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9  
10 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

11  
12 SCOTT BRUCE, Individually and on Behalf of All  
13 Others Similarly Situated,

14 Plaintiff,

15 v.

16 SUNTECH POWER HOLDINGS CO. LTD. and  
17 ZHENGRONG SHI,

18 Defendants.

Case No. 3:12-cv-04061-RS

**CONSOLIDATED SECOND AMENDED  
CLASS ACTION COMPLAINT**

Hon. Richard Seeborg

JURY TRIAL DEMANDED



1 France, Belgium, the Netherlands, Luxembourg, Greece, the United States, Canada, China, the Middle  
2 East, Australia, and Japan. Shi was the founder and largest shareholder of Suntech. Throughout the  
3 Class Period, Shi also dominated the operations and governance of Suntech as the Company's Chief  
4 Executive Officer and Chairman of the Board.

5  
6 3. Suntech also participates through GSF and other investments and joint ventures in the  
7 engineering, procurement and construction and operation of solar energy plants. GSF was the  
8 Company's most important investment vehicle, and was the subject of repeated misrepresentations  
9 throughout the Class Period.

10  
11 4. GSF is an investment fund formed in February 2008 under Luxembourg law. Defendant  
12 Shi told financial analysts following Suntech that "the purpose of [GSF] is basically [to] try to generate  
13 the market and provide for our customers." In June 2008 and September 2008, Suntech signed  
14 contracts committing to invest €258.0 million in return for 86% of the share equity of GSF. In addition  
15 to his indirect exposure to GSF through Suntech, Defendant Shi personally took a direct 10.67% stake  
16 in GSF through his personal investment vehicle, Best (Regent) Asia Group Ltd. The remaining 3.33%  
17 of GSF was retained by GSF Capital Pte Ltd. ("GSF Capital"), the parent of Global Solar Fund Partners  
18 S.a.r.L. ("GP"), which functioned as the general partner of the GSF investment fund.

19  
20 5. GSF acquired, developed, invested in, and eventually operated seven European solar  
21 projects, primarily in Southern Italy. These projects were held in a series of Luxembourg and Italian  
22 holding companies and special-purpose vehicles ("SPVs"). Collectively, the projects, holding  
23 companies and SPVs are referenced in Suntech's SEC filings and herein as "GSF investees" or "GSF  
24 investee companies."  
25

26  
27 6. In addition to his managerial duties at Suntech, Shi served on GP's board of managers  
28 along with a Suntech outside sales representative named Javier Romero ("Romero"), and Dr. Stuart

1 Wenham, Suntech's Chief Technology Officer. While Romero was entrusted with most management  
2 functions, Shi had considerable authority over strategic decisions that GP made on behalf of GSF. As  
3 Suntech explained in its 2009 Annual Report filed on Form 20-F:

4           The composition of the board of managers of the general partner is as follows:  
5           Category A managers include Mr. Javier Romero and Category B managers  
6           include Dr. Zhengrong Shi, our chairman and chief executive officer, and Dr.  
7           Stuart Wenham, our chief technology officer. Category A managers are entrusted  
8           with the day-to-day management of GSF, and any investment/divestment decision  
9           shall  
10           always include the favorable votes of the Category A manager and at least one  
11           Category B manager of the general partner.

12           7.       By at least nominally shifting the day-to-day control of GSF investee companies to GP  
13           and Romero, Suntech gained considerable accounting benefits which directly boosted its bottom line.  
14           Suntech did not have to consolidate GSF's debt or operating losses into Suntech's own financial  
15           statements, even though it owned the vast majority of GSF shares. This was significant because the  
16           GSF investee companies sustained large operating losses during the permitting, design, engineering,  
17           and construction phases of the projects. Instead, on the basis of this structure, Suntech was able to book  
18           gains whenever the "fair value" of GSF investee companies, which was conveniently determined by  
19           GSF management, increased. In particular, Suntech used this accounting method to book \$269.5  
20           million in gains during the third and fourth quarters of 2010. These gains were substantially more than  
21           Suntech's operating profits for the period, and even larger than Suntech's operating profits for the entire  
22           year.

23           8.       Additionally, as intended, the GSF investee companies became huge customers of  
24           Suntech's photovoltaic products, purchasing over \$300 million of solar modules from Suntech between  
25           2009 and 2010 alone. Because Suntech was able to account for GSF as an equity investment rather  
26           than a consolidated subsidiary, it was able to book revenues at the time of sale. This further boosted  
27  
28

1 Suntech's operating results, especially in 2009 and 2010. In short, GSF was extremely important to  
2 Suntech and Defendant Shi and required Defendants to be highly aware of all matters affecting GSF.

3 9. Although GSF's structure and its accounting methodology propelled Suntech's profits, it  
4 came with a major disadvantage. The shift of control to GP made Suntech highly dependent upon  
5 Javier Romero, GP's Category A manager. As a result, Suntech had few options when it learned that  
6 Romero was not a trustworthy partner.  
7

8 10. Shi and Suntech knew that Romero had falsely represented his relationship with the  
9 Company. In at least one significant European industry conference, Romero falsely held himself out to  
10 be the "President" of Suntech Spain. *See, e.g.*, Agenda for the Business in Clean Energy Conference on  
11 March 31, 2009 in Barcelona, available at <http://agenda.acc10.cat/media/0000000500/0000000896.pdf>.  
12 According to Suntech, this was blatantly false. Suntech told the SEC that Romero was not the President  
13 of Suntech Spain and, in fact, had never been an employee (let alone executive) of Suntech.  
14

15 11. Defendants are believed to have learned of Romero's misrepresentations when made, but  
16 unquestionably gained knowledge of Romero's fabrication no later than May 17, 2010, when an article  
17 reiterating the false claim was published on a popular financial website called *The Street Sweeper*. *See*  
18 <http://thestreetsweeper.org/undersurveillance.html?i=672>. Shortly thereafter, in a letter to the SEC on  
19 Suntech's letterhead, signed by then Chief Financial Officer Amy Zhang ("Zhang"), who reported  
20 directly to Shi, Suntech conceded that it "has been informed that Mr. Javier Romero has previously held  
21 himself out to be the president of Suntech Spain," but that such representations were not accurate or  
22 authorized.  
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25 12. At about the same time as the *Street Sweeper* article, Suntech vastly expanded its  
26 financial exposure to Romero's operations. In May 2010, Suntech entered into a €54.2 million (\$683  
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1 million)<sup>1</sup> guarantee of a loan that the China Development Bank granted to GSF's largest and most  
2 important investee company, Solar Puglia II, S.a.r.L. Additionally, as further security to China  
3 Development Bank (also referenced as "CDB" herein), Suntech was required to maintain approximately  
4 €30.0 million in a cash collateral account with a commercial bank in Luxembourg. Collectively, the  
5 loan guarantee agreement and the associated deposit of cash collateral are referenced herein as the  
6 "GSF Loan Guarantee." The GSF Loan Guarantee appears to have been the largest financial  
7 commitment that the Company had *ever* provided to a third-party, and is in fact more than twice as  
8 large as Suntech's capital commitment to GSF.  
9

10 13. In return for providing the guarantee, Suntech was supposed to receive a pledge of €560  
11 million (\$690.2) in German government bonds pledged by Romero's personal investment vehicle, GSF  
12 Capital. The bond pledge was a critical piece of the GSF Loan Guarantee, as it provided Suntech with  
13 financial protection if it was ever called upon to satisfy the guarantee. As is detailed herein, Shi and  
14 Suntech recklessly chose not to conduct any meaningful due diligence upon the bond pledge.  
15

16 14. The due diligence Shi declined would have revealed that the bonds, supposedly pledged  
17 never existed. Defendants, who chose not to confirm the existence of the bonds, had no reasonable  
18 basis to tell investors the bonds were in place to protect Suntech from liability. Even worse, as is  
19 alleged in detail herein – Defendants knew or recklessly ignored numerous facts that put them on notice  
20 that this transaction was highly suspicious, and required a heightened level of due diligence. In fact,  
21 even the most rudimentary due diligence to follow-up on any of the numerous obvious discrepancies  
22 and red flags detailed herein would have quickly demonstrated that the bond transaction was a sham  
23 and, that as a result, Suntech faced a massive but undisclosed liability under the loan guarantee to the  
24 China Development Bank. In addition to their recklessness throughout the Class Period, Defendants  
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28 <sup>1</sup> As of May 17, 2010, the exchange rate between the Euro Currency and the U.S. Dollar was approximately 1.2325:1.

1 acquired actual knowledge that the bonds did not exist by February, 2012, when Shi's partner in GSF,  
2 Romero, informed him of this fact, according to Romero's witness statement filed by his counsel at  
3 Orrick, Herrington & Sutcliffe LLP in a case brought by Suntech against Romero and others in the  
4 United Kingdom (the "United Kingdom Case"). The statement was signed by Romero immediately  
5 below a paragraph stating the facts "in this witness statement are true."  
6

7 15. Accordingly, during the Class Period, Defendants deceived investors by repeatedly  
8 claiming that: (1) the GSF Loan Guarantee was fully backstopped by the German bond collateral, (2)  
9 Suntech had full, unrestricted access to the bonds which could cover any payments advanced under the  
10 guarantee; and (3) the fair value of its exposure under the guarantee was only €2 million, due to the  
11 phantom bond backstop, when in fact the fair value was at least \$60 to \$80 million. Given the facts that  
12 were know or plainly available to Defendants, Defendants' statements to investors about the guarantee  
13 were at a minimum deliberately reckless and misleading.  
14

15 16. The truth was exposed on July 30, 2012, when Suntech stunned investors by revealing  
16 that it had not confirmed the existence of the €60 million (\$690 million) worth of German government  
17 bonds it claimed as collateral, and that the transactional documents contained irregularities indicating  
18 that the bonds likely never even existed. On this news, shares of the Company declined \$0.23 per  
19 share, or 14.65%, to close on July 30, 2012, at \$1.34 per share, on unusually heavy trading volume, and  
20 further declined another \$0.21, or 15.67%, to close on July 31, 2012, at \$1.13 per share, also on  
21 unusually heavy trading volume. Similarly, Suntech's 3% convertible notes dropped from a pre-  
22 disclosure close of \$69.00 to close at \$45.00 on July 31, 2012.  
23  
24

25 17. In a December 7, 2012 press release, Suntech admitted that its financial statements for  
26 2010, 2011, and the first quarter of 2012 were unreliable because they falsely assumed that the GSF  
27 Loan Guarantee was fully backstopped by German government bonds, when in fact those bonds did not  
28

1 exist. The Company stated that remedying its accounting errors would likely reduce 2010 net income  
2 by \$60 million to \$80 million.

3 18. After Suntech disclosed the non-existence of the German government bonds, several top  
4 management officials resigned, including Chief Commercial Officer Andrew Beebe, CFO of Suntech  
5 Europe Bert Van Kampen, President of Suntech Europe Jerry Stokes, and President of Suntech America  
6 John Lefebvre. Additionally, on August 15, 2012 Defendant Shi stepped down from his position as  
7 Chief Executive Officer and was ousted as Chairman of the Board of Directors on or about March 4,  
8 2013.

9  
10 19. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in  
11 the market value of the Company's securities, Plaintiffs and other Class members have suffered  
12 significant losses and damages.

#### 13 **JURISDICTION AND VENUE**

14  
15 20. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15  
16 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-  
17 5).

18  
19 21. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.  
20 §1331 and Section 27 of the Exchange Act (15 U.S.C. §78aa).

21  
22 22. Venue is proper in this Judicial District pursuant to 28 U.S.C. §1391(b) and Section 27  
23 of the Exchange Act (15 U.S.C. §78aa(c)). Substantial acts in furtherance of the alleged fraud or the  
24 effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including  
25 the preparation and dissemination of materially false and/or misleading information, occurred in  
26 substantial part in this Judicial District. Additionally, the Company maintains its United States  
27 headquarters in this Judicial District, in San Francisco, California.





1 securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. Shi  
2 manifested this control with respect the Company's earnings releases, each of which, upon information  
3 and belief, he reviewed and contributed comment to prior to publication. Shi was also provided with  
4 copies of the Company's other reports and press releases alleged herein to be misleading prior to, or  
5 shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them  
6 to be corrected. Because of his positions and access to material non-public information available to  
7 him, Shi knew that the adverse facts specified herein had not been disclosed to, and were being  
8 concealed from, the public, and that the positive representations which were being made were then  
9 materially false and/or misleading or made with reckless disregard for the truth.  
10

11 27. Defendant Suntech is a Cayman Islands corporation with its principal executive offices  
12 located at 9 Xinhua Road, New District, Wuxi, Jiangsu Province 214028, People's Republic of China.  
13 Suntech also maintains operations in Europe and North America, including United States offices in San  
14 Francisco, California. An involuntary bankruptcy petition was filed against Suntech on October 14,  
15 2013 in the United States Bankruptcy Court for the Southern District of New York. Although Suntech  
16 filed a motion to dismiss the claims asserted against it in the First Consolidated Amended Complaint,  
17 the Court did not rule on that motion due to the operation of the automatic stay provision of the U.S.  
18 bankruptcy code, which prohibits the commencement or continuation of an action against a debtor that  
19 was or could have been commenced before the commencement of the bankruptcy proceeding. *See*  
20 U.S.C. § 362(a)(1). This Complaint does not alter or waive Plaintiffs' claims against Suntech.  
21 However, to ensure compliance the automatic bankruptcy stay, this Complaint will not be served upon  
22 Suntech and Plaintiffs' claims against Suntech will not be prosecuted during the pendency of the  
23 bankruptcy stay.  
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27 28. Non-party Amy Yi Zhang ("Zhang") served as CFO of the Company from August 2005  
28 through April 2011. Zhang was Suntech's Principal Accounting Officer and Compliance Officer until

1 July 2010. Zhang also served as a Director of the Company from February 2007 to April 2011, when  
2 she left Suntech to, as Suntech explained, “pursue other opportunities.” Prior to her employment at  
3 Suntech, Zhang, who holds a master’s degree in business administration, was the CFO of Deloitte  
4 Consulting China and the CFO of Atos Origin China. Currently, Zhang is the CEO of Sky Solar  
5 Holdings, another Chinese solar company.  
6

## 7 **SUBSTANTIVE ALLEGATIONS**

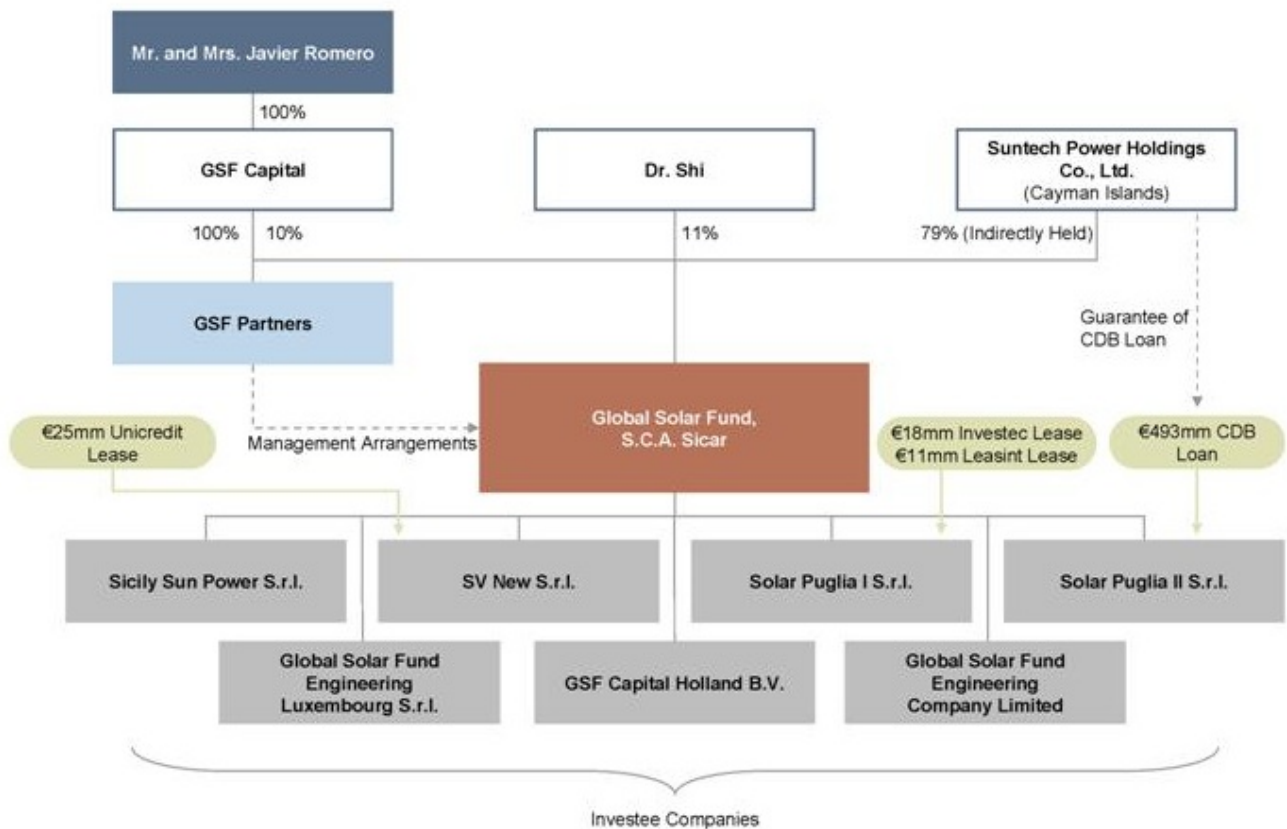
### 8 **I. Suntech Expands Into Solar Development With Large Investment In GSF**

9 29. According to its own public statements, Suntech is one of the largest solar panel  
10 manufacturing companies in the world. Suntech designs, develops, manufactures, and markets  
11 photovoltaic products including solar modules. Its products are used to provide electric power for  
12 residential, commercial, industrial, and public utility applications in Europe, North America, and Asia.  
13 Suntech sells its products both to value-added resellers, such as distributors and systems integrators,  
14 and directly to large solar project developers.  
15

16 30. During the Class Period, Suntech was run at the behest of Defendant Shi, who according  
17 to Suntech’s former Director of Global Marketing from 2007 to 2012, Jeff Shubert, had a huge ego and  
18 micromanaged the affairs of the Company. Shubert worked directly with Suntech executives in China,  
19 including Defendant Shi.  
20

21 31. Starting in 2008, Suntech undertook several strategic initiatives to expand its business  
22 into systems integration and project development. In so doing, Suntech hoped to leverage its balance  
23 sheet and industry recognition to finance projects that less-established companies could not. As the  
24 Company noted in its 2008 20-F, it intended for “vertical integration into PV [photovoltaic, *i.e.*, solar]  
25 system integration and project development ... [to] become an increasingly important part of [its]  
26 business.”  
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32. Suntech formed a series of investment entities in 2008 to accomplish its expansion into project development. By far the largest and most significant of these was its €258 million capital commitment to GSF. GSF, or Global Solar Fund, S.C.A., Sicar, was formed as a Luxembourg corporation, or “*société en commandite par actions*,” in February 2008, and registered as an investment fund, or “*société d’investissement à capital à risqué*.” Below is a diagram of GSF’s structure and ownership as of November 12, 2012, according to Suntech:



Available at: <http://www.sec.gov/Archives/edgar/data/1342803/000110465912077662/0001104659-12-077662-index.htm>

33. According to Suntech’s letter to the SEC dated February 16, 2011, Romero came up with the concept for GSF, “including its investment strategy, target screening/due diligence process, proposed team and fund structure.” Romero pitched the GSF concept to Suntech management in January or February 2007. Prior to that time, Suntech had a limited relationship with Romero –

1 Suntech had entered into a sales agency contract weeks earlier with GDI Partners Consulting Ltd.  
2 (“GDI”), a company Romero owned, covering a single Suntech customer.<sup>2</sup>

3 34. As Defendant Shi would later admit to the SEC, Suntech was interested in investing in  
4 GSF in large part because GSF would become “a possible additional sales channel through which the  
5 Company may be able to sell its products.” Suntech also found the structure that Romero pitched to be  
6 highly advantageous. Because it separated investment and control, the majority investor – Suntech –  
7 could treat the entity as a deconsolidated equity investment on its financial statements. For Suntech,  
8 this created three unique benefits: (1) sales of solar modules by Suntech to GSF could be booked  
9 immediately as revenues by Suntech instead of deferred; (2) Suntech would not have to book the  
10 substantial operating losses that solar projects generate during the development stage; and (3) as an  
11 equity investment, Suntech could book substantial gains on its balance sheet whenever GSF  
12 management determined that GSF’s value had increased.  
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15 35. Shi expressed interest in the GSF concept pitched by Romero. In August 2007, Romero  
16 delivered to the Company a preliminary private placement memorandum, including a draft proposal  
17 that Defendant Shi and Suntech CTO Stuart Wenham serve on the board of managers of the general  
18 partner of GSF. Romero formed the necessary entities between August 2007 and February 2008, and in  
19 March 2008, delivered to Suntech a final private placement memorandum. The final private placement  
20 memorandum contemplated an initial capitalization of €100 million, and a total capitalization of €500  
21 million.  
22

23 36. According to Suntech’s February 16, 2011 letter to the SEC, based on the final private  
24 placement memorandum, Defendant Shi “considered recommending to the board of directors that the  
25 Company initially invest between Euro50 million to Euro60 million in GSF, representing between a  
26

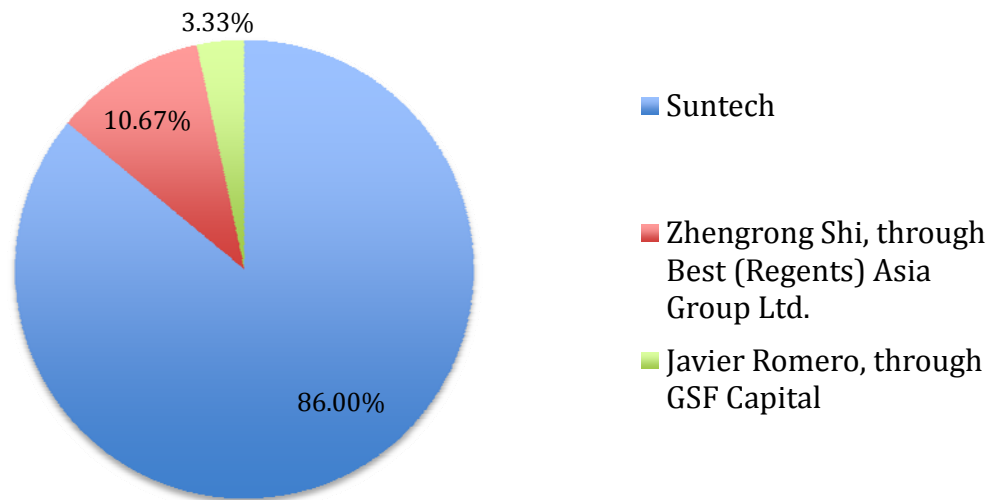
27  
28 <sup>2</sup> Shortly after the January or February 2007 GSF pitch, Suntech signed two additional representation contracts with GDI allowing Romero to present Suntech’s products to a broader range of Spanish customers. *Id.*

1 10% to 12% interest of the total fund, but about a 50% to 60% interest of an initial Euro100 million first  
2 round closing for the fund which Mr. Romero was contemplating.”

3 37. Suntech accepted Defendant Shi’s recommendation. In June 2008, Suntech signed an  
4 agreement committing to invest €58 million in GSF. On July 3, 2008, Suntech filed a Form 6-K  
5 disclosing this investment, and that Defendant Shi had also made a personal investment. However, the  
6 Company did not disclose the amount or nature of Defendant Shi’s investment. In September 2008,  
7 Suntech signed and disclosed a second commitment agreement, more than quadrupling its commitment  
8 to a total of €258 million. As of December 31, 2011, Suntech had contributed a total of €155.7 million  
9 to GSF pursuant to these commitments.  
10

11 38. On October 21, 2009, the SEC Division of Corporate Finance wrote Suntech a formal  
12 letter, requesting that Suntech disclose, among other things, “the nature and extent of Dr. Shi’s  
13 investment in GSF.” In response, by letter dated December 4, 2009, Suntech disclosed to SEC staff and  
14 committed to subsequently disclose to Suntech investors that Defendant Shi had taken a 10.67% equity  
15 interest in GSF through his personal investment entity, Best (Regent) Asia Group Ltd. Accordingly, as  
16 of October 2008, GSF was owned as follows:  
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## GSF Ownership - Oct. 2008



This ownership structure remained constant throughout the Class Period with one exception: in November 2011, Suntech transferred 6.7% of its shares to GSF Capital, leaving Suntech with a 79.3% stake and expanding GSF Capital's interest to 10.03%. According to the Company, the transfer was made in recognition of Romero's contribution to the Company. At all times relevant hereto, Romero owned 100% of GSF Capital.

39. Management of GSF was entrusted to the GP, Global Solar Fund Partners, S.a.r.L. From the time of Suntech's initial investment through the end of the Class Period, GP was managed by a dual category board of managers. Romero was appointed the sole Category A manager, and was entrusted with the day-to-day management of GSF. Defendant Shi and Suntech CTO Wenham were appointed Category B managers, entitled to vote on any GSF decision involving investment or divestment.

40. Defendants understood that information regarding GSF was material to Suntech investors. Accordingly, Shi promised investors that he and Suntech would be transparent and forthcoming regarding the Company's investment in GSF. For example, in response to an analyst's question regarding GSF receivables during a November 19, 2009 earnings conference call, Defendant

1 Shi claimed that with respect to disclosures regarding GSF, the Company “ha[d] been quite transparent  
2 about it. So I think that there shouldn't be any hidden issue here.”

3 41. By early 2010, it was clear that GSF had become very important to Suntech. In 2009,  
4 Suntech had sold \$115.8 million worth of solar modules to GSF Investee Companies – a figure that  
5 would grow to \$197.4 million for 2010. Suntech had not been harmed by the accountants’ requirement  
6 that GSF investees allow competitive bidding for solar module contracts, before awarding such  
7 contracts to Suntech. As Suntech Vice President Steve Chadima noted on January 12, 2010 at the  
8 Needham & Company Growth Conference: “we are not stupid. Obviously, we made this decision to  
9 get involved [with GSF] because if we’re at least close [to competing bidders] we’ll probably get  
10 selected. So far...we got them all.” More importantly, GSF’s first round of solar development projects  
11 were on track to be completed and connected to the grid in the latter half of 2010, which would drive a  
12 substantial upward revaluation of Suntech’s (and Defendant Shi’s) equity stakes in GSF.  
13  
14

## 15 **II. Defendants Learn Prior to the Class Period That Javier Romero Is Not Trustworthy**

16 42. The hope of continued module sales to and equity gains from GSF caused Defendants to  
17 turn a blind eye to the unethical dealings of Suntech’s business partner, and ignore early warnings that  
18 Javier Romero was not trustworthy. Defendants came to learn that Romero had publicly lied about his  
19 relationship with Suntech by falsely holding himself out to be the President of Suntech Spain.  
20 According to Suntech’s October 28, 2010 letter to the SEC, Romero had never been an employee or  
21 executive of Suntech:  
22

23 Mr. Javier Romero, the Category A manager of Global Solar Fund, previously  
24 acted as a non-executive representative and sales agent for the Company though  
25 he has never been a Suntech employee. He is no longer a sales agent for the  
26 Company and is an independent manager of GSF....[E]xcept for the relationship  
27 with the Company described above as a non-executive representative and sales  
28 agent for Suntech, the Category A manager of GSF does not have, nor did he  
have, any other relationship with the Company or any of its affiliates.



43. Nonetheless, as Defendants knew, Romero was falsely portraying himself within the solar energy industry as an employee and an executive of Suntech's Spanish division. For example, at the March 31, 2009 Business in Clean Energy conference, an "International Summit" co-sponsored by the American Chamber of Commerce in Spain and broadly involving key figures within Spain's renewable energy industry, Romero portrayed himself as the "President" of "Suntech Spain," and gave a speech in that false capacity. Romero's fabrication was recorded in the conference agenda:

## BiCE - Business in Clean Energy - 31st March '09, ESADEFORUM Barcelona



Parallel Session 2A

### INNOVATION FOR A CLEAN FUTURE - GENERATION & DISTRIBUTION

Timing	Role	Speaker	Company	Topic	web
17.20- 19.05					
	Keynote Speaker	Roland Jansen - Founder and President	Mother Earth Investments	Jatropha & challenges investing in Innovation on Clean Energy Projects	<a href="http://www.clipsyndicate.com/">http://www.clipsyndicate.com/</a> <a href="http://www.jatrophacongress.org/v1/spk4.html">http://www.jatrophacongress.org/v1/spk4.html</a>
	Speaker	Jan Willem Bode - CEO	One Carbon	Biogas Revolution	<a href="http://www.onecarbon.com/">http://www.onecarbon.com/</a>
	Speaker	Sjors Van Einsel	Ecofys - Group Econcern	The Potential for Algae	<a href="http://www.ecofys.com/">http://www.ecofys.com/</a> <a href="http://www.econcern.com/">http://www.econcern.com/</a>
	Speaker	Javier Romero - President, Suntech Spain	Suntech Power	The future of solar technologies in Spain, EU and worldwide	<a href="http://www.suntech-power.com/">http://www.suntech-power.com/</a>
	Moderator	Tech Made in Germany	Gexsi	and will re-direct the questions from the audience	<a href="http://www.gexsi.org/">http://www.gexsi.org/</a>
	All	Roundtable & Q&A	-	Please, see the list below	

szoter.com

See Conference Agenda, <http://agenda.acc10.cat/media/0000000500/0000000896.pdf>.

44. Defendants are believed to have learned of these misrepresentations at around the time they were made, due to the public nature of the misrepresentations, the dissemination of the same at one or more key industry events, and Defendants' extensive contacts within the solar energy industry. At the very latest, Defendants learned of Romero's deception by May 17, 2010. On that date, a negative article about Suntech was published in *The Street Sweeper*, an online financial site. See <http://thestreetsweeper.org/undersurveillance.html?i=672> stating:

Interestingly, in a conference bulletin for an industry trade show held last spring (around the same time that Suntech negotiated its big sales to GSF), one of the presenters – with the name Javier Romero – specifically identified himself as the president of Suntech Spain.

*Id.*

1 45. Likewise, in a June 2010 article published by Euromoney Institutional Investor, Romero  
2 admitted that he had “never been on the payroll of Suntech” but confirmed that he had appeared at the  
3 conference as the supposed President of Suntech. Romero also stated that there had been “noise around  
4 the issue” of his appearance, further confirming that Defendants had known about Romero’s  
5 transgression.

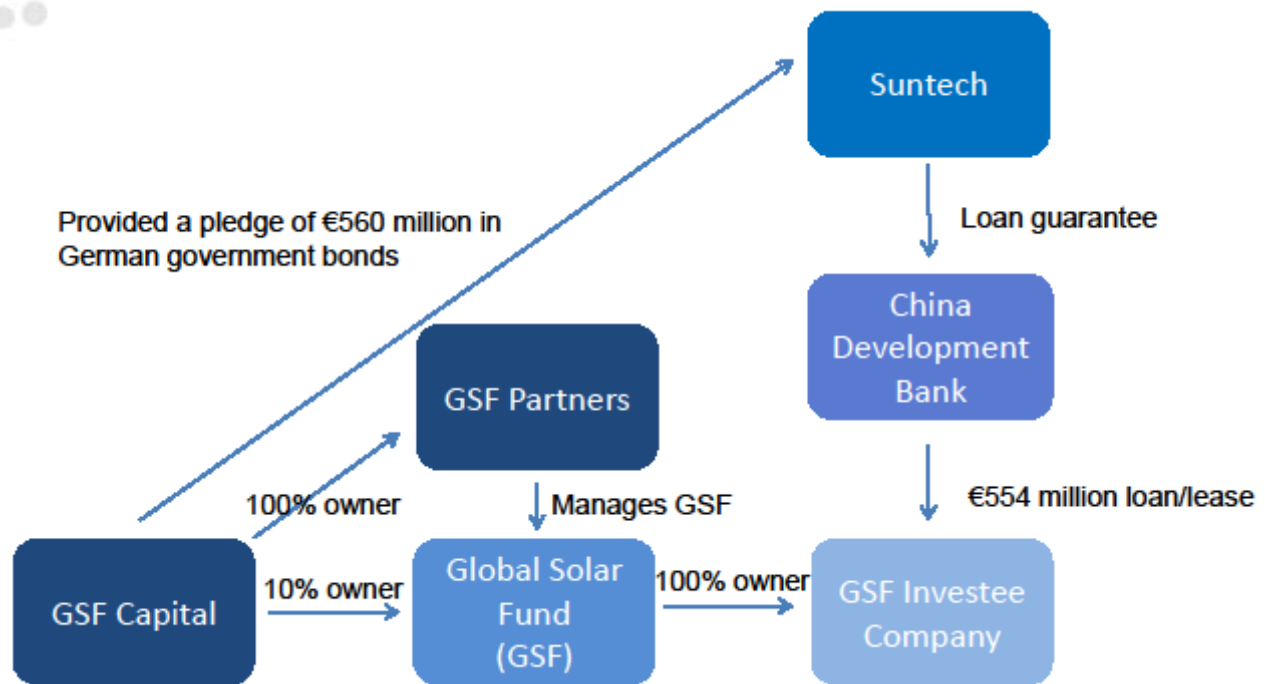
6 46. Defendants avoided disclosure of Romero’s deception to the SEC until pressed by SEC  
7 staff. The SEC’s September 27, 2010 letter to Suntech specifically asked “Tell us whether you are  
8 aware of any situations in which the Category A manager has held himself out to be an employee or  
9 representative of Suntech Power Holdings or any of its affiliates (other than GSF).” In response, by  
10 letter dated October 28, 2010, Suntech admitted that “the Company has been informed that Mr. Javier  
11 Romero has previously held himself out to be the president of Suntech Spain,” but that “the Company  
12 has never authorized him to do so.”  
13  
14

15 **III. Suntech Expands Its Financial Exposure To GSF From €258 Million To over €300**  
16 **Million**

17 47. In the latter part of May 2010, despite knowledge that Romero was not trustworthy,  
18 Suntech massively expanded its financial exposure to GSF. At that time, in addition to its prior €258  
19 million capital commitment to GSF, Suntech:

- 20 a. entered into a written agreement with China Development Bank whereby Suntech  
21 guaranteed the entire amount of a €54.2 million loan facility that China Development  
22 Bank provided to GSF’s largest investee company, Solar Puglia II, S.a.r.L.; and  
23 b. deposited €30 million in a cash collateral account at a commercial bank in Luxembourg  
24 designated by China Development Bank to provide further security to China  
25 Development Bank in connection with the loan.

26 48. At €54.2 million, the GSF Loan Guarantee more than tripled Suntech’s total financial  
27 exposure to GSF and its investee companies. According to Suntech, the guarantee was structured as  
28 follows:



13 Available at: [http://ir.suntech-power.com/phoenix.zhtml?c=192654&p=RssLanding](http://ir.suntech-power.com/phoenix.zhtml?c=192654&p=RssLanding&cat=events&id=4815367)  
14 &cat=events&id=4815367.

15 49. According to Shi and Suntech, Suntech would be protected in the event that the GSF  
16 investee company defaulted by a pledge of €560 million in German government bonds put in place by  
17 Romero through GSF Capital. They claimed that Suntech could use the bonds to satisfy the GSF Loan  
18 Guarantee with China Development Bank. Accordingly, the German government bond collateral was  
19 the most critical component of the transaction because, they asserted, it would have eliminated  
20 Suntech's massive exposure under the GSF Loan Guarantee. The German bonds, however, were never  
21 actually pledged to Suntech, leaving Suntech completely exposed for the full amount of the Loan  
22 Guarantee.  
23

24 50. Defendant Shi was deeply involved in structuring the GSF Loan Guarantee as reflected  
25 by, among other things, the numerous emails described below in which Shi discussed the proposed  
26 transaction with Romero and others. Shi's keen interest in the guarantee was primarily due to its  
27 potential impact on Suntech's financials. Suntech's auditors had informed Defendant Shi that Suntech  
28

1 would have to record any guarantee as a contingent liability on its balance sheet if Suntech had actual  
2 financial exposure under the guarantee. Shi feared that recording such a large liability would deter  
3 investors, so he pushed for the convoluted transaction with Romero that would ultimately allow  
4 Suntech to record only a negligible liability on its balance sheet and remain attractive to investors.

5 **IV. Defendants Failed to Perform Any Meaningful Due Diligence on the Entities That**  
6 **Were to Supply the German Government Bonds and Ignored Obvious Red Flags**

7 51. Romero first pitched the idea of pledging borrowed German government bonds directly  
8 to China Development Bank, which summarily rejected the concept. In a July 29, 2009 email from  
9 Romero to Guo Guoben of China Development Bank, which was copied to Defendant Shi and  
10 Suntech's Director of Investment Hao Zhi ("Zhi"), Romero proposed the idea of obtaining German  
11 bonds from an unknown British company called Werner Richter Investment Ltd. ("Werner Richter")  
12 for a fee, in return for which Werner Richter would transfer title to the German bonds to GSF Capital.  
13 GSF Capital would then contract to pledge the German bonds as a guarantee to China Development  
14 Bank but physically deposit them with a different bank in London, Royal Bank of Scotland ("RBS").  
15

16 52. In the email, Romero tried to persuade the China Development Bank that with the  
17 German bonds as security, "there is absolutely NO risk for CDB." Despite Romero's assurances, China  
18 Development Bank rejected Romero's proposal.  
19

20 53. Had the bonds actually existed, GSF Capital could have deposited them directly with  
21 China Development Bank. They did not, however, so Romero then turned to his business partner, Shi,  
22 who on behalf of Suntech, recklessly accepted the inherently suspicious pledge rejected by China  
23 Development Bank, and put Suntech's shareholders on the hook for a massive liability without  
24 investigating any of the numerous indicia that the transaction was fake.  
25

26 54. On December 2, 2009, Romero sent an email to Defendant Shi proposing that Suntech  
27 provide a guarantee to China Development Bank and that Suntech receive German bonds from GSF  
28

1 Capital as collateral. Romero's email also reflected his and Shi's desire to conceal important aspects of  
2 the proposed transaction from the market and from China Development Bank. Romero wrote:

3 Very important that this collateral [German bonds] is not informed to the market (as you  
4 mentioned we need to have this confidential, not leak to the market, only the board  
5 should now [sic] this). I do not know how you can handle the auditors. Do you have  
feedback on this?

\* \* \*

6 CDB must not know that GSF is providing collateral to [Suntech] guarantee.

7 Romero concluded the email by requesting quick action on the deal: "LET'S CLOSE  
8 EVERYTHIGNN [sic] THIS WEEK!!"

9  
10 55. On December 5, 2009, Kim Liou ("Liou"), Suntech's General Counsel who reported  
11 directly to Shi, emailed Romero, copying Defendant Shi and other Suntech executives, requesting  
12 certain information from Romero, including an "[u]nderstanding of the other liabilities and obligations  
13 of GSF Capital[.]" However, Romero was unable to provide the requested information. On December  
14 7, 2009, Romero responded that "It is still missing GSF Capital PTE Ltd 2008 audited accounts."

15  
16 56. A December 9, 2009 email from Zhi to Romero, copying Defendant Shi and other  
17 Suntech executives, reflects that Suntech had not yet undertaken due diligence as to the bond provider:  
18 "the missing pieces . . . are the information on the lenders of the bond and the agreement between the  
19 lender and GSF Capital Pte Ltd. When do you think you can send us the info?"

20  
21 57. Also on December 9, 2009, Romero emailed Liou and Zhi, copying Defendant Shi and  
22 other Suntech executives. Romero again emphasized his desire to conceal key parts of the transaction,  
23 stating: "we need to figure out the way to provide CDB the required information, but can NOT show  
24 them that [Suntech] has a counter guarantee. This could result in unexpected results as it would  
25 undermine their confidence about the project (why [Suntech] should look for a counter guarantee if they  
26 believe the project is perfectly safe? Increasing the costs of the financing significantly)."

27  
28 58. On December 10, 2009, Zhi emailed Defendant Shi, Romero, and others providing a  
progress update on the GSF Loan Guarantee. Zhi acknowledged the pressure to finalize the deal

1 quickly: “We understand timing is critical for this project and we have worked very hard to push things  
2 forward.” Zhi noted that the “CDB lawyer has been very slow in response” so that Zhi would “call  
3 CDB so that they can push the lawyers.” Zhi stated that due diligence “on bond lender and lending  
4 agreement” had not been completed but was instead “pending for information.” He added that: “*We*  
5 *have decided not to perform detailed DD on GSF Capital due to sensitivity of information.*”  
6 (Emphasis added). Zhi stated that the issue of “Accounting treatment” was “a critical piece” and that  
7 Suntech had a discussion with auditors the previous day “on the guarantee and our argument not to  
8 disclose the structure.”

10 59. On December 13, 2009, Suntech’s Board of Directors (including Defendant Shi, its  
11 Chairman) met and discussed the proposed GSF Loan Guarantee. According to the minutes of the  
12 meeting, Zhi discussed the “due diligence performed, remaining to be performed and unable to be  
13 performed on each of the GSF project companies, the German government bond and GSF Capital[.]”  
14 The reluctance of GSF Capital to provide due diligence information caught the attention of the Board.  
15 According to the minutes, Director Susan Wang “inquired about the Company’s due diligence, and the  
16 resistance of GSF Capital to provide due diligence materials.” Liou acknowledged to the Board that  
17 due diligence on the provider of the German bonds (*i.e.*, Werner Richter) “was not yet completed.”  
18

19 60. In response to Director Wang’s concerns, the Board conditioned its approval of the GSF  
20 Loan Guarantee on “[m]anagement’s completing to its satisfaction due diligence relating to (i) the  
21 provider of the German government bond and (ii) the bond transfer arrangement between GSF Capital  
22 and the provider of the German government bond[.]” At the time, Defendant Shi oversaw the  
23 management of the Company as its Chief Executive Officer.  
24

25 61. On December 16, 2009, Romero finally emailed a document he claimed to be the  
26 agreement between GSF Capital and Werner Richter to Defendant Shi, Liou, and Zhi. However, the  
27 document was still in draft form and unsigned. Moreover, the agreement contained an inconsistency as  
28

1 to which bank would serve as custodian, a discrepancy that Defendant Shi or Suntech would have  
2 observed if they had done even a cursory review of the document. Although Romero repeatedly  
3 informed Defendants that RBS would be the custodian, the agreement identifies ABN AMRO in Hong  
4 Kong as the custodian bank. Indeed, this obvious and inexplicable inconsistency was quickly pointed  
5 out by Justice Cooke in the United Kingdom Case: “RBS is the bank that was supposed to be holding  
6 on to the bonds and yet, whatever it is, 14(e) here defines the custodian bankers ABN AMRO in Hong  
7 Kong.”  
8 Kong.”

9 62. The next day, on December 17, 2009, Liou responded to Romero, copying Shi and other  
10 Suntech executives. Liou asked: “Do you have any additional information/due diligence materials you  
11 can provide about ‘Werner Ritcher [sic] Investments Limited’. It would be good to know something  
12 more about who this provider of the German bond [sic] really is.” Romero responded that he would  
13 “ask Werner Ritcher [sic] to prepare a profile.” Neither Shi, nor anyone else at Suntech, took the time  
14 to contact Werner Richter directly.  
15

16 63. On December 18, 2009, Romero sent an email to Defendant Shi, Liou, and other  
17 Suntech executives. The email stated that Romero was meeting with “Mrs. Prudent [sic] Clark,” the  
18 supposed President of Werner Richter, the next day. Neither Shi, nor anyone at Suntech reporting to  
19 Shi, bothered to contact Ms. Clark.  
20

21 64. Romero’s December 18, 2009 email attached a document described by Romero as the  
22 “profile of Werner Ritcher [sic.]” As Suntech later conceded in a Singapore Case filing, “[t]he ‘profile’  
23 document provided by Mr. Romero contains a number of basic errors from which it can be inferred that  
24 it was not a genuine profile of Werner Richter and/or was not produced by Werner Richter[.]” In  
25 particular:  
26

- 27 • The company is described (in what is purportedly its own profile that it prepared) as “Werner  
28 Ritcher” when the correct spelling is “Werner Richter.” The misspelling occurs throughout the  
document. Romero made precisely the same spelling error in multiple emails to Suntech;

- 1 • The two-page profile contains multiple grammatical errors suggesting it was drafted by a non-  
2 native English speaker, even though Werner Richter was registered in England. For example,  
3 the document states “The company core-business is . . .” and refers to “two important Bank of  
4 the London place[.]”
- 5 • The profile contains inconsistent typeface;
- 6 • The profile contains two different spellings of the alleged company president – page one names  
7 “Prudence Clarke” while page two refers to “Prudence Clark”;
- 8 • The profile states that “since its inception” Werner Richter’s objective had been, among other  
9 things, to construct a trading infrastructure of investment bank quality. Public filings available  
10 at the time, however, showed that Werner Richter had been dormant from its date of  
11 incorporation until at least August 31, 2008;
- 12 • The profile claimed that Werner Richter was 75% owned by the Man Group, which Suntech  
13 acknowledged in Singapore Case documents is “inherently unlikely.”

14 65. Liou responded to Romero later that day, copying Zhi and Zhang. Liou stated that  
15 Suntech had asked its outside counsel to do “high level due diligence” on Werner Richter. Liou  
16 identified two significant red flags that were revealed even by his minimal review:

17 (1) Nothing showed up under Werner “Ritcher” Investments Limited which was the name  
18 in all of the draft documents and corporate summary provided, but there is a Werner  
19 “Richter” Investments Limited. See the attached.

20 a. Can you please ask the bond provider to confirm their name, and if there is  
21 misspelling in the legal documents to please correct it throughout

22 b. Can you please ask the bond provider to confirm that the attached publicly  
23 filed documents are the documents for their company.

24 (2) The corporate summary the bond provider prepared also indicated that they are 75%  
25 owned by Man Group; however, after pulling the corporate record filings of Man Group,  
26 they do not list either Werner Ritcher or Werner Richter as an owned entity (...see the  
27 attached)

28 a. Can you please ask the bond provider to explain? It could be that Man Group  
acquired their interest after these documents were filed on 3/31/09 (...note that  
the corporate documents of Werner Richter also showed that it was 100% held by  
Dr. Marco Russo). However, it would be good to hear from the bond provider.

66. Romero responded by email on December 20, 2009. Romero stated “[t]he right name is  
Werner Richtner [sic] Investments Ltd.” – yet another incorrect spelling of the company name.  
Moreover, Romero provided no explanation as to why a purportedly legitimate investment company



1 would misspell its own name in its company profile. The email chain does not include any follow-up  
2 from Suntech regarding why Romero's new spelling differed from the spelling in the public records.

3 67. As to the second discrepancy raised by Liou, Romero stated: "They confirmed that they  
4 have entered into a definite agreement with Man Group Holdings in November 2009, this agreement is  
5 confidential but next time they are requested to file registration it will be public." Suntech, in a court  
6 filing, has since described Romero's explanation as "dubious." The Man Group did not, in fact, acquire  
7 a 75% interest in Werner Richter, and no filing of such acquisition was ever made. However, there is  
8 no indication in the extensive Singapore court record that either Suntech or Shi bothered to contact Man  
9 Group, or followed up to see if the filing Romero claimed would be made by Man Group was in fact  
10 made.  
11

12 68. As reflected in Liou's December 18, 2009 email, Suntech had reviewed the "corporate  
13 documents of Werner Richter." These documents revealed that Werner Richter was not the substantial  
14 company that Romero had represented it to be. According to Suntech, Werner Richter's corporate  
15 filings "show that Werner Richter had nominal share capital (GBP 1) and the sole shareholder was  
16 Marco Russo, it only filed one set of accounts (in June 2009) for a period in which the company was  
17 described as dormant, and the company was dissolved on July 20, 2010."  
18

19 69. Additional facts either actually known or available to but deliberately disregarded by  
20 Defendants further demonstrate that Werner Richter was merely a shell company with no ability to  
21 procure €60 million in German government bonds. According to Suntech's filings in the Singapore  
22 Case:  
23

- 24
- 25 • "[N]either Werner nor its directors appears to have ever been linked to financial services  
26 activity in the UK public domain, and none has ever been registered as FSA (Financial  
27 Services Authority) regulated";
  - 28 • "Searches of publicly available information in the UK found no evidence to suggest that  
Werner ever had a significant commercial activity in the country";

- 1 • “Werner has no identifiable media profile in the UK and does not appear to have ever advertised itself”;
- 2 • “[T]he addresses linked to Werner appear to be virtual offices or residential addresses”;
- 3 • “[*B*]asic research of the public record in Italy found press reports stating that,” in 2001, Marco Russo, the sole shareholder of Werner Richter, was arrested on charges of criminal conspiracy, fraud, tax evasion, and money laundering. (Emphasis added). The press quoted a release by an Italian law enforcement agency stating that Russo was responsible for creating fake electronic records of financial assets held in bank accounts overseas. Russo was allegedly responsible for hacking the securities transaction network Euroclear to create false records of a transaction involving the setting up of a false \$120 million loan guarantee within the electronic system of the Monaco branch of BPN Paribas. Russo and his partners then reportedly attempted to obtain a line of credit from BPN Paribas against the fake security.

10 70. In short, as Defendant Shi stated in a Singapore court filing, “Werner Richter was, at all material times, a shell company with no substantial assets and no record of commercial activity[.]”  
11 Indeed, Suntech has stated that certain of the facts about Werner Richter discussed above give rise to  
12 the inference “that Werner Richter was not a company of substantial means with €10 billion or €20  
13 billion of assets under management and did not own and/or have possession of the German Bonds at  
14 any material stage; and/or did not have the ability or entitlement or intention to transfer the German  
15 Bonds to GSF Capital.”  
16

17  
18 71. Despite all of these significant and obvious red flags, Suntech did not perform any due  
19 diligence on Werner Richter, aside from reviewing Werner Richter’s corporate filings. Those filings  
20 raised serious questions about the company (as discussed above) but Suntech failed to meaningfully  
21 resolve those questions. Suntech did not conduct any meaningful further investigations. Had it done  
22 so, it would have learned that not only was Werner Richter a dormant shell company, but its sole  
23 shareholder Marco Russo had a history of criminal activity, facts which were never disclosed to  
24 investors.  
25

26  
27 72. Moreover, the President of Werner Richter, Prudence Clark, confirmed that Suntech  
28 never contacted her to ask her questions about the transaction. Had they done so they would have

1 learned that Ms. Clark has never met Romero, that, according to her, Werner Richter had no business  
2 operations, and that she was entirely unaware of the bond transaction. Indeed, Ms. Clark did not learn  
3 about the transaction until approximately two years later when she saw a contract between Werner  
4 Richter and GSF Capital in Marco Russo’s office, containing her forged signature.

5 73. Suntech has admitted in Singapore court filings that the transaction was “inherently  
6 suspicious”: “It is *inherently suspicious* that Werner Richter was (apparently) prepared to transfer  
7 €60 million of German bonds to GSF Capital without first having in place a contract signed by GSF  
8 Capital (the ‘Global Master Securities Lending & Borrowing Agreement’ dated 18 December 2009,  
9 which is only purportedly signed by Ms. Clark of Werner Richter).” (Emphasis added). The  
10 “inherently suspicious” nature of the transaction existed and was known to Defendant Shi since 2009  
11 based on facts available to Shi both before and during the Class Period, and not simply in hindsight, and  
12 therefore should have been disclosed to investors instead of claiming that the transaction shielded  
13 Suntech from exposure.

14 74. Although Suntech engaged outside counsel in connection with the GSF Loan Guarantee,  
15 the function of outside counsel was not to perform detailed due diligence on the bonds, Werner Richter,  
16 or GSF Capital. Suntech explained in a Singapore Case filing that the law firm Simpson Thacher &  
17 Bartlett drafted the Pledge Agreement between Suntech and GSF Capital but “were not formally  
18 retained by Suntech to advise on, manage or conduct the transaction” and were *not “instructed to*  
19 *conduct detailed due diligence on the German Bonds.”* (Emphasis added). Suntech received only  
20 “occasional[] . . . comments” from Simpson Thacher and from a German law firm “on a fairly *ad hoc*  
21 basis.” “The input from both firms was focused on the text of the draft agreements they were asked to  
22 review, and was *not intended to establish the authenticity of documents supplied by Mr. Romero nor*  
23 *the existence of the German Bonds themselves[.]”* (Emphasis added). Moreover, Suntech’s own in-  
24 house counsel could not have conducted adequate or meaningful due diligence in connection with the  
25  
26  
27  
28

1 GSF Loan Guarantee because according to Suntech, its in-house counsel was “not overly familiar with  
2 this type of transaction[.]”

3 **V. Defendants Ignored Romero’s Suspicious Behavior Relating to the GSF Loan**  
4 **Guarantee**

5 75. As Suntech stated in the Singapore Case, “Mr. Romero acted *suspiciously* throughout  
6 the [GSF Loan Guarantee] transaction and appeared reluctant to share information with Suntech or with  
7 CDB.” (Emphasis added). Romero was apparently unwilling to allow Suntech to undertake due  
8 diligence about GSF Capital, causing Suntech to conclude not to perform detailed due diligence on GSF  
9 Capital, as discussed above.

10  
11 76. In addition, in a Singapore Case filing, Suntech stated that “Romero has shown himself  
12 to be willing to conspire to suppress material information,” referring to the December 2 and 9, 2009  
13 emails from Romero to Defendant Shi and others, *see supra* ¶¶ 54, 57, in which Romero asked to  
14 conceal the security arrangement from China Development Bank.

15  
16 77. Moreover, according to Defendant Shi, during the GSF Loan Guarantee negotiations,  
17 Romero applied “pressure on Suntech to agree to provide the guarantee.” Indeed, several emails  
18 between Romero and Suntech reflect Romero’s insistence that Suntech execute the guarantee quickly  
19 and without considering every “risk or detail.” For example, on December 6, 2009, Romero emailed  
20 Shi and offered his personal “guarantee that nothing will go wrong.” Romero stated that they must  
21 “execute fast” and “not do ‘paralysis by analysis’ [and] consider any small, remote risk or detail.”  
22 Romero’s insistence was effective, as Defendant Shi responded: “I understand and will push forward  
23 quickly.” Two days later, Romero responded to Shi claiming to have just spoken with China  
24 Development Bank and claiming that the bank was “deeply concerned” that Suntech had not yet agreed  
25 to the guarantee:  
26

27  
28 I just got off a call with CDB. They have stopped the credit application for the additional  
70-100MWs financing until we close the current project finance. They told me  
confidentially that they are starting to be deeply concerned about Suntech willingness to

1 provide guarantee for this first project and that creates huge unconfidence on their side  
2 about the safety of the project. They complained that despite CDB offering GSF much  
3 better conditions (leverage, spreads, total investment per MW of the project...) than  
4 Trina, they have already closed with Trina [Solar, another publicly traded China-based  
5 solar module manufacturer] (including the collateral) despite having started the process  
6 with us 6 months before. They said that the only thing that id delaying the project is the  
7 guarantee from Suntech.

8 I just wanted to let you know that the situation is getting quite tense. I keep telling them  
9 that it is a simple process of US-listed companies requiring approval from the Board,  
10 however they said to me that Trina is also US-listed and that Suntech Board already  
11 approved the first guarantee commitment signed by you. They said they do not  
12 understand.

13 78. Zhi responded to Romero, copying Defendant Shi, with skepticism about Romero's  
14 story:

15 Can you let us know who in CDB told you this? I'd like to hear the complain [sic] from  
16 him/her directly.

17 The guarantee wordings were sent to us after work hours last Thursday. Did Trina  
18 review and finalize the guarantee clause, obtained board approval, issued legal opinion  
19 which involved lawyers on Cayman law, English law, US law in just 5 days, including  
20 weekend?

21 79. Romero's response to Zhi, copying Defendant Shi, did not identify the contact at China  
22 Development Bank and offered no explanation for how another company could have finalized a similar  
23 transaction in such a short timeframe. Instead, Romero wrote: "This comes directly from the very very  
24 top. I do not know how Trina did its process, but it is closed and finalized (and signed). I do not see  
25 why CDB should not tell me the truth."

26 80. Likewise, Romero also used supposed concerns by Werner Richter to push the deal  
27 along. On February 5, 2010, Romero emailed Liou and Zhi asking that Suntech proceed to sign the  
28 pledge agreement and claiming "I cannot hold more [sic] the bond provider." In a February 11, 2010  
email from Romero to Zhi, Romero wrote: "Did you finalized [sic] the issue about [German  
government bond] pledge? We cannot wait any longer or we will risk at [sic] losing the guarantee, I  
cannot keep Werner quiet anymore, they are very nervous." Zhi responded to Romero that day,  
copying Defendant Shi, stating: "We understand the urgency to close the German Government Bond

1 deal[.]” The extreme pressure from Romero to close such a massive deal so quickly before any  
2 meaningful due diligence could be completed was yet another red flag indicating the fraudulent nature  
3 of the transaction that Defendants recklessly disregarded.

4 **VI. Defendants Failed to Independently Verify the Existence of the German Government**  
5 **Bonds but Relied Instead on Suspicious Documentation Containing Numerous Obvious**  
6 **Errors**

7 81. Despite the extraordinary importance of the German bonds to protecting Suntech from  
8 liability under the GSF Loan Guarantee and the numerous warning signs of fraud discussed above,  
9 Defendants did not independently verify the existence of the bonds before entering into the GSF Loan  
10 Guarantee, instead relying entirely on information provided by Romero – information that was highly  
11 suspicious and contained numerous obvious errors and which information was being supplied by a  
12 person whose conduct was known to Defendants to be unreliable.

13 82. On December 24, 2009, Romero emailed Defendant Shi and other Suntech executives  
14 stating that the “Bonds have transfer [sic] to GSF Capital.” Romero attached documents purporting to  
15 be screenshots from the Euroclear website,<sup>3</sup> as well as a purported transaction confirmation document  
16 from RBS reflecting the bond deposit. Romero also told Suntech that “anyone” could check the bonds  
17 on Euroclear. Inexplicably, however, neither Defendant Shi nor anyone at Suntech chose to do so.  
18

19 83. On January 21, 2010, Romero emailed Liou, copying Defendant Shi and other Suntech  
20 executives, stating that the German bond transaction had been finalized successfully and attaching the  
21 same purported Euroclear screenshots sent previously, as well as documents purporting to be images of  
22 the German bond certificates, and a purported transaction confirmation document from RBS similar to  
23 the one sent previously.  
24

25 84. As Defendant Shi attested in the Singapore Case, “there were a number of discrepancies  
26 and/or errors in the supporting documents Romero provided to [Suntech] in relation to the German  
27

28 \_\_\_\_\_  
<sup>3</sup> Euroclear is a financial services company that specializes in the settlement of securities transactions.

1 Bonds.” For example, a filing by Suntech in the Singapore Case identifies the following signs of fraud  
2 in the Euroclear documents:

- 3 • The screenshots purport to be from Euroclear’s “FundSettle” product but bond  
4 transactions on Euroclear are not settled using the FundSettle platform;
- 5 • “[T]here are a number of spelling errors on the GSF screenshots.” The misspellings  
6 “would be inherently unlikely to occur in a genuine Euroclear document”;
- 7 • In one screenshot, “the confirmed cash amount appears not to be a currency and instead  
8 appears to be an account number”;
- 9 • The screenshots “refer to ‘shares’, which is a terminology used for ordinary shares of  
10 equity or investments funds,” but not for bonds;
- 11 • The screenshots “refer to ‘subscription’ and ‘redemption’, which is a terminology used  
12 for investments funds,” but not for bonds;
- 13 • The screenshots do not contain “a clear account of the parties involved, their custodians,  
14 the mode of transfer . . . [or] the account numbers of the various custodial agents/banks”  
15 as one would expect them to contain;
- 16 • “The participant code for GSF Capital changes in the Euroclear screenshots. It includes  
17 the numbers ‘101050’, ‘25500’, ‘25501’, and ‘25990’”.

18 85. Even the purported confirmation document from RBS contained blatant errors. For  
19 example, the document includes non-conforming International Bank Account Numbers (“IBAN”). An  
20 IBAN is an international standard for the numbering of bank accounts. The IBAN quoted in the letter  
21 has only 12 characters when it should have 16. Entering the IBAN into an IBAN-checking system  
22 offered on RBS’s public website confirms that the number is not a recognizable IBAN. Defendant Shi  
23 – a highly educated and sophisticated businessman – and Defendant Suntech, either failed to confirm  
24 the validity of the IBAN on RBS’s public website or, if they did, recklessly disregarded that the IBAN  
25 was invalid.

26 86. Given these and other errors, the documentation provided by Romero gave Defendants  
27 absolutely no basis to conclude that the bonds had been deposited. Indeed, a filing by Suntech in the  
28 Singapore Case admitted precisely the opposite: “Overall my view is that the documents presented to

1 Suntech *do not amount to evidence that the Bonds have been transferred* into a custody account at  
2 RBS for the benefit of Suntech.”

3 87. On January 22, 2010, Liou emailed Romero, copying Defendant Shi and other Suntech  
4 executives. Liou asked Romero to ask RBS to provide an undertaking not to release the German bonds  
5 without Suntech’s consent. On January 25, 2010, Romero emailed two letters to Defendant Shi and  
6 other Suntech executives. One of the letters, dated January 22, 2010, purported to be from Werner  
7 Richter to RBS requesting confirmation that the German bonds would not be released without the  
8 written consent of Suntech. The other letter, dated January 25, 2010, purported to be from RBS to  
9 Werner Richter confirming “that the Bonds in reference, will not be release [sic] without the written  
10 consent of SUNTECH POWER HOLDINGS CO. LTD.”

11  
12 88. These documents, too, contained facially-apparent irregularities. Both letters use the  
13 same erroneous salutation “Dears sirs” suggesting not only a lack of authenticity, but that they were  
14 both drafted by the same person. Moreover, filings by Suntech in the Singapore Case note that the  
15 letter purportedly from Werner Richter contains misspellings, inconsistent use of font, and poor  
16 grammar. According to Suntech, “[t]he language used in this letter . . . indicates that the writer’s first  
17 language was unlikely to be English and that it was unlikely to have been sent by an investment  
18 manager holding (according to Mr. Romero) approximately €20 billion of assets. By way of example,  
19 the letter misspells Werner Richter’s own name in the signature as ‘Werner Richter Investiments’.”

20  
21 89. Suntech also stated that the “purported response of RBS on 25 January 2010 contains a  
22 number of suspicious errors”, including:

- 23  
24
- 25 • “It is not on headed notepaper, despite that fact that Mr. Romero represented that it had been  
signed by Mr. Gordon Pell (a very senior executive at RBS)”;
  - 26 • “Unusually, there is no RBS address provided on a letter purportedly sent by RBS”
  - 27 • “The ‘RBS’ logo on the top left of the document clearly appears to have been lifted from  
another document or computer screen”;
  - 28 • “The signature, allegedly of Mr. Pell, is illegible”;



- 1 • “The letter is simply addressed to ‘Dear Sirs,’ despite the fact that it is supposedly responsive to a letter sent by Ms. Clark”;
- 2 • “The use of English . . . is unusual and indicates that the writer’s first language was unlikely to be English.”

3  
4 90. Defendants were motivated to avoid investigating these red flags. If China Development  
5 Bank found out the truth, it could either pull the financing or demand a higher rate, as they admitted  
6 fearing. See ¶¶ 54, 57. On the other hand, if the auditors found out that the bonds purportedly  
7 backstopping Suntech’s guarantee did not exist, they would force Suntech to recognize the fair value of  
8 the liability on its balance sheet.

9  
10 91. With no good options, Defendants simply – and deliberately – disregarded the red flags  
11 indicating the fraudulent nature of the transaction. They declined to even take the very basic step of  
12 independently confirming whether the bonds existed until *over two years* later, and then did so only  
13 because they wanted to ready GSF for sale. On May 31, 2012, Suntech’s counsel wrote to RBS to seek  
14 confirmation that RBS in fact held the bonds, and sent additional follow-up communications thereafter.  
15 On June 18, 2012, RBS informed Suntech’s counsel that RBS could not locate any record of the  
16 German bond transaction and that the account number provided by Romero could not be correct as it  
17 had the wrong configuration. RBS also said that the January 25, 2010 letter purportedly from RBS  
18 looked like a “standard scam” document. Had Defendants sought such confirmation from RBS at the  
19 time of the transaction, they would have learned then that the bonds had never been deposited.  
20  
21

## 22 **VII. Suntech Never Received the Bond Certificates as Expected by the Pledge Agreement**

23 92. In a January 21, 2010 email from Romero to Liou, copying Defendant Shi and other  
24 executives at Suntech, Romero claimed to have the “original” German bond certificates. Suntech,  
25 however, never received or even saw those certificates. Although the Pledge Agreement required  
26 Romero to deliver the bond certificates to Suntech, Suntech declined to enforce this provision.  
27

28 93. Specifically, the Pledge Agreement between Suntech and GSF Capital states that “[t]he  
Pledgor [*i.e.*, GSF Capital] shall . . . on the execution of this pledge, deposit with the Pledgee [*i.e.*,

1 Suntech] all stock or share certificates or other documents of title to or representing the present Pledged  
2 Investments[.]” In addition, the Global Master Securities Lending & Borrowing Agreement between  
3 GSF Capital and Werner Richter specified that RBS would “send the original certificate of the Bonds to  
4 the BORROWER [*i.e.*, GSF Capital.]”

5 94. The unusual failure of Suntech to enforce material contractual terms that were  
6 specifically designed to protect Suntech was so patently reckless that it was noted by the English High  
7 Court of Justice and acknowledged by Suntech’s own attorney in the United Kingdom Case. At a July  
8 25, 2012 hearing, Justice Cooke and Huw Davies, counsel for Suntech, engaged in the following  
9 exchange about the Global Master Securities Lending & Borrowing Agreement:  
10

11 MR. JUSTICE COOKE: And there is [sic] a whole bunch of provisions, starting right from the  
12 beginning, 1, 2, 3, 4, 5, 6, 7, all about the custodian bank delivering certificates, issuing  
13 certificates and writing to, and so on, all culminating in 5 and 6 with the custodian bank  
14 requesting issue of new certificates and sending the original certificates (inaudible) to the  
15 borrower, none of which could have happened. ***How does that come about, or how does that  
not come about, without anybody making a song and dance?***

16 MR. DAVIES: ***That is a valid question***, my Lord. You mean at Suntech?

17 MR. JUSTICE COOKE: Yes, absolutely.

18 MR. DAVIES: The answer to that I do not know, my Lord. That is an element that I cannot  
19 answer, a question I cannot answer. But it is fair to say that there are, with the benefit of  
20 hindsight, looking at a lot of these documents, as we have, with great care, it strikes us that  
***there was clearly a sham going on*** that did not strike other people at Suntech at the time.  
Where one is dealing with a fraud one is not looking at contributory negligence as such.

21 MR. JUSTICE COOKE: No.

22 MR. DAVIES: ***There are obvious questions***, but that may be for another day and another  
23 internal matter for Suntech consider. But I do not think, with respect, my Lord, that it impacts  
24 on today’s application and the basis on which I am making it.

25 MR. JUSTICE COOKE: No, I proceed on the basis of the affidavit evidence in front of me, but  
26 in effect ***there are, it seems to me, a number of questions that may be asked*** about exactly what  
27 factually was going on at the time the documents were executed and ***why on the fact of it there  
was no follow-up*** to inquire about the provisions of the agreements and ***whether they had gone  
through in the manner the documents suggest they should***. None of that, as you say, in fact  
28 (inaudible) a claim in deceit as such, but it just raises questions.

(Emphasis added).

**VIII. Defendants Continued to Observe Signs of Fraud Throughout the Class Period**

1  
2  
3 95. The indications that the German bonds were missing and other signs of fraud did not  
4 cease after the GSF Loan Guarantee was executed. Rather, such warning signs continued throughout  
5 the Class Period and further increased Defendants' knowledge of or reckless disregard for the truth  
6 about the phony German bond collateral.  
7

8 96. Defendant Shi has conceded that his concerns about Romero's erratic behavior  
9 continued to grow during the Class Period. Defendant Shi explained that "in 2011, Suntech learned of  
10 various events in Italy which gave it cause for concern about the competence of Romero's management  
11 of the GSF Fund's assets in Italy and had questioned Romero regarding them." For example, certain  
12 power plants owned by GSF became the subject of criminal and regulatory investigations in Italy.  
13 Those investigations concerned allegations of misrepresentations during the licensing applications for  
14 the projects and resulted in the temporary seizure by the Italian court of some of the installations.  
15

16 97. Also, in May 2011, Romero sent an email to President of Suntech Europe Jerry Stokes,  
17 copying Defendant Shi. The email described an investigation by the public prosecutor in the City of  
18 Lecce, Italy into allegations that workers employed by a subcontractor at a GSF site were not paid and  
19 "were treated as 'slaves'." The situation resulted in protests which blocked the City of Lecce for  
20 several days and the arrest of 15 people on criminal charges of "reduction in slavery." Romero himself  
21 was alleged by the prosecutor to have made a false statement in connection with the incident.  
22

23 98. When Suntech considered selling its investment in GSF, Suntech asked Romero for  
24 information regarding GSF's activities and value but Romero was very reluctant to provide any  
25 information about the value of GSF. Romero also started missing his regular monthly calls with  
26 Defendant Shi to update Defendant Shi on GSF and the industry in general, and began to avoid  
27  
28

1 Defendant Shi. According to Shi, “Romero’s behaviour caused me to become suspicious.” All of this  
2 occurred in or before early 2012.

3 99. Indeed, Shi repeatedly demonstrated his mistrust of Romero throughout the Class Period  
4 – particularly when it came to protecting Shi’s own assets. While Shi’s mistrust did not cause him to  
5 take precautions when it came to the GSF Loan Guarantee, Romero’s reluctance to provide Defendant  
6 Shi in his personal capacity as a limited partner of GSF with information about GSF was so concerning  
7 to Defendant Shi that, after 2010, Shi refused to agree to several capital call notices issued to Shi by  
8 Romero on behalf of GSF.  
9

10 100. Finally, to the extent that there was ever any reason to believe that the German bonds  
11 actually existed and were deposited with RBS, those reasons vanished on or around February 20, 2012.  
12 On that date, according to Romero’s witness statement submitted by his counsel at Orrick, Herrington  
13 & Sutcliffe LLP in Suntech’s United Kingdom Case, Romero told Defendant Shi by telephone that the  
14 German bonds had been unilaterally repossessed by Werner Richter.  
15

16 **IX. Defendants’ False and Misleading Statements About Suntech’s Exposure To GSF And**  
17 **Liability Under The GSF Loan Guarantee During The Class Period**

18 101. The Class Period begins on August 18, 2010, when the Company issued a press release  
19 entitled, “Suntech Reports Second Quarter 2010 Financial Results,” which quotes Defendant Shi and  
20 reports that the Company’s “other long-term liabilities” had decreased by over \$14.5 million from the  
21 end of the prior quarter to \$124,215,000. The following day, the Company filed the press release with  
22 the SEC on Form 6-K.  
23

24 102. The statements contained in Paragraph 101 above were materially false when made,  
25 and/or omitted material information necessary to make the statements not misleading under the  
26 circumstances in which they were made, because Suntech omitted from its calculation of “other long-  
27 term liabilities” the fair value of the liability that Suntech assumed under the GSF Loan Guarantee,  
28

1 which was at least \$60 to \$80 million because the guarantee was not backstopped in any meaningful  
2 way.

3 103. Also on August 18, 2010, the Company held a conference call with investors, analysts,  
4 and other market participants, to discuss the Company's financial results for the 2010 fiscal second  
5 quarter. In that call, Defendant Shi emphasized select metrics designed to misleadingly communicate  
6 that Suntech's financial exposure to GSF and its investee companies had decreased, and omitted and  
7 failed to disclose that in fact the opposite had occurred. Defendant Shi stated:  
8

9 Now, I would like to give a update on our investment in the Global Solar Fund. I'm  
10 pleased to say that GSF has made significant progress, both in terms of the project  
11 installation and in project financing. In the third quarter, we received two payments from  
12 GSF-invested companies totaling 27.7 million euros. The first payment of 1.7 million  
13 euros is going to the outstanding receivables from shipments made in 2009. The  
14 European financing for the first set of projects has been fully approved, and we expect to  
15 receive the remainder of the relayed outstanding receivables in the third quarter.

16 Defendant Shi further stated that, with respect to the Company's commitment to GSF, "we expect the  
17 rest of AR [accounts receivable] should be able to be collected in Q3." In response to an analyst's  
18 question regarding whether "there are any other receivables out there," Defendant Shi replied, "No, not  
19 really."

20 104. The statements contained in Paragraph 103 above were materially false when made,  
21 and/or omitted material information necessary to make the statements not misleading under the  
22 circumstances in which they were made, because Defendants omitted disclosure of Suntech's exposure  
23 from the €54.2 million GSF Loan Guarantee, which was not backstopped in any meaningful way.

24 105. On November 17, 2010, the Company issued a press release entitled, "Suntech Reports  
25 Third Quarter 2010 Financial Results," which quotes Defendant Shi and reports that the Company's  
26 "other long-term liabilities" were \$179,315,000, further stating:

27 Total net revenues for the third quarter of 2010 were \$743.7 million, an increase of  
28 19.0% from \$625.1 million in the second quarter of 2010 and an increase of 57.2% from  
\$473.1 million in the third quarter of 2009. Total net revenues to the investee companies  
of GSF were \$143.8million in the third quarter of 2010. **Revenue and profit related to**

1 *the sales to investee companies of GSF during the third quarter of 2010 were fully*  
2 *recognized with accounts receivable fully collected during the same period.* (emphasis  
added.)

3 The following day, the Company filed the above financial results with the SEC on Form 6-K.

4 106. The statements contained in Paragraph 105 above were materially false when made,  
5 and/or omitted material information necessary to make the statements not misleading under the  
6 circumstances in which they were made, because Suntech omitted from its calculation of “other long-  
7 term liabilities” the fair value of the liability that Suntech assumed under the GSF Loan Guarantee,  
8 which was at least \$60 to \$80 million because the guarantee was not backstopped in any meaningful  
9 way.  
10

11 107. Also on November 17, 2010, the Company held a conference call with investors,  
12 analysts, and other market participants, to discuss Suntech’s Third Quarter Earnings. During the  
13 conference call, Defendant Shi stated, in relevant part, as follows:  
14

15 Now, I will provide an update on our investment in the Global Solar Fund. In the third  
16 quarter, GSF successfully closed and received drawdown from the European financing.  
17 In total, we’ll receive €33 million towards the 2009 receivables in the third quarter.  
18 Secondly, we made a further shipment to GSF investee companies in the third quarter,  
19 resulting in revenues of \$144 million. We have already received 100% of the payment  
for these sales made in the third quarter. Thirdly, GSF investee companies completed  
construction of 10 megawatts of projects in Italy in the third quarter, resulting in a non-  
cash gain to Suntech of 19.8 million.

20 \*\*\*\*

21 The equity and earnings of affiliates in the third quarter of 2010 was primarily related to  
22 a 19.8 million increase in the fair value of GSF investments in 10 megawatts of projects  
23 which were completed in the third quarter of 2010 .... Accounts receivable due from  
investee companies in GSF was 59.7 million as of September 30, 2010, compared with  
24 94.2 million as of June 30, 2010. The sequential decrease was due to the collection of  
approximately €33 million in the third quarter.

25 108. The statements contained in Paragraph 107 above were materially false when made,  
26 and/or omitted material information necessary to make the statements not misleading under the  
27 circumstances in which they were made, because Defendant Shi: (1) omitted disclosure of Suntech’s  
28

1 largest exposure to GSF, the €54.2 million GSF Loan Guarantee, which was not secured by any  
2 meaningful backstop to limit the Company's exposure under the Guarantee; (2) omitted disclosure that  
3 whatever decrease in the Company's exposure to GSF was accomplished by collecting receivables was  
4 dwarfed by the far larger GSF Loan Guarantee.

5 109. On March 8, 2011, the Company issued a press release entitled, "Suntech Announces  
6 Fourth Quarter and Full Year 2010 Financial Results." The release quoted Defendant Shi and reported  
7 that the Company's "other long-term liabilities" had decreased in the fourth quarter of 2010 to  
8 \$167,605,000. The following day, the Company filed this press release with the SEC on a Form 6-K.

9 110. The statement contained in Paragraph 109 above was materially false when made, and/or  
10 omitted material information necessary to make the statements not misleading under the circumstances  
11 in which they were made, because Suntech omitted from its calculation of "other long-term liabilities"  
12 the fair value of the liability that Suntech assumed under the GSF Loan Guarantee, which was at least  
13 \$60 to \$80 million because the guarantee was not backstopped in any meaningful way.

14 111. Also on March 8, 2011, the Company held a conference call with investors, analysts, and  
15 other market participants, to discuss Suntech's Fourth Quarter and Full Year 2010 Earnings. During the  
16 conference call, Defendant Shi stated, in relevant part:  
17  
18  
19

20 In the fourth quarter, we recognized revenues of approximately \$54 million related to  
21 shipment to GSF investee companies. We collected the majority of the related  
22 receivables during the quarter. In addition, I'm pleased to say that we have also collected  
23 all of the outstanding payments related to the 2009 receivables. We only had about \$10  
24 million of outstanding receivables from GSF investee companies, as of the end of fourth  
25 quarter. Secondly, GSF investee companies made excellent progress developing solar  
26 projects. They completed the construction of 95 megawatts of projects in the fourth  
27 quarter and the target to achieve grid connection before the end of June 2011 under the  
28 government decree.

112. The statements identified in Paragraph 111 above were materially false when made,  
and/or omitted material information necessary to make the statements not misleading under the  
circumstances in which they were made, because Defendant Shi omitted disclosure of Suntech's

1 exposure from the €54.2 million GSF Loan Guarantee, which was not backstopped in any meaningful  
2 way.

3 113. On May 9, 2011, Suntech filed its Annual Report for the 2010 fiscal year on Form 20-F  
4 with the SEC (“2010 Form 20-F”). The Company’s 2010 Form 20-F was signed by Defendant Shi and  
5 reaffirmed the Company’s financial results announced on March 8, 2011. Apparently in response to the  
6 pressure applied by the SEC, the Company finally incorporated in its 2010 Form 20-F reference to the  
7 €54.2 million GSF Loan Guarantee, stating:  
8

9 In June 2008, we signed a commitment to invest in Global Solar Fund, S.C.A, Sicar. GSF  
10 is an investment fund created to make investments in private companies that own or  
11 develop projects in the solar energy sector. Our initial commitment to GSF was €8.0  
12 million, and in September 2008 we increased the size of our commitment by an  
13 additional €200.0 million to an aggregate total of €258.0 million in return for 86% of the  
14 share equity in GSF. As of December 31, 2010, we had contributed a total of €55.7  
15 million to GSF, representing all of our contribution obligations by such date. We have a  
16 50% voting interest in GSF.

17 The general partner of GSF is Global Solar Fund Partners S.à r.l., which is responsible  
18 for the management of GSF. The composition of the board of managers of the general  
19 partner is as follows: Category A managers include Mr. Javier Romero and Category B  
20 managers include Dr. Zhengrong Shi, our chairman and chief executive officer, and Dr.  
21 Stuart Wenham, our chief technology officer. Category A managers are entrusted with  
22 the day-to-day management of GSF, and any investment/divestment decision shall  
23 always include the favorable votes of Category A managers and at least one Category B  
24 manager of the general partner. Mr. Javier Romero has never served as an employee of  
25 the Company, but he has previously served as a non-executive representative and sales  
26 agent of the Company where he facilitated sales of our PV products in Spain until March  
27 2008. In connection therewith, services he provided included collaborating in the  
28 identification of business opportunities, providing support in developing good relations  
between ourselves and customers, introducing our personnel before representatives of the  
customers, advising in the preparation and negotiation of offers and contracts, and  
collaborating with us in the development of price policies in Spain.

\*\*\*\*

***In May 2010, we consummated an arrangement in which we guaranteed payment obligations under finance facilities provided by China Development Bank to Solar Puglia II, S.ar.L, an investee company of GSF, amounting to approximately €554.2 million.*** In addition, as additional security to China Development Bank, we are required to maintain cash collateral accounts with a commercial bank in Luxembourg in an amount equal to one installment payment of amounts due under the finance facilities amounting to approximately €30.0 million. Events of default under the finance facilities include failure to pay amounts due on any payment date, failure of the borrower to



1 comply with its financial covenant, failure by the borrower to comply with other  
2 provisions of the agreement subject to a 10 day cure period, a cross default by the  
3 borrower on other financial indebtedness in excess of €1.0 million, bankruptcy or other  
4 events of insolvency, and a material adverse change in the business, property, liabilities,  
5 operations, prospects or financial condition of the borrower or us, or the ability of the  
6 borrower or us to perform its obligations under the agreement. In addition, in the event  
7 certain power plants to be developed are not connected to the power grid before January  
8 30, 2011, China Development Bank has the right to declare a proportionate amount of the  
9 outstanding loans immediately due and payable representing the percentage of the power  
10 to be generated by the unconnected plants to the planned installed capacity of 123 MW.  
11 None of the power plants developed were connected to the power grid by January 30,  
12 2011, and as a result China Development Bank is entitled to demand immediate payment  
13 of the entire loan amount. GSF has received oral assurances from China Development  
14 Bank that it does not intend to demand payment of the loan amount in the event the  
15 power plants can be connected to the grid by June 30, 2011. *As security for our  
16 obligations under the guarantee, we received a pledge of €560.0 million in German  
17 government bonds from GSF Capital Pte Ltd., the parent of the general partner of  
18 GSF. The fair value of the debt guarantee was approximately €2.0 million, which has  
19 been recorded in our balance sheet at the effective date of this guarantee.* (emphasis  
20 added.)

21 114. The statements contained in Paragraph 113 above were materially false when made,  
22 and/or omitted material information necessary to make the statements not misleading under the  
23 circumstances in which they were made, because: (1) the fair value of the liability created by the debt  
24 guarantee obligation was not “approximately €2 million,” but instead was at least \$60 to \$80 million;  
25 (2) Suntech had not received a pledge of €560 million in German government bonds from GSF Capital;  
26 (3) the statements omitted that Suntech had not conducted meaningful due diligence with respect to the  
27 purported pledge agreement; (4) the statements omitted the Defendants’ understanding that the bonds in  
28 question, to the extent they ever existed, were borrowed by GSF Capital from other parties; and (5) the  
statements omitted that documentation provided by GSF Capital, on its face, contained irregularities,  
but that Suntech either failed to meaningfully review such documentation or ignored the irregularities.

115. On May 25, 2011, the Company issued a press release entitled, “Suntech Reports First  
Quarter 2011 Financial Results,” which quoted Defendant Shi and reported that “other long-term  
liabilities” had dropped to \$145,160,000. This statement was materially false and misleading because it  
did not incorporate the fair value of the €54.2 million GSF Loan Guarantee, which was at least \$60 to

1 \$80 million.

2 116. That same day, May 25, 2011, the Company held a conference call with investors,  
3 analysts, and other market participants, to discuss Suntech's First Quarter Earnings. During that call, in  
4 response to a question from Macquarie analyst Kelly Dougherty, Defendant Shi confirmed that there  
5 was "no risk of any kind of write-downs associated with GSF":

6 <Q - Kelly A. Dougherty>: So there's no risk of any kind of write-downs associated with GSF  
7 because they've completed everything that you've already accounted for.

8 <A - Zhengrong Shi>: That's true, yeah.

9 117. The statements made by Defendant Shi contained in Paragraph 116 above were  
10 materially false when made, and/or omitted material information necessary to make the statements not  
11 misleading under the circumstances in which they were made, because they omitted that Suntech was at  
12 substantial risk of having to take a financial charge and/or restate its financial reports because it had not  
13 recorded on its balance sheet the fair value of the liability created by the €54.2 million GSF Loan  
14 Guarantee, which was at least \$60 to \$80 million.

15 118. On August 22, 2011, the Company issued a press release entitled, "Suntech Reports  
16 Second Quarter 2011 Financial Results," which quoted Defendant Shi and reported "other long-term  
17 liabilities" of \$155,400,000. This statement was materially false and misleading because it did not  
18 incorporate the fair value of the €54.2 million GSF Loan Guarantee, which was at least \$60 to \$80  
19 million.

20 119. On November 22, 2011, the Company issued a press release entitled "Suntech Reports  
21 Third Quarter 2011 Financial Results," which quoted Defendant Shi and reported "other long-term  
22 liabilities" of \$177,900,000. This statement was materially false and misleading because it did not  
23 incorporate the fair value of the €54.2 million GSF Loan Guarantee, which was at least \$60 to \$80  
24 million.

25 120. On March 8, 2012, the Company issued a press release entitled, "Suntech Reports Fourth  
26  
27  
28

1 Quarter and Full Year 2011 Financial Results,” which quoted Defendant Shi and reported “other long-  
2 term liabilities” of \$167,200,000. This statement was materially false and misleading because it did not  
3 incorporate the fair value of the €54.2 million GSF Loan Guarantee, which was at least \$60 to \$80  
4 million.

5 121. On April 27, 2012, the Company filed a Form 6-K containing its Audited Consolidated  
6 Financial Statements for the Year Ended December 31, 2011. The Form 6-K contained the following  
7 disclosure with respect to the GSF Loan Guarantee:  
8

9  
10 In May 2010, a third party financial institution granted a debt facility of approximately  
11 EUR554.2 million to the GSF investee companies for which the Company provided a  
12 guarantee. *GSF Capital Pte Ltd., the parent of the general partner of GSF and an  
unrelated party, offered to pledge a total amount of EUR560.0 million in German  
Government Bonds as security for the Company’s obligations under the guarantee.*

13 *The German Government Bonds that are pledged are registered in the name of, and  
14 held by, GSF Capital Pte Ltd. The Company has entered into a pledge agreement with  
15 GSF Capital Pte Ltd. with respect to the German Government Bonds pursuant to  
16 which the Company has the right (among other things), in the event any amounts  
17 owed under the project financing facility guaranteed by the Company are not paid by  
18 the GSF investee company, to exercise the power to sell or otherwise dispose of the  
19 German Government Bonds without further notice to GSF Capital Pte Ltd., and apply  
20 the proceeds thereof towards the satisfaction of the secured liabilities. The fair value  
of the debt guarantee was approximately USD2 million as of the effective date of this  
guarantee. This debt guarantee is recorded as part of the investment in Global Solar  
Fund ... and will be amortized into equity in net earnings (loss) of affiliates through the  
term of the guarantee. The carrying amount of the guarantee was \$1.8 million as of  
December 31, 2011. (emphasis added.)*

21  
22 122. The April 27, 2012 Form 6-K further stated:

23 In May 2010, we consummated an arrangement in which we guaranteed payment  
24 obligations under finance facilities provided by China Development Bank to Solar  
25 Puglia II, S.ar.L, an investee company of GSF, in the amount of approximately €54.2  
26 million. In addition, as additional security to China Development Bank, we are required  
27 to maintain cash collateral accounts with a commercial bank in Luxembourg in an  
28 amount equal to one installment payment of amounts due under the finance facilities  
amounting to approximately €30.0 million. Events of default under the finance facilities  
include failure to pay amounts due on any payment date, failure of the borrower to  
comply with its financial covenant, failure by the borrower to comply with other  
provisions of the agreement subject to a 10 day cure period, any cross default by the  
borrower on other financial indebtedness in excess of €1.0 million, bankruptcy or other

1 events of insolvency, and any material adverse change in the business, property,  
2 liabilities, operations, prospects or financial condition of the borrower or us, or the  
3 ability of the borrower or us to perform its obligations under the agreement. As of  
4 December 31, 2011, approximately 145MW of power plants have been completed, of  
5 which approximately 143MW have been connected to the grid. *As security for our*  
6 *obligations under the guarantee, we received a pledge of €560.0 million in German*  
7 *government bonds from GSF Capital Pte Ltd., the parent of the general partner of*  
8 *GSF.* Any repayment failure or default event of GSF investee companies under a  
9 financing or lease agreement could lead to a repayment obligation on our company and  
10 could have a material adverse affect [sic] on our business, financial condition, results of  
11 operations and prospects.

12 \*\*\*\*\*

13 In May 2010, we consummated an arrangement in which we guaranteed payment  
14 obligations under finance facilities provided by China Development Bank to Solar  
15 Puglia II, S.ar.L, an investee company of GSF, in the amount of approximately  
16 €54.2 million. In addition, as additional security to China Development Bank, we are  
17 required to maintain cash collateral accounts with a commercial bank in Luxembourg in  
18 an amount equal to one installment payment of amounts due under the finance facilities  
19 amounting to approximately €30.0 million. Events of default under the finance facilities  
20 include failure to pay amounts due on any payment date, failure of the borrower to  
21 comply with its financial covenant, failure by the borrower to comply with other  
22 provisions of the agreement subject to a 10 day cure period, any cross default by the  
23 borrower on other financial indebtedness in excess of €1.0 million, bankruptcy or other  
24 events of insolvency, and any material adverse change in the business, property,  
25 liabilities, operations, prospects or financial condition of the borrower or us, or the  
26 ability of the borrower or us to perform its obligations under the agreement. As of  
27 December 31, 2011, approximately 145 MW of power plants have been completed, of  
28 which approximately 143 MW have been connected to the grid. *As security for our*  
*obligations under the guarantee, we received a pledge of €560.0 million in German*  
*government bonds from GSF Capital Pte Ltd., the parent of the general partner of*  
*GSF. The fair value of the debt guarantee was approximately \$2.0 million, which was*  
*recorded in our balance sheet at the effective date of this guarantee.* (emphasis added.)

123. The statements contained in Paragraphs 121-22 above were materially false when made,  
and/or omitted material information necessary to make the statements not misleading under the  
circumstances in which they were made, because: (1) Suntech had not received a pledge of €560  
million in German government bonds from GSF Capital; (2) the Company did not have “the power to  
sell or otherwise dispose of the German Government Bonds without further notice to GSF Capital Pte  
Ltd., and apply the proceeds thereof towards secured liabilities;” (3) the statements omitted that  
Defendants had not conducted meaningful due diligence with respect to the purported pledge

1 agreement; (4) the statements omitted the Defendants' understanding that the bonds in question, to the  
2 extent they ever existed, were borrowed by GSF Capital from other parties; (5) the statements omitted  
3 that documentation provided by GSF Capital, on its face, contained irregularities, but that Defendants  
4 either failed to meaningfully review such documentation or ignored the irregularities; (6) the fair value  
5 of the liability created by the GSF Loan Guarantee at the time of inception was not \$2 million, or even  
6 € million as asserted in the Form 20-F filed the same day, but at least \$60 to \$80 million; and (7) the  
7 statements omitted that Defendants knew the Company's massive guarantee was no longer backstopped  
8 (if it ever was) because on or around February 20, 2012, Romero informed Defendant Shi via telephone  
9 that the bonds were unilaterally repossessed by Werner Richter.  
10

11 124. On April 27, 2012, Suntech filed its Annual Report on Form 20-F with the SEC for the  
12 2011 fiscal year ("2011 Form 20-F"). The Company's 2011 Form 20-F was signed by Defendant Shi  
13 and reaffirmed the Company's financial results announced on March 8, 2012. The 2011 Form 20-F  
14 also stated:  
15

16 In June 2008, we entered into a commitment to invest in Global Solar Fund, S.C.A, Sicar.  
17 GSF is an investment fund created to make investments in private companies that own or  
18 develop projects in the solar energy sector. Our initial commitment to GSF was €58.0  
19 million, and in September 2008 we increased the size of our commitment by an  
20 additional €200.0 million to an aggregate total of €258.0 million in return for 86% of the  
21 share equity in GSF. As of December 31, 2011, we had contributed a total of €155.7  
22 million to GSF, fulfilling all of our contribution obligations by such date. We have a 50%  
23 voting interest in GSF.

\*\*\*\*

24 In May 2010, we consummated an arrangement in which we guaranteed payment  
25 obligations under finance facilities provided by China Development Bank to Solar Puglia  
26 II, S.ar.L, an investee company of GSF, in the amount of approximately €54.2 million.  
27 In addition, as additional security to China Development Bank, we are required to  
28 maintain cash collateral accounts with a commercial bank in Luxembourg in an amount  
equal to one installment payment of amounts due under the finance facilities amounting  
to approximately €30.0 million. Events of default under the finance facilities include  
failure to pay amounts due on any payment date, failure of the borrower to comply with  
its financial covenant, failure by the borrower to comply with other provisions of the  
agreement subject to a 10 day cure period, any cross default by the borrower on other  
financial indebtedness in excess of €1.0 million, bankruptcy or other events of  
insolvency, and any material adverse change in the business, property, liabilities,

1 operations, prospects or financial condition of the borrower or us, or the ability of the  
2 borrower or us to perform its obligations under the agreement. As of December 31, 2011,  
3 approximately 145 MW of power plants have been completed, of which approximately  
4 143 MW have been connected to the grid. ***As security for our obligations under the  
5 guarantee, we received a pledge of €560.0 million in German government bonds from  
6 GSF Capital Pte Ltd., the parent of the general partner of GSF. The fair value of the  
7 debt guarantee was approximately €2.0 million, was been [sic] recorded in our balance  
8 sheet at the effective date of this guarantee. As of December 31, 2011, the carrying  
9 amount of such debt guarantee was \$1.8 million.*** (emphasis added.)

10 125. The statements contained in Paragraph 124 above were materially false when made,  
11 and/or omitted material information necessary to make the statements not misleading under the  
12 circumstances in which they were made, because: (1) Suntech had not received a pledge of €560  
13 million in German government bonds from GSF Capital; (2) the Company did not have “the power to  
14 sell or otherwise dispose of the German Government Bonds without further notice to GSF Capital, and  
15 apply the proceeds thereof towards secured liabilities;” (3) the statements omitted that Defendants had  
16 not conducted meaningful due diligence with respect to the purported pledge agreement; (4) the  
17 statements omitted the Defendants’ understanding that the bonds in question, to the extent they ever  
18 existed, were borrowed by GSF Capital from other parties; (5) the statements omitted that  
19 documentation provided by GSF Capital, on its face, contained irregularities, but that Defendant either  
20 failed to meaningfully review such documentation or ignored the irregularities; (6) the fair value of the  
21 liability created by the GSF Loan Guarantee at the time of inception was not €2 million and the current  
22 carrying value was not \$1.8 million, but rather at least \$60 to \$80 million; and (7) the statements  
23 omitted that Defendants knew that the Company’s massive guarantee was no longer backstopped (if it  
24 ever was) because on or around February 20, 2012, Romero informed Defendant Shi via telephone that  
25 the bonds were unilaterally repossessed by Werner Richter.

26 126. On May 23, 2012, the Company issued a press release entitled, “Suntech Reports First  
27 Quarter 2012 Financial Results,” which quoted Defendant Shi and reported “other long-term liabilities”  
28

1 of \$193 million. This statement was materially false and misleading because it did not incorporate the  
 2 fair value of the €54.2 million GSF Loan Guarantee, which was in fact at least \$60 to \$80 million.

3  
 4 **Suntech Discloses Material Exposure Under The GSF Loan Guarantee, Causing The Price of Its  
 Common Stock and Convertible Notes To Plummet**

5 127. On July 30, 2012, the Company issued a press release entitled, “Suntech Investigates  
 6 Security Interest in Connection With GSF,” which disclosed:

7  
 8 Suntech Power Holdings Co., Ltd. (NYSE: STP) (“Suntech” or the “Company”) today  
 9 announced that the Company is conducting an investigation into a security interest  
 10 Suntech received in connection with its investment in Global Solar Fund, S.C.A., Sicar  
 11 (“GSF”). Based on recent review and inquiries, *Suntech suspects that the collateral  
 related to the security interest may not have existed* and the Company may have been a  
 victim of fraud.

12 In May 2010, Suntech guaranteed payment obligations related to finance facilities  
 13 provided to an investee company of GSF in the amount of approximately €54.2 million.  
 14 As security for the Company’s obligations under the guarantee, Suntech received a  
 15 pledge of German government bonds (the “Bonds”) in the amount of €60.0 million from  
 16 GSF Capital Pte Ltd., a third-party investor of GSF. The Company’s investment in GSF  
 17 is discussed in the Company’s 2011 Annual Report on Form 20-F, including on pages 98  
 18 to 99 and F-29 to F-30. As part of Suntech’s initiative to monetize its investment in GSF,  
 the Company engaged outside counsel to review and assist the process. As a result of  
 these efforts, the Company’s *outside counsel recently noted certain facts and  
 circumstances suggesting that the Bonds may not have existed* and Suntech may have  
 been a victim of fraud. (emphasis added.)

19 128. On this news, shares of the Company declined \$0.23 per share, or 14.65%, to close on  
 20 July 30, 2012, at \$1.34 per share, on unusually heavy volume, and further declined another \$0.21, or  
 21 15.67%, to close on July 31, 2012, at \$1.13 per share, also on unusually heavy volume. Suntech’s  
 22 convertible notes dropped from \$69.00 just prior to the disclosure to \$45.00 at the close of trading on  
 23 July 31, 2012, a drop of nearly 35%, on heavy volume. Stock analysts also reduced their price targets  
 24 for Suntech securities as a result of the news. For example, on July 31, 2012, Aaron Chew at Maxim  
 25 Group lowered his price target to \$0.00, meaning that he viewed the stock as worthless: “we foresee  
 26 zero value left for equity.” Chew explained: “While the fraud concerns the *collateral* backing the  
 27 project debt and not the *project* itself, where there is smoke there is usually fire. This not only  
 28

1 undermines [Suntech's] efforts to refinance, in our view, but also the value of [Suntech's] projects and  
2 plans to monetize it." Additionally, on August 2, 2012, Standard and Poor's gave Suntech a "sell"  
3 recommendation as a result of the news, citing Suntech's "deteriorating financial position."

4 129. Later on July 30, 2012, the Company held a conference call with investors, analysts, and  
5 other market participants, to discuss the non-existent German government bonds. Defendant Shi and  
6 David King, Suntech's new Chief Financial Officer, participated on behalf of Suntech. Defendant Shi  
7 admitted that the documentation contained irregularities that when finally reviewed two years after the  
8 guarantee was provided, suggested that the so-called backstop collateral never even existed:  
9

10 Now I will provide a summary of how we discovered this suspected fraud. As we have  
11 previously stated, we have been looking to monetize our investment in GSF. We recently  
12 started to receive initial offers for GSF assets and that we hired external counsel to work  
13 on the transaction. As part of this process, external counsel uncovered inconsistencies in  
14 the documentation regarding the German government bonds, which we believe have  
15 been placed to Suntech as security by GSF Capital. GSF Capital is a third-party investor  
16 of GSF and the owner of the general partner of GSF. **Full investigation made it  
17 apparent that these bonds may never have existed** and that GSF Capital and its  
18 principal may have committed fraud. (emphasis added.)

19 130. In the July 30, 2012 conference call, King admitted that Suntech was not told that GSF  
20 Capital owned the bonds they claim to have pledged. Instead, he conceded that Suntech was informed  
21 in 2010 that "GSF Capital... have [sic] borrowed the bonds from a registered company in Europe."  
22 Thus, Suntech had known, but failed to disclose for at least two years, that even if the bonds existed,  
23 GSF Capital had borrowed the bonds from another company.

24 131. On September 21, 2012, the Company issued a press release entitled "Suntech Receives  
25 Continued Listing Standards Notice from the New York Stock Exchange," stating:  
26

27 Suntech Power Holdings Co., Ltd. (NYSE: STP) ("Suntech" or the "Company"), the  
28 world's largest producer of solar panels, today announced that it has been notified by the  
New York Stock Exchange (the "NYSE") that the Company did not meet the NYSE's  
price criteria for continued listing standard because, as of September 10, 2012, the  
average closing price of the Company's American Depositary Shares, or ADSs, was less  
than \$1.00 per ADS over a consecutive 30-trading-day period.



1 Under NYSE rules, the Company has six months following receipt of the notification to  
2 regain compliance with the minimum share price requirement. The Company can regain  
3 compliance at any time during the six-month cure period if the Company's ADSs have a  
4 closing share price of at least \$1.00 on the last trading day of any calendar month during  
5 the period and also has an average closing share price of at least \$1.00 over the 30  
6 trading-day period ending on the last trading day of that month or on the last day of the  
7 cure period.

8 132. On December 7, 2012, the Company issued a press release entitled "Suntech Announces  
9 Preliminary Financial Results for the Third Quarter of 2012 ... Announces Planned Restatement of  
10 Prior Years' Financial Statements." This press release conceded that the fair value of the guarantee  
11 obligation was at least \$60 to \$80 million, more than twenty times greater than the amount that Suntech  
12 had recorded in their financial statements:

13 In July 2012, Suntech announced that it was conducting an investigation into a security  
14 interest it received from GSF Capital in connection with financing of Italian solar  
15 facilities related to its investment in GSF. ***Suntech has recently come to the conclusion  
16 that the security interest does not exist and that it has been the victim of a fraud by  
17 others. As a result, with respect to the guarantee that Suntech provided to lenders to a  
18 GSF project company in 2010, the Company is required to record a guarantee  
19 obligation in the range of \$60 million to \$80 million, which is an increase from the  
20 prior guarantee obligation of \$3 million.*** The Company expects that this will result in a  
21 corresponding reduction in net income of \$60 million to \$80 million for the year ended  
22 December 31, 2010. The impact to net income for the years ended December 31, 2011  
23 and December 31, 2012 is expected to be immaterial.

24 Accordingly, Suntech's Audit Committee of the Board of Directors and the management  
25 team have concluded that Suntech's interim condensed financial information for 2010,  
26 2011 and first quarter 2012, and its annual consolidated financial statements for 2010  
27 and 2011 together with the accompanying reports of Suntech's independent registered  
28 accounting firm for 2010 and 2011 should not be relied upon by investors. The Company  
intends to file its restated consolidated financial statements once the assessment of the  
guarantee obligation and GSF's financial audit are completed. Suntech currently expects  
that this will be in early 2013 and will continue to inform investors of any material  
developments in a timely manner. The Company cannot assure you that the ongoing  
assessment of the guarantee obligations and the results of GSF's financial audit will not  
result in additional changes to the Company's prior financial statements that will need to  
be reflected in its restated consolidated financial statements. (emphasis added.)

133. To date, Suntech has not filed any restated consolidated financial statements.

134. Suntech has never recovered from the fraud. On March 20, 2013, Suntech announced

1 that a group of eight Chinese banks had filed a petition for insolvency and restructuring of Suntech's  
2 Chinese subsidiary, Wuxi Suntech Power Co., Ltd. in a Chinese court. On October 31, 2013, Suntech  
3 announced that it intended to challenge another petition for involuntary bankruptcy that had been filed  
4 against it under Chapter 7 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Southern  
5 District of New York by a group of bondholders. Then, on November 6, 2013, Suntech announced that  
6 it had filed an application for a provisional liquidation with the Grand Court of the Cayman Islands, the  
7 jurisdiction of its incorporation. Suntech also stated that it would consider pursuing a Chapter 15  
8 proceeding in the United States following the grant of the application in the Cayman Islands.  
9

### 10 **CLASS ACTION ALLEGATIONS**

11 135. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure  
12 23(a) and (b)(3) on behalf of a class, consisting of all those who purchased Suntech ADSs and Suntech  
13 3.0% convertible notes between August 18, 2010, and July 30, 2012, inclusive (the "Class Period") and  
14 who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and  
15 directors of the Company, at all relevant times, and members of their immediate families and their legal  
16 representatives, heirs, successors or assigns and any entity in which Defendants have or had a  
17 controlling interest.  
18

19 136. The members of the Class are so numerous that joinder of all members is impracticable.  
20 Throughout the Class Period, Suntech's ADSs were actively traded on the NYSE, and its 3.0%  
21 convertible notes were actively traded and reported on FINRA's Trade Reporting And Compliance  
22 Engine ("TRACE"). While the exact number of Class members is unknown to Plaintiffs at this time  
23 and can only be ascertained through appropriate discovery, Plaintiffs believe that there are hundreds or  
24 thousands of members in the proposed Class. Several million dollars' worth of Suntech ADS shares  
25 and 3.0% convertible notes traded weekly during the Class Period. According to Bloomberg, there are  
26 currently 180.2 million outstanding ADS, and \$541,000,000 (face value) outstanding 3.0% convertible  
27  
28

1 notes. Record owners and other members of the Class may be identified from records maintained by  
2 Suntech or its transfer agent and may be notified of the pendency of this action by mail, using the form  
3 of notice similar to that customarily used in securities class actions.

4 137. The market for Suntech's ADS securities and 3.0% convertible notes was open, well-  
5 developed and efficient at all relevant times. As a result of these materially false and/or misleading  
6 statements, and/or failures to disclose, Suntech's securities traded at artificially inflated prices during  
7 the Class Period. Plaintiffs and other members of the Class purchased or otherwise acquired Suntech's  
8 securities relying upon the integrity of the market price of the Company's securities and market  
9 information relating to Suntech, and have been damaged thereby.

10  
11 138. Plaintiffs' claims are typical of the claims of the members of the Class as all members of  
12 the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is  
13 complained of herein.

14  
15 139. Plaintiffs will fairly and adequately protect the interests of the members of the Class and  
16 have retained counsel competent and experienced in class and securities litigation.

17  
18 140. Common questions of law and fact exist as to all members of the Class and predominate  
19 over any questions solely affecting individual members of the Class. Among the questions of law and  
20 fact common to the Class are:

21 (a) Whether the federal securities laws were violated by Defendants' acts as alleged  
22 herein;

23 (b) Whether statements made by Defendants to the investing public during the Class  
24 Period omitted and/or misrepresented material facts about the business, operations, and prospects of  
25 Suntech;  
26  
27  
28

1 (c) Specifically, whether the statements regarding Suntech's guarantee of a loan for  
2 the benefit of a GSF investee company, including the misrepresentations regarding collateral backing  
3 such guarantee, were materially false and/or misleading;

4 (d) Whether Defendants acted with scienter;

5 (e) Whether the disclosure of Defendants' misrepresentations and/or realization of  
6 the risks concealed by Defendants' misrepresentations caused the members of the Class to sustain  
7 damages; and  
8

9 (f) The proper measure of damages.

10 141. Underscoring the predominance of common questions of law and fact in this action,  
11 reliance can be established on a classwide basis by application of the fraud-on-the-market presumption.  
12 The market for Suntech's securities was open, well-developed and efficient at all relevant times for the  
13 following reasons, among others:  
14

15 (a) Suntech's ADS securities met the requirements for listing, and were listed and  
16 actively traded on the NYSE, a highly efficient and automated market;

17 (b) Suntech's 3.0% convertible notes met the requirements for trade reporting on  
18 FINRA's TRACE system, and were regularly traded;

19 (c) As a regulated issuer, Suntech filed periodic public reports with the SEC and  
20 regularly corresponded with the SEC, which reports and correspondence were published for investors  
21 on the SEC's EDGAR database and available to any member of the public via an internet connection;  
22

23 (d) Suntech regularly communicated with public investors via established market  
24 communication mechanisms, including presentations at investor conferences, conference calls,  
25 dissemination of press releases on the national circuits of major newswire services, and other wide-  
26 ranging public disclosures, such as communications with the financial press and other similar reporting  
27 services;  
28

1 (e) Suntech was followed by numerous securities analysts employed by brokerage  
2 firms who wrote reports about the Company, the contents or summary of which were disseminated to  
3 the investing public; and

4 (f) Suntech was widely followed by online websites focusing on solar energy and/or  
5 renewable energy technologies.

6  
7 142. As a result of the foregoing, the market for Suntech's securities promptly digested and  
8 reacted to current information regarding Suntech from publicly available sources. Under these  
9 circumstances, all purchasers of Suntech's ADSs and 3.0% convertible notes during the Class Period  
10 suffered similar injury through their purchase of Suntech securities at artificially inflated prices. Thus,  
11 a presumption of reliance applies.

12  
13 143. A class action is superior to all other available methods for the fair and efficient  
14 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the  
15 damages suffered by individual Class members may be relatively small, the expense and burden of  
16 individual litigation makes it impossible for members of the Class to individually redress the wrongs  
17 done to them. There will be no difficulty in the management of this action as a class action.

18 **ADDITIONAL SCIENTER ALLEGATIONS**

19  
20 144. Defendants had no reasonable basis to believe that they had accurately reported  
21 Suntech's liability under the GSF Loan Guarantee, that they had fully and truthfully described the  
22 nature of that obligation to investors, or that they had candidly disclosed Suntech's actual financial  
23 exposure to GSF and GSF investee companies. Instead, at the time they made the statements alleged in  
24 Paragraphs 101-26 above, Defendants were aware that the statements were materially false when made,  
25 and/or acted with deliberate recklessness because they lacked material information necessary to make  
26 the statements not misleading under the circumstances in which they were made, for the reasons set  
27 forth above, and because they had access to information contradicting their public statements and  
28

1 reflecting the true value and nature of the GSF Loan Guarantee and Suntech's actual financial exposure  
2 to GSF and its investee companies.

3 145. Specifically, Defendants recklessly failed to even ascertain the existence of the  
4 purported €60 million in German government bonds or confirm that they would be available to  
5 backstop Suntech's obligations under the GSF Loan Guarantee, despite numerous red flags indicating  
6 that the transaction was not legitimate. This failure is particularly shocking given that Defendant Shi  
7 was known to be one of the most successful, experienced, and sophisticated business persons in China.  
8

9 146. Defendants' conduct is particularly reckless in light of the size of the GSF Loan  
10 Guarantee and its importance to Suntech. The €54.2 million amount that Suntech guaranteed under  
11 the GSF Loan Guarantee was larger than any other guarantee the Company had ever provided to any  
12 customer or joint venture, was more than twice as large as the Company's total equity commitment to  
13 GSF, and exceeded Suntech's reported earnings in every prior year. And as former CFO King, who  
14 reported to Defendant Shi, explained in a July 30, 2012 conference call with investors, the purpose of  
15 the German government bonds was "to assure Suntech that the guarantee would not create material  
16 liability for Suntech[.]" Given the vast potential for financial injury under this obligation, Defendants'  
17 failure to verify the existence of the claimed collateral was an extreme departure from any reasonable  
18 standard of care and demonstrated deliberate recklessness to the truth of their statements. Moreover, as  
19 detailed in Paragraphs 51 to 100 herein, numerous red flags indicated to Defendants that their claims to  
20 have access to €60 million in bonds were untrue and that they acted with deliberate recklessness to the  
21 truth of the statements made.  
22  
23

24 147. Defendants also knew of or recklessly disregarded other red flags with respect to GSF  
25 generally which put them on notice that financial transactions with GSF, especially large transactions  
26 like the GSF Loan Guarantee, required particular scrutiny. For example, GSF had fraudulently  
27 misrepresented the nature of its projects to obtain fast-track permits from Italian authorities. At least  
28

1 some of GSF's projects were illegally permitted. As the Company conceded in its 2010 20-F, signed by  
2 Defendant Shi:

3 5 solar parks representing 2.83 MW . . . have been [the] object of an  
4 investigation by the Court of Brindisi in relation to some potential  
5 irregularities concerning the relevant permits.

6 The tribunal argues that the land has been divided in smaller portions to  
7 avoid the AU (Permit to construct the solar plant that needs all public  
8 institutions full approval), and apply for the DIA (Permit to construct the  
solar plant obtainable through a simpler procedure)

9 148. The Brindisi, Italy, public prosecutor has since charged five GSF subsidiaries and certain  
10 individuals including Romero with illegal construction and fraud against the State for unlawfully  
11 splitting five solar projects into smaller sub 1 megawatt schemes in order to qualify for a less stringent  
12 30-day permitting process only available for smaller projects. Suntech would have known of this  
13 misconduct at the time it was committed. As Suntech described to the SEC in a letter dated October 28,  
14 2010, Suntech as part of its own due diligence reviewed "legal due diligence reports" describing the  
15 permitting status and the "DIA permitting process required in Italy".  
16

17 **FIRST CLAIM**

18 **Violation of Section 10(b) of**  
19 **The Exchange Act and Rule 10b-5**  
20 **Promulgated Thereunder Against All Defendants**

21 149. Plaintiffs repeat and reallege each and every allegation contained above as if fully set  
22 forth herein.

23 150. During the Class Period, as specified above Defendants (i) deceived the investing public,  
24 including Plaintiffs and other Class members, through their material Class Period misrepresentations as  
25 alleged herein; and (ii) caused Plaintiffs and other members of the Class to purchase Suntech's securities  
26 at artificially inflated prices.  
27

28 151. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue

1 statements of material fact and/or omitted to state material facts necessary to make the statements not  
2 misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and  
3 deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market  
4 prices for Suntech's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All  
5 Defendants are sued as the primary participants in the wrongful and illegal conduct charged herein.  
6 Specifically, as is detailed above, Defendants: (a) omitted material adverse information regarding  
7 Suntech's enormous exposure under the €54.2 million GSF Loan Guarantee; (b) affirmatively  
8 misrepresented that the GSF Loan Guarantee was backstopped by €60 million in German government  
9 bonds, when it in fact was not; (c) recorded less than 5% of the true fair value of the GSF Loan  
10 Guarantee as a liability on Suntech's balance sheet; and (d) failed to report required qualitative  
11 information regarding the GSF Loan Guarantee to investors.  
12

13  
14 152. Defendants, directly and indirectly, by the use, means or instrumentalities of interstate  
15 commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal  
16 adverse material information about Suntech's financial well-being and prospects, as specified herein.

17 153. Defendant Shi's primary liability, arises from the following facts: (i) Defendant Shi was  
18 a high-level executive and/or directors at the Company during the Class Period and a member of the  
19 Company's management team or had control thereof; (ii) Defendant Shi made or participated in the  
20 making or certification of statements which are expressly attributed to him as specified herein; (iii)  
21 Defendant Shi, by virtue of his responsibilities and activities as Chief Executive Officer and/or Chief  
22 Financial Officer of Suntech at the time of the statements referenced herein, had the authority to and did  
23 control the making of the statements referenced herein that were attributed to Suntech; (iii) Defendant  
24 Shi was advised of, and had access to, other members of the Company's management team, internal  
25 reports and other data and information about the Company's finances, operations, and sales at all  
26 relevant times; and (iv) Defendant Shi was aware of the Company's dissemination of information to the  
27  
28



1 investing public which he knew and/or recklessly disregarded was materially false and misleading.

2 154. All Defendants had actual knowledge of the misrepresentations and omissions of  
3 material facts set forth herein, or acted with reckless disregard for the truth in that he failed to ascertain  
4 and to disclose such facts, even though such facts were readily available to them and deliberately  
5 ignored numerous red flags putting him on notice that the transaction he described to investors was not  
6 legitimate. Defendants' material misrepresentations and omissions were made knowingly or with  
7 deliberate recklessness to the truth, and were made for the purpose and effect of concealing Suntech's  
8 financial well-being and prospects from the investing public and supporting the artificially inflated price  
9 of its securities.  
10

11 155. As a result of the dissemination of the materially false and misleading information  
12 and/or failure to disclose material facts, as set forth above, the market price of Suntech's common stock  
13 and convertible notes were artificially inflated during the Class Period. Without knowledge of the fact  
14 that market prices of these securities were artificially inflated, and relying directly or indirectly on the  
15 false and misleading statements made by Defendants, or upon the integrity of the markets in which these  
16 securities trade, Plaintiffs and other Class members acquired Suntech's securities during the Class Period  
17 at artificially high prices and were damaged upon the disclosure that caused a precipitous decline in the  
18 price of Suntech securities on July 30-31, 2012.  
19  
20

21 156. At the time of their respective purchases, Plaintiffs and other Class members were not  
22 aware of the true facts regarding the GSF Loan Guarantee, the phantom bond backstop, and Suntech's  
23 true liabilities. Had Plaintiffs and the other Class members been informed of the truth, they would not  
24 have purchased or otherwise acquired their Suntech securities, or, if they had acquired such securities  
25 during the Class Period, they would not have done so at the artificially inflated prices which they paid.  
26

27 157. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act  
28 and Rule 10b-5 promulgated thereunder.

1 158. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and the  
2 other members of the Class suffered damages in connection with their purchases of the Company's  
3 securities during the Class Period.

4 159. Although this Claim is asserted against, *inter alia*, Suntech, this Complaint will not be  
5 served upon Suntech and this Claim will not be prosecuted against Suntech during the pendency of the  
6 automatic bankruptcy stay. *See* 11 U.S.C. § 362(a)(1).  
7

8 **SECOND CLAIM**

9 **Violation of Section 20(a) of**  
10 **The Exchange Act Against Defendant Shi**

11 160. Plaintiffs repeat and reallege each and every allegation contained above as if fully set  
12 forth herein.

13 161. Defendant Shi acted as a controlling person of Suntech within the meaning of Section  
14 20(a) of the Exchange Act as alleged herein. By virtue of his high-level position as Chairman of the  
15 Board of Directors and Chief Executive Officer, including his individual certification of the Company's  
16 financial statements and the Company's reliance upon them to convey the Company's financial status  
17 and developments to investors, Defendant Shi had the power to influence and control and did influence  
18 and control the content and dissemination of the statements alleged above to be false and misleading.  
19 Shi was provided with or had unlimited access to copies of the Company's reports, press releases, public  
20 filings and other statements alleged by Plaintiffs to be misleading prior to and/or shortly after these  
21 statements were issued and had the ability to prevent the issuance of the statements or cause the  
22 statements to be corrected.  
23  
24

25 162. In particular, Shi had direct and supervisory involvement in the day-to-day operations of  
26 the Company and, therefore, is presumed to have had the power to control or influence the particular  
27 transactions giving rise to the securities violations as alleged herein, and exercised the same.  
28

1 163. By virtue of his position as a controlling person, Defendant Shi is secondarily liable for  
2 Suntech's primary violations under Section 20(a) of the Exchange Act. Moreover, as the former Chief  
3 Executive Officer and Chairman of the Board of Directors, Defendant Shi exercised control over Zhang,  
4 the Chief Financial Officer, and Liou, the Company's in-house counsel, both of whom reported to him.  
5 Consequently, Defendant Shi is also secondarily liable for the primary violations of Zhang under Section  
6 20(a) of the Exchange Act. As a direct and proximate result of Defendant Shi's wrongful conduct,  
7 Plaintiffs and other Class members suffered damages in connection with their purchases of the  
8 Company's securities during the Class Period.  
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

12 (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules  
13 of Civil Procedure;

14 (b) Awarding compensatory damages in favor of Plaintiffs and the other Class members  
15 against all Defendants, jointly and severally, for all damages sustained as a result of Defendants'  
16 wrongdoing, in an amount to be proven at trial, including interest thereon;

17 (c) Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this  
18 action, including counsel fees and expert fees; and  
19

20 (d) Such other and further relief as the Court may deem just and proper.  
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**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury.

Dated: January 27, 2014

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**PROOF OF SERVICE VIA ELECTRONIC POSTING PURSUANT TO NORTHERN DISTRICT OF CALIFORNIA LOCAL RULES AND LOCAL CIVIL RULE 5-1**

I, the undersigned, say:

I am a citizen of the United States and am employed in the office of a member of the Bar of this Court. I am over the age of 18 and not a party to the within action. My business address is 1925 Century Park East, Suite 2100, Los Angeles, California 90067.

On January 27, 2014, I caused to be served the following document:

**CONSOLIDATED SECOND AMENDED CLASS ACTION COMPLAINT**

By posting the document to the ECF Website of the United States District Court for the Northern District of California, for receipt electronically by the parties as reflected on the attached Court's Service List.

And on any non-ECF registered party:

**By Mail:** By placing true and correct copies thereof in individual sealed envelopes, with postage thereon fully prepaid, which I deposited with my employer for collection and mailing by the United States Postal Service. I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, this correspondence would be deposited by my employer with the United States Postal Service that same day.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 27, 2014, at Los Angeles, California.

*s/ Michael Goldberg*  
Michael Goldberg

## Mailing Information for a Case 3:12-cv-04061-RS Bruce v. Suntech Power Holdings Co., Ltd et al

### Electronic Mail Notice List

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**Manual Notice List**

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