the Presidential election, citing the primacy of reputation and credibility as the firm’s key selling tool. Some observers noted that in the presidential elections six years earlier, in 1994, it was S&P that was bullish on the country and Moody’s was more cautious, coinciding at that time with a strong marketing effort in the country by S&P.” Source: “Rating Agencies: Is There an Agency Issue?”, authored by Roy C. Smith and Ingo Walter, Stern School of Business, New York University (February 18, 2001), which cites reference to an article entitled “Moody’s, S&P Are at Odds Over Future of Mexico” by Jonathan Friedland and Pamela Druckerman, *Wall Street Journal* (February 7, 2000). Another example: “The rating agencies have not been alone in feeling the pressure of governments in response to their assessments. In February 1999 Goldman Sachs analysts targeted the financial condition of Thailand’s largest bank, Bangkok Bank, as a potential threat to the country’s financial stability, driving down the price of its shares. The Thai Ministry of Finance immediately chastised Goldman Sachs and implicitly threatened to withdraw government business, which in turn was coupled to the threat of lost private-sector business from companies hesitant to incur the disfavor of the Ministry of Finance.” Source: “Rating Agencies: Is There an Agency Issue?”, authored by Roy C. Smith and Ingo Walter, Stern School of Business, New York University (February 18,

201. The two largest of the Three Primary Credit Rating Agencies beginning with Moody's and followed two months later by Standard & Poor's, which collectively control approximately 80% of the credit rating industry, sought to exploit their financial markets hegemony and the power of their ratings to create an opportunity which would enable them to reap windfall ratings profits by opening the gate to debt issuance by both the Chinese Government and domestic Chinese corporations, and in the pursuit of such opportunity deliberately constructed, assigned, published, and distributed knowingly false international sovereign credit rating classifications for the Chinese Government, which classifications concealed and continue to conceal the actions of the rated government, The People's Republic of China, including the actions of selective default; rejection of the successor government doctrine of settled international law affirming continuity of obligations among successive internationally recognized governments; the contracting of new external debt with Japanese institutions without the consent of the defaulted debt holders whom consequently suffered involuntary subordination; the making of exclusionary and non-proportional preferential debt payments to the new Japanese creditors; concluding a discriminatory debt settlement accord with Great Britain which excluded other nations' citizens; and repudiation of China's pre-1949 full faith and credit sovereign debt; and which rating classifications enabled and continue to enable the

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2001). Yet another example: "In the same vein, commentators noted that Morgan Stanley had been dismissed in 1997 as financial adviser to Shandong International Power Development in China after publishing a negative research report and that retribution in the case of unfavorable research was hardly unusual in Asia, where links between government, private companies and powerful families are much closer than in some other parts of the world." Source: "Investment Banks Must Soothe Asian Sensibilities" by Mark Landler, *New York Times* (March 12, 1999), as cited in: "Rating Agencies: Is There an Agency Issue?", authored by Roy C. Smith and Ingo Walter, Stern School of Business, New York University (February 18, 2001). The following statement underscores the need for restraining the abusive practices of the Three Primary Credit Rating Agencies: "It is our view that maintaining the integrity and quality of the credit ratings is essential to investor confidence and to the proper functioning of our capital markets". Source: Investment Company Institute, statement before the SEC Hearings on Issues Related to Credit Rating Agencies (November 21, 2002).

Chinese Government to escape its repayment obligation of China's defaulted full faith and credit sovereign debt.<sup>62</sup>

202. On May 23, 1988, Moody's assigned the first international sovereign credit rating for China, which was purchased by the Chinese Government, The People's Republic of China. The rating assigned was A3, an "investment-grade" (as opposed to "speculative-grade") rating classification which denotes a high quality borrower which has no outstanding defaulted obligations and which has demonstrated both the willingness and the ability to repay its obligations, thereby enabling the borrower to create new international debt on favorable terms.<sup>63</sup>

203. Moody's published sovereign credit ratings methodology provides the following definitions:

"Government Bond Rating: Aims at measuring the risk that a government may default on its own obligations in either local or foreign currency. It takes into account both the ability and willingness (*emphasis added*) of a government to repay its debt in a timely manner."

"Foreign Currency Government Bond Ratings reflect Moody's opinion of the capacity and willingness (*emphasis added*) of a government to mobilize foreign exchange to repay foreign currency-denominated bonds on a timely basis."

204. Moody's published rating symbols and definitions states the following:

"A Obligations rated A are considered upper-medium grade and are subject to low credit risk."

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<sup>62</sup> Standard & Poor's asserts a disclaimer in a disingenuous attempt to escape liability for the effect of its actions in those instances in which the assignment of a truthful rating would present an obstacle to S&P's ability to earn ratings revenue, e.g., the act of willfully excluding the actions of the People's Republic of China and the existence of China's defaulted full faith and credit sovereign debt in the published rating classification. Neither Moody's nor Fitch attempt the use of a disclaimer.

<sup>63</sup> Moody's published rating methodology states, "In the end, willingness to repay is the key to sovereign credit analysis."

“Moody's appends numerical modifiers 1, 2, and 3 to each generic rating classification from Aa through Caa. The modifier 1 indicates that the obligation ranks in the higher end of its generic rating category; the modifier 2 indicates a mid-range ranking; and the modifier 3 indicates a ranking in the lower end of that generic rating category.”

205. A comparison of the facts with Moody's published rating symbols and definitions reveals that the assignment of a truthful rating would have resulted in the assignment of the following rating classification for China:

“C Obligations rated C are the lowest rated class of bonds and are typically in default, with little prospect for recovery of principal or interest.”

206. The assignment of a truthful and factually correct sovereign rating for China would have established a “default” country ceiling for China, and would have thus deprived Moody's of earning future revenue from rating new debt obligations issued by Chinese corporations.

207. By considering its ability to exploit its market position and the power of its ratings to earn future revenue, Moody's acted in the role of a market actor rather than as a publisher when it assigned an A3 international sovereign credit rating to China, a country in default on its full faith and credit sovereign debt, and continues to act in the role of a market actor by continuing to maintain the artifice.

208. On July 27, 1988, Standard & Poor's assigned its first international sovereign credit rating for China. The assigned rating was “Satisfactory” and was purchased by the Chinese Government, The People's Republic of China. The rating excluded the fact of default and further concealed the actions of the rated issuer, The People's Republic of China, including The People's Republic of China's refusal to accept responsibility for and honor the repayment of China's defaulted full faith and credit

sovereign debt as the internationally recognized government of China, as well as The People's Republic of China's actions of selective default, repudiation of the debt, the practice of making discriminatory, exclusionary and non-proportional payments to equally-ranked creditors, concluding a discriminatory and exclusionary debt settlement accord with Great Britain, and rejection of the successor government doctrine of settled international law.<sup>64</sup>

209. According to the metrics published by Standard & Poor's for developing sovereign credit ratings, its evaluation includes a borrower's willingness to pay:

“Standard & Poor's sovereign credit ratings are an assessment of each government's ability and willingness (*emphasis added*) to service its debt in full and on time.”

210. According to Standard & Poor's published definition and criteria for “Selective Default”:

“An obligor rated ‘SD’ (Selective Default) has failed to pay one or more of its financial obligations (rated or unrated) when it came due. An ‘SD’ rating is

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<sup>64</sup> According to “The Ratings Game”, authored by Martin Mayer and published by The International Economy (July 1999), “All ratings agencies agree that a debtor is in default when it either misses a payment beyond a grace period or seeks to renegotiate the loan - ‘anything’, says S&P’s Marie Cavanaugh, ‘that is not timely service of debt according to the terms of issue.’” Therefore, when applied to a country, the rating classification presently assigned to China by Standard & Poor’s denotes an “investment-grade” debt rating for a country which has no full faith and credit sovereign obligations outstanding in a state of default. The international sovereign credit rating classifications initially and subsequently assigned to China by Standard & Poor’s exclude the actions of the People’s Republic of China including the actions of repudiation and selective default, and are therefore revealed as contrivances intended to operate in conjunction with a disclaimer in a disingenuous attempt by Standard & Poor’s to escape liability from the negative causal effect of its actions in those instances in which the assignment of a truthful and factually accurate rating would impair or restrict the ability of Standard & Poor’s to monetize the assigned rating to its financial benefit, i.e., to maximize the potential ratings profits which Standard & Poor’s could realize by virtue of the assigned rating. Because of the uniquely privileged position of Standard & Poor’s in the industry, the injurious effect of the contrived rating classifications on the defaulted debt holders is not constrained by the use of a disclaimer, which fails to alter the market effect of the assignment, publication, and distribution by Standard & Poor’s of a factually false sovereign credit rating classification which constitutes the proximate mechanism whereby the People’s Republic of China is able to gain access to the international financial markets on favorable terms despite its refusal to repay China’s defaulted full faith and credit sovereign debt, thereby destroying the incentive of the People’s Republic of China to honor repayment of the debt which it is at liberty to repudiate without negative causal effect on its credit rating. The disclaimer employed by Standard & Poor’s is therefore established as disingenuous and so constitutes a component of the artifice.

assigned when Standard & Poor's believes that the obligor has selectively defaulted on a specific issue or class of obligations but it will continue to meet its payment obligations on other issues or classes of obligations in a timely manner (*emphasis added*)."

211. The falsity of the rating assigned by Standard & Poor's is evident from a comparison of the facts comprising the immediate instance with the published definition of the prevailing international sovereign credit rating classification assigned to China ('A+'), and published and distributed by Standard & Poor's Ratings Services: <sup>65</sup>

"An obligor rated 'A' has strong capacity to meet its financial commitments but is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligors in higher-rated categories. The ratings from 'AA' to 'CCC' may be modified by the addition of a plus (+) or minus (-) sign to show relative standing within the major rating categories." <sup>66</sup>

212. The sovereign credit rating classifications initially assigned to China by Moody's and subsequently by Standard & Poor's, and the rating classifications presently assigned, published, and distributed by each of the Three Primary Credit Rating Agencies for China are factually inconsistent with the Agencies' published metrics (e.g., evaluation of a borrower's willingness to repay debt) and the published definitions of their rating classifications (e.g., "Selective Default" versus "investment-grade" classifications) and are provably false by the application of the Agencies' metrics and definitions to the facts

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<sup>65</sup> Id. The sovereign rating classifications assigned, published and distributed for China by the Three Primary Credit Rating Agencies constitute the proximate mechanism whereby the People's Republic of China is able to gain access to the international financial markets on favorable terms without honoring repayment of China's defaulted full faith and credit sovereign debt, thereby destroying the Chinese Government's incentive to repay the debt. The injurious effect of the rating on the defaulted debt holders is neither contained by nor limited by S&P's attempted disclaimer, and because the effect of the assigned rating classification extends beyond the operation of any disclaimer and excludes the true facts comprising the immediate instance, the assigned rating is demonstrably false. Indiana University's Dr. Scott Kennedy, who specializes in China's political economy, observed: "If you have any credibility, you would probably be rating everything junk in China" (source: Wall Street Journal, January 5, 2004).

<sup>66</sup> When applied to a sovereign issuer, this rating classification denotes an "investment-grade" debt rating for a government which has no full faith and credit sovereign obligations outstanding in a state of default.

comprising the instance of China.<sup>67</sup> Comparative definitions of the relevant ratings classifications are provided as Inset Exhibits 6 and 7.

213. The assignment, publication, and distribution of an international sovereign credit rating for The People’s Republic of China by the two largest of the Three Primary Credit Rating Agencies marked the overt beginning of the *Capitalist China* enterprise. The initial credit rating classifications assigned by Moody’s and Standard & Poor’s were the first in a serial pattern of international sovereign credit rating classifications subsequently assigned, published, and distributed by Standard & Poor’s, Moody’s and Fitch which continue to exclude the facts and so hide the truth and enable The People’s Republic of China to escape its repayment obligation of the Chinese Government’s defaulted full faith and credit sovereign debt, which The People’s Republic of China continues to refuse to repay.

214. The reason for the variance is explained by the potential for windfall profits which Moody’s and Standard & Poor’s could obtain by opening the gate to expanded issuance of new debt by domestic Chinese corporations, to the immense financial benefit of Moody’s, Standard & Poor’s, and the other participants of the

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<sup>67</sup> Recent instances in which Standard & Poor’s has assigned a “Selective Default” issuer credit rating classification to a country include Argentina (2001) following its debt restructuring and discriminatory exchange offer to bondholders; the Dominican Republic (2005) which became delinquent on payments owed to commercial bank creditors while continuing to service its external bonded debt; and Russia (1998) following the country’s default on its domestic obligations while continuing to service its international debt. In each instance, the “Selective Default” rating remained in full force and effect until all outstanding defaulted obligations were resolved. Also recently, according to a report by the Reuters News Service dated December 18, 2008, Standard & Poor’s lowered the issuer credit rating assigned to Russia’s Moscow region to “selective default”, after a second firm whose debt was backed by the regional government failed to make a payment. Standard & Poor’s took no such action previously in respect of China following the 1998 default of \$3 billion of international debt obligations of the Guangdong International Trust & Investment Corporation, which was owned by China’s central government. Standard & Poor’s has also ignored the announcement of the Chinese Government that it will unilaterally nullify all guarantees which local governments have provided for debt issued by the central government’s financing vehicles “as concerns about credit risks on such debt surges”. Source: “China to Nullify Financing Guarantees by Local Governments” (Bloomberg Financial News, March 8, 2010).

**Published Definitions**  
**International Sovereign Credit Rating Classifications**

**Exhibit 6**  
**Prevailing Sovereign Credit Rating Classifications**  
**Long-Term Foreign Currency Debt of the Chinese Government**

Agency	Rating	Definition
Standard & Poor's	A+	An obligor rated A has strong capacity to meet its financial commitments but is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligors in higher-rated categories. The ratings from AA to CCC may be modified by the addition of a plus (+) or minus (-) sign to show relative standing within the major rating categories.
Moody's	A1	Obligations rated A are considered upper-medium grade and are subject to low credit risk. Moody's appends numerical modifiers 1, 2, and 3 to each generic rating classification from Aa through Caa. The modifier 1 indicates that the obligation ranks in the higher end of its generic rating category.
Fitch	A+	High credit quality. 'A' ratings denote expectations of low default risk. The capacity for payment of financial commitments is considered strong. This capacity may, nevertheless, be more vulnerable to adverse business or economic conditions than is the case for higher ratings. The modifiers (+) or (-) may be appended to a rating to denote relative status within major rating categories. Such suffixes are not added to the AAA Long-term rating category, to categories below CCC, or to Long-Term IDR categories below B.

Compare the above artificial sovereign credit rating classifications with the published definitions maintained by the same agencies as illustrated in Exhibit 2, which definitions truthfully describe the genuine rating classifications in light of the factual evidence (i.e., the actions of the People's Republic of China with respect to evasion of repayment of its defaulted sovereign debt, including the actions of repudiation; selective default; rejection of the successor government doctrine of settled international law; discriminatory settlement with Great Britain; and the practice of preferential, exclusionary and discriminatory payments to selected general obligation creditors of the Government of China).

**Exhibit 7**  
**Truthful and Factually Conforming (i.e., Non-Injurious) Rating Classifications**  
**Long-Term Foreign Currency Debt of the Chinese Government**  
**As Determined by Conformance of Rating Agencies' Published Criteria and Definitions to**  
**Facts Comprising the Actions of the People's Republic of China, Including:**  
**[1] Repudiation; [2] Selective Default; [3] Rejection of Successor Government Doctrine of**  
**International Law; [4] Discriminatory Settlement with Great Britain; [5] Preferential and**  
**Discriminatory Payments to Selected General Obligation Creditors**

Agency	Rating	Definition
Standard & Poor's	SD (Selective Default)	An obligor rated SD (Selective Default) has failed to pay one or more of its financial obligations (rated or unrated) when it came due. An SD rating is assigned when Standard & Poor's believes that the obligor has selectively defaulted on a specific issue or class of obligations but it will continue to meet its payment obligations on other issues or classes of obligations in a timely manner.
Moody's	C	Obligations rated C are the lowest rated class of bonds and are typically in default, with little prospect for recovery of principal or interest.
Fitch	RD (Restricted Default)	RD: Restricted default. RD ratings indicate an issuer that in Fitch Ratings' opinion has experienced an uncured payment default on a bond, loan or other material financial obligation but which has not entered into bankruptcy filings, administration, receivership, liquidation or other formal winding-up procedure, and which has not otherwise ceased business. This would include the selective payment default on a specific class or currency of debt; the uncured expiry of any applicable grace period, cure period or default forbearance period following a payment default on a bank loan, capital markets security or other material financial obligation; the extension of multiple waivers or forbearance periods upon a payment default on one or more material financial obligations, either in series or in parallel; and execution of a coercive debt exchange on one or more material financial obligations.

*Capitalist China* enterprise, for which a satisfactory credit rating for China was, and remains, essential to both the creation as well as the operation of the enterprise, which could not have been created nor operated if Moody's and Standard & Poor's had assigned truthful and factually accurate rating classifications to China.

215. The opportunity cost to Moody's and Standard & Poor's from the assignment of factually accurate rating classifications for China, e.g., "Selective Default" in the instance of Standard & Poor's, would entail the loss of the potential ratings revenue for the entire country, including the potential ratings revenue from all Chinese corporations. By truthfully rating the Chinese Government in default, in conformance with their published rating methodologies, Moody's and Standard & Poor's would have forfeited billions of dollars in profits.

216. By considering its ability to exploit its market position and the power of its ratings to earn future revenue, Standard & Poor's acted in the role of a market actor, as did Moody's, rather than as a publisher when it initially assigned a "Satisfactory" international sovereign credit rating to China, a country in default on its full faith and credit sovereign debt, and acted in a market actor role again when it subsequently increased the rating to a "BBB" ("investment-grade") classification, and continues to act in the role of a market actor by maintaining the artifice.

217. The actions undertaken by Moody's and Standard & Poor's were deliberately designed and intentionally crafted to exclude and to mitigate the actions of The People's Republic of China and enable China to re-enter the international financial markets on favorable terms and free from a default penalty without honoring the repayment of China's defaulted full faith and credit sovereign debt, and Moody's and

Standard & Poor's undertook such actions with scienter, destroying the incentive of the debtor to repay the defaulted debt and stranding the holders of the defaulted debt.

218. On February 20, 1992, Standard & Poor's increased the rating assigned to China from "Satisfactory" to an "investment grade" classification ("BBB"), granting China access to broad categories of regulated financial institutions which would now be eligible to purchase international sovereign debt obligations of the Chinese Government, thereby substantially increasing the marketability of newly-created debt of the Chinese Government and substantially increasing the ability of the *Capitalist China* enterprise to profit from the creation and sale of new debt. This marked the beginning of a serial pattern of upgrades to China's international sovereign credit rating by the Three Primary Credit Rating Agencies which continues in effect at present.

219. On December 11, 1997, Fitch joined the *Capitalist China* enterprise by the action of assigning, publishing, and distributing an international sovereign credit rating artifice for China. The credit rating classification was "A-". A borrower rated "A-" is defined as an "investment-grade", i.e., high quality (as opposed to "speculative-grade") borrower having no outstanding defaulted obligations and which has demonstrated the willingness to repay its obligations, thereby enabling the borrower to create new international debt on favorable terms free from a default penalty. Fitch has consistently maintained an "investment-grade" sovereign credit rating classification for China, and continues to do so.

220. Over time, each of the Three Primary Credit Rating Agencies have engaged in a pattern of serial upgrades to the international sovereign credit rating assigned, published and distributed for The People's Republic of China (Inset Exhibit 8).

## **Exhibit 8**

### **China International Sovereign Credit Rating History**

The Three Primary Credit Rating Agencies have upgraded China's international sovereign credit rating (i.e., the "long-term foreign currency sovereign credit rating" assigned to China) ten (10) times, as shown below:

#### **Standard & Poor's**

Assigned, published, and distributed "Satisfactory" rating classification (July 1988) and has assigned, published, and distributed six (6) subsequent upgrades:

From "Satisfactory" to "BBB" (February 1992)

From "BBB" to "BBB+" (May 1997)

Reclassified from "BBB+" to "BBB" (July 1999)

From "BBB" (affirmed in 2001) to "BBB+" (February 2004)

From "BBB+" to "A-" (July 2005)

From "A-" to "A" (July 2006)

From "A" to "A+" (July 2008)

S&P has maintained an "investment grade" rating for China since 1992, which S&P defines as an issuer not having any defaulted full faith and credit sovereign debt outstanding and unpaid.

#### **Moody's**

Assigned, published, and distributed "A3" rating classification (May 1988) and has assigned, published, and distributed two (2) subsequent upgrades:

Reclassified from "A3" to "Baa1" (November 8, 1989)

From "A3" to "A2" (October 2003)

From "A2" to "A1" (July 2007)

Moody's has maintained an "investment grade" rating for China since 1988, which Moody's defines as an issuer not having any defaulted full faith and credit sovereign debt outstanding and unpaid.

#### **Fitch**

Assigned, published, and distributed "A-" rating classification (December 1997) and has assigned, published, and distributed two (2) subsequent upgrades:

From "A-" to "A" (September 2006)

From "A" to "A+" (November 2008)

Fitch has maintained an "investment grade" rating for China since 1997, which Fitch defines as an issuer not having any defaulted full faith and credit sovereign debt outstanding and unpaid.

221. The Three Primary Credit Rating Agencies continue to maintain international sovereign credit rating classifications for The People's Republic of China which exclude and therefore effectively mitigate the actions of The People's Republic of China and which enable the Chinese Government continued access to the international

financial markets on favorable terms free from a default penalty, thereby destroying its incentive to repay the defaulted debt.

222. The facts comprising the immediate instance are distinguished from the other notable ratings failures of the Three Primary Credit Rating Agencies by (1) the assignment, publication, and distribution of provably false rating classifications; and (2) foreknowledge of falsity.

223. The rating classifications are widely published, extensively relied upon, and distributed via the United States and international mails and wires and other means and instrumentalities of interstate commerce, and substantially affect interstate commerce, the domestic and international financial markets, and the national and international economy.

224. The Three Primary Credit Rating Agencies assigned, published and distributed artificial international sovereign credit ratings for China in consideration of their own profits, and continue to do so in order to create and sustain an artificial sovereign ceiling for China with which to maximize their profits at the expense of the defaulted debt holders.<sup>68</sup>

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<sup>68</sup> The constraining effect of a country's sovereign ceiling on domestic corporate credit ratings is described in a news release issued by Fitch Ratings, entitled, "Fitch Affirms PetroChina at 'A', Constrained by China's Sovereign Ratings" (June 28, 2007). The relationship and proximity of the assignment of favorable credit ratings for domestic Chinese corporations (resulting in enhanced debt issuance capability and thus increased ratings profits for the credit rating agencies) to China's sovereign credit rating is further illustrated in a report published by S&P Credit Research entitled, "Ratings On Eight China And Hong Kong Companies Raised After Sovereign Upgrades" (July 31, 2008). The report states: "Standard & Poor's Ratings Services said today that it had raised the long-term ratings on the following China and Hong Kong companies: --China Mobile Ltd., China National Offshore Oil Corp., CNOOC Ltd., and CNOOC Finance Corp. Ltd. to 'A+' from 'A'. -- Airport Authority Hong Kong, Hong Kong Link 2004 Ltd., Kowloon Canton Railway Corp., and MTR Corp. Ltd. to 'AA+' from 'AA'. The outlook on the ratings is stable. The rating actions follow the decision earlier today to raise the long-term and short-term sovereign credit ratings on the People's Republic of China (A+/Stable/A-1+) and Hong Kong, Special Administrative Region (AA+/Stable/A-1+)."

225. Moody's, in the role of a market actor seeking to obtain additional ratings profits, promoted and sponsored a conference which it described as "Credit Ratings and Opportunities for Chinese Issuers in the Global Bond Market", soliciting Chinese corporations to take advantage of the opportunity afforded by the rating artifice constructed and maintained by Moody's, Standard & Poor's and Fitch, and to exploit the artificial sovereign credit rating classification assigned, published and distributed for China in order to create and sell new debt in the international financial markets, to be rated for a fee by Moody's. The three primary discussion topics of the conference are described by Moody's as "China Sovereign Rating"; "Overview of International Bond Market"; and "Opportunities for Chinese Issuers" (Appendix Exhibit 30).

226. Moody's is also a joint venture partner with the Chinese Government in establishing local credit rating services in China, in order to boost ratings revenue from expanded debt issuance capabilities of Chinese corporations by virtue of China's artificial sovereign credit rating, i.e., China's "sovereign ceiling" (Appendix Exhibit 31).

227. The intentional actions of the Three Primary Credit Rating Agencies in regard to their continued assignment, publication, and distribution of demonstrably false sovereign credit rating classifications for China have been criticized by financial industry participants, and have been described as both "a hot potato" by a Credit Rating Analyst as reported by *EuroWeek Capital Markets* (April 8, 2005), and "a sensitive issue" by an International Banker as reported by the *Financial Times* (June 7, 2005). The continuing actions of the Three Primary Credit Rating Agencies in regard to their construction and operation of the artifice resulted in a request in 2005 by the then-Chairman of the Joint Economic Committee of the United States Congress for an investigation (Appendix

Exhibit 32) and the subsequent introduction of concurrent House and Senate resolutions in the 110<sup>th</sup> United States Congress (Senate Concurrent Resolution 78 and House Resolution 1179) expressing the sense of the Congress in condemning the actions of the Three Primary Credit Rating Agencies in regard to the prevailing artificial sovereign credit rating classifications assigned, published, and distributed for China by the Three Primary Credit Rating Agencies (Appendix Exhibit 33 and Appendix Exhibit 34).<sup>69</sup> The language of both resolutions states in part:

*“Whereas the wrongful actions of the Government of the People’s Republic of China are improperly concealed by the continuing publication of artificial “investment grade” sovereign credit rating classifications assigned to the Chinese government by the 3 primary Nationally Recognized Statistical Rating Organizations (NRSROs) and this concealment fails to conform to the published definitions of those Organizations;*

*Whereas the continued publication of artificial “investment grade” sovereign credit rating classifications assigned to the Government of the People’s Republic of China provides an incentive to the Chinese government to avoid a negotiated settlement with United States citizens regarding China’s default on its sovereign debt obligations;*

*Whereas the lack of transparency concerning the selective default of the Government of the People’s Republic of China poses a material risk to the investing public and threatens the integrity of the United States capital markets; ...”*

228. The initial and subsequent sovereign credit rating classifications assigned to The People’s Republic of China comprised, and continue to comprise, an artifice intentionally constructed by Moody’s and subsequently replicated by Standard & Poor’s and Fitch to enable the Chinese Government to escape its repayment obligation of its

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<sup>69</sup> The request for an investigation was made in a letter dated May 24, 2005, addressed to the Hon. William H. Donaldson, the then-Chairman of the United States Securities and Exchange Commission and was authored by the Hon. Jim Saxton, then-Chairman of the Joint Economic Committee of the U.S. Congress. In its response, the SEC disclaimed jurisdiction over the activities of the Three Primary Credit Rating Agencies, and was silent as to the fact that each of the Three Primary Credit Rating Agencies is registered with the SEC as a Registered Investment Adviser pursuant to the Investment Advisers Act of 1940, yet Standard & Poor’s, Moody’s and Fitch continue to engage in practices which are prohibited thereunder.

repudiated full faith and credit sovereign debt and to gain re-entry into the international financial markets on favorable terms free from a default penalty. The initial rating classifications assigned to China by the Three Primary Credit Rating Agencies established an artificial foundation upon which the Agencies could increase the ratings over time in order to improve the attractiveness and marketability of the Chinese Government's international sovereign debt and thereby reap windfall profits from the creation and sale of new debt of the Chinese Government, as well as opening the gate to the expanded issuance of new debt by Chinese corporations, all to the immense financial benefit of Moody's, Standard & Poor's, Fitch, and the other participants of the *Capitalist China* enterprise, for which a satisfactory credit rating for China was, and remains, essential to both the creation as well as the operation of the enterprise.<sup>70</sup>

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<sup>70</sup> The financial markets hegemony of the Three Primary Credit Rating Agencies was acknowledged by the Court in *County of Orange v. McGraw-Hill Companies* (No. SA CV 96-0765-GLT, 1997 U.S. Dist., LEXIS 22459, C.D. Cal. June 2, 1997): "S&P's position in the securities field may have caused it to assume an independent professional duty enforceable in a tort action." The Court further noted that the ratings could be the basis of liability if the Complainant proved by clear and convincing evidence that Standard and Poor's acted with knowledge that the ratings were false or with reckless disregard of their truth or falsity. In *Jefferson County School District v. Moody's Investors Service* (175 F.3d 848, Tenth Circuit, 1999), the Court reasoned that Moody's publication was protected by the First Amendment because it neither stated nor implied an assertion that was provably false. Agencies may be held liable in situations where the agency entertained serious doubts about the truth or falsity of its publication (*St. Amant v. Thompson*, 390 U.S. 727, 731, 1968); agencies may be held liable in situations where the agency knew that there was a "high degree of awareness of the probable falsity" of its publication (*Garrison v. Louisiana*, 379 U.S. 64, 74, 1968).

V. **The Complicit Roles of the Credit Rating Agencies, Debt Underwriters, Law Firms, Clearing Agents, and Paying Agents in the Operation of the *Capitalist China Enterprise***

A. **The Credit Rating Agencies and the Debt Underwriters Actively Assist the Chinese Government to Obtain Access to New International Capital on Favorable Terms and Thereby Escape its Repayment Obligation of the Defaulted Debt**

1. **Operation of the *Capitalist China Enterprise*: Creation and Sale of New International Sovereign Debt of The People’s Republic of China**

**Phase II – The Credit Rating Agencies and the Debt Underwriters Conspired to Exploit the International Sovereign Credit Rating Artifice Constructed by Moody’s and Subsequently Replicated by the Other Two Primary Credit Rating Agencies to Profit from the Creation and Sale of New International Sovereign Debt of the Chinese Government with the Complicit Assistance of the Law Firms, Clearing Agents, and Paying Agents**

**Exhibit 9  
Precursor Events to the Chinese Government’s  
Re-Entry into the International Financial Markets**

<b>Year</b>	<b>Description of Event</b>
1982	The China International Trust and Investment Company (“CITIC”) arranges the creation of a yen-denominated external sovereign debt obligation of The People’s Republic of China privately offered and subscribed by 30 Japanese financial institutions, by which action The People’s Republic of China selectively defaults on the Chinese Government’s existing full faith and credit sovereign debt which remains an unpaid obligation of The People’s Republic of China as the internationally recognized government of China.
1983	The People’s Republic of China repudiates the Chinese Government’s pre-existing full faith and credit sovereign debt.
1987	The People’s Republic of China concludes a discriminatory debt settlement accord with Great Britain which excludes non-British persons from participation.
1988	The People’s Republic of China is reportedly seeking an international sovereign credit rating in order to re-enter the international financial markets and engage in the public offer and sale of sovereign debt obligations; Morgan Stanley is reportedly acting as the Adviser to the Chinese Government. Immediately subsequent to the date of the news report, Moody’s assigned an “investment-grade” international sovereign credit rating to China (“A3” classification assigned May 23, 1988), followed two months later by Standard & Poor’s (“Satisfactory” classification assigned July 27, 1988), enabling The People’s Republic of China to reenter the international financial markets on favorable terms, thereby effectively destroying the incentive of The People’s Republic of China to repay the Chinese Government’s defaulted sovereign debt and extinguishing (“taking”) the rights of the holders of the Chinese Government’s unpaid full faith and credit sovereign debt. This action continues in effect through the present.

229. Moody's and Standard & Poor's created the *Capitalist China* enterprise in 1988 by the construction of an artifice in the form of a false international sovereign credit rating assigned, published, and distributed for China, and which false rating enabled the Chinese Government to escape its repayment obligation of the defaulted debt, and enabled the subsequent pattern of serialized debt creation for the benefit of the participants including the Chinese Government, which would not have been possible if a truthful sovereign credit rating had been assigned to China by Moody's and Standard & Poor's, and subsequently by Fitch.

230. Subsequent to the construction of the artifice, additional capital markets gatekeeper firms consisting of Goldman Sachs, Merrill Lynch & Co., JP Morgan Chase, Morgan Stanley, Deutsche Bank, Barclays Capital, BNP Paribas, CS First Boston, and UBS (individually, a "Debt Underwriter" and collectively, the "Debt Underwriters") sought to exploit the artifice created and maintained by the Three Primary Credit Rating Agencies and to exploit their gatekeeper role to profit from the creation and public sale of new international sovereign debt of the Chinese Government and to further profit from providing access to international debt financing by domestic Chinese corporations, with which to then establish and develop a profitable collateralized debt obligations and credit derivatives swaps franchise in the Asian markets, which would not be possible in the face of a truthful sovereign credit rating for China.<sup>71</sup>

231. Complainant is aware of at least twenty instances involving the creation and public sale of new international sovereign debt of the Chinese Government by the *Capitalist China* enterprise, commencing in 1993.

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<sup>71</sup> Source: Report published by Derivatives Week (November 6, 2006) describing UBS' Asian markets initiatives.

232. On November 8, 1989, Moody's reclassified the international sovereign credit rating artifice assigned, published, and distributed for China from "A3" to "Baa1". The newly assigned rating classification denotes an "investment-grade", i.e., high quality (as opposed to "speculative-grade") borrower having no outstanding defaulted obligations and which has demonstrated both the willingness and the ability to repay its obligations, thereby enabling the borrower to create new international debt on favorable terms. Moody's has consistently maintained an "investment-grade" rating classification for China, and continues to do so.

233. On February 20, 1992, Standard & Poor's strengthened the international sovereign credit rating artifice assigned, published, and distributed for China from "Satisfactory" to "BBB". The newly assigned rating classification denotes an "investment-grade", i.e., high quality (as opposed to "speculative-grade") borrower having no outstanding defaulted obligations and which has demonstrated both the willingness and the ability to repay its obligations, thereby enabling the borrower to create new international debt on favorable terms. Standard & Poor's has consistently maintained an "investment-grade" sovereign rating classification for China, and continues to do so.

234. On September 10, 1993, Moody's strengthened the international sovereign credit rating artifice assigned, published, and distributed for China from "Baa1" to "A3". The newly assigned rating classification denotes an "investment-grade", i.e., high quality (as opposed to "speculative-grade") borrower having no outstanding defaulted obligations and which has demonstrated both the willingness and the ability to repay its obligations, thereby enabling the borrower to create new international debt on favorable

terms. Moody's has consistently maintained an "investment-grade" rating classification for China.

235. The artifice jointly created by Moody's and Standard & Poor's created the foundation for enabling a pattern of serialized debt creation through the operation of the *Capitalist China* enterprise.

236. In 1993, the *Capitalist China* enterprise, in reliance upon the demonstrably false "investment-grade" sovereign credit rating artifice initially constructed by Moody's and subsequently replicated by Standard & Poor's, created, offered and sold a \$300 million, 10 year external sovereign debt obligation of the Chinese Government for the first time since about 1942. Lehman Brothers acted as the syndicate manager for the debt sale.

237. In 1994, the *Capitalist China* enterprise, in reliance upon the demonstrably false "investment-grade" sovereign credit rating artifice initially constructed by Moody's and subsequently replicated by Standard & Poor's, created, offered and sold a \$1 billion, 10 year external sovereign debt obligation of the Chinese Government which was offered and sold in the United States for the first time since about 1942, when the J.P. Morgan company sold full faith and credit sovereign debt obligations of the Chinese Government in the United States. Merrill Lynch was appointed and acted as the syndicate co-manager for the debt sale. The law firm of Skadden, Arps, Slate, Meagher & Flom LLP acted as Legal Advisor to the underwriters as to United States law and concealed the actions of The People's Republic of China, i.e., selective default, discriminatory settlement,

exclusionary payments to equally-ranked creditors, repudiation, and refusal to repay the Chinese Government's defaulted full faith and credit sovereign debt.<sup>72</sup>

238. In 1994, the *Capitalist China* enterprise, in reliance upon the demonstrably false "investment-grade" sovereign credit rating artifice initially constructed by Moody's and subsequently replicated by Standard & Poor's, created, offered and sold a ¥30 billion, 10 year international sovereign debt obligation of the Chinese Government (Appendix Exhibit 35).

239. In 1995, the *Capitalist China* enterprise, in reliance upon the demonstrably false "investment-grade" sovereign credit rating artifice initially constructed by Moody's and subsequently replicated by Standard & Poor's, created, offered and sold a ¥10 billion, 20 year international sovereign debt obligation of the Chinese Government.

240. The participants in the *Capitalist China* enterprise knew of the injurious nature of their actions and also knew that the operation of the *Capitalist China* enterprise was, and remains, dependent upon the construction and operation of a sovereign credit rating artifice, and therefore recognized the fragility and vulnerable nature of the *Capitalist China* enterprise which owes its existence to the participants' wrongful actions.

241. Cognizant of the risks of their actions and with foreknowledge of the falsity of the sovereign credit rating artifice constructed by Moody's and subsequently replicated by Standard & Poor's, the participants in the *Capitalist China* enterprise sought to establish a sovereign benchmark for China (i.e., an internationally-issued,

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<sup>72</sup> Statement appearing on the firm's website (last visited on January 25, 2010): "In Asia Mr. Chilstrom represented the underwriters in the 1994 US\$1 billion global debt offering by the People's Republic of China, the first offering in the United States by the PRC since its founding in 1949. Earlier, Mr. Chilstrom advised the underwriters in the historic stock offering by Shanghai Petrochemical Company Limited, the first SEC-registered public offering by a company organized under the laws of the PRC." URL: <http://www.skadden.com/index.cfm?contentID=45&bioID=13>

foreign-currency sovereign debt obligation) in order to facilitate the issuance of debt in the international financial markets by domestic Chinese corporations, and to ensure that China's sovereign benchmark would survive the loss of the *Capitalist China* enterprise (e.g., the withdrawal of the artificial international sovereign credit rating classification assigned to China and/or a grant of injunctive relief prohibiting the Debt Underwriters from engaging in the creation of new external sovereign debt of the Chinese Government, absent the repayment of the defaulted debt).

242. In 1996, the participants in the *Capitalist China* enterprise took the unprecedented step of creating and selling a \$100 million international sovereign debt obligation of the Chinese Government having a tenor of 100 years (i.e., a maturity of 100 years), thereby ensuring the existence of an international sovereign benchmark for China in the event that the *Capitalist China* enterprise was lost as a consequence of regulatory enforcement action or by civil litigation by the defaulted creditors whom have been deprived of their rights in property by the operation of the *Capitalist China* enterprise. The sovereign debt obligation was offered and sold within the United States by JP Morgan and Chase Manhattan Bank which acted as the syndicate co-managers for the debt sale, and the debt remains the first and only 100 year maturity international sovereign debt obligation ever offered and sold by any sovereign government worldwide including the United States of America (Appendix Exhibit 36).<sup>73</sup>

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<sup>73</sup> Government debt obligations typically have maturities ranging from five to twenty years; the U.S. Government's longest-dated treasury obligations have a maturity of thirty years. Sovereign obligations issued by emerging markets governments, which China certainly was in 1996, generally have shorter-dated maturities as a consequence of the risks endemic to the increased volatility of emerging economies. A sovereign debt obligation of one hundred years is unprecedented for any government borrower even today, and is completely unnatural for China when considered in respect to the state of China's economic development in 1996.

243. In 1996, the *Capitalist China* enterprise, in reliance upon the demonstrably false “investment-grade” sovereign credit rating artifice initially constructed by Moody’s and subsequently replicated by Standard & Poor’s, created, offered and sold a \$300 million, 10 year international sovereign debt obligation of the Chinese Government which was offered and sold in the United States.

244. In 1996, the *Capitalist China* enterprise, in reliance upon the demonstrably false “investment-grade” sovereign credit rating artifice initially constructed by Moody’s and subsequently replicated by Standard & Poor’s, created, offered and sold a \$300 million, 7 year international sovereign debt obligation of the Chinese Government which was offered and sold in the United States.

245. On May 14, 1997, Standard & Poor’s increased China’s international sovereign credit rating artifice to “BBB+”. A borrower rated “BBB+” is defined as an “investment-grade”, i.e., high quality (as opposed to “speculative-grade”) borrower having no outstanding defaulted obligations and which has demonstrated the willingness to repay its obligations, thereby enabling the borrower to create new international debt on favorable terms.

246. In 1997, the *Capitalist China* enterprise, in reliance upon the demonstrably false “investment-grade” sovereign credit rating artifice initially constructed by Moody’s and subsequently replicated by Standard & Poor’s, created, offered and sold a \$100 million, 30 year international sovereign debt obligation of the Chinese Government which was offered and sold in the United States. Merrill Lynch acted as the syndicate manager.

247. On December 11, 1997, Fitch joined the *Capitalist China* enterprise and assigned, published and distributed an international sovereign credit rating artifice for China. The rating classification was “A-”. A borrower rated “A-” is defined as an “investment-grade”, i.e., high quality (as opposed to “speculative-grade”) borrower having no outstanding defaulted obligations and which has demonstrated the willingness to repay its obligations, thereby enabling the borrower to create new international debt on favorable terms. Fitch has consistently maintained an “investment-grade” sovereign rating classification for China, and continues to do so.

248. In 1998, the *Capitalist China* enterprise, in reliance upon the demonstrably false “investment-grade” sovereign credit rating artifice initially constructed by Moody’s and subsequently replicated by Standard & Poor’s and Fitch, created, offered and sold a \$1 billion, 10 year international sovereign debt obligation of the Chinese Government which was offered and sold in the United States. Goldman Sachs acted as the syndicate manager.

249. On July 20, 1999, Standard & Poor’s reclassified the Chinese Government’s international sovereign credit rating artifice to “BBB”. The newly assigned rating classification denotes an “investment-grade”, i.e., high quality (as opposed to “speculative-grade”) borrower having no outstanding defaulted obligations and which has demonstrated both the willingness and the ability to repay its obligations, thereby enabling the borrower to create new international debt on favorable terms. Standard & Poor’s has consistently maintained an “investment-grade” rating classification for China.

250. In 1999, the *Capitalist China* enterprise, in reliance upon the demonstrably false “investment-grade” sovereign credit rating artifice initially constructed by Moody’s and subsequently replicated by Standard & Poor’s and Fitch, created, offered and sold a \$150 million, 5 year international debt obligation of the Bank of China, an instrumentality of the Chinese Government.

251. In 2000, the *Capitalist China* enterprise, in reliance upon the demonstrably false “investment-grade” sovereign credit rating artifice initially constructed by Moody’s and subsequently replicated by Standard & Poor’s and Fitch, created, offered and sold a ¥30 billion, 5 year international sovereign debt obligation of the Chinese Government.

252. In 2001, the *Capitalist China* enterprise, in reliance upon the demonstrably false “investment-grade” sovereign credit rating artifice initially constructed by Moody’s and subsequently replicated by Standard & Poor’s and Fitch, created, offered and sold a €550 Million, 5 year international sovereign debt obligation of the Chinese Government. Deutsche Bank, Barclays Capital and BNP Paribas acted as the Joint Lead Managers and Joint Lead Bookrunners of the syndicate. Members of the underwriting syndicate included ABN AMRO Bank N.V., Cazenove & Co. Ltd., Mizuho International PLC, UBS AG (acting through its business group UBS Warburg), and Westdeutsche Landesbank Girozentrale. The Chase Manhattan Bank London Branch acted as the common depository for the debt obligation and also acted as the Fiscal Agent and Principal Paying Agent. The Paying Agent was Chase Manhattan Bank Luxembourg SA. Euroclear Bank S.A./N.V., as operator of the Euroclear System, and Clearstream Banking, S.A., a wholly owned subsidiary of the Deutsche Börse Group, acted as clearing agents. JP Morgan Chase Bank (New York) acted as the Registrar and Fiscal, Paying and

Transfer Agent. The law firm of Sidley Austin Brown & Wood LLP acted as legal advisor to The People's Republic of China as to United States law. The law firm of Sullivan & Cromwell LLP acted as legal advisor to the underwriters as to United States law. The authorized agent for China in the United States was the general manager of the Bank of China, New York Branch (Appendix Exhibit 37).

253. In 2001, the *Capitalist China* enterprise, in reliance upon the demonstrably false "investment-grade" sovereign credit rating artifice initially constructed by Moody's and subsequently replicated by Standard & Poor's and Fitch, created, offered and sold a \$1 billion, 10 year international sovereign debt obligation of the Chinese Government. Goldman Sachs (Asia) L.L.C., JP Morgan and Morgan Stanley Dean Witter acted as the Joint Lead Managers and Joint Bookrunners of the syndicate. Members of the underwriting syndicate included Chase Manhattan International Limited, Morgan Stanley & Co. International Limited, Bank of China (U.K.) Limited, Credit Suisse First Boston (Europe) Limited, Daiwa Securities SMBC Europe Limited, The Hong Kong and Shanghai Banking Corporation Limited, Merrill Lynch International, Nomura International PLC, and Salomon Brothers International Limited. The Chase Manhattan Bank London Branch acted as the common depository for the debt obligation. Euroclear Bank S.A./N.V., as operator of the Euroclear System, and Clearstream Banking, S.A., a wholly owned subsidiary of the Deutsche Börse Group, acted as clearing agents. JP Morgan Chase Bank (New York) acted as the Registrar and Fiscal, Paying and Transfer Agent. The law firm of Sidley Austin Brown & Wood LLP acted as legal advisor to The People's Republic of China as to United States law. The law firm of Sullivan & Cromwell LLP acted as legal advisor to the underwriters as to United States law. The

authorized agent for China in the United States was and remains the General Manager of the Bank of China, New York Branch.

254. In 2002, the *Capitalist China* enterprise, in reliance upon the demonstrably false “investment-grade” sovereign credit rating artifice initially constructed by Moody’s and subsequently replicated by Standard & Poor’s and Fitch, created, offered and sold a \$500 million, 10 year international sovereign debt obligation of the Chinese Government, which was offered and sold in the United States. CS First Boston acted as the syndicate manager.<sup>74</sup>

255. In 2003, Goldman Sachs acted as Credit Rating Advisor to the Ministry of Finance of The People’s Republic of China (Appendix Exhibit 38).<sup>75</sup>

256. On October 13, 2003, Fitch, in order to improve the prospects for an upcoming international sovereign debt sale of the Chinese Government, affirmed the “A-” international sovereign credit rating artifice assigned, published, and distributed for China, and strengthened China’s sovereign credit rating outlook to “Positive”.

257. On October 15, 2003, Moody’s, in order to improve the prospects for an upcoming international sovereign debt sale of The People’s Republic of China, raised the

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<sup>74</sup> A letter dated November 27, 2002 was sent to each of the Three Primary Credit Rating Agencies notifying each firm of the existence of China’s defaulted full faith and credit sovereign debt and the falsity of the prevailing sovereign credit rating classifications assigned, published, and distributed for China by the Three Primary Credit Rating Agencies. A second letter of notice, dated May 18, 2006, was sent to each of the Three Primary Credit Rating Agencies again notifying each firm of the existence of China’s defaulted full faith and credit sovereign debt and the falsity of the prevailing sovereign credit rating classifications assigned, published, and distributed for China by the Three Primary Credit Rating Agencies.

<sup>75</sup> The following statements appear in Goldman Sachs’ 2003 Annual Report: “Goldman Sachs helped the Ministry of Finance of the People’s Republic of China execute a landmark global financing that showcased China’s strong credit profile, broadened its investor base and achieved the lowest coupon ever for a U.S. dollar offering by the government of China. The success of the \$1 billion offering, as well as the Moody’s foreign currency credit rating upgrade that coincided with it, underscored confidence in China’s long-term growth prospects and stability. Goldman Sachs served as credit rating advisor to the Ministry of Finance and acted as joint book-running lead manager on the bond issue.” Both Henry Paulson, Chairman and Chief Executive Officer of Goldman Sachs and Norman Feit, Legal Director of Litigation for Goldman Sachs, were previously notified of the existence of the defaulted full faith and credit sovereign debt of the Chinese Government by a letter dated January 2, 2002.

international sovereign credit rating artifice assigned, published and distributed for The People's Republic of China from "A3" to "A2" and did so immediately in advance of the creation and public sale of China's new sovereign debt (Appendix Exhibit 39). The international sovereign credit rating classification assigned to The People's Republic of China by Moody's is considered an "investment-grade" (versus "speculative-grade") rating denoting a borrower which has demonstrated both the willingness and the ability to repay its long-term foreign currency debt.

258. On October 22, 2003, Standard & Poor's affirmed its "BBB" international sovereign credit rating artifice for China, and maintained a "Positive" outlook. The action was timed to coincide with the *Capitalist China* enterprise's creation and public sale of a new international sovereign debt obligation of the Chinese Government.<sup>76</sup>

259. On October 22, 2003, the *Capitalist China* enterprise filed a Prospectus Supplement with the SEC and, in reliance upon the demonstrably false "investment-grade" sovereign credit rating artifice initially constructed by Moody's and subsequently replicated by Standard & Poor's and Fitch, created, offered and sold a \$1 billion, 10 year international sovereign debt obligation of the Chinese Government, which was offered and sold in the United States. Page S-6 of the Prospectus Supplement describes the international sovereign credit rating classifications assigned to China by the Three Primary Credit Rating Agencies. Goldman Sachs (Asia) L.L.C., JP Morgan, and Merrill Lynch & Co. acted as the Joint Lead Managers and Joint Bookrunners for the syndicate. Members of the underwriting syndicate included Banc One Capital Markets, Citigroup Global Markets, Credit Suisse First Boston, the Hong Kong and Shanghai Banking

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<sup>76</sup> This action by Standard & Poor's occurred one day after the International Relations Committee of the House of Representatives of the United States Congress conducted a televised public hearing on the matter of the Chinese Government's defaulted sovereign debt.

Corporation (HSBC), Morgan Stanley & Co. International, and Nomura International. The debt obligation was processed and distributed through the book-entry facilities of the Depository Trust Company, which acted as the clearing agent. Euroclear Bank S.A./N.V., as operator of the Euroclear System, and Clearstream Banking, S.A., a wholly owned subsidiary of the Deutsche Börse Group, also acted as clearing agents. JP Morgan Chase Bank (New York) acted as the Registrar and Fiscal, Paying and Transfer Agent, and the Depository Trust Company acted as the book-entry paying agent. The law firm of Sidley Austin Brown & Wood LLP acted as legal advisor to The People's Republic of China as to United States law. The law firm of Sullivan & Cromwell LLP acted as legal advisor to the underwriters as to United States law. The authorized agent for China in the United States was and remains the General Manager of the Bank of China New York Branch (Appendix Exhibit 40).

260. In 2003, the *Capitalist China* enterprise, in reliance upon the demonstrably false “investment-grade” sovereign credit rating artifice initially constructed by Moody’s and subsequently replicated by Standard & Poor’s and Fitch, created, offered and sold a \$200 million, 10 year international sovereign debt obligation of the Chinese Government, which was offered and sold in the United States. CS First Boston acted as syndicate manager.

261. In 2003, the *Capitalist China* enterprise, in reliance upon the demonstrably false “investment-grade” sovereign credit rating artifice initially constructed by Moody’s and subsequently replicated by Standard & Poor’s and Fitch, created, offered and sold a €400 million, 5 year international sovereign debt obligation of the Chinese Government. BNP Paribas, Deutsche Bank and UBS acted as syndicate co-managers.

262. In 2003, the *Capitalist China* enterprise, in reliance upon the demonstrably false “investment-grade” sovereign credit rating artifice initially constructed by Moody’s and subsequently replicated by Standard & Poor’s and Fitch, created, offered and sold a \$300 million, 30 year international sovereign debt obligation of the Chinese Government, which was offered and sold in the United States. CS First Boston acted as the syndicate manager.

263. On February 18, 2004, Standard & Poor’s raised its sovereign credit rating artifice for China from “BBB” to “BBB+” and maintained a “Positive” outlook. The newly assigned rating classification denotes an “investment-grade”, i.e., high quality (as opposed to “speculative-grade”) borrower having no outstanding defaulted obligations and which has demonstrated both the willingness and the ability to repay its obligations, thereby enabling the borrower to create new international debt on favorable terms. Standard & Poor’s has consistently maintained an “investment-grade” rating classification for China. The action was timed to coincide with the *Capitalist China* enterprise’s upcoming creation and public sale of new international sovereign debt obligations of the Chinese Government.

264. On October 21, 2004, the *Capitalist China* enterprise, in reliance upon the demonstrably false “investment-grade” sovereign credit rating artifice initially constructed by Moody’s and subsequently replicated by Standard & Poor’s and Fitch, created, offered and sold a €1 billion, 10 year international sovereign debt obligation of the Chinese Government, which was offered and sold in Europe and in Asia. Deutsche Bank acted as the Global Coordinator and Deutsche Bank, BNP Paribas, and UBS acted as the Joint Lead Managers and Joint Bookrunners for the syndicate. Members of the

underwriting syndicate included ABN AMRO Bank N.V., Barclays Bank PLC, Calyon, Cazenove & Co. Ltd., Daiwa Securities SMBC Europe Limited, Dresdner Bank AG, and Nomura International, PLC. The debt obligation was cleared through Euroclear Bank S.A./N.V., as operator of the Euroclear System, and Clearstream Banking, S.A., a wholly owned subsidiary of the Deutsche Börse Group, which acted as clearing agents. JP Morgan Chase Bank (London) acted as the Fiscal Agent and Principal Paying Agent, and JP Morgan Chase Bank Luxembourg S.A. acted as the Luxembourg Paying and Listing Agent. The law firm of Sidley Austin Brown & Wood LLP acted as Legal Advisor to The People's Republic of China as to United States law. The law firm of Davis Polk & Wardwell LLP acted as Legal Advisor to the underwriters as to United States law. The debt obligation was not registered in the United States (Appendix Exhibit 41).

265. On October 21, 2004, the *Capitalist China* enterprise, in reliance upon the demonstrably false “investment-grade” sovereign credit rating artifice initially constructed by Moody's and subsequently replicated by Standard & Poor's and Fitch, created, offered and sold a \$500 million, 5 year international sovereign debt obligation of the Chinese Government, which was offered and sold in Europe and in Asia. Merrill Lynch International acted as the Global Coordinator and Merrill Lynch International, Goldman Sachs (Asia) L.L.C., JP Morgan, and Morgan Stanley acted as the Joint Lead Managers and Joint Bookrunners for the syndicate. Members of the underwriting syndicate included BOCI Asia Limited, Citigroup Global Markets Limited, Credit Suisse First Boston (Europe) Limited, The Hong Kong and Shanghai Banking Corporation Limited (HSBC), ICEA Securities Limited, and Lehman Brothers International (Europe). JP Morgan Chase Bank (London) acted as the Fiscal Agent and Principal Paying Agent,

and JP Morgan Chase Bank Luxembourg S.A. acted as the Luxembourg Paying and Listing Agent. The law firm of Sidley Austin Brown & Wood LLP acted as Legal Advisor to The People’s Republic of China as to United States law. The law firm of Davis Polk & Wardwell LLP acted as Legal Advisor to the underwriters as to United States law. The debt obligation was not registered in the United States.

**Exhibit 10**  
**Participants Engaged in the Creation and Sale**  
**of Recently-Issued Chinese Government Debt**<sup>77</sup>

<b>Year of Issue</b>	<b>Clearing Agents</b>	<b>Joint Lead Managers and Joint Bookrunners</b>	<b>Fiscal Agents and Principal Paying Agents</b>	<b>Legal Advisors</b>
<p style="text-align: center;"><b>2004</b></p> <p>Offered and Sold in Europe and in Asia</p>	<p>Euroclear Bank S.A./N.V. as operator of the Euroclear System (“Euroclear”)</p> <p>Clearstream Banking S.A. (“Clearstream”)</p>	<p style="text-align: center;"><b>The Bonds</b></p> <p>Deutsche Bank (Global Coordinator) BNP Paribas UBS Investment Bank</p> <p style="text-align: center;"><b>The Notes</b></p> <p>Merrill Lynch International (Global Coordinator) Goldman Sachs (Asia) L.L.C. JPMorgan Morgan Stanley</p>	<p style="text-align: center;"><b>Fiscal Agent and Principal Paying Agent</b></p> <p>JPMorgan Chase Bank, London Branch</p> <p style="text-align: center;"><b>Luxembourg Paying and Listing Agent</b></p> <p>JPMorgan Chase Bank Luxembourg S.A.</p>	<p style="text-align: center;"><b>To the Issuer as to United States Law</b></p> <p>Sidley Austin Brown &amp; Wood LLP</p> <p style="text-align: center;"><b>To the Underwriters as to United States Law</b></p> <p>Davis Polk &amp; Wardwell</p>
<p style="text-align: center;"><b>2003</b></p> <p>Offered and Sold in the United States and in Luxembourg and in Hong Kong</p>	<p>Euroclear Bank S.A./N.V. as operator of the Euroclear System (“Euroclear”)</p> <p>Clearstream Banking S.A. (“Clearstream”)</p> <p><b>For Book Entry Securities</b></p> <p>Depository Trust Company</p>	<p>Goldman Sachs (Asia) L.L.C. JPMorgan Merrill Lynch &amp; Co.</p> <p style="text-align: center;"><b>Underwriters</b></p> <p>Banc One Capital Markets Citigroup Global Markets Credit Suisse First Boston Daiwa Securities SMBC Europe Hong Kong and Shanghai Banking Corporation ICEA Securities Lehman Brothers International (Europe) Morgan Stanley &amp; Co. International Nomura International</p>	<p style="text-align: center;"><b>Registrar and Fiscal, Paying and Transfer Agent</b></p> <p>JPMorgan Chase Bank, New York</p> <p style="text-align: center;"><b>Luxembourg Paying and Listing Agent</b></p> <p>JPMorgan Chase Bank Luxembourg S.A.</p> <p style="text-align: center;"><b>Paying Agents For Book Entry Securities</b></p> <p>Depository Trust Company</p>	<p style="text-align: center;"><b>To the Issuer as to United States Law</b></p> <p>Sidley Austin Brown &amp; Wood LLP</p> <p style="text-align: center;"><b>To the Underwriters as to United States Law</b></p> <p>Sullivan &amp; Cromwell LLP</p>

266. On July 20, 2005, Standard & Poor’s strengthened the Chinese Government’s international sovereign credit rating artifact from “BBB+” to “A-”. The

<sup>77</sup> All 2004 data derived from the Offering Circular dated October 21, 2004. All 2003 data derived from the U.S. Registration Statement no. 333-108727 (October 16, 2003). The Common Code for this offering of notes is 017941941, the ISIN is US712219AJ30 and the CUSIP is 712219AJ3. The Prospectus and the Supplement to the Prospectus may be accessed and viewed on the world wide web at the following URL: <http://www.sec.gov/Archives/edgar/data/909321/000114554903001347/u98681p1e424b5.htm>

newly assigned rating classification denotes an “investment-grade”, i.e., high quality (as opposed to “speculative-grade”) borrower having no outstanding defaulted obligations and which has demonstrated both the willingness and the ability to repay its obligations, thereby enabling the borrower to create new international debt on favorable terms. Standard & Poor’s has consistently maintained an “investment-grade” rating classification for China.

**Exhibit 11**  
**Creation and Public Offering and Sale of New External Sovereign Debt**  
**by the *Capitalist China Enterprise***

[Rated General Obligation Foreign Currency Chinese Government External Sovereign Debt] <sup>1</sup>

Issuance Date	Lead Managers	Currency	Amount	ISIN	Registered in U.S.
1993	Lehman Brothers	USD	\$300 Million	XS0046788260	No
1994	(Unknown)	Yen	¥30 Billion	(Unknown)	No
1994	Merrill Lynch / (Unknown)	USD	\$1 Billion	US712219AA21	Yes
1995	(Unknown)	Yen	¥10 Billion	JP515600ARC9	No
1996	Chase Manhattan Bank / JP Morgan	USD	\$100 Million	US712219AC86	Yes
1996	(Unknown)	USD	\$300 Million	US712219AE43	Yes
1996	(Unknown)	USD	\$300 Million	(Unknown)	Yes
1997	Merrill Lynch	USD	\$100 Million	US712219AG90	Yes
1998	Goldman Sachs	USD	\$1 Billion	US712219AH73	Yes
1999	Bank of China	USD	\$150 Million	(Unknown)	(Unknown)
2000	(Unknown)	Yen	¥30 Billion	(Unknown)	(Unknown)
2001	Deutsche Bank / Barclays Capital / BNP Paribas	Euro	€550 Million	XS0129953005	No
2001	Goldman Sachs / JP Morgan / Morgan Stanley Dean Witter	USD	\$1 Billion	XS0129936331	No
2002	CS First Boston	USD	\$500 Million	USU17469AA25	Yes
2003	CS First Boston	USD	\$200 Million	USG21886AA70	Yes
2003	BNP Paribas / Deutsche Bank / UBS	Euro	€400 Million	XS0178312913	No
2003	Goldman Sachs / JP Morgan / Merrill Lynch	USD	\$1 Billion	US712219AJ30	Yes
2003	CS First Boston	USD	\$300 Million	USG21886AB53	Yes
2004	Merrill Lynch / Goldman Sachs / JP Morgan / Morgan Stanley	USD	\$500 Million	XS0203592422	No
2004	Deutsche Bank / BNP Paribas / UBS	Euro	€1 Billion	XS0203685788	No

267. On August 18, 2005, the *Capitalist China* enterprise filed a U.S. registration statement and preliminary prospectus supplement with the SEC for the planned sale of \$610 million of debt obligations by the China Development Bank, an instrumentality of The People's Republic of China. Page S-3 of the Prospectus Supplement describes the credit rating classifications assigned to the China Development Bank, as well as the international sovereign credit rating assigned to China by the Three Primary Credit Rating Agencies. Merrill Lynch & Co. and BNP Paribas were named as the Joint Global Coordinators for the syndicate. Barclays Capital, the Hong Kong and Shanghai Banking Corporation (HSBC), BNP Paribas, JP Morgan, Citigroup, Merrill Lynch & Co., Goldman Sachs (Asia) L.L.C., and UBS Investment Bank were named as the Joint Lead Managers and Joint Bookrunners for the syndicate. Barclays Bank PLC, BNP Paribas Securities Corp., Citigroup Global Markets Inc., Goldman Sachs (Asia) L.L.C., the Hong Kong and Shanghai Banking Corporation Limited (HSBC), JP Morgan Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, and UBS Limited were named as members of the underwriting syndicate. JP Morgan Chase Bank (formerly the Chase Manhattan Bank N.A.) was named as the Fiscal Agent. The law firm of Sidley Austin Brown & Wood LLP acted as Legal Advisor to the China Development Bank as to United States law. The Authorized Agent in the United States was the General Manager of the Bank of China, New York Branch.

268. On October 17, 2005, Fitch strengthened the international sovereign credit rating assigned, published, and distributed for China from "A-" to "A". The newly assigned rating classification denotes an "investment-grade", i.e., high quality (as opposed to "speculative-grade") borrower having no outstanding defaulted obligations

and which has demonstrated both the willingness and the ability to repay its obligations, thereby enabling the borrower to create new international debt on favorable terms. Fitch has consistently maintained an “investment-grade” rating classification for China.

269. On July 27, 2006, Standard & Poor’s strengthened the international sovereign credit rating artifice assigned, published, and distributed for China from “A-” to “A”. The newly assigned rating classification denotes an “investment-grade”, i.e., high quality (as opposed to “speculative-grade”) borrower having no outstanding defaulted obligations and which has demonstrated both the willingness and the ability to repay its obligations, thereby enabling the borrower to create new international debt on favorable terms. Standard & Poor’s has consistently maintained an “investment-grade” rating classification for China.

270. On July 25, 2007, Moody’s strengthened the international sovereign credit rating artifice assigned, published, and distributed for China from “A2” to “A1”. The newly assigned rating classification denotes an “investment-grade”, i.e., high quality (as opposed to “speculative-grade”) borrower having no outstanding defaulted obligations and which has demonstrated both the willingness and the ability to repay its obligations, thereby enabling the borrower to create new international debt on favorable terms. Moody’s has consistently maintained an “investment-grade” rating classification for China.

271. On November 6, 2007, Fitch strengthened the international sovereign credit rating artifice assigned, published, and distributed for China from “A” to “A+”. The newly assigned rating classification denotes an “investment-grade”, i.e., high quality (as opposed to “speculative-grade”) borrower having no outstanding defaulted

obligations and which has demonstrated both the willingness and the ability to repay its obligations, thereby enabling the borrower to create new international debt on favorable terms. Fitch has consistently maintained an “investment-grade” rating classification for China.

272. On July 31, 2008, Standard & Poor’s strengthened the international sovereign credit rating artifice assigned, published, and distributed for China from “A” to “A+”. The newly assigned rating classification denotes an “investment-grade”, i.e., high quality (as opposed to “speculative-grade”) borrower having no outstanding defaulted obligations and which has demonstrated both the willingness and the ability to repay its obligations, thereby enabling the borrower to create new international debt on favorable terms. Standard & Poor’s has consistently maintained an “investment-grade” rating classification for China.

273. On August 18, 2009, Standard & Poor’s affirmed its “A+” international sovereign credit rating artifice assigned, published, and distributed for China.

274. On November 9, 2009, Moody’s revised its outlook for the Chinese Government’s international sovereign credit rating outlook to from “Stable” to “Positive”, portending an imminent strengthening of the international sovereign credit rating artifice assigned, published, and distributed for China, since such upgrades in credit outlook typically precede an upgrade of the borrower’s rating classification.

275. On January 12, 2010, Standard & Poor’s affirmed its “A+” international sovereign credit rating artifice assigned, published, and distributed for China and assigned a “Stable” outlook.

276. On January 13, 2010, Fitch affirmed its “A+” international sovereign credit rating artifice assigned, published, and distributed for China and assigned a “Stable” outlook.

277. From the start of the *Capitalist China* enterprise, each of the Three Primary Credit Rating Agencies have consistently maintained artificial “investment-grade” sovereign credit rating classifications for China and each of the Three Primary Credit Rating Agencies continue to assign, publish, and distribute fictitious “investment-grade” sovereign credit ratings for China.

278. In addition to a fictitious international sovereign credit rating assigned to China by at least two of the Three Primary Credit Rating Agencies, in order to profitably operate the *Capitalist China* enterprise and engage in the creation and sale of new external sovereign debt of the Chinese Government on favorable terms, it would have been necessary to hide the truth of The People’s Republic of China’s selective default and subsequent repudiation of the Chinese Government’s full faith and credit sovereign debt, its discriminatory settlement with Great Britain, and the refusal of The People’s Republic of China to honor its repayment obligation as it continues to make exclusionary and non-proportional payments to equally-ranked general obligation creditors. The intentional omission of the disclosure obligation would require the cooperation of the law firms which acted as counsel to The People’s Republic of China and the Debt Underwriters.

**B. The Law Firms Have Actively Assisted, and Continue to Actively Assist the Chinese Government in Obtaining Access to New International Capital on Favorable Terms and, Thereby, to Escape its Repayment Obligation of the Defaulted Debt**

1. The Law Firm of Skadden Arps Slate Meagher & Flom LLP  
Joined and Helped to Operate the *Capitalist China* Enterprise to Manage  
the Creation and Sale of New International Sovereign Debt of the Chinese  
Government

279. In 1994, the Law Firm of Skadden, Arps, Slate, Meagher & Flom LLP acted as underwriters' counsel as to United States law and concealed the actions of The People's Republic of China, i.e., selective default, discriminatory settlement, exclusionary payments to equally-ranked creditors, repudiation, and refusal to repay the Chinese Government's defaulted full faith and credit sovereign debt.<sup>78</sup>

280. Robert Chilstrom, a Partner at Skadden Arps Slate Meagher & Flom LLP, was directly involved in providing legal representation to the co-managers of the underwriting syndicate of the 1994 sale within the United States of the Chinese Government's newly created external sovereign debt (Appendix Exhibit 42).

281. Robert Chilstrom and the Law Firm of Skadden Arps Slate Meagher & Flom LLP, acting as willing participants in the *Capitalist China* enterprise, deliberately assisted the enterprise in concealing both the existence of the Chinese Government's defaulted debt and the Chinese Government's actions with respect to the defaulted debt, and thereby assisted the enterprise in evading the disclosure obligation required of U.S. registrants.

282. In addition to the omission of required disclosure obligation, Mr. Chilstrom and the Law Firm of Skadden Arps Slate Meagher & Flom LLP made use of obfuscations or false statements in the description of the debt offering.

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<sup>78</sup> Id. at 72.

283. The failure to disclose certain material facts and the use of obfuscated or false statements enabled the Chinese Government to gain access to the United States financial markets and other international financial markets and obtain new capital on favorable terms, destroying the incentive for the Chinese Government to repay its defaulted full faith and credit sovereign debt.

2. In 2001, or earlier, and in 2003, and in 2004, and in 2005, the Law Firm of Sidley Austin Brown & Wood, LLP, now Sidley Austin LLP, joined the *Capitalist China* enterprise.<sup>79</sup>

284. In 2001, the Law Firm of Sidley Austin Brown & Wood LLP acted as Legal Advisor to The People's Republic of China as to United States law in connection with the creation and sale of new external sovereign debt obligations of the Chinese Government.

285. In its 2001 role as Legal Advisor to The People's Republic of China as to United States law, the Law Firm of Sidley Austin Brown & Wood LLP, acted as a willing participant in the *Capitalist China* enterprise and deliberately assisted the enterprise in concealing both the existence of the Chinese Government's defaulted debt and the Chinese Government's actions with respect to the defaulted debt, and thereby assisted the enterprise in evading China's disclosure obligation.

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<sup>79</sup> In January 2006, Sidley Austin Brown & Wood LLP changed its name to Sidley Austin LLP. Sidley Austin LLP, a Delaware limited liability partnership which operates at the firm's offices other than Chicago, London, Hong Kong, Singapore and Sydney, is affiliated with other partnerships, including Sidley Austin LLP, an Illinois limited liability partnership (Chicago); Sidley Austin LLP, a separate Delaware limited liability partnership (London); Sidley Austin LLP, a separate Delaware limited liability partnership (Singapore); Sidley Austin, a New York general partnership (Hong Kong); Sidley Austin, a Delaware general partnership of registered foreign lawyers restricted to practicing foreign law (Sydney); and Sidley Austin Nishikawa Foreign Law Joint Enterprise (Tokyo). The affiliated partnerships are referred to herein collectively as Sidley Austin

286. In its 2001 role as Legal Advisor to The People's Republic of China as to United States law, and in addition to the willful omission of China's disclosure obligation, the law firm of Sidley Austin Brown & Wood LLP made use of obfuscations or false statements in the description of the debt offering, and deliberately understated the total amount of existing debt owed by the Chinese Government.

287. The willful omission of certain material facts and the use of obfuscated or false statements enabled the Chinese Government to gain access to the international financial markets in 2001 and obtain new capital on favorable terms, destroying the incentive for the Chinese Government to repay its defaulted full faith and credit sovereign debt.

288. In 2003, the Law Firm of Sidley Austin Brown & Wood LLP acted as Legal Advisor to The People's Republic of China as to United States law in connection with the creation and sale of new external sovereign debt obligations of the Chinese Government.

289. In its 2003 role as Legal Advisor to The People's Republic of China, the Law Firm of Sidley Austin Brown & Wood LLP, acted as a willing participant in the *Capitalist China* enterprise and deliberately assisted the enterprise in concealing both the existence of the Chinese Government's defaulted debt and the Chinese Government's actions with respect to the defaulted debt, and thereby assisted the enterprise in evading China's disclosure obligation.

290. In its 2003 role as Legal Advisor to The People's Republic of China, and in addition to the willful omission of China's disclosure obligation, the Law Firm of Sidley Austin Brown & Wood LLP made use of obfuscations or false statements in the

description of the debt offering, and deliberately understated the total amount of existing debt owed by the Chinese Government.

291. The willful omission of certain material facts and the use of obfuscated or false statements enabled the Chinese Government to gain access to the United States financial markets and other international financial markets in 2003 and obtain new capital on favorable terms, destroying the incentive for the Chinese Government to repay its defaulted full faith and credit sovereign debt.

292. In 2004, the Law Firm of Sidley Austin Brown & Wood LLP acted as Legal Advisor to The People's Republic of China as to United States law in connection with the creation and sale of new external sovereign debt obligations of the Chinese Government.

293. In its 2004 role as Legal Advisor to The People's Republic of China, the Law Firm of Sidley Austin Brown & Wood LLP, acted as a willing participant in the *Capitalist China* enterprise and deliberately assisted the enterprise in concealing both the existence of the Chinese Government's defaulted debt and the Chinese Government's actions with respect to the defaulted debt, and thereby assisted the enterprise in evading China's disclosure obligation.

294. In its 2004 role as Legal Advisor to The People's Republic of China, and in addition to the willful omission of China's disclosure obligation, the Law Firm of Sidley Austin Brown & Wood LLP made use of obfuscations or false statements in the description of the debt offering, and deliberately understated the total amount of existing debt owed by the Chinese Government.

295. The willful omission of certain material facts and the use of obfuscated or false statements enabled the Chinese Government to gain access to the international financial markets in 2004 and obtain new capital on favorable terms, destroying the incentive for the Chinese Government to repay its defaulted full faith and credit sovereign debt.

296. In 2005, the Law Firm of Sidley Austin Brown & Wood LLP acted as Legal Advisor to The People's Republic of China as to United States law in connection with the creation and sale of new external sovereign debt obligations of the Chinese Government.

297. In its 2005 role as Legal Advisor to The People's Republic of China, the Law Firm of Sidley Austin Brown & Wood LLP, acted as a willing participant in the *Capitalist China* enterprise and deliberately assisted the enterprise in concealing both the existence of the Chinese Government's defaulted debt and the Chinese Government's actions with respect to the defaulted debt, and thereby assisted the enterprise in evading China's disclosure obligation.

298. In its 2005 role as Legal Advisor to The People's Republic of China, and in addition to the willful omission of China's disclosure obligation, the Law Firm of Sidley Austin Brown & Wood LLP made use of obfuscations or false statements in the description of the debt offering, and deliberately understated the total amount of existing debt owed by the Chinese Government.

299. The willful omission of certain material facts and the use of obfuscated or false statements enabled the Chinese Government to gain access to the United States financial markets and other international financial markets in 2005 and obtain new capital

on favorable terms, destroying the incentive for the Chinese Government to repay its defaulted full faith and credit sovereign debt.

300. In regard to the role of the law firm of Sidley Austin Brown & Wood LLP as counsel to the issuer with respect to the creation and sale of new external sovereign debt of The People's Republic of China in 2003, Sidley Austin Brown & Wood LLP was notified of its failure to disclose the existence of the Chinese Government's defaulted full faith and credit sovereign debt, and the refusal of The People's Republic of China to repay such debt, and the inclusion of a knowingly false "Debt Record" in the U.S. registration statement and prospectus by a letter from the law firm of Stites & Harbison PLLC dated December 31, 2003 (Appendix Exhibit 43). The law firm of Sidley Austin Brown & Wood LLP subsequently failed to take any action to amend the U.S. registration statement and prospectus.<sup>80</sup>

301. By a letter dated December 9, 2010 and delivered by certified U.S. mail, the Complainant has notified the Law Firm of Sidley Austin LLP, the successor to the law firm of Sidley Austin Brown & Wood LLP, of a demand for repayment of the defaulted obligations which its client, The People's Republic of China is obligated under international law to repay as the successor obligor of the debt, yet refuses to repay. The letter stated the intent to file litigation if an acceptable response was not received to the demand for repayment of the debt, and so created an additional disclosure obligation for The People's Republic of China. No response has been received from Sidley Austin LLP as of February 10, 2010.<sup>81</sup>

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<sup>80</sup> Registration No. 333-108727. The Prospectus and Prospectus Supplement are accessible on the world wide web at: <http://www.sec.gov/Archives/edgar/data/909321/000114554903001347/u98681p1e424b5.htm>

<sup>81</sup> The Law Firm of Sidley Austin Brown & Wood LLP has acted and continues to act as counsel to the People's Republic of China with respect to its disclosure obligation pursuant to United States law in regard

3. The Law Firm of Sullivan & Cromwell LLP Joined the *Capitalist China Enterprise*

302. In 2001, and in 2003, and again in 2004, the law firm of Sullivan & Cromwell LLP acted as Legal Advisor to the underwriters as to United States law in connection with the creation and sale of new external sovereign debt obligations of the Chinese Government.

303. In its role in 2001, and in 2003, and again in 2004 as Legal Advisor to the underwriters, the law firm of Sullivan & Cromwell LLP, acted as a willing participant in the *Capitalist China* enterprise and deliberately assisted the enterprise in concealing both the existence of the Chinese Government's defaulted debt and the Chinese Government's actions with respect to the defaulted debt, and thereby assisted the enterprise in evading China's disclosure obligation.

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to the offer and sale of sovereign debt obligations of the Chinese Government within the United States. Sidley Austin also recently advised Sinotruk, a PRC state-owned enterprise, regarding its \$1.16 billion IPO, including entry into the United States pursuant to Regulation S, with no disclosure of the Chinese Communist Government's refusal to honor repayment of its defaulted sovereign debt. The lack of disclosure integrity should come as no surprise in light of Sidley Austin's role in the sale of subprime mortgages. Sidley Austin was recently ranked as the top issuer's counsel for mortgage-backed securities, and even prior to its combination with Brown & Wood, Sidley had been a top adviser to issuers and underwriters of mortgage-backed securities. The predecessor firm of Brown & Wood admitted to orchestrating an artifice which was then operated as a knowingly fraudulent tax shelter scheme and which defrauded the U.S. Treasury out of an estimated \$2.5 billion in tax revenues. As a result, Sidley Austin agreed to pay a \$39.4 million penalty to the IRS and also agreed, along with accounting firm KPMG, to pay \$154 million to clients that sued the firms. Criminal actions in the matter were brought by both the United States Department of Justice and the Internal Revenue Service in what was the largest criminal tax case ever. Sidley Austin was also the subject of a special inquiry conducted by the Senate Permanent Subcommittee on Investigations. Apparently, the law firm not only engineered the fraudulent tax shelter scheme, but also issued a knowingly fraudulent tax opinion to support the massive multi-billion dollar scheme. Sidley Austin also concealed the fact of a public hearing entitled, "U.S.-China Ties: Reassessing the Economic Relationship" conducted by the House Committee on International Relations, which invited and did include testimony pertaining to the existence of the defaulted sovereign debt of the government of China, and which hearing occurred prior to the date of the 2003 prospectus supplement. Sidley Austin also concealed the existence of a House Concurrent Resolution (H.Con.Res. 60) in the United States Congress which specifically referenced the existence of the defaulted sovereign debt of the government of China. Subsequent to the receipt of constructive notice provided by the letter prepared by the law firm of Stites & Harbison dated December 31, 2003, Sidley Austin has failed to take any action to amend the 2003 U.S. registration statement and prospectus. Complainant further believes that it can persuasively establish that Sidley Austin purposefully misled the district court in the *Morris* case.

304. In its role in 2001, and in 2003, and again in 2004 as Legal Advisor to the underwriters, and in addition to the willful omission of China's disclosure obligation, the law firm of Sullivan & Cromwell LLP made use of obfuscations or false statements in the description of the debt offering, and deliberately understated the total amount of existing debt owed by the Chinese Government.

305. The willful omission of certain material facts and the use of obfuscated or false statements enabled the Chinese Government to gain access to the international financial markets in 2001, and to the United States financial markets and other international financial markets in 2003, and the international financial markets in 2004 and obtain new capital on favorable terms, destroying the incentive for the Chinese Government to repay its defaulted full faith and credit sovereign debt.

4. The Law Firm of Davis Polk & Wardwell LLP Joined the  
*Capitalist China* Enterprise

306. In 2004, the law firm of Davis Polk & Wardwell LLP acted as Legal Advisor to the underwriters as to U.S. law in connection with the creation and sale of new external sovereign debt obligations of the Chinese Government.

307. In its role in 2004 as Legal Advisor to the underwriters, the law firm of Davis Polk & Wardwell LLP, acted as a willing participant in the *Capitalist China* enterprise and deliberately assisted the enterprise in concealing both the existence of the Chinese Government's defaulted debt and the Chinese Government's actions with respect to the defaulted debt, and thereby assisted the enterprise in evading China's disclosure obligation.

308. In its role in 2004 as Legal Advisor to the underwriters, and in addition to the willful omission of China's disclosure obligation, the law firm of Davis Polk & Wardwell LLP made use of obfuscations or false statements in the description of the debt offering, and deliberately understated the total amount of existing debt owed by the Chinese Government.

309. The willful omission of certain material facts and the use of obfuscated or false statements enabled the Chinese Government to gain access to the international financial markets in 2004 and obtain new capital on favorable terms, destroying the incentive for the Chinese Government to repay its defaulted full faith and credit sovereign debt.

5. Sovereign Disclosure Obligation: Prohibition Against Half-Truths

310. The law firms of Skadden Arps Slate Meagher & Flom LLP, and Sidley Austin Brown & Wood LLP, and Sullivan & Cromwell LLP, and Davis Polk & Wardwell LLP, are collectively referenced as the "Law Firms".

311. The Law Firms purposefully hid material facts of disclosure and engaged in the making of half-truths in order to assist The People's Republic of China in Escaping its repayment obligation of the Chinese Government's defaulted full faith and credit sovereign debt.

312. In the United States, the disclosure obligation for registered sovereign issuances are governed by the SEC's Schedule B, which affirmatively requires only minimal disclosure including pricing, payments schedule, and volume.

313. However, an affirmative obligation by registered sovereign issuers to speak with respect to additional disclosure does exist in that statements made in

connection with an offering of debt obligations, although literally true, may not be misleading through their incompleteness.<sup>82</sup> A duty is imposed upon an issuer to refrain from disclosing materially incomplete statements (i.e., the prohibition against “half-truths”).<sup>83</sup>

314. Accordingly, a source of a sovereign’s obligation to disclose additional risks in the offering documents arises from additional disclosure which the sovereign volunteers. In the event that a registered sovereign issuer may elect to provide additional disclosure beyond the requirements imposed by SEC Schedule B, such statements must constitute full and complete disclosure and not be misleading through their incompleteness.

315. Under, statements that are literally true can create liability if they create a materially misleading interpretation because they omit some key fact (or, in other words, are “half-truths”).<sup>84</sup>

316. The duty not to make “half-truths” applies to both registered and non-registered sovereign bond issuances.

317. The prospectus dated October 16, 2003 and the prospectus supplement dated October 22, 2003 pertaining to the registered offering, sale and issuance of

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<sup>82</sup> Rule 10b-5 and Section 10(b) of the Exchange Act. The lack of meaningful affirmative disclosure obligations in the Schedule B context, elevates the importance of the obligation not to speak in “half-truths”. A discussion of this point is provided by the treatise authored by James D. Cox entitled, *Rethinking U.S. Securities Laws in the Shadow of International Competition*, L. & Contemp. Problems, Autumn 1992, at 177, 192-193 (cited at 13, *An Empirical Study of Securities Disclosure Practices*, authored by Mitu Gulati and Stephen Choi, Duke Law School Working Paper, 2006).

<sup>83</sup> Id.

<sup>84</sup> Id.

sovereign obligations of The People's Republic of China violated the prohibition against the making of "half-truths".<sup>85</sup>

Examples:

a) Voluntary Disclosure: Debt Record (page 69 of the prospectus) –

"The central government has always paid when due the full amount of principal of, any interest and premium on, and any amortization or sinking fund requirements of, external and internal indebtedness incurred by it since the PRC was founded in 1949."

Omission: This statement is misleading. Both the prospectus and the prospectus supplement intentionally omit any mention of the existence of pre-1949 defaulted full faith and credit sovereign obligations of the Government of China, which under accepted conventions of international law, the payment obligation for such indebtedness was incurred by the central government of China in 1949 and on which that government has since settled with British bondholders while continuing to evade the claims of American bondholders. The Chinese Government's action of repudiation of the debt is also entirely omitted.

b) Voluntary Disclosure: External Debt<sup>86</sup> (page 67 of the prospectus) –

"Loans are the primary source of external debt. Non-trade loans accounted for approximately 84.4% of the total external debt outstanding at December 31, 2002. Commercial loans (i.e., loans obtained from any source on commercial terms), official primary government loans (i.e., loans obtained on favorable terms from foreign governments and international financial organizations including the World Bank and Asian Development Bank) and other types of debt financing accounted for approximately 53.5%, 30.9% and 15.6%, respectively, of total external debt in the form of loans at December 31, 2002. The central government's current policy is to continue to seek loans from foreign governments and international financial institutions to finance infrastructure projects in China. At the end of 2002, the total outstanding external debt was US\$168.5 billion."

"The Ministry of Finance, on behalf of the central government, has raised funds in the international capital markets through various debt securities and bond issues since 1993. The Ministry of Finance's principal objective is to set up benchmarks for other Chinese borrowers. Several state-owned financial institutions and enterprises have also issued debt securities in the international capital markets with the approval of the State Council."

"Unless the central government expressly provides otherwise, the central government does not guarantee or provide any direct or indirect credit support to any entity in China. However, debtors that have their external debt registered with the State Administration of Foreign Exchange have the right to buy foreign currencies as permitted by the central

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<sup>85</sup> Registration no. 333-108727. (ISIN US712219AJ30 / CUSIP 712219AJ3). See prospectus dated October 16, 2003 and the prospectus supplement dated October 22, 2003:

<http://www.sec.gov/Archives/edgar/data/909321/000114554903001347/u98681p1e424b5.htm>

<sup>86</sup> This section contains extensive narrative and numerous schedules referencing the outstanding obligations and external debt of the Government of China. No mention is made regarding the existence of defaulted sovereign debt of the Government of China.

government at the China Foreign Exchange Trading System rate in order to service the interest and principal payments on their registered external debt.”

Omission: The language of this section intentionally conceals the existence of a significant liability of The People’s Republic of China under the successor government doctrine of settled international law espousing continuity of obligations. The failure to disclose the existence of the defaulted sovereign debt of the Government of China and the existence of a defaulted class of creditors also exposes purchasers of the offered obligations to the risk of judicial and other actions brought by the class of defaulted creditors, the existence of which remains undisclosed, and whose actions to recover payment on the defaulted obligations would reasonably be considered to be adverse to the interests of purchasers of newly-offered obligations. The concealment of the defaulted sovereign debt of the Government of China also acts to intentionally deceive prospective purchasers as to the actual risk of non-repayment inherent to the actions of the Government of China towards its defaulted creditors and the refusal to honor repayment of its outstanding defaulted sovereign debt.

318. The following language appears on page S-7 of the Supplement to the Prospectus dated October 16, 2003 and describes the ranking of the obligations publicly registered, offered and sold within the United States as ranked equal to all other general and unsecured obligations of China for money borrowed and also states a pledge for the due and timely performance of all obligations of China:

“Ranking **The notes will rank equally** with each other and **with all other general and (subject to the provisions in the notes providing for the securing of such obligations in the event certain other obligations of China are secured) unsecured obligations of China for money borrowed** and guarantees given by China in respect of money borrowed by others. **China will pledge its full faith and credit** for the due and punctual payment of the notes and **for the due and timely performance of all obligations of China** with respect to the notes.” (Emphasis added).

319. The above language is untrue and conceals the fact that the international sovereign debt obligations created by the *Capitalist China* enterprise for the benefit of The People’s Republic of China are treated by the enterprise as superior to the defaulted full faith and credit sovereign obligations of the Chinese Government held by the Complainant and other persons.

320. The debt obligations registered in the United States and offered and sold to investors in 2003 pursuant to the registration statement do not rank equally with all

other general obligations of China, and the government of The People’s Republic of China does not honor the “due and timely performance of all obligations of China.”<sup>87</sup>

321. The above language conceals the continuing action of The People’s Republic of China of the avoidance of repayment of the Chinese Government’s preexisting full faith and credit sovereign debt and the making of exclusionary and non-proportional payments to equally-ranked general obligation creditors, resulting in the involuntary subordination of the rights of the holders of the defaulted debt.

322. The failure of Sidley Austin to take action to amend the U.S. registration statement in the face of actual notice evidences either the application of a reckless standard of care, or the application of a deliberate intent to conceal the existence of the Chinese Government’s defaulted sovereign debt and so intentionally misstate The People’s Republic of China’s respect for international law and its willingness to repay debt for which it is the obligor.

323. The intentional omission of material facts of disclosure assists the *Capitalist China* enterprise in the creation and sale of new international sovereign debt of The People’s Republic of China and assists The People’s Republic of China in escaping its repayment obligation of the Chinese Government’s preexisting full faith and credit sovereign debt.

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<sup>87</sup> Under established international law, a nation’s international obligations remain unchanged after a mere change of government, even if such a change is a radical one, such as from a dictatorship to a democracy. The defaulted debt therefore remains an unpaid general obligation of the government of China. *Id.* at 7. China recognized its liability for the repayment of its defaulted sovereign debt owed to British citizens in 1987, yet continues to attempt to escape its repayment obligation on this same debt held by citizens of the United States through the making of discriminatory payments to selected creditors holding China’s general obligation debt, while excluding proportional payments to creditors holding the Chinese Government’s preexisting full faith and credit sovereign debt.

**C. The Clearing Agents Actively Assist the Chinese Government to Obtain Access to New International Capital on Favorable Terms and Thereby Escape its Repayment Obligation of the Defaulted Debt**

1. The Chase Manhattan Bank Joined the *Capitalist China* Enterprise as a Clearing Agent

324. Known instances in which the Chase Manhattan Bank has acted as a willing participant in the *Capitalist China* enterprise and has actively assisted the Chinese Government in the creation and sale of new external sovereign debt includes the debt created and sold in 2001, for which debt the Chase Manhattan Bank acted as the common depositary.

2. The Depository Trust Company Joined the *Capitalist China* Enterprise as a Clearing Agent

325. Known instances in which the Depository Trust Company has acted as a willing participant in the *Capitalist China* enterprise and has actively assisted the Chinese Government in the creation and sale of new external sovereign debt includes the debt created and sold in 2003, for which debt the Depository Trust Company acted as a Clearing Agent.

3. Euroclear Bank Joined the *Capitalist China* Enterprise as a Clearing Agent

326. Known instances in which Euroclear Bank S.A./N.V. as operator of the Euroclear System has acted as a willing participant in the *Capitalist China* enterprise and has actively assisted the Chinese Government in the creation and sale of new external

sovereign debt includes the debt created and sold in 2001, 2003, and 2004, for which debt Euroclear Bank acted as a Clearing Agent.

4. Clearstream Banking, S.A. Joined the *Capitalist China* Enterprise as a Clearing Agent

327. Known instances in which Clearstream Banking, S.A., a wholly owned subsidiary of the Deutsche Börse Group has acted as a willing participant in the *Capitalist China* enterprise and has actively assisted the Chinese Government in the creation and sale of new external sovereign debt includes the debt created and sold in 2001, 2003, and again in 2004, for which debt Clearstream Banking, S.A. acted as a Clearing Agent.

**D. The Paying Agents Actively Assist the Chinese Government to Obtain Access to New International Capital on Favorable Terms and Thereby Escape its Repayment Obligation of the Defaulted Debt**

1. JP Morgan Chase Bank (formerly the Chase Manhattan Bank N.A.) Joined the *Capitalist China* Enterprise as a Paying Agent

328. Known instances in which JP Morgan Chase Bank (New York) has acted as a willing participant in the *Capitalist China* enterprise and has actively assisted the Chinese Government in the creation and sale of new external sovereign debt includes the debt created and sold in 2001 and in 2003, for which debt JP Morgan Chase Bank (New York) acted as the Registrar and Fiscal, Paying and Transfer Agent. JP Morgan Chase Bank was named as the Fiscal Agent in the U.S. registration statement dated August 18, 2005 for the planned sale of debt by the China Development Bank, an instrumentality of The People's Republic of China.

329. In its role of a Paying Agent, JP Morgan Chase Bank (New York) made and continues to make exclusionary and non-proportional payments to equally-ranked general obligation creditors of the Chinese Government.

330. Known instances in which JP Morgan Chase Bank (London) has acted as a willing participant in the *Capitalist China* enterprise and has actively assisted the Chinese Government in the creation and sale of new external sovereign debt includes the debt created and sold in 2001 for which debt the Chase Manhattan Bank (London) acted as the Fiscal Agent and Principal Paying Agent, and again in 2004, for which debt the JP Morgan Chase Bank (London) acted as the Fiscal Agent and Principal Paying Agent.

331. In its role of a Paying Agent, JP Morgan Chase Bank (London) made and continues to make exclusionary and non-proportional payments to equally-ranked general obligation creditors of the Chinese Government.

332. Known instances in which JP Morgan Chase Bank Luxembourg S.A. has acted as a willing participant in the *Capitalist China* enterprise and has actively assisted the Chinese Government in the creation and sale of new external sovereign debt includes the debt created and sold in 2001, for which debt the Chase Manhattan Bank Luxembourg S.A. acted as the Paying Agent, and again in 2004, for which debt JP Morgan Chase Bank Luxembourg S.A. acted as the Luxembourg Paying and Listing Agent.

333. In its role of a Paying Agent, JP Morgan Chase Bank Luxembourg S.A. made and continues to make exclusionary and non-proportional payments to equally-ranked general obligation creditors of the Chinese Government.

2. The Depository Trust Company Joined the Capitalist China Enterprise as a Paying Agent

334. Known instances in which the Depository Trust Company has acted as a willing participant in the *Capitalist China* enterprise and has actively assisted the Chinese Government in the creation and sale of new external sovereign debt includes the debt created and sold in 2003, for which debt the Depository Trust Company acted as the book-entry Paying Agent.

335. In its role of a Paying Agent, the Depository Trust Company made and continues to make exclusionary and non-proportional payments to equally-ranked general obligation creditors of the Chinese Government.

**E. The Actions of the Participants in the *Capitalist China* Enterprise Have Destroyed the Incentive of The People’s Republic of China, as the Obligor of the Chinese Government’s Defaulted Sovereign Debt, to Repay the Debt and Have Thereby Constructively Taken the Complainant’s Rights in Property**

1. The Debt Underwriters and the Law Firms and the Clearing Agents Continue to Create and Sell New International Sovereign Debt of the Chinese Government in Reliance on Artificial Sovereign Credit Rating Classifications Assigned to China by the Three Primary Credit Rating Agencies Which Intentionally Exclude China’s Defaulted Full Faith and Credit Sovereign Debt and the Paying Agents Continue Making Discriminatory and Exclusionary Payments to Selected Equally-Ranked General Obligation Creditors of the Chinese Government

336. In order for China, a country in default on its full faith and credit sovereign debt, to penetrate and reenter the international financial markets without honoring its repayment obligation required the complicity of the gatekeepers, including the construction of an international sovereign credit rating artifice.

337. The named parties, which are gatekeepers to the international financial markets, have exploited and continue to exploit their market hegemony to operate the *Capitalist China* enterprise as a means with which to reap windfall profits at the expense of the holders of China's defaulted sovereign debt by enabling the Chinese Government to access new capital on favorable terms free from default penalty, and have thereby destroyed the obligor's incentive to repay the defaulted debt.

338. The Three Primary Credit Rating Agencies, the Debt Underwriters, the Law Firms, the Clearing Agents, and the Paying Agents conspired to create and reap unjust enrichment from the enterprise constituted as *Capitalist China*. The enterprise is constructed and operated for the purpose of generating substantial fees for the participants, whose actions enable The People's Republic of China to create and sell new external sovereign debt through the operation of an artificial sovereign credit rating and the concealment of the actions of The People's Republic of China in regard to the Chinese Government's defaulted full faith and credit sovereign debt, including intentional omissions and half-truths, and the making of exclusionary payments to equally-ranked general obligation creditors.

339. The international sovereign credit rating classifications initially assigned, published, and distributed for China by Moody's and Standard & Poor's established an artifice which effectively extinguished the rights of the defaulted debt holders by

enabling the serialized creation of new external debt by the newly constituted *Capitalist China* enterprise, providing China with access to the international financial markets on favorable terms and thereby destroying the incentive of the Chinese Government to repay the debt.

340. The Three Primary Credit Rating Agencies the Debt Underwriters, the Law Firms, the Clearing Agents, and the Paying Agents deliberately assisted The People's Republic of China in excluding both the existence of the Debt, and the actions of The People's Republic of China in regard to its refusal to honor its repayment obligation of the Debt, from the official Chinese Government debt statistics and from the other information materials used by the participants in the *Capitalist China* enterprise to create and sell new debt obligations of The People's Republic of China.

341. Communication containing information which the named parties knew to be false or fraudulent was exchanged, and continues to be exchanged, among participants in the *Capitalist China* enterprise through the United States Postal Service.

342. Communication containing information which the named parties knew to be false or fraudulent was exchanged, and continues to be exchanged, among participants in the *Capitalist China* enterprise through the use of the wires.

343. In the normal process of developing, assigning, publishing, and distributing a sovereign credit rating, and engaging in the creation and sale of new debt, there would have been an extensive exchange of information, including documents and telephonic conversations.

344. In each such exchange and communication, the named parties were aware of, and intentionally excluded or disregarded, certain material truths and facts, and did so and continue to do so in the interest of obtaining profits.

345. The named parties' profits are obtained by means of false or fraudulent pretenses, including the false pretense that the international sovereign credit rating classifications assigned, published, and distributed for China by the Three Primary Credit Rating Agencies conform to the extant facts.

346. The details of these communications are within the exclusive control of the named parties.

347. The profits obtained by the named parties from such activity was invested in, and used, by the named parties to acquire an interest in, and to further the objectives of, the *Capitalist China* enterprise, an enterprise affecting interstate commerce.

348. The concerted actions of the participants in the *Capitalist China* enterprise, collectively comprised of the Three Primary Credit Rating Agencies, the Debt Underwriters, the Law Firms, the Clearing Agents, the Paying Agents were, and remain, intentionally designed to enable The People's Republic of China to avoid its repayment obligation of the Chinese Government's defaulted sovereign debt.

349. The continuing operation of the *Capitalist China* enterprise by the named parties enables The People's Republic of China to continue to evade honoring repayment of the Chinese Government's defaulted full faith and credit sovereign debt to the Complainant and The People's Republic of China continues to evade honoring repayment in violation of settled international law.

350. The continuing and complicit actions of the gatekeepers to the international financial markets, as participants in the *Capitalist China* enterprise, have deprived and continue to deprive the holders of the Chinese Government's defaulted full faith and credit sovereign debt, including Complainant, of their rights in property including the involuntary subordination of their rights.

351. As a direct consequence of such actions, the holders of the defaulted debt, including Complainant, are injured in their property.

352. Holders of the defaulted debt, including Complainant, have been further injured, and continue to be further injured, in their property by the anti-competitive and collusive business practices engaged in by the Three Primary Credit Rating Agencies and which practices are in violation of the federal antitrust laws.

353. The Three Primary Credit Rating Agencies the Debt Underwriters, the Law Firms, the Clearing Agents, and the Paying Agents have been and continue to be unjustly enriched by the operation of the *Capitalist China* enterprise.

354. The People's Republic of China has been and continues to be unjustly enriched by the operation of the *Capitalist China* Enterprise.

355. The Three Primary Credit Rating Agencies, Goldman Sachs, Sidley Austin LLP and JP Morgan Chase Bank have ignored the actual notice provided by the Complainant and continue to engage in wrongful and injurious actions which cause continuing injury to Complainant.

356. At the heart of the *Capitalist China* enterprise is an orchestrated pattern of concerted and deliberate actions by capital markets gatekeepers to reap unjust enrichment from the creation and sale of new international debt of both The People's Republic of

China and domestic Chinese corporations in reliance upon a demonstrably false sovereign credit rating artifice, and the actions of the participants continue at the expense of the holders of the Chinese Government's defaulted full faith and credit sovereign debt, including Complainant.

357. The nature of the constructive taking is illustrated by the following statement by Dr. Adam Lerrick, professor emeritus of economics at Carnegie Mellon University evidencing the proximity between the effect of misleading ratings and the creation of new debt, and the "taking" of defaulted creditors' enforcement ability:

*"If large-scale financing was supplied to governments in default, the incentive for the debtor to conclude a deal was destroyed."*<sup>88</sup>

358. The construction of the international sovereign credit rating artifice in the immediate instance, i.e., the assignment of false "investment-grade" sovereign credit rating classifications to a country in default on its {preexisting} full faith and credit sovereign debt, operates to precisely this effect by enabling the debtor to obtain new external capital on a large-scale and on favorable terms free from a default penalty, effectively destroying the obligor's incentive to repay the defaulted debt and stranding the holders of the defaulted debt.<sup>89</sup>

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<sup>88</sup> Source: *"A Leap of Faith for Sovereign Default: From IMF Judgment Calls to Automatic Incentives"*, by Adam Lerrick, *Cato Journal*, Vol. 25, No. 1 (Winter 2005). Mr. Lerrick was formerly the Friends of Allan H. Meltzer Professor of Economics at Carnegie Mellon University and a Visiting Scholar at the American Enterprise Institute. He served as a senior adviser to the chairman of the International Financial Institution Advisory Commission (known as the "Meltzer Commission"), where he analyzed the workings of the World Bank and reassessed its role in the global economy. Previously, he was an investment banker with Salomon Brothers and Credit Suisse First Boston, and he originated and led the negotiation team of the Argentine Bond Restructuring Agency in the \$100 billion Argentine debt restructuring. A further testament to the critical role of the Three Primary Credit Rating Agencies in establishing the marketability of debt instruments is the widely recognized industry maxim, *"brokers are selling machines when backed by agency ratings"*.

<sup>89</sup> The pervasive effect on the international financial markets of the sovereign credit rating classifications assigned, published, and distributed by the Three Primary Credit Rating Agencies is further evidenced by the existence of a dedicated section of the website of the Emerging Markets Traders Association ("EMTA") which reports on the latest rating actions of the Three Primary Credit Rating Agencies:

359. A reasonable expectation exists of the continuing injury from the named parties' actions in the absence of equitable relief, as evidenced by Moody's action of November 9, 2009, in which it upgraded China's sovereign credit outlook from "Stable" to "Positive". Such upgrades in credit outlook typically precede an upgrade of the rated borrower's credit rating classification and is therefore indicative that Moody's harbors the imminent intent to upgrade China's international sovereign credit rating.<sup>90</sup>

## **VI. Prayer for Relief**

**A. WHEREFORE, Complainant prays for the Antitrust Division of the United States Department of Justice to commence an investigation into the practices of the Three Primary Credit Rating Agencies as described in this Complaint and to bring an antitrust enforcement action against the named parties, including the specific relief stated below.**

### **1. Antitrust Injury**

360. Complainant realleges and incorporates herein, as though fully set forth, the allegations of all preceding paragraphs of the Complaint.

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<http://www.emta.org/template.aspx?id=4936>

The EMTA is the principal trade organization for the emerging markets trading and investment community.

<sup>90</sup> Substantial international debt issuance by Asian countries including China is expected to occur in 2010. EuroWeek, the newspaper of the global capital markets, reports in an article entitled, "*Asia Sovereigns Hint at Bumper Year for Bonds*" (February 12, 2010) that "[G]overnment officials across Asia added to talk of international bond issues again this week, making 2010 likely to be a year of heavy sovereign issuance." In a self-described initiative "to serve China's growing capital markets" and further evidencing its role as a market actor and participant in the business, Standard & Poor's recently announced that it "...is planning to establish a Greater China headquarters in Shanghai, underscoring the company's commitment to supporting China's growing capital markets..." Source: "*Standard & Poor's to Broaden Presence in China with New Greater China Headquarters in Shanghai*", PRNewswire release by The McGraw-Hill Companies, Inc. (November 12, 2009).

361. The Three Primary Credit Rating Agencies collectively control approximately, or in excess of, 95% of the international credit rating industry and so in effect are constituted as the industry.

362. By their actions, the Three Primary Credit Rating Agencies have caused Complainant to suffer economic injury and such injury is of the nature of an antitrust injury.

## 2. Civil Racketeering

363. Complainant realleges and incorporates herein, as though fully set forth, the allegations of all preceding paragraphs of the Complaint.

364. The Three Primary Credit Rating Agencies, the Debt Underwriters, the Clearing Agents, the Paying Agents, and the Law Firms, collectively constituted as participants in the *Capitalist China* enterprise, conspired to construct and operate an enterprise, whose operation is dependent upon an artifice, in order to reap windfall profits at the expense of the defaulted creditors.

365. By their actions, the Three Primary Credit Rating Agencies, the Debt Underwriters, the Clearing Agents, the Paying Agents, and the Law Firms, have caused Complainant to suffer economic injury and such injury is of the nature of a civil racketeering injury.

366. On the basis of the factual evidence as stated herein, Complainant prays for a summary administrative adjudication and order of injunction restraining the continuation and furtherance of the injurious actions of the Three Primary Credit Rating Agencies and suspending the publication and distribution of the falsehood, namely the international sovereign credit rating assigned to China, until such time as the Debt is

repaid in full, including the loan principal and all interest due thereon; default interest; and penalties.

**VII. Complainant's Verification**

The undersigned says that I am the Complainant herein and have read the foregoing statement of Complaint and the facts stated therein are true.

By: \_\_\_\_\_

Kevin O'Brien, President  
Sovereign Advisers, Inc., Trustee of the Starwood Trust

Date: \_\_\_\_\_

## Index of Exhibits

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### Specimen Certificates

**Exhibit 1**

The Chinese Government Five Per Cent  
Reorganization Gold Loan of 1913

The Imperial Chinese Government  
Five Per Cent Hukuang Railways  
Sinking Fund Gold Loan of 1911

**Exhibit 2**

Advertisements and Solicitations  
Within the United States  
And Quotation of the Subject Debt  
Within the United States

**Exhibit 3**

United States Paying Agent  
for the Subject Debt

**Exhibit 4**

U.S. Treasury Certificate Evidencing Presence  
of the Subject Debt Within the United States

**Exhibit 5**

Direct Commercial Effect on the Silver Bullion  
Market Within the United States

**Exhibit 6**

Evidence of the Subject Debt Offered  
And Sold Within the United States

**Exhibit 7**

Agreement Between the Government of the  
United States of America and the Government  
of The People's Republic of China Concerning  
the Settlement of Claims

**Exhibit 8**

Letter From the President of the United States  
Foreign Bondholders Protective Council to  
Chinese Ambassador, His Excellency Chai-  
Zemin, Referencing the Exclusion of the  
Subject Debt from the 1979 U.S. – China  
Claims Settlement Treaty

**Exhibit 9**

Legal Confirmation to the United States  
Congress of the Exclusion of the Subject Debt  
From the 1979 U.S. – China  
Claims Settlement Treaty

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<b>Exhibit 10</b>	University of Chicago Law Review Article Referencing the Inability of U.S. Persons to Obtain Relief Through United States Courts in Regard to the Subject Debt
<b>Exhibit 11</b>	Letter to Judicial Watch
<b>Exhibit 12</b>	New York Times Article (May 12, 1988)
<b>Exhibit 13</b>	Statement of Repudiation of the Subject Debt by the Ministry of Finance of The People's Republic of China
<b>Exhibit 14</b>	Letter From the French Minister of the Economy, Finance, and Industry in Response to an Inquiry Regarding the Status of Negotiations Between the Government of France and the Communist Chinese Government
<b>Exhibit 15</b>	Abstract of the Decision by the United States Supreme Court in <i>Altmann v. Austria</i>
<b>Exhibit 16</b>	Seal Appearing on the Subject Bonded Debt
<b>Exhibit 17</b>	French Government Parliamentary Transcript Referencing the Status of Negotiations Between the Government of France and the Communist Chinese Government
<b>Exhibit 18</b>	1984 Annual Report of the U.K. Corporation of Foreign Bondholders
<b>Exhibit 19</b>	Agreement Between The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of The People's Republic of China Concerning the Settlement of Mutual Historical Property Claims
<b>Exhibit 20</b>	Foreign Compensation (People's Republic of China) Order 1987

---

<b>Exhibit 21</b>	Foreign Compensation Commission Admission of Bonds and Property in the Sino- British Settlement Agreement
<b>Exhibit 22</b>	Foreign Compensation Commission Solicitation of Claims in Respect of Bonds
<b>Exhibit 23</b>	Hansard Records Evidencing Inclusion of Bonded Debt in the Sino-British Agreement
<b>Exhibit 24</b>	Cancelled Bond
<b>Exhibit 25</b>	Chinese Government Five Per Cent Reorganization Gold Loan Agreement
<b>Exhibit 26</b>	Demand for Repayment of the Subject Debt
<b>Exhibit 27</b>	The Syndicate Banks Failed to Maintain Sinking Funds for the Subject Debt as Contractually Obligated by the Various Loan Agreements
<b>Exhibit 28</b>	Memorandum of the United States Securities and Exchange Commission
<b>Exhibit 29</b>	Investigation by the Washington Post into the Practices of the Credit Rating Agencies
<b>Exhibit 30</b>	Moody's Sponsors Promotional Conference for Chinese Corporations to Exploit China's Sovereign Credit Rating
<b>Exhibit 31</b>	Moody's Chinese Joint Venture
<b>Exhibit 32</b>	Request for Investigation into the Credit Rating Agencies by the Chairman of the Joint Economic Committee of the United States Congress
<b>Exhibit 33</b>	Senate Concurrent Resolution 78 of the United States Congress

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<b>Exhibit 34</b>	House Resolution 1179 of the United States Congress
<b>Exhibit 35</b>	New York Times Article (February 3, 1994)
<b>Exhibit 36</b>	U.S. Firms Underwrite Chinese Government 100 Year Bond
<b>Exhibit 37</b>	Underwriting of Chinese Government Debt Offered and Sold Publicly in 2001
<b>Exhibit 38</b>	The Role of Goldman Sachs as Credit Rating Advisor to The People's Republic of China
<b>Exhibit 39</b>	Moody's Upgrades China's Sovereign Credit Rating to Increase Marketability of Chinese Government International Bonds
<b>Exhibit 40</b>	Underwriting of Chinese Government Debt Offered and Sold Publicly in 2003
<b>Exhibit 41</b>	Underwriting of Chinese Government Debt Offered and Sold Publicly in 2004
<b>Exhibit 42</b>	The Role of Robert Chilstrom and the Law Firm of Skadden Arps Slate Meagher & Flom as Underwriters Counsel in the Public Offering and Sale of Chinese Government Debt Obligations
<b>Exhibit 43</b>	Notice Provided by the Law Firm of Stites & Harbison to the Law Firm of Sidley Austin Brown & Wood Concerning Material Misstatements of Fact and Omissions of Disclosure in the U.S. Registration Statement

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Access the Exhibits to the Complaint by clicking [here](#).