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Via Facsimile, Electronic Mail and Certified Mail

October 12, 2007

Hon. Christopher Cox, Chairman
Office of the Chairman

Mr. Brian G. Cartwright, General Counsel
Office of the General Counsel

Ms. Linda Thomsen, Director
Division of Enforcement

Mr. John W. White, Director
Division of Corporation Finance

United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Inadequate Disclosure of Risks to American Investors of Unreliable Chinese Government Economic Data, of Predicted Political Instability in China, and of Prior Chinese Government Debt Repudiation:

COMPLAINT

Failure of Chinese Government State-Owned Enterprises Listed on NYSE Euronext and NASDAQ Exchanges to Disclose Defaulted Full Faith and Credit Defaulted Sovereign Debt.

Dear Chairman Cox, Mr. Cartwright, Ms. Thomsen and Mr. White:

We respectfully write to your attention on behalf of the many defaulted bondholders affiliated with the American Bondholders Foundation[1] in reference to the disclosure obligation of the state-owned enterprises of the Government of China which presently have shares actively listed on the NYSE Euronext and NASDAQ securities exchanges (please refer to Exhibit 1 for a schedule of such companies).

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[1] The American Bondholders Foundation is an organization comprised of U.S. individual owners of Chinese Government full faith and credit bonds issued prior to 1949 and due to mature in 1960, that seek to require China to abide by settled international law and honor its contractual sovereign obligations to bondholders. Although China in 1987 made payments to British holders of pre-1949 Chinese Government bonds, to settle the claims of British bondholders, China has refused to make any payments to American bondholders of similar Chinese Government bonds.

Access to the United States capital markets conveys significant economic benefits to the listed issuers and, in turn, entails certain obligations including the responsibility to make full and complete disclosure in connection with such listings. At present, no disclosure appears as regards the companies appearing in Exhibit 1 referencing the refusal of the Chinese Government to honor repayment of China's defaulted sovereign debt held by American citizens. Under the successor Government doctrine of settled international law, the repayment obligation for this debt is the responsibility of the Government of the People's Republic of China, which continues to attempt to evade repayment to Americans. We further note that the United States Foreign Claims Settlement Commission, an agency of the U.S. Department of Justice, has determined that the defaulted bonds represent a valid unpaid general obligation of the Chinese Government. In this regard, it is revealing to observe that the U.S. Foreign Bondholders Protective Council, a non-profit corporation established by the United States Department of State, Department of the Treasury, and the Federal Trade Commission for the purpose of assisting U.S. citizens holding defaulted obligations issued by foreign Governments in the recovery of repayment, reports that in over forty successful settlements involving defaulted sovereign debt, the Chinese Government represents the only instance of a Government refusing to negotiate settlement of its defaulted debt with American citizens.

Accordingly, we request that the Securities and Exchange Commission carefully examine whether the state-owned enterprises of the Government of China and other foreign issuers based in China are adequately disclosing investment risks to current and prospective American owners of Chinese corporate or Government equities and bonds. In particular, we request that the Commission evaluate whether Chinese corporate issuers who are presently, or who will become, subject to the Commission's disclosure requirements under the 1933 Act or the 1934 Exchange Act, especially those issuers with a controlling or large bloc of equity securities owned directly or indirectly by the Chinese Government (the People's Republic of China – PRC), are properly disclosing the known risks posed by (1) the credible allegations that official Chinese Government economic statistics are unreliable and misleading; (2) the adverse consequences of increasing and predicted political instability of the Chinese Government; and (3) the official Chinese Government position of the repudiation of Chinese sovereign debts issued by established predecessor Chinese Governments.

We believe that current and future American investors need the protection which the Commission can provide by ensuring that all Chinese corporate and Government issuers make full and fair disclosure to the investing American public of the unique risks associated with investing in stocks or bonds of Chinese companies or of the Chinese Government.

1. **<u>Misleading Chinese Government Economic Data.</u>**

In its recent (October 31, 2002) quarterly filing with the Commission on Form 6-K, the China Petroleum & Chemical Corporation (called Sinopec) (NYSE/symbol:SPN) stated:

> "In the first three quarters of 2002, the PRC economy continued to maintain rapid growth, with a GDP growth rate of 7.9%. Benefiting from the above, there was a stable growth in the domestic demand for refined oil and petrochemical products…." (emphasis added).

> "The Company believes that in the fourth quarter of 2002 …. China's economy will maintain a steady and healthy growth, which will create more demand for petrochemical products in China and a positive market environment for the business of the Company." (emphasis added).

Sinopec is basing its projections of future profitability and stockholder value on the reliability of the Chinese Government's rosy economic data. According to a December 16, 2002 report included in the New Republic magazine, the official Chinese Government claims of 7%- 10% annual growth during each of the last 20 years "do not add up".[2] The article further reports that the actual growth rate during the 1998-2001 period was closer to 4% and that "China has been plagued by deflation, rising unemployment and declining energy use."[3] The article goes on to state that China's national economic statistics are subject to "political meddling" and "corruption"[4], that more than two-thirds of the biggest Chinese companies "falsify their accounting"[5], that China's "economy is becoming less efficient and competitive, that the country is "without a decent legal system", and that its banking system could be insolvent by 2008. The author concludes that "Ultimately, China's economic façade probably will crack. And, when it does, the consequences may be disastrous." [6]

The Commission has correctly focused attention during the last year on the accuracy, completeness and transparency of American companies' financial statements and their management's analysis. We believe the same level of scrutiny should be applied to those Chinese based companies whose shares are listed on U.S. exchanges or that otherwise desire to access the American capital markets. Otherwise, American investors risk significant losses as a result of their investment in Chinese companies based on their misplaced reliance on information which, if recently published reports are accurate, is materially misleading. Furthermore, the major Chinese corporations listed on the NYSE are reported to have poor quality earnings, according to a recent article published in the Financial News[7], citing a report by an independent research firm which is highly critical of the NYSE for allowing the listings. In this regard, we further note the following revealing comments by industry observers:

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[2] "Asia Minor, Is China's Economic Boom a Myth", by Joshua Kurlantzick, The New Republic, December 16,2002, page 20.
[3] Id.
[4] Id., pages 20 and 24
[5] Id., page 24.
[6] Id., page 25.
[7] See, "Study Slams NYSE Over Chinese Listings" (Financial News), September 17, 2007.

> "If you have any credibility, you would probably be rating everything junk in China."
>
> "China doesn't adhere to international accounting standards. To make matters worse, the Government issues misleading statistics."
>
> - *Indiana University's Dr. Scott Kennedy, who specializes in China's political economy.*
>
> "Sometimes you have a column of figures that don't add up to the total at the bottom. It's that bad."
>
> - *Brian Colton, an analyst who rates China's sovereign bonds for Fitch Ratings (Hong Kong).*
>
> (Above statements reported by the *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.

We urge the Commission to confer with U.S. intelligence and Treasury officials in order to access the resources available to make an independent analysis of the statements on the performance and stability of China's economy contained in filings made with the Commission and relied upon by the American investing public.

According to the July 2002 report of the U.S. – China Security Review Commission (established and appointed by the U.S. Congress), "Chinese firms raising capital or otherwise trading their securities in the U.S. markets have predominately been major [majority] state-owned enterprises, some of which have ties to China's military, defense industry, or intelligence services." As a result, since the Chinese PRC Government directly or indirectly controls a majority of the ownership of most of the Chinese companies which are listed on U.S. exchanges and are subject to the periodic filing of reports with the Commission, it is doubtful that most such Chinese companies have the independence needed to vigorously challenge the accuracy of the Chinese Government's official economic data.

The U.S. – China Security Review Commission recommended in July 2002 that the Securities and Exchange Commission more carefully scrutinize the disclosure in the United States of certain foreign issuers, including certain Chinese corporate issuers, to minimize concerns about U.S.

national security risks posed by the activities of certain foreign companies"[8]. Similarly, the SEC should carefully scrutinize the accuracy of statements and implied optimistic forecasts contained in SEC filings of Chinese issuers whenever such statements and forecasts are based on the questionable economic data of the Chinese Government.

2. Political Instability of Chinese Government.

Experts and political analysts are expressing increasing doubt about the ability of the present Communist Party controlled Chinese Government to either reform or survive. This looming political crisis poses real financial risks to Americans investing in Chinese based companies and in debt securities of the Chinese Government. The Chinese Government (through sovereign bond offerings) and Chinese state-owned and other enterprises have raised significant funds in overseas capital markets in recent years, including the U.S. capital markets.[9] Accordingly, the American Bondholders Foundation urges the Securities and Exchange Commission to (1) carefully review each registration statement and periodic report filed by a Chinese Government or corporate issuer and (2) require the conspicuous inclusion of adequate disclosure that will alert the investing American public to the material risks posed by this incipient instability and volatility.

In a recent edition of Foreign Affairs one prominent analyst of Chinese political affairs noted the increasing dysfunction of the Chinese Government and the associated threat to economic and political stability:

> "China's governance deficits are likely to continue to grow and threaten the sustainability of its economic development. The slow-brewing crisis of governance may not cause an imminent collapse of the regime, but the accumulation of severe strains on the political system will eventually weigh down China's economic modernization as poor governance makes trade and investment more costly and more risky. The current economic dynamism may soon fade as long-term stagnation sets in.
>
> Such a prospect raises questions about some prevailing assumptions about China. …[t]he international business community, in its enthusiasm for the Chinese market, has greatly discounted the risks embedded in the country's political system. Few appear to have seriously considered whether their basic premises about China's rise could be wrong. These assumptions should be revisited through a more realistic assessment of whether China, without

[8] Chapter 6 of the July 2002 Report to Congress of the U.S. –China Review Commission – The National Security Implications of the Economic Relationship Between the United States and China – "China's Presence in U.S. Capital Markets"

[9] Id. The U.S. – China Review Commission estimated that Chinese entities have raised more than $40 billion in international equity markets since 1992, including $14 billion in U.S. markets since 1998. An additional $20 billion in U.S dollar denominated bonds have been sold by Chinese issuers in international offerings since 1992.

> restructuring its political system, can ever gain the institutional competence required to generate power and prosperity on a sustainable basis. As Beijing changes its leadership, the world needs to reexamine its long-cherished views about China, for they may be rooted in little more than wishful thinking"[10]

The increasing risks to investors posed by the political instability of the Chinese Government are further evidenced by the following socio-economic trends occurring in China[11]:

> Increasing wealth disparity;
>
> Perceived deprivation by diverse segments of the populace;
>
> Pervasive employment dislocation;
>
> Escalating inflation;[12]
>
> Rampant pollution and toxic environmental poisoning (which was suppressed at the Chinese Government's request in a 2007 World Bank report);
>
> Economic dependence on mercantilist trade policies; and
>
> Vast quantities of uncollectible debt held by the Chinese Government's state-owned banks (estimated by Ernst & Young to exceed $1 trillion at just one bank).

The American Bondholders Foundation respectfully requests the Commission to ensure full and fair disclosure by Chinese corporate and Government issuers of the financial risks posed by Governmental and political instability within China so that American investors may make fully informed decisions whether to purchase the equity or debt securities of such issuers. Because many of the Chinese corporate issuers subject to the Commission's jurisdiction are majority owned, directly or indirectly, by the very Chinese Government whose stability is at risk, a conflict of interest may inhibit management of the corporate issuers from making full disclosure of the potential adverse consequences in the absence of a specific Commission mandate. Accordingly, a specific disclosure mandate by the Commission is warranted in order to ensure protection of American investors. Such mandated disclosure would be similar to other recent Commission initiatives to ensure that issuers provide timely and adequate information about the potentially adverse consequences associated with such risks as environmental liabilities, derivatives and currency fluctuations, and inadequate internal accounting controls.

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[10] "China's Governance Crisis", September/October 2002 Foreign Affairs, Minxin Pei
[11] See, for example, Economist Magazine (October 13, 2007).
[12] See, for example, "China Freezes Prices in Move to Contain Inflation" (Associated Press), September 19, 2007).

3. Risk of Debt Repudiation.

The Commission should adopt a policy that requires all registration statements (and subsequent annual reports) filed with the Commission for debt securities issued by a Chinese issuer, including sovereign debt of the Chinese PRC Government, to contain a clear statement that the PRC Government of China has repudiated the sovereign debt obligations of predecessor Chinese governments. Prospective American investors are entitled to be fully informed of the official Chinese Government position that the current Chinese Government is not bound by the sovereign full faith and credit debt obligations incurred by the established and internationally recognized Government of China during the pre World War II period.[13] Such disclosure will alert American investors to the possibility that a future Chinese Government might be tempted to seek to invoke the precedent of its PRC predecessor by renouncing any obligation to honor Chinese Government bonds issued in the 1990's or the first years of the 2000 decade.

The position of the current PRC Government of China disclaiming the obligations of an established and widely recognized predecessor Government of the same nation is inconsistent with the norms of international law. (See *the Restatement (Third) of the Foreign Relations Law of the United States*, Section 712(2) and Creditors Claims in International Law, The International Lawyer, Vol. 34, page 235, Spring, 2000)[14] In fact, in 1987 China entered into a treaty with Great Britain that recognized the obligation of the current PRC Chinese Government for bonds issued prior to the 1949 change of Governments.[15] This treaty provided compensation to British holders of Chinese Government bonds issued prior to 1949.[16] American investors are entitled to full disclosure of the repudiations made by the current PRC Chinese Government of the sovereign debts of predecessor Chinese Governments. Such information is critical to enable prospective American purchasers of Chinese Government debt securities to assess the likelihood that a

[13] February 2, 1983 Aide Memoire of the Ministry of Foreign Affairs of the People's Republic of China, included as pages 81-82 of the American Society of International Law, International Legal Materials, 22I.L.M. 75 (1983) wherein the PRC declared "The Chinese Government recognizes no external debts incurred by the defunct Chinese Governments and has no obligation to repay them. …It is a long-established principle of international law that odious debts are not to be succeeded to."

[14] The widely reported assurances of the United States and the international community that financial obligations incurred by the current (Saddam Hussein era) Iraqi Government to Russia and to France will be honored by any new Iraqi Government following a change of regime is indicative of the prevailing applicability of this principle of international law. As recently as the late 1990's post Soviet era Russia acknowledged its liability to French bondholders for pre-1917 Czarist era Russian sovereign debt.

[15] According to the New York Times of June 8, 1987, Britain reached a settlement with the Chinese Government. "China was previously barred from issuing bonds on the London market because of its refusal to honor debts incurred by Governments before the 1949 Communist Revolution." The settlement did not provide full value to the British bondholders, but it does provide official evidence of the Chinese Government's willingness, however reluctantly, to recognize its obligation to honor bonds like those held by American bondholders.

[16] Unfortunately, only British citizens and British companies, and no American bondholders or other non-British nationals, were eligible to submit claims. See Part IV of the Foreign Compensation (People's' Republic of China) Order 1987 of Her Majesty's Government.

successor Chinese Government which might emerge from a political transition to a non-Communist Party dominated state will abide by accepted international law norms and honor debt securities issued by the current PRC Government of China. Clearly, as the possibility of political volatility in China becomes increasingly noted by credible analysts,[17] the repudiation by the present Chinese Government of a predecessor Chinese Government's sovereign debt is a highly material fact that a prudent investor would want to know.

The specifications articulated in Exhibit 2 and Exhibit 3 appended hereto are reiterated in their entirety and are incorporated by reference, and made a part of, this complaint. We allege the disclosure violations described herein as against each of the companies appearing in Exhibit 1, individually, and further allege disclosure violations against all state-owned enterprises of the Government of China which are presently registered, or may become registered with the Commission.

We further note that the Commission has previously received explicit notification of the failure of the Chinese Government to disclose its defaulted sovereign debt on numerous occasions, including:

> Letter from the Honorable Bill Frist, United States Senator, addressed to the Honorable Arthur Levitt, Chairman (January 29, 2001);
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> Letter from Stites & Harbison PLLC addressed to the Honorable Harvey L. Pitt, Chairman and Mr. Allen L. Beller, Director, Corporate Finance Division (January 8, 2003);
>
> Letter from Sovereign Advisers addressed to Mr. Michael Macchiaroli, Associate Director, Division of Market Regulation (March 31, 2005);
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> Letter from the Chairman of the Joint Economic Committee of the United States Congress addressed to the Honorable William H. Donaldson, Chairman (May 24, 2005);
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> Letter from Sovereign Advisers to the Honorable Christopher Cox, Chairman (August 4, 2005);
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> Letter from Sovereign Advisers addressed to Mr. Walter Stachnik, Inspector General (October 11, 2005);
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> Letter from Sovereign Advisers addressed to Mr. Brian G. Cartwright, General Counsel, Office of the General Counsel, Ms. Linda Thomson, Director, Division of Enforcement and Mr. John W. White, Director, Division of Corporation Finance (September 1, 2006); and

[17] See Parts 1 and 2 of this Letter.

Letter from Sovereign Advisers addressed to Mr. Brian G. Cartwright, General Counsel, Office of the General Counsel, Ms. Linda Thomson, Director, Division of Enforcement and Mr. John W. White, Director, Division of Corporation Finance (February 15, 2007).

In summary, we urge the Commission to adopt policies and procedures to ensure the full disclosure to the Commission and the investing American public of the unique and material risks outlined in this letter of investing in Chinese corporate and Governmental securities.

Sincerely,

Kevin O'Brien
President

Exhibits Appended Hereto:

Exhibit 1: Schedule of state-owned enterprises of the Government of China presently listed on the NYSE Euronext and NASDAQ securities exchanges.

Exhibit 2: Complaint describing violations of the federal securities laws of the United States in respect to the offer, sale and trading of sovereign debt securities of the People's Republic of China including violations of Rule 10b-5 and Section 10(b) of the Exchange Act.

Exhibit 3: Complaint alleging fraud in connection with offerings of securities by the Government of China within the United States.

cc: Mr. John A. Thain, Chief Executive Officer
NYSE Group, Inc.

Mr. Robert Greifeld, President and Chief Executive Officer
NASDAQ Stock Market

Ms. Patricia Rado, President and Chief Operating Officer
American Stock Exchange

Ms. Mary L. Schapiro, Chief Executive Officer
Financial Industry Regulatory Authority

Mr. Russ Iuculano, Executive Director
North American Securities Administrators Association

Hon. Lawrence G. Wasden, President
National Association of Attorneys General

Hon. Andrew M. Cuomo, Attorney General for the State of New York
Office of the New York State Attorney General

Mr. John Petty, President
United States Foreign Bondholders Protective Council