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Via Priority Mail

April 8, 2004

Honorable Eliot Spitzer, Esq.
Attorney General of the State of New York
120 Broadway
New York, New York 10271-0332

Re: Sovereign Credit Rating and U.S. Underwriting of Debt Securities of the People's Republic of China:

Deceptive Practices, Inadequate Disclosure, Misleading Credit Analyses, Violations of U.S. and International Laws, Selective Enforcement of Multilateral Agency Policies, Unlawful Diversion of Monies Due Individual Bondholders.

Dear Mr. Spitzer:

I respectfully wish to bring to your attention a situation which I believe represents a grave injustice to thousands of American bondholders, including residents of New York State. As a class, these bondholders continue to suffer economic harm as a result of the actions of the Government of the People's Republic of China acting in concert with the major credit rating agencies and the complicity of various U.S. underwriters including Morgan Stanley, J.P. Morgan, Goldman Sachs, Citigroup and others which are actively assisting the People's Republic of China in the issuance of new debt securities in the U.S. capital markets.

The American Bondholders Foundation (the "ABF") is the duly incorporated national organization representing the consolidated claims of thousands of United States bondholders located across America who are holders of full faith and credit sovereign bonds issued by the Government of China and on which that government has defaulted and continues to evade payment to American citizens. Although repeated demands by individual U.S. bondholders to China for payment of these obligations have been ignored for years by the Chinese Government, the People's Republic of China has previously settled an identical series of these bonds with citizens of Great Britain in 1987.¹

The series of bonds which are the subject of the ABF collection action were issued by the Government of China as full faith and credit sovereign obligations of the Chinese Government, and were sold to individual investors within the United States by various institutions including Deutsche Bank and HSBC Bank.

¹ The People's Republic of China negotiated a settlement accord with British bondholders in June of 1987.

Under established principles of international law and accepted conventions of international trade and commerce, a successor government is liable for payment of the pre-existing sovereign debt of a predecessor government.²

Subsequent to defaulting on the external bonded debt represented by this series of bonds, the Government of China pledged its intention to resume service on the debt when economic conditions permitted, although the People's Republic of China has not made any payments on the bonds.³ The continued evasion of payment to American citizens who are holders of the Bonds represents a discriminatory attempt to evade payment of full faith and credit sovereign debt by a country which possesses the financial ability to pay such legitimate claims.

The ABF is duly incorporated under the laws of the state of Delaware. The ABF and its members have retained the law firm of Stites & Harbison to act as counsel in the matter of collecting on the defaulted Chinese government debt.⁴ On June 13, 2001, at the direction of the White House Counsel, the United States Department of State and the Securities and Exchange Commission, the ABF contacted the Foreign Bondholders Protective Council (the "FBPC") to initiate collection proceedings on these defaulted obligations. The FBPC was created by Presidential Executive Order to assist U.S. citizens in collecting on defaulted debts of foreign issuers and has successfully completed collection of 47 previous defaulted bond settlements. The ABF has been featured extensively by the international print and broadcast media, including the British Broadcast Corporation, Financial Times, Wall Street Journal, Associated Press, Bloomberg Financial News, USA Today, Congressional Quarterly, Voice of America, Business Week and Barron's Financial News. The ABF has also hosted a congressional forum with the participation of the National Congress of American Indians.⁵

The most prevalent obligation for which payment is sought by the ABF is the Chinese Government 5% Reorganization Gold Loan. This class of obligations was issued by a global syndicate of international banks and was sold to investors in the United States and

² Refer to series of Memorandums issued by the law firm of Stites & Harbison PLLC for a comprehensive discussion of this doctrine including relevant authorities (*copies of Stites & Harbison Memorandums and Choate Valuation Memorandum provided as tab "6" of companion reference binder*).

³ See letter dated December 11, 1979 from Mr. J. Brian Attwood, Assistant Secretary for Congressional Relations, U.S. Department of State, addressed to the Honorable Charles A. Vanik, Chairman of the Subcommittee on Trade, Committee of Ways and Means, U.S. House of Representatives.

⁴ Refer to Stites & Harbison Memorandum addressed to Members of the United States Congress (February 22, 2002) for a comprehensive analysis of legal issues. The Memorandum affirms the rights of American citizens to collect payment on their legally valid outstanding claims. Refer to Stites & Harbison Memorandum to Members of the United States Congress (May 30, 2003) for a discussion of issues involving the Foreign Claims Settlement Commission. See also, Choate Valuation Memorandum (June 23, 2002).

⁵ Federally-recognized American Indian tribes constitute eligible recipients of the charitable and humanitarian programs to be funded from the 30% contribution of debt collection proceeds. The charitable and humanitarian programs will be administered under the auspices of the affiliated ABF foundation.

Europe. The bonds were scheduled to mature in 1960. The language of the bond certificates, as well as the language of the Loan Agreement authorizing the bond issue, mandated that the obligations were to be considered as binding upon the Government of China and its successors.⁶ The obligations which are the subject of the ABF collection action have been appraised in accordance with the debt covenants specified in the Loan Agreement by a recognized specialist in bond valuation.⁷ The value of the obligations has been determined in accordance with the provisions specified in the language of the Loan Agreement. All such bonds which have been tendered for collection are presently held in trust by the ABF.⁸

In addition to general principles of international law, there exist several recent precedents that are applicable in the situation described herein:

- ▶ 1986
The Government of the Soviet Union settled the claims of British citizens who were holders of defaulted pre-1917 Russian government bonds.
- ▶ 1987
The Government of the People's Republic of China settled the claims of British citizens who were holders of an identical series of defaulted Chinese government obligations as the ABF affiliated bondholders.
- ▶ 1996
The Government of Russia settled the claims of French citizens who were holders of defaulted pre-1917 Russian government bonds.
- ▶ 2004
Recently, the People's Republic of China has notified the Government of France that it intends to settle the claims of French citizens who are holders of an identical series of defaulted Chinese government obligations as the ABF affiliated bondholders.

⁶ Under accepted conventions of international trade and commerce, a successor government is responsible for payment of the obligations of a predecessor government. In fact, the language which appears on the bond certificates which are the subject of the ABF collection action explicitly states: "These obligations are intended to be binding upon the Government of China and any Successor Government" (*image of bond certificate provided as tab "2" of companion reference binder*).

⁷ For an analysis of the valuation of the affiliated bondholder claims, refer to Choate Valuation Memorandum (June 23, 2002).

⁸ Note that the bonds held by ABF affiliated bondholders are exclusive of similar bonds acquired by the United States Government Office of Foreign Asset Management through the Trading with the Enemy Act and presently held by the "public-at-large".

Despite the obligation of the People's Republic of China to honor the claims of U.S. bondholders under international law, the Chinese Government continues to blatantly disregard the claims of American bondholders and continues its discriminatory treatment of United States citizens in an attempt to evade payment of these claims.

Although a judicial remedy is generally available to U.S. investors in the securities of foreign governments which subsequently enter default, a 1984 U.S. federal court ruling prevents American courts from retroactively applying the "commercial activity" exception to the doctrine of sovereign immunity.⁹ The court held that, although American law changed in 1952, a creditor of a foreign government could not retroactively apply the newer 1952 law to obtain a U.S. judgment against a foreign government for debt issued prior to 1952. The individual U.S. bondholders affiliated with the American Bondholders Foundation are therefore denied relief through U.S. courts since the Chinese Government issued the bonds prior to 1952.¹⁰

It has long been the policy of the United States Department of State that intervention by the United States Government in bondholder disputes is appropriate in situations involving either debt repudiation or discrimination.¹¹ The ABF bondholders are victims of both of these circumstances (e.g., debt repudiation by the People's Republic of China and an exclusionary settlement with British citizens).¹² Accordingly, the ABF affiliated bondholders are therefore pursuing resolution of claims through the United States Congress.

⁹ Jackson v. The People's Republic of China, 596 F. Supp. 386 (N.D. Al. 1984), affirmed 11th Circuit U.S. Court of Appeals, 794 F. 2d. 1490 (1986).

¹⁰ Foreign Sovereign Immunities Act of 1976. Pub. L. 94-583, 90 Stat. 2891, 28 U.S.C. Sec. 1330, 1332(a), 1391(f) and 1601-1611. See also 22 C.F.R. 93. The Foreign Sovereign Immunities Act provides recourse to United States citizens who have suffered economic injury from the commercial activities of foreign governments or instrumentalities thereof, to bring tort actions against such sovereign governments in U.S. federal court provided that the economic injury occurred during or after 1952. No judicial remedy is available to U.S. citizens in U.S. courts under the Foreign Sovereign Immunities Act for economic harm or takings which occurred prior to 1952. The Foreign Sovereign Immunities Act of 1976 (the "FSIA") is the sole basis under U.S. law whereby plaintiffs may obtain jurisdiction over a foreign state. Courts have consistently ruled that the exceptions to absolute sovereign immunity under the FSIA are not retroactive. The 'commercial activity' exception to sovereign immunity existed before 1976 because of the 1952 State Department 'Tate letter'.

¹¹ See policy letter addressed to *the Honorable Charles A. Vanik, Chairman, Subcommittee on Trade Committee on Ways and Means, United States House of Representatives*, authored by J. Brian Atwood, Assistant Secretary of State for Congressional Relations (December 11, 1979), stating that examples in which intervention by the United States Government is appropriate in resolving the bondholder claims of U.S. citizens includes the following: (1) situations in which the obligations are repudiated; and (2) situations in which American nationals are discriminated against.

¹² See Aide Memoire 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 declared "The Chinese Government recognizes no external debts incurred by the defunct Chinese Governments and has no obligation to repay them ...". For the matter of discrimination against the claims of United States citizens, refer to the provisions of the 1987 treaty between China and Great Britain which provides for settlement and payment of bondholder claims of British nationals and which does not provide for any payment on the claims of American bondholders.

Numerous members of the 107th United States Congress, including the House Majority Leader and the Chairman of the House Financial Services Committee, signed a letter to President George W. Bush expressing their desire that the Administration take action to compel the Chinese Government to honor its debt (*copy of letter from the U.S. House of Representatives to President George W. Bush provided as tab "4" of companion reference binder*). In response to the efforts of the ABF and its many Congressional supporters, the 108th Congress held a hearing in the U.S. House of Representatives on this issue preparatory to a vote on House Concurrent Resolution 60 ("H.Con.Res.60"), stating the desire of the United States Congress that China honor its debts to American taxpayers.¹³

On October 21, 2003, Mrs. Jonna Z. Bianco, President of the American Bondholders Foundation presented testimony in the United States Congress on this issue during the televised public hearing conducted by the International Relations Committee of the U.S. House of Representatives.¹⁴

Having provided some background on this important issue, please allow me to now direct your attention to certain recent events related to the situation described above, which may merit further investigation by your office. On behalf of the American Bondholders Foundation and the affiliated individual bondholders, the following specific complaints are hereby presented to your attention:

1. Inadequate Disclosure of Risk by Chinese Securities Issuers

In a letter addressed to the United States Securities and Exchange Commission (the "SEC") dated January 8, 2003, Mr. B. Riney Green, a partner of the law firm of Stites & Harbison articulated specific concerns regarding the extent of disclosure provided pursuant to offerings of securities within the U.S. capital markets by the Government of the People's Republic of China and its state-owned entities (*copy of letter dated January 8, 2003 from Stites & Harbison to the United States Securities and Exchange Commission provided as tab "7" of companion reference binder*).¹⁵

¹³ Refer to H.Con.Res.60, introduced by Rep. Walter Jones and forty-two co-sponsors into the 108th Congress on February 27, 2003. (*copy of H.Con.Res.60 provided as tab "5" of companion reference binder*).

¹⁴ Other witnesses presented additional testimony at this hearing regarding the U.S.–China economic relationship, specifically addressing the loss of approximately three million manufacturing jobs from the U.S. to China since mid-2000. Witnesses presenting testimony included representatives of the National Association of Manufacturers and the AFL-CIO. (*Transcript of testimony presented at hearing conducted by the House International Relations Committee on October 21, 2003 provided as tab "3" of companion reference binder*). Congressional web-links:

http://wwwc.house.gov/International_Relations/108/bian2021.htm

<http://www.nist.gov/hearings/2003/uschina.html>

¹⁵ Letter dated January 8, 2003 from Stites & Harbison PLLC to the Honorable Harvey L. Pitt, Chairman, U.S. Securities and Exchange Commission and Mr. Alan Beller, Director, Corporate Finance Division, U.S. Securities and Exchange Commission.

The following issues were brought to the attention of the SEC as examples of inadequate disclosure in securities offering filings and investor documents related to offerings of securities by the People's Republic of China:

1. Misleading Chinese Government economic data;
2. Political instability of the Chinese Government; and
3. Risk of debt repudiation.

To date, the SEC has not taken any action concerning this very serious matter apart from acknowledging receipt of the Stites & Harbison letter (*copy of letter dated January 21, 2003 from the United States Securities and Exchange Commission to Stites & Harbison provided as "Tab 8" of companion reference binder*).

These issues adversely affect the resolution of the ABF affiliated bondholders' claims since the Government of the People's Republic of China continues to enjoy unfettered access to U.S. capital markets without any disclosure of the situation described herein, and thus has little incentive to settle the claims of prior holders of its defaulted debt.

Chinese securities issuers and their U.S. underwriters continue to omit mention of material disclosures related to, among other omissions, the situation described herein. For example, the People's Republic of China sovereign bond offering prospectus filed with the U.S. Securities and Exchange Commission on October 16, 2003 for the offer and sale of \$1 billion in ten year debt securities in the United States contains no mention or reference to the ABF collection action or to any existing defaulted full faith and credit sovereign debt of the Chinese government.¹⁶

The following excerpted statements appear in the prospectus and the prospectus supplement of the People's Republic of China dated October 16, 2003 describing the offering of \$1 billion of ten year notes in the United States:

▶ Page S-11 of the Prospectus Supplement:

"China is neither involved in any litigation, arbitration or administrative proceedings which are material in the context of the issue of the notes nor aware of any such litigation, arbitration or administrative proceedings, whether pending or threatened."

¹⁶ People's Republic of China. Securities prospectus dated October 16, 2003. U.S. Securities and Exchange Commission EDGAR web-link:
<http://www.sec.gov/Archives/edgar/data/909321/000114554903001347/u98681p1e424b5.htm>

“Except as disclosed in this prospectus supplement and the accompanying prospectus, there has been no significant change in the condition (financial, political, economic or otherwise) or the affairs of China which is material in the context of the issue of the notes since December 31, 2002.”

These statements are misleading to prospective investors for the following reasons:

1. The legal counsel to the American Bondholders Foundation has served a formal notice of demand for payment of the defaulted Chinese Government securities to the Minister of Finance of the People’s Republic of China in Beijing, as well as to the Embassy of the People’s Republic of China in Washington, D.C.;
2. The prospectus supplement omits mention of the existence of a significant quantity of defaulted full faith and credit sovereign obligations of the Chinese Government;
3. The prospectus supplement omits mention of the Chinese Government’s continued discrimination against American citizens in this matter and the continuing refusal of the Government of China to honor claims of American bondholders in violation of accepted conventions of international law;
4. The prospectus supplement omits mention of the recent public record testimony on this matter in the United States Congress;
5. The prospectus supplement omits mention of the Congressional Resolution (“H.Con.Res.60”) pending in the United States House of Representatives; and
6. The prospectus supplement omits mention of the recent initiation of settlement negotiations by the Chinese Government with citizens of France regarding settlement of the same series of bonds held by French citizens.

The preceding factors are directly related to China’s economic affairs.

▶ Page 69 of the Prospectus:

“Debt Record

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.”

This statement is misleading to prospective investors for the following reason:

1. The complete omission 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 and is presently in the process of negotiating a settlement with French bondholders, while continuing to exclude the claims of American bondholders.

The situation described herein, involving a significant amount of outstanding defaulted Chinese Government debt obligations, and the Chinese Government's continuing refusal to acknowledge or honor such obligations in violation of accepted principles of international law, and the related ABF collection action, merits disclosure as a material aspect of any offering of full faith and credit sovereign obligations of the Government of the People's Republic of China.

Additional concerns regarding inadequate disclosure of the material risks implicit to the offer and sale of securities of the Chinese Government, or instrumentalities thereof, has recently been reiterated by each of the following:

- ▶ The Wall Street Journal;
- ▶ The Hong Kong Credit and Collection Management Association; and
- ▶ The U.S. - China Security Review Commission.¹⁷

Directly pertinent to this complaint are certain "*Key Findings*" of the bipartisan U.S.-China Security Review Commission Report to the United States Congress (*copy of report provided as tab "9" of companion reference binder*).

The conclusions presented in the salient section of the report, entitled "China's Presence in U.S. Capital Markets", identify serious concerns related to inadequate disclosure of the material risks implicit to the offer and sale of securities of the Chinese Government or instrumentalities thereof. Such concerns are summarized in the following excerpts from the report:

¹⁷ See "China Stocks Evoke the Ghost of Bubble Past", *Wall Street Journal* (January 27, 2004), which stated "Chinese companies, for example, don't adhere to U.S. or international accounting standards. And credit-rating agencies are unable to rate most of the Chinese companies listing overseas because of a lack of transparency and disclosure. Finally, the Chinese Government is involved in one way or another in most of the companies listed on the markets". See also "Credit Ratings in China can be Mere Guesswork", *Wall Street Journal* (January 5, 2004), which stated "But faulty accounting, poor corporate governance and a lack of disclosure hamper the raters' efforts. To make matters worse, the Government issues misleading statistics." (*copies of articles provided as tab "10" of companion reference binder*). For national security concerns posed by inadequate disclosure associated with offerings of Chinese securities in the U.S. capital markets, see Report to Congress of the U.S.-China Security Review Commission: "The National Security Implications of the Economic Relationship Between the United States and China". Chapter Six, *China's Presence in the U.S. Capital Markets*. The U.S.-China Security Review Commission. July 2002.

- ▶ “The U.S. Government lacks adequate institutional mechanisms to monitor national security concerns raised by Chinese and other foreign entities seeking to raise capital or otherwise trade their securities in the U.S. debt and equity markets. Moreover, Security and Exchange Commission (SEC) reporting requirements for foreign registrants provide insufficient disclosure to the investing public of the national security risks related to certain foreign entities’ global business activities, including the material risks associated with entities that do business in terrorist-sponsoring states.”
- ▶ “Chinese issuers have raised an estimated \$20 billion over the past decade from international bond offerings denominated in U.S. dollars.”
- ▶ “China has also raised significant sums internationally through its sovereign and corporate bond offerings. As shown in Figure 6.2, Chinese sovereign bonds garnered \$8.5 billion and corporate bonds raised \$26 billion from 1986 through 2001.”
- ▶ “Marc Lackritz, President of the Securities Industry Association, testified that Chinese entities had raised \$48.3 billion in equity capital overseas from 1991-2000, and that about 7 percent of this amount – or \$3.4 billion – had been raised through targeted U.S. offerings. He further indicated that Chinese issuers of debt raised around \$9.7 billion in the U.S. markets during that time period. A report prepared for the Commission on China’s fundraising activities in the U.S. equity markets concludes that Chinese firms raised approximately \$14.6 billion through IPOs in U.S. capital markets from 1999-2001, representing 73 percent of the \$20 billion Chinese firms raised in total through overseas IPOs during that time period.”
- ▶ “The Chinese Government’s bond offerings, which have been purchased by U.S. institutional and other investors, provide scant detail on the use of the proceeds raised from such offerings.”¹⁸

¹⁸ This specific finding would appear to be at odds with the explicit message of the February 17, 2004 full-page display advertisement in the *Wall Street Journal* by Morgan Stanley, entitled “Look Out World, Here We Come”, which aggressively touts the profits to be made in Chinese stocks. See also the recent quarter-page display advertisement in the *Wall Street Journal* by Fred Alger & Company, Inc., distributor of the China Growth Fund, entitled “The Bull. The Bear. And Now The Dragon”. This advertisement references China’s \$1.3 trillion GDP (2003) and China’s no. 2 global ranking for purchasing power as reasons to invest in Chinese securities.

- ▶ “The presence of Chinese debt and equity offerings in the U.S. capital markets raises U.S. national security concerns that have not been adequately examined to date. The Commission is concerned about the identities and nature of the Chinese companies accessing the U.S. capital markets. Specifically, the extent to which they have ties to the People’s Liberation Army or components of China’s defense industry, intelligence services, or are assisting in the proliferation of weapons of mass destruction ballistic missile delivery systems.¹⁹ The Commission is also concerned with those entities operating in U.S.-sanctioned countries, or are otherwise engaged in activities inimical to U.S. interests.”
- ▶ “The PRC is using U.S. capital markets as a source of central government funding for military and commercial development and as a means of cloaking U.S. technology acquisition efforts by its front companies with a patina of regularity and respectability.”
- ▶ “Overlaying these specific concerns is the issue of Chinese sovereign debt issuances. Since China’s bond prospectuses generally provide little detail as to how the proceeds will be spent, the significant monies raised by these offerings could be finding their way into military spending and other activities that are harmful to U.S. security interests. Because money is fungible, funds raised by China from its general-purpose bonds are just as useful for military and other security-related purposes as funds raised by a PLA-affiliated company.”
- ▶ “The Commission is concerned about the use of the U.S. capital markets as a source of funding for the Chinese military and intelligence services and for Chinese companies assisting in the proliferation of weapons of mass destruction or ballistic missile delivery systems. This activity not only poses direct security concerns, but raises issues regarding investor transparency and material risk as well. Given this dynamic, the Commission is troubled that neither the U.S. Government nor the U.S. investment community is adequately evaluating security-related risks related to China’s fundraising in the U.S. capital markets.”

The foregoing conclusions by a congressional investigative commission are indicative of the seriousness of the implications regarding inadequate disclosure of risk by Chinese securities issuers.

¹⁹ See also the statement “Chinese-made missiles capable of penetrating an M1 Abrams tank are being smuggled into Iraq.” *Newsweek*, February 16, 2004 (page 33).

2. Credit Rating Agencies Selectively Ignoring Pertinent Facts

The three major nationally-recognized statistical rating organizations (“NRSROs”), commonly referred to as credit rating agencies (i.e., Moody’s Investors Service, Standard and Poor’s Rating Group and Fitch Ratings) continue their deceptive practice of selectively disregarding pertinent facts associated with the situation described herein, particularly the “*willingness to pay*” metric, which represents a significant and continuing component of embedded risk implicit to general obligations of the Chinese Government.²⁰

According to representatives of the U.S. Department of State, the People’s Republic of China explicitly repudiated all bond claims originating prior to its 1949 assumption of the Government of China.²¹ Since the assumption and payment of any valid outstanding obligations of a pre-existing government by a recognized successor government is a basic tenant of international law, the refusal of the People’s Republic of China to abide by this established convention violates accepted principles of international trade and commerce and demonstrates its unwillingness to comply with commonly accepted standards of conduct.²² Such an attitude, manifested as a form of institutionalized behavior, is inconsistent with increased recognition of the quality of the Chinese Government’s international obligations. The Sovereign Immunity Act does not convey perfect protection to all participants in defaulted sovereign debt financings. The People’s Republic of China explicitly acknowledged its responsibility for payment of pre-1949 Chinese sovereign bonds pursuant to a 1987 agreement with Great Britain, thereby establishing a precedent for collection by United States bondholders.²³ Despite the agreement with Great Britain, the People’s Republic of China continues to attempt to evade payment to U.S. citizens for the identical series of full faith and credit sovereign bonds.

²⁰ Nationally Recognized Statistical Rating Organizations (“NRSROs”). The three organizations comprising this classification of credit rating service providers are Moody’s Investors Service, Standard and Poor’s Rating Group and Fitch Ratings. Dominion Bond Rating Service was recognized in 2003 as a fourth NRSRO.

²¹ Aide Memoire 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 declared “The Chinese Government recognizes no external debts incurred by the defunct Chinese Governments and has no obligation to repay them ...”.

²² See *Restatement (Third) of the Foreign Relations Law of the United States*, Section 712(2) and “Creditors Claims in International Law”, *The International Lawyer*, Volume 34, page 235, Spring 2000. See also, for example, the recent United Nations Security Council resolution on weapons inspections in Iraq which stipulates that a subsequent government in Iraq following a regime change will remain liable for predecessor national debt obligations.

²³ The 1987 agreement with Great Britain referenced herein provided a collection mechanism for the claims of British citizens who were holders of these full faith and credit obligations and did not provide recourse for American citizens to collect payment.

Recent events involving instrumentalities of the Chinese Government serve to further illustrate the character and intent of the Government of the People's Republic of China with respect to honoring payment obligations. The spate of serial defaults by numerous state-owned enterprises and the apparently deliberate defaults by various Chinese international trust and investment companies which are instrumentalities of the Chinese Government reveals the appearance of a serial pattern of orchestrated issuance and subsequent defaults, which may be construed as intentional and selective in nature, and represents a recurring theme, or "pattern" on the part of the Chinese Government.

The long-term sovereign credit rating assessments of the People's Republic of China issued by the major credit rating agencies contain no mention whatsoever of the fact that a very substantial quantity of full faith and credit sovereign obligations of the Chinese Government presently remain in a state of default. The discriminatory repudiation of these obligations by the Government of China is material to a fair and accurate assessment of overall payment risk inherent to full faith and credit obligations of the Chinese Government, particularly with respect to evaluation of the *willingness to pay* metric, and it is unconscionable that disclosure of this fact is not reflected in the long-term sovereign credit ratings assigned to full faith and credit obligations of the People's Republic of China by any of the three major rating agencies. An examination of the historical facts suggest that the probability of continuity of payments on present and future-issued obligations may reasonably be construed as embodying a significant degree of repayment uncertainty which is not reflected in the current long-term sovereign debt rating of the People's Republic of China.

The situation described above, involving the omission of significant and material aspects from the prevailing rating assessments of the Chinese Government, was explicitly brought to the attention of the chief executive officers of Moody's Investors Service, Standard and Poor's Rating Group and Fitch Ratings in a letter dated November 27, 2002 written by Mrs. Jonna Z. Bianco, President of the American Bondholders Foundation (*copy of letter included as tab "11" of companion reference binder*).²⁴

To date, no acknowledgement or response to this letter has been received from any of the three major credit rating agencies. On October 13, 2003 Fitch Ratings affirmed its investment grade assessment and assigned a "positive" outlook. On October 15, 2003 Moody's Investors Service announced that it was upgrading the long-term foreign currency sovereign credit rating of the Chinese Government from the previous A3 rating to a newly-assigned rating of A2. Incredibly, on October 22, 2003, the very day after the United States Congress House of Representatives International Relations Committee conducted a televised public hearing on the ABF issue, Standard and Poor's Corporation

²⁴ The full faith and credit sovereign obligations of the Chinese Government referenced herein exist in a state of "discriminatory repudiation" due to the 1987 settlement with British bondholders which excluded non-British bondholders, and the pending settlement-in-progress with respect to French bondholders which is also expected to exclude U.S. bondholders, among others.

actually affirmed its investment grade assessment of the long-term foreign currency sovereign credit rating of the Chinese Government and assigned a “positive” outlook. Coincidentally, each of these development occurred during October, 2003, the same month that the Government of the People’s Republic of China filed a prospectus with the SEC for the offer and sale of \$1 billion in government notes.

The following is a summary of actions taken by the major credit rating agencies during the month of October, 2003:

- ▶ October 13, 2003
Fitch Ratings affirmed the long-term foreign currency rating of China at A-. The rating outlook is positive. This rating applies to all of China’s senior unsecured long-term sovereign debt issues.
- ▶ October 15, 2003
Moody’s Investors Service, Inc. upgraded China’s sovereign rating from A3 to A2 for long-term foreign-currency denominated debt. The rating outlook is stable.
- ▶ October 22, 2003
Standard & Poor’s Ratings Group affirmed its BBB senior unsecured foreign currency credit rating for China. The outlook is positive.²⁵

The intentional and willful omission of the existence of a significant dollar value of defaulted obligations of the Chinese Government in the prevailing debt rating assessments of the People’s Republic of China constitutes a blatant rejection of the generally accepted current U.S. national standard that the degree of rigor exercised in assessing the adequacy of issuer disclosures must be increased rather than relaxed (compare, for example, the insufficiency of Hong Kong standards when measured against U.S. standards).

The ABF considers this conduct as outrageous, particularly in light of the fact that the circumstances described herein were previously brought to the explicit attention of the three major credit rating agencies by the ABF. In light of the persistent evasion by the Chinese Government with respect to payment of its defaulted sovereign obligations and the potential financial impact arising from the emergence of a significant liability, the following existing Chinese Government credit ratings are inappropriate and misleading:

²⁵ People’s Republic of China offering prospectus for the offer and sale of sovereign obligations of the Government of China filed with the U.S. Securities and Exchange Commission. October 16, 2003.

**People's Republic of China
Long-Term Foreign Currency Credit Rating**

Credit Rating Agency	January 2002	January 2004
Standard & Poor's	BBB/Stable/A-3	BBB/Positive/A-3
Moody's Investors Service	A3/Stable	A2/Stable
Fitch Ratings	A-	A-/Positive

The conduct of the Government of the People's Republic of China with respect to its continuing refusal to honor U.S. citizens' claims arising from defaulted Chinese Government debt obligations as required under conventions of international law is neither consistent with, nor indicative of, an investment-grade sovereign. Rather, such behavior is suggestive of the conduct of parties which have been deemed criminal enterprises in the United States and against whom both civil and criminal actions have been successfully brought pursuant to the Racketeer Influenced Corrupt Organizations Act ("RICO"). The isolationist Chinese communist government (i.e., the People's Republic of China) ultimately acceded to political power over the Chinese mainland and subsequently repudiated existing external sovereign debt obligations.²⁶ The Government of the People's Republic of China subsequently determined to re-access the international capital markets while ignoring the payment claims arising from holders of valid pre-existing obligations of the Chinese Government in violation of international law. Such conduct represents a form of institutionalized behavior which suggests the probability that debt defaults presaged upon the unwillingness to pay external obligations may reasonably be expected to recur in the future. The investment grade rating assigned by the three major rating agencies to the sovereign debt of the People's Republic of China ignores the conduct of the Chinese Government in failing to honor its outstanding full faith and credit obligations (i.e., the *willingness to pay* valid obligations as opposed to the mere *ability to pay*) and serves to reward the "bad actor" conduct of this government for its discriminatory mistreatment of American bondholders.²⁷

The major rating agencies continue to willfully disregard the fact that a substantial dollar value of full faith and credit sovereign bonds of the Chinese Government remain in a state of default in contravention of international law. By assigning an investment grade rating to the long term sovereign debt of the People's Republic of China, the major credit rating agencies continue to selectively ignore the *willingness to pay* issue, sending a dangerously misleading signal to the global financial markets and creating a dangerous precedent with respect to accepted principles of international law.

²⁶ Taiwan publicly renounced any claim to the government of all China in 1991.

²⁷ Resolving the claims of British bondholders, yet disregarding the similar claims of U.S. bondholders.

The concerns expressed herein regarding the posture of the major credit rating agencies with respect to intentional omission of pertinent facts and willful disregard of material information in assigning credit ratings are echoed in testimony presented at the recent hearing on the credit rating agencies conducted by the U.S. Securities and Exchange Commission on November 15, 2002 (*copy of testimony provided as tab "12" of companion reference binder*).²⁸ The following excerpts of testimony presented at the SEC hearing by Mr. Glenn Reynolds, Chief Executive Officer, CreditSights, Inc. illustrate that the specific deficiencies described herein may be part of an endemic problem:

- ▶ “Our main areas of concern with respect to the rating agencies have been the transparency of the ratings process and how information flows are extracted from higher risk issuers and subsequently delivered to the market. One major area of confusion has been in the use of confidential information and to what extent the decisions are tied to public information. We also address below some of the considerable barriers to entry that have been created by the long process of allowing new NRSROs to enter the market. This has served to protect the market position and the revenue stream of the current peer group of rating agencies. The fact that the agencies have a business model that allows them to get paid regardless of the quality of product they deliver to the market, all the while insulated from securities litigation and competitive inroads by new market entrants, makes for a great equity story but not necessarily a very good market watchdog. We also believe there are some conflicts of interest worth considering in light of broader trends going on in the market.”

²⁸ Hearing on the Credit Rating Agencies, Securities and Exchange Commission, November 15, 2002. Testimony by Mr. Glenn Reynolds, Chief Executive Officer, CreditSights, Inc., entitled “Rating Agencies in the Capital Markets”. For historical precedent, see “The Dog That Didn’t Bark: Moody’s, Et.Al. Fail Investors In Asian Markets, Miss Warning Signs In China And Russia” (*William J. Casey Institute of the Center for Security Policy*. Publication 97-C 200. December 23, 1997). Excerpt: “For example, today’s *New York Times* reports that, while Moody’s was downgrading South Korean, Thai, Indonesian and Malaysian sovereign debt, it ‘affirm[ed its previous] ratings for Hong Kong and China.’ As it happens, these ratings are extraordinarily high. In the case of China for instance, its long-term foreign currency bonds are rated by Moody’s to be ‘A3’ -- the agency’s seventh highest rating. China’s long-term foreign bank deposits are somewhat lower, at ‘BAA2’. Neither of these have changed in at least the past year. This comes in contrast to analyses cited by the highly regarded DRI/McGraw-Hill Global Risk Service during the second quarter of 1997. DRI/McGraw-Hill warned that as much as ‘20-40% of China’s outstanding stock of loans, valued at \$600 billion can be classified as non-performing. So far, the problem has been contained. However, should things go wrong in China’s banking sector, the ramifications in developing Asia could be huge.’ The scale of the decline of so-called ‘Red Chip’ stocks (i.e., China-based, government-controlled or -affiliated entities) on the Hong Kong market have, in many cases, fallen faster and further than have counterparts among pre-takeover Hong Kong Blue Chips. It is also the view of some respected analysts in Asia that China’s much-touted hard currency reserves are, in fact, seriously encumbered by virtue of the need to prop up large -- *and, in many cases, doomed* -- Chinese state-owned industries and enterprises.”

- ▶ “In terms of the issuer-fee conflict, we have heard a number of points made in the past by investors. Since the fee does not get generated without a deal, being generous at new issue and revisiting the credit trend after the deal is in the market creates an apparent tension in the decision making process. Any rating action/assessments that prevents an issuer from accessing the market such as an unduly harsh opinion or demand (and transparent) set of metrics and forward expectations could jeopardize the deal. That means no fee. That action presents additional risks since the agencies can always revisit later after the deal is in the market. At that point, the ability to be more aggressive in ratings actions and express disappointment in financial trends can lead to rapid and precipitous downgrades. We certainly saw such post-new-issue-boom revision in the aftermath of the record 2001 issuance wave. When such post-issuance revisions occur, the problem is that the rating agency has booked its fee, the underwriter has booked its fee, and banks have refinanced their exposure and laid off their risk, and the only loser is the investor who gets blindsided after an accelerated review. The holders of the debt securities are often pension funds, insurance companies, and mutual funds, so the impact goes down to the individual level of retiree, policy holder and life savings. We have seen too frequently major deals get printed and a reassessment of the credit in a matter of weeks and often a few months. While the agencies often describe this as "calling them as they see them," the fact is greater transparency in the information flows and more detailed criteria for future ratings moves should be available when the new deal is printed. At least, such an approach will give investors a better idea of what is expected, and they can better gauge what the agencies are expecting and make investment judgments appropriately. Then they will not be so shocked when the agencies "call them as they see them" later. Uncertainty over this process only heightens market volatility and for many institutions promotes risk aversion.”²⁹

The situation described herein, involving a significant amount of outstanding defaulted Chinese Government debt obligations, the Chinese Government’s continuing refusal to acknowledge or honor such obligations in violation of accepted principles of international law, and the related ABF collection action, merits disclosure as a material aspect of any credit rating assessment pertaining to the long-term sovereign credit of the Government of the People’s Republic of China. Since the curing of prior defaults is a normal pre-condition to new publicly-funded debt by domestic U.S. corporations, it is reasonable to expect the major credit rating agencies to display no less tolerance to foreign issuers, sovereign or commercial, when an issuer fee is involved. It is extremely inappropriate for the major credit rating agencies to be permitted to continue to selectively ignore long established principles of law and finance as well as current accounting and disclosure standards.

²⁹ Excerpt from transcript of testimony of Mr. Glenn Reynolds, Chief Executive Officer, CreditSights, Inc., presented during the hearing on the credit rating agencies conducted by the U.S. Securities and Exchange Commission on November 15, 2002.

The outrageously unconscionable conduct of the three major credit rating agencies in this matter demonstrates a willful and deliberate disregard of the objective facts and circumstances and is inconsistent with the important role of the major credit rating agencies as independent evaluators upon which the public-at-large may depend in confidence.³⁰

3. Continued Underwriting of Chinese Government Securities in Contravention of the Johnson Debt Default Act

The Johnson Debt Default Act (the “Act”) generally provides that it shall be a federal criminal offense for any person or corporation subject to the jurisdiction of the United States to engage in the sale of securities of any foreign government which is in default on the payment of its obligations to the United States Government.³¹

The language of the Act states, in part:

“Hereafter, it shall be unlawful within the United States or any place subject to the jurisdiction of the United States for any person to purchase or sell the bonds, securities, or other obligations of, any foreign government or political subdivision thereof, issued after the passage of this Act, or to make any loan to such foreign government, political subdivision, organization, or association, except a renewal or adjustment of existing indebtedness while such government, political subdivision, organization, or association, is in default in the payment of its obligations, or any part thereof, to the Government of the United States.”³²

The ABF is concerned that any debt obligations issued by the Government of the People’s Republic of China or any instrumentalities thereof, which have been sold in the United States, either publicly or on a private placement basis subsequent to the date of default or repudiation of the series of bonds referenced herein and presently held in trust for collection, may represent a violation of the Act. Under the Act, culpability for any such violations shall apply to any seller, underwriter or broker of such securities within the United States.

The Act may be applicable in the specific instance described herein for the following reasons:

³⁰ See the revealing comment by Indiana University’s Dr. Scott Kennedy, who specializes in China’s political economy: “If you have any credibility, you would probably be rating everything junk in China.” See also the statement: “China doesn’t adhere to international accounting standards. To make matters worse, the government issues misleading statistics.” According to Mr. Brian Colton, an analyst who rates China’s sovereign bonds for Fitch Ratings (Hong Kong): “Sometimes you have a column of figures that don’t add up to the total at the bottom. It’s that bad.” *Wall Street Journal*, January 5, 2004. See also the statement by Mr. Gordon Chang, former partner at Paul, Weiss, Rifkind, Wharton & Garrison in Beijing: “China has less borrowing capacity than many people think; it is not as creditworthy as many people think.” *William J. Casey Institute of the Center for Security Policy*, May 22, 2001.

³¹ 48 Stat. 574, 31 U.S.C.A. §804a (April 13, 1934).

³² As used in the Act, the term “person” includes individuals, partnerships, and corporations.

1. The ABF has been informed by officials of the United States Government that the U.S. Government is presently in possession of a substantial quantity of defaulted full faith and credit Chinese government bonds substantially similar to the series held by individual bondholders affiliated with the ABF. According to members of the Judiciary Committee of the United States Congress, such bonds were acquired by the U.S. Government through the Office of the Alien Property Custodian pursuant to the Trading with the Enemy Act, and are presently held in the vaults of the U.S. Department of Justice.³³
2. The existence of direct loans provided by the United States Government to the Government of China which subsequently entered into default prior to repayment, and which remain in default. For example, the Export-Import Bank loan of 1946.³⁴

Under the Act, it is a federal criminal offence for any party subject to the jurisdiction of the United States to sell the securities of, or engage in the provision of loans or extending of credit to, any foreign government, or organization thereof, which is in default on debt owed to the Government of the United States. The language of the Act may reasonably be construed to prohibit the underwriting, offer or sale of securities of the Government of the People's Republic of China or its state-owned enterprises, including the provision of trade credit.

Through their activities involving underwriting of Chinese Government securities and providing or arranging trade credit on behalf of its state-owned enterprises, the major financial houses (e.g., Morgan Stanley Dean Witter, Goldman Sachs, Merrill Lynch, J.P. Morgan, etc.), are constituted as criminals under the Act. Included within this group of firms which continue their practice of dealing in Chinese Government securities are two of the same institutions which sold the aforementioned defaulted securities to the investing public (i.e., Deutsche Bank and HSBC).

The most recent example of which the ABF is aware pertaining to the offer and sale of Chinese Government securities in the United States is the offering of \$1 billion of notes of the Government of the People's Republic of China (prospectus dated October 2003). No disclosure appears in the prospectus regarding possible violations of the Johnson Debt Default Act in connection with the offering.

³³ In effect, held by the "public-at-large".

³⁴ In addition, the United States Government lent in excess of \$670 million in pre-war, wartime, and post-war loans to the Government of China, including the \$500 million "Wilson Loan" in 1942. Sources: "Kimber's Record of Government Debts" (Overseas Statistics, Inc., 1934). "Foreign Loans to China, Kao Ping-Shu (Sino-International Economic Research Center, 1946). "China's Foreign Debt", W. Kuhlmann (no publisher information available, 1984).

Upon a closer examination of the relevant fact pattern, it would appear that by virtue of their practice of engaging in a repetitive practice of assisting in the issuance and subsequent serial defaults of Chinese Government securities (as specified in detail under the section pertaining to deceptive practices), such financial houses may be subject to the penalties specified pursuant to the Racketeer Influenced Corrupt Organizations (“RICO”) statute. Selectively ignoring repeated violations of the Act, as well as egregious violations of accepted conventions of international law, is a dangerous precedent and acts as a destabilizing influence on global affairs of trade and commerce.

4. Preferential Treatment Accorded the People’s Republic of China in Contravention of the Interests of the American Public and Established International Monetary Fund Policy; Subordination of United States Bondholders’ Claims.

The International Monetary Fund (the “IMF”) admitted the People’s Republic of China as a member in 1978. By providing financial assistance to the Government of the People’s Republic of China, a sovereign which remains in default on its external full faith and credit obligations and which refuses to negotiate in good faith with its creditors, the IMF has selectively ignored its standing policy (“performance criterion”) of requiring that a debtor country engage in good faith negotiations with its creditors in order to maintain eligibility for assistance from the IMF.³⁵ Such practice is in direct contravention of the IMF’s established policy.³⁶

The United States and therefore the American “public-at-large”, is the single largest shareholder of the IMF. The conduct of the IMF in regard to selectively disregarding its own established policy by continuing to provide financial assistance to the Chinese Government is harmful to the interests of U.S. bondholders and is contrary to the interests of the American public. In order to protect the interests of the American public as a shareholder, the IMF should be compelled to disavow its preferential treatment of China and adhere to and enforce its established policies in a consistent and uniform manner.

³⁵ For reference to IMF policy, see “The IMF and Argentina”. *Washington Post*, March 12, 2004. The People’s Republic of China receives financial assistance from the IMF Group through the World Bank.

³⁶ For example, the IMF reiterated and enforced this policy by requiring that Argentina negotiate in good faith with the country’s sovereign bondholders in order to remain eligible for continued financial assistance through the IMF. Noting that the average discount for recent sovereign debt settlements is 36%, the IMF deemed that Argentina’s offer of twenty-five cents on the dollar to holders of its defaulted sovereign bonds did not constitute a good faith settlement offer. The IMF approved disbursement of an interim loan to Argentina based in part on the promise by the Government of Argentina to continue to pursue a good faith settlement with holders of its defaulted sovereign bonds. See “G-7 Nations Push Argentina to Work with Bondholders”. *Wall Street Journal* (February 9, 2004). See also “Argentina Finds Middle Ground with IMF, Averts Loan Default”. *Wall Street Journal* (March 10, 2004). On a related point, the refusal of the Chinese Government to honor claims of American bondholders may also constitute a violation of the country’s membership in the World Trade Organization (the “WTO”).

5. Diversion of Monies Due Individual Bondholders

Recently, Morgan Stanley, J.P. Morgan, Goldman Sachs and Citigroup have begun a practice of purchasing the defaulted debt of provinces, cities, villages and towns (including the debt owed by instrumentalities of such provinces, cities, villages and towns) of the People's Republic of China and aggressively pursuing the collection of such debt (*copy of article provided as tab "13" of companion reference binder*).³⁷ Under the communist system of national government, all provinces, villages, cities and towns constitute political subdivisions of the national government. The national government is also the owner of the banks from which the majority of these loans were purchased.

In the instance described herein, the national government (i.e., the People's Republic of China) is the obligor of defaulted full faith and credit sovereign obligations which are presently outstanding. Such full faith and credit sovereign obligations constitute a class of claims which are senior to the debts of political subdivisions of the Chinese national government. The collection of debts owed by political subdivisions of the Chinese national government may constitute an illegal diversion of monies due individual U.S. bondholders, whose claims are senior to such debts.³⁸ Accordingly, the practices engaged in by Morgan Stanley, J.P. Morgan, Goldman Sachs and Citigroup may have the effect of these firms receiving such monies in contravention of applicable law.

6. Recurring Pattern of Deceptive Practices

Although the key findings of the U.S.-China Security Review Commission as specified in its report to the United States Congress do not articulate an explicit condemnation that the Government of the People's Republic of China, its state-owned enterprises, and underwriters of Chinese government and corporate securities have engaged in a long-standing pattern of deceptive practices, misconduct and fraud, a survey of the report's findings does suggest that some degree of complicity or collusion is occurring between issuers of Chinese securities and institutional marketers of Chinese securities in the United States.³⁹ In fact, a review of the relevant facts is evocative of the types of actions

³⁷ See "In China, Foreigners Chip Away at a Mountain of Bad Debt". *Wall Street Journal* (Jan. 13, 2004).

³⁸ The debt covenants specified in the Loan Agreement and reiterated on the reverse of each bond certificate contains a provision referenced as "Condition 2. Sub-clause (e)", which stipulates that the tax revenues remitted to the central government by four specific provinces (i.e., political subdivisions) of China are pledged as secondary security for repayment of the bonds. The language of sub-clause (e) states: "Pending the re-organization of the said Salt revenues mentioned in sub-clause (c) of this Condition the Provinces of Chihli, Shantung, Honan and Kiangsu are to provide monthly the amounts necessary for the service of the said Loan as mentioned in the Loan Agreement and the payment of these amounts is made a first charge upon certain Central Government taxes of the said respective Provinces. The said Provincial contributions are to be suspended or finally released in the events mentioned in the Loan Agreement, and not otherwise".

³⁹ Report to Congress of the U.S.-China Security Review Commission: "The National Security Implications of the Economic Relationship Between the United States and China". Chapter Six, *China's Presence in the U.S. Capital Markets*. The U.S.-China Security Review Commission. July 2002.

which may be subject to prosecution under the Racketeer Influenced Corrupt Organizations (“RICO”) statute.

This contention is further supported by a recent example involving the apparently deliberate spate of defaults involving various Chinese “International Trust and Investment Corporations”, which are organized as instrumentalities of the Chinese Government. After the 1996-1998 collapse of the Guangdong International Trust and Investment Corporation, the central government disavowed the sector’s foreign debt, which is estimated at \$12 billion dollars.⁴⁰

A cursory review of pertinent events reveals the recurring theme of a serial pattern of repetitive Chinese debt defaults in conjunction with the deliberate obfuscation of the use of offering proceeds, which may act in concert to create a threat to the national security of the United States resulting from the relatively unimpeded access to capital available to Chinese Government state-owned enterprises trafficking in weapons sales to terrorist-sponsoring states.⁴¹ An examination of the relevant facts reveals the following:

1. That there exists a history of serial debt defaults by the same issuer (i.e., the Chinese Government);
2. That issuance of additional bonds to investors in the face of past serial defaults was aided and abetted by the following:
 - ▶ The advance payment of a ten percent (10%) selling commission to the selling banks; and
 - ▶ The retail marketing of the securities to individual (versus institutional) investors;
3. The subsequent absorption into the bank(s) of the sinking fund established for the protection of bondholders;
4. The subsequent abandonment of individual investors by the selling banks and the failure by the selling banks to negotiate a restructuring of the defaulted full faith and credit debt in blatant and deliberate disregard of fiduciary and moral obligation;

⁴⁰ See “Strategy Revealed in Collapse of Chinese Investment Trust”. *Wall Street Journal* (February 15, 2002). The article contains the following comments: “It bothers me a great deal when you have to question the institution’s willingness to pay” – Mr. Fan Jiang, Executive Director for Fixed Income, Goldman Sachs in Hong Kong. “I think mainly what they saw was a narrowing window of opportunity where they might be able to slip in there with their own little tactical default when nobody was looking” – Mr. David Boren, Montepelier Asset Management in London (*copy of article provided as tab “14” of companion reference binder*).

⁴¹ For example, the economic sanctions imposed in 1993 by the United States Government on the Chinese Government’s state-owned enterprise Norinca for trafficking in illegal weapons sales. See also the statement “Chinese-made missiles capable of penetrating an M1 Abrams tank are being smuggled into Iraq.” *Newsweek*, February 16, 2004 (page 33). An even more egregious example of illegal weapons trafficking by state-owned enterprises of the Chinese Government is the 1992 incident involving the illegal importation of AK-47 assault rifles through the Port of Long Beach by the China Overseas Shipping Company (“COSCO”).

5. The continuing pattern of events involving instrumentalities of the Chinese Government serves to further illustrate the character of the Government of the People's Republic of China with respect to honoring payment obligations. The recent spate of debt defaults by numerous Chinese Government state-owned enterprises and the apparently deliberate defaults by various Chinese international trust and investment companies which are instrumentalities of the Chinese Government reveals a serial pattern of orchestrated issuance and subsequent default, which appears to be intentional and selective in nature, and represents a recurring theme, or "pattern" on the part of the Chinese Government;⁴²
6. The continuing complicity on the part of U.S. firms and their foreign affiliates to aid and abet such a pattern of defaults, and to do so in flagrant violation of U.S. law (i.e., the use of solicitation and offering documents which contain significant omissions of material facts; inadequate disclosure; contravention of the Johnson Debt Default Act). Specific instances may include the involvement of Ernst & Young with respect to its role as advisor to the Chinese Government with respect to defaults by various Chinese International Trust and Investment Corporations, and the underwriters of the October 22, 2003 \$1 billion offering of notes of the Government of the People's Republic of China (SEC Registration No. 333-108727). Underwriters of this offering include Goldman Sachs L.L.C., J.P. Morgan Securities Inc., Merrill Lynch, Pierce Fenner & Smith Incorporated, Banc One Capital Markets, Inc., Citigroup Global Markets Inc., Credit Suisse First Boston LLC, Daiwa Securities SMBC Europe Limited, The Hong Kong and Shanghai Banking Corporation Limited, ICEA Securities Limited, Lehman Brothers International, Morgan Stanley & Co. International Limited, and Nomura International plc.;⁴³ and
7. That such an orchestrated pattern of behavior has been defined as racketeering in the United States and has been subject to the provisions and remedies available under the RICO statute.

⁴² See, for example, the recent situation involving the \$3.46 billion initial public offering of shares of China Life Insurance Company (December 23, 2003 – February 3, 2004), wherein a class action civil suit was initiated by investors one month after the world's largest IPO, seeking damages for an alleged \$652 million "massive financial fraud" perpetrated by the company. *Wall Street Journal*, March 18, 2004. The \$105 million underwriting fee was divided among four banks: China International Capital Corporation, Citigroup, Inc., Credit Suisse First Boston, and Deutsche Bank. For additional recent examples, refer to the multiple situations involving instances of financial fraud which occurred at the New York branch of the Bank of China, as well as the disappearance of more than \$700 million in depositors' assets from various other Bank of China branches. See "Chinese Auditors Deny Bank Fraud". *BBC News*, January 28, 2002. See also, "Bank of China Fugitive Linked to 2002 \$483 Million Fraud Scandal". *Dow Jones Newswires*, April 16, 2004.

⁴³ Ernst & Young LLP serves as advisor to The Greater China Investment Fund. On March 16, 2004, Bloomberg Financial News announced that Merrill Lynch was selected to manage the global initial public offering for China Power.

Honorable Eliot Spitzer, Esq.
April 8, 2004
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It would appear to be the philosophy of Deutsche Bank, HSBC, the Government of the People's Republic of China, Morgan Stanley, Goldman Sachs and other underwriters and credit rating agencies that it is perfectly acceptable to sell a full faith and credit sovereign bond issue to a group of unsophisticated individual investors, and then to leave the issue in default when the issuer reneges on payment, ignore repeated demands for payment on the defaulted obligations, and then after the public forgets about the default, to sell additional bonds of the same government to unsuspecting buyers.

Past defaults by this issuer remain outstanding and the continued underwriting of additional debt and equity issues of the Chinese Government and its state-owned enterprises poses a significant risk to the investing public.

In consideration of the foregoing, I believe you will agree that it may be appropriate to open an investigation into the practices employed with respect to the underwriting of Chinese Government securities within the United States as well as the selective practices employed by the major credit rating firms regarding the sovereign debt rating of the People's Republic of China, and the related ancillary issues described herein.

I have taken the liberty of enclosing a companion reference binder for your review, which contains selected materials pertinent to the situation described above. If I can answer any questions or provide you with any additional information, please do not hesitate to contact me directly at (520) 615-4525. The President of the American Bondholders Foundation is Mrs. Jonna Z. Bianco. Mrs. Bianco may be contacted at (931) 359-8781. Thank you for your interest in reviewing the enclosed materials.

Sincerely,

Kevin O'Brien
President

KO:jwc

Enclosure

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