



securities, unregistered broker-dealer activity, illegal insider trading, material misrepresentations and omissions, and trading in violation of certain short-selling restrictions.

2. Siris, an author of several books (including *Guerrilla Investing: Winning Strategies for Beating the Wall Street Professionals*) and former author of a monthly investment column for a New York-based publication (where he frequently wrote about companies in which his funds invested), manages two New York-based funds, including one of the relatively few, and larger, funds dedicated to U.S. listed Chinese companies. As of year-end 2010, Siris's assets under management totaled approximately \$160 million.

3. Siris and his firm Hua Mei acted as paid consultants to numerous Chinese companies in which his funds invested, including China Yingxia International, Inc. ("China Yingxia" or the "Company"), a purported nutritional foods company and one of the many Chinese companies in recent years that have gained access to the U.S. capital markets via reverse merger. Hua Mei received both cash and shares – including shares received through a person directly or indirectly controlled by the issuer, in a transaction that operated as an end-run around registration provisions of the federal securities laws, and which Siris sold for illicit proceeds of approximately \$24,600 – for performing due diligence on China Yingxia; raising over \$2 million for an \$8.7 million China Yingxia "PIPE" transaction, in which Siris acted as an unregistered broker and received payment of \$107,500 in transaction-based compensation; and reviewing and advising on Commission filings, press releases, and hiring decisions, among other things.

4. During the time Siris worked and had a relationship of trust and confidence with China Yingxia, he received and traded on material, non-public information concerning the Company. Specifically, on or around February 19, 2009, Siris learned of problems at China Yingxia directly from the Company's chief executive officer, including that she had engaged in

illegal fundraising activities in China, and that a Company factory had shut down. In response, Siris began selling hundreds of thousands of shares of China Yingxia stock prior to any public disclosure by China Yingxia concerning these issues that threatened to, and indeed later did, shutter the Company. Siris learned additional material, non-public information during the late afternoon of March 3, 2009, when he received a draft press release and notice that China Yingxia planned to publicly disclose the problems. Siris increased his orders to sell over the next couple of days before China Yingxia issued its press release publicly disclosing the problems on March 6, 2009. In all, Siris, through his funds, sold 1,143,660 China Yingxia shares in a matter of weeks, for ill-gotten gains (profits and/or losses avoided) of approximately \$172,000.

5. China Yingxia's stock price plummeted on the first trading day after it issued the press release of March 6, 2009. The Company's directors resigned that same day and, within roughly a month, the chief financial officer also resigned, effectively ending China Yingxia's operations. Reports indicate that Chinese officials have sentenced the Company's CEO to death for illegal fundraising activities, similar to a Ponzi scheme, involving Chinese citizens.

6. Around the time of China Yingxia's collapse, Siris made material misrepresentations and omissions to investors in his funds concerning his dealings with China Yingxia. Siris wrote to his investors and placed blame on others he claimed were responsible for the Company's Commission filings and key hiring decisions, among other things, and against whom he wanted to initiate legal action. Siris omitted from disclosure, however, his significant role in those very same tasks.

7. Siris also engaged in illegal insider trading ahead of ten offering announcements for other Chinese issuers, resulting in a total of approximately \$162,000 in ill-gotten gains. After

expressly agreeing to go “over-the-wall,” which included a prohibition on trading, Siris traded ahead of the offering announcements, in breach of his duty not to trade on such information.

8. Further, to induce at least one issuer to sell securities to his funds, Siris falsely represented in a securities purchase agreement that his funds had not engaged in any trading after being contacted in confidence about a particular deal, when in fact his funds had effected sales in that issuer’s securities.

9. Finally, Siris directed short sales in the securities of at least two Chinese companies in violation of restrictions prohibiting such sales prior to his funds’ participation in firm commitment public offerings involving those two companies. In connection therewith, Siris’s funds made ill-gotten gains of approximately \$127,000.

#### **SECURITIES LAWS VIOLATIONS**

10. By virtue of the foregoing conduct and as further alleged herein, Defendants Siris, Guerrilla Capital, and/or Hua Mei violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a) and (c), and 77q(a)], Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and 78o(a)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], Rule 105 of Regulation M [17 C.F.R. § 242.105], and Section 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. § 80b-6(4)], and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

11. Unless permanently restrained and enjoined, Defendants will again engage in the acts, practices, transactions, and courses of business set forth in this Complaint and in acts, practices, transactions and courses of business of similar type and object.

12. In addition to injunctive relief, the Commission seeks a final judgment ordering disgorgement of ill-gotten gains plus prejudgment interest, civil money penalties, and such equitable and other relief as the Court deems just, appropriate, or necessary.

### **JURISDICTION AND VENUE**

13. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)], Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u-1], and Sections 209(d) and 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(d) and (e)].

14. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(b), and 77v(a)], Sections 21(d), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa], Sections 209(d), 209(e), and 214(a) of the Advisers Act [15 U.S.C. §§ 80b-9(d), (e) and 80b-14], and 28 U.S.C. § 1331.

15. Venue in this District is proper because Defendants reside, and certain of the transactions, acts, practices, and/or courses of business occurred, within the Southern District of New York. In addition, there are material witnesses who reside, and have their principal places of business, within the Southern District of New York.

16. Defendants, directly or indirectly, made use of the means or instruments of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails, or of any facility of any national securities exchange, as described in this Complaint.

### **DEFENDANTS**

17. **Peter Siris**, age 68, resides in New York, New York, and manages the investment funds Guerrilla Partners, LP (“Guerrilla Partners”) and Hua Mei 21<sup>st</sup> Century Partners, LP (“Hua

Mei Partners”). Siris, through his two funds, invests heavily in U.S. listed Chinese companies. Siris formerly held series 7 and 63 securities licenses, and was last a registered representative of a broker-dealer in 1997. Siris is not registered with the Commission in any capacity.

18. **Guerrilla Capital Management, LLC** is a limited liability company organized under the laws of Delaware and headquartered in New York, New York. It is the management company for the funds associated with Siris, Guerrilla Partners and Hua Mei Partners. It is not registered with the Commission in any capacity.

19. **Hua Mei 21st Century, LLC** is a limited liability company organized under the laws of Delaware with offices in New York and Beijing, China. It is a sub-advisor to Guerrilla Capital and reportedly provides consulting services to Chinese companies. It is not registered with the Commission in any capacity.

#### **OTHER RELEVANT ENTITIES**

20. **Guerrilla Partners, LP** is a limited partnership organized under the laws of Delaware that operates as an investment fund. It is not registered with the Commission in any capacity.

21. **Hua Mei 21<sup>st</sup> Century Partners, LP** is a limited partnership organized under the laws of Delaware that operates as an investment fund focusing on investments in U.S. listed Chinese companies. It is not registered with the Commission in any capacity.

22. **Guerrilla Advisors, LLC** is a Delaware limited liability company controlled in part by Siris, and is the general partner to Guerrilla Partners and Hua Mei Partners. It is not registered with the Commission in any capacity.

23. **China Yingxia International, Inc.** was a Florida corporation headquartered in Harbin, China with purported operations in China. China Yingxia’s stock was quoted on the

OTC Link (formerly “Pink Sheets”) operated by OTC Markets Group, Inc. under the symbol “CYXI.” On February 2, 2012, the Commission instituted administrative proceedings pursuant to Section 12(j) of the Exchange Act against China Yingxia, as the Company had not filed any periodic reports with the Commission since late 2008. By an Order dated March 7, 2012, each class of China Yingxia’s registered securities was revoked.

## **FACTS**

### **I. Background on China Yingxia**

24. China Yingxia entered the U.S. capital markets via reverse merger in May 2006 with assistance from a father-and-son team that has brought multiple Chinese companies public. The father, Individual A, operated a consulting firm specializing in work with Chinese companies (“Consulting Firm”), while the son, Individual B, was president of a registered broker-dealer based in New York, New York (“Broker-Dealer”). Although Individual A was not registered as a broker, nor was he associated with any registered broker-dealer, he controlled many of the activities of the Broker-Dealer, and held himself out to the public as chairman of the Broker-Dealer.

25. From 2006 to 2009, China Yingxia purported to be a nutritional health food business with operations in Harbin, China. After the China Yingxia reverse merger, Individuals A and B maintained an integral role with China Yingxia, acting as *de facto* management. Among other things, they recommended and facilitated the hiring of service providers (including lawyers, auditors, and investor relations firms) as well as China Yingxia’s CFO and U.S.-based directors; organized and participated in board meetings; managed the Company’s public filings; and controlled part of its finances. (In light of their role with China Yingxia, Individuals A and B are also referred to below as the “Company Representatives.”)

## **II. China Yingxia's First Capital Raise and Introduction of Defendant Siris**

26. By early 2007, China Yingxia sought to raise several million dollars purportedly for working capital and other corporate purposes, including purchasing materials related to a soybean production line. The Company Representatives led the efforts on behalf of China Yingxia, and hired an investor relations firm to coordinate road show presentations and the initial introduction of potential investors.

27. In April 2007, China Yingxia held its road show in New York City, meeting with various fund managers, including Siris, and others that often invested in Chinese companies. Siris, in turn, introduced one of his associates to the Company.

28. After conducting due diligence and making the determination to invest, Siris and his associate negotiated investment terms with the Company Representatives for Siris and his associate to invest in China Yingxia through a PIPE transaction. (A "PIPE" – or private investment in public equity – refers to a private placement of securities of an already-public company.) In July 2007, Siris and his associate invested a total of \$2 million, with Siris investing \$1.5 million on behalf of his two funds. China Yingxia announced the completion of its first PIPE on July 16, 2007.

## **III. Transfer of Shares to Hua Mei from China Yingxia's CEO's Father In Violation of Registration Requirements**

### **a. Background on Section 5 of the Securities Act**

29. Sections 5(a) and 5(c) of the Securities Act make it unlawful for any person, directly or indirectly, to use the mails or other means of interstate commerce to sell or to offer to sell a security for which a registration statement is not filed or not in effect, absent an available exemption.

30. Section 4(1) of the Securities Act provides an exemption from the registration requirements of Section 5 for those who are not underwriters, issuers, or dealers. Section 2(a)(11) of the Securities Act defines “underwriters” as any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates, or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking. The term “issuer” includes any person directly or indirectly controlling or controlled by, or any person under direct or indirect common control with, the issuer.

31. Rule 144 of the Securities Act provides a “safe harbor” exemption permitting the public resale of restricted and control securities (control securities are securities held by an affiliate of the issuing company; an affiliate is a shareholder, such as a director or large shareholder, in a relationship of control with the issuer) when, among other things, the selling security holder has held the securities for a specified period of time. During the relevant period, a selling security holder must have held the security for one year before qualifying for a Rule 144 safe harbor, absent any permissible “tacking.” Tacking generally allows a holder of restricted securities to combine the separate holding periods of previous owners (except for previous owners who are affiliates of or in a relationship of control with the issuer) to satisfy the holding period requirement.

**b. Siris and Hua Mei Violated the Registration Requirements of the Securities Laws**

32. After receiving restricted shares from a person directly or indirectly controlled by the Company, and without holding those shares for the requisite time period, nor being able permissibly to tack any holding periods of previous owners, Siris and Hua Mei improperly sold unregistered securities that Hua Mei received from China Yingxia.

33. The Company Representatives negotiated to pay Siris and his associate, the lead investors, for the due diligence they conducted in connection with their investments in the July 2007 PIPE. The due diligence was used in later efforts to sell China Yingxia to other potential investors in a subsequent PIPE transaction.

34. The Company Representatives arranged sham agreements in which they transferred China Yingxia shares to Siris and his associate but made it appear as though the shares were coming from a shareholder allegedly to reimburse Siris and his associate for services performed for the shareholder. In fact, the sham agreements were simply a means for China Yingxia to provide Hua Mei with shares believed to be immediately eligible for sale because, if the Company had issued the shares directly to Hua Mei, the shares would have been restricted stock subject to holding period and other requirements for resale.

35. In early July 2007, Siris's firm, Hua Mei, entered into a consulting agreement with an unnamed and, at the time, unknown shareholder of China Yingxia, purportedly to compensate Siris for the due diligence that was conducted relating to his funds' investment in China Yingxia (the "Agreement"). Siris's associate entered into a substantially identical agreement.

36. The Agreement provided for payment to Hua Mei of 175,000 restricted shares from the unnamed shareholder of China Yingxia that had been previously issued in connection with the Company's May 2006 reverse merger. The Agreement did not contain any information concerning the services Hua Mei provided. The Company Representatives negotiated and facilitated execution of the Agreement, and later assisted with transferring the shares to Hua Mei.

37. On August 1, 2007, almost one month after execution of the Agreement, the Company Representatives identified the unnamed shareholder, who was supposedly the

counterparty to the Agreement. The counterparty, the previously unnamed shareholder and source of the 175,000 shares, was in fact the father of China Yingxia's CEO. The father of China Yingxia's CEO was a person directly or indirectly controlled by the issuer, China Yingxia. The CEO's father's restricted shares were transferred to Hua Mei at the apparent direction of the Company. Further, the CEO's father apparently was not reimbursed by the Company for his shares.

38. In the same communication identifying the unnamed shareholder, the Company Representatives provided instructions for obtaining a legal opinion under Rule 144 to lift the restrictions on the 175,000 shares, and thus render the shares freely tradeable.

39. Although the Company Representatives knew that no services were provided to the previously unnamed shareholder – as they had only identified the CEO's father as a party to the Agreement on August 1, 2007, after the services had been rendered – Individual B relayed advice to Siris that “if the shares were received as compensation for work done for the Company then [counsel] could not give the 144 legal opinion to lift the restriction, but if the shares were compensatoin [sic] for work done for the shareholder, then this is none [sic] issue.” Individual B further advised Siris to send Company counsel “a simple e-mail saying that the shares were transferred by a non-affiliate of the [C]ompany in exchange for services rendered for THAT shareholder, not to the Company.”

40. On August 17, 2007, Siris sent an email to China Yingxia's counsel falsely stating the following:

We received these shares from [the CEO's father] in exchange for consulting services rendered to [the CEO's father] in China. [The CEO's father] has owned these shares of China Yingxia for more than one year. I am informed he is not an affiliate of the [C]ompany. The services we provided were to [the CEO's father] and not to the [C]ompany.

41. In fact, neither Siris nor his related entities rendered any services to the CEO's father. In reality, the services were rendered to China Yingxia.

42. Based on Siris's representations and other paperwork, Company counsel sent China Yingxia's transfer agent a letter stating, "[s]uch shares were issued pursuant to a consulting agreement ... with [the CEO's father] ... please transfer the shares as requested."

43. As a result, Hua Mei received "free-trading" shares of China Yingxia that should have been restricted and ineligible for immediate public resale.

44. Siris, on behalf of Hua Mei, began selling the shares on August 14, 2007 and continued selling shares through November 15, 2007.

45. At the time of Hua Mei's sales, although the restricted shares had been held by the CEO's father for more than one year, they were not eligible for immediate resale. The CEO's father could not legitimately rely on any exemption from registration of such securities given his relationship to the Company. The CEO's father was an "issuer" as that term is defined within the definition of "underwriter" in Section 2(a)(11) of the Securities Act. Those who received shares from him received restricted shares, and were deemed "underwriters" upon the sale of such shares. Moreover, Hua Mei did not meet the requirements for sale under Rule 144, and the transaction to compensate Hua Mei, as arranged by China Yingxia representatives, operated to evade the registration requirements of the Securities Act.

46. In all, Siris, on behalf of Hua Mei, sold 8,600 shares of China Yingxia stock that should have been restricted from resale for proceeds of approximately \$24,600.

47. There was no registration statement in effect for the shares that Siris sold on Hua Mei's behalf from August 14 to November 15, 2007, and Hua Mei was not entitled to any exemption from registration when selling the unregistered shares during this time period.

#### **IV. Siris Acted as an Unregistered Broker During China Yingxia's Second PIPE Transaction**

48. Section 15(a)(1) of the Exchange Act prohibits a broker or dealer from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security unless the broker or dealer is registered with the Commission. Section 3(a)(4) of the Exchange Act defines a “broker” as any person who is engaged in the business of effecting transactions in securities for the account of others.

49. Siris – who, during the relevant period, was not registered as a broker or dealer, nor was he associated with any registered broker-dealer – acted as an unregistered broker in connection with China Yingxia's second capital raise by, among other things, raising over \$2 million worth of investments in exchange for transaction-based compensation.

50. With Siris's assistance, the Company embarked on a second PIPE transaction shortly after closing the first round of financing. The Company Representatives engaged Siris, and two other so-called “consultants,” to help with the second financing in exchange for commissions of approximately 5% of the amount of money each introduced to China Yingxia.

51. Siris participated at key points in the chain of distribution of China Yingxia's securities. The Company held a meeting with potential investors in July 2007 at a shared conference room in Siris's office building. Siris circulated a Company PowerPoint to other fund managers and friends, informed them that he had conducted due diligence, and stated that the Company had a strong commitment to the quality of its products. In addition, Siris responded to questions from interested investors.

52. Siris also wrote concerning the PIPE that “[w]e will take indications of interest ... next week and expect to close the deal immediately thereafter.” Siris also noted that many

people wanted to invest in the deal. Siris initially directed others to contact him if interested, but later directed interested investors to contact the official placement agent, the Broker-Dealer.

53. Further, Siris received drafts of the offering documents for his review and comment. He also communicated with the official placement agent, the Broker-Dealer, concerning interested investors.

54. Siris also communicated with one of the other “consultants” that was assisting China Yingxia in raising money.

55. For instance, the other “consultant” emailed Siris on July 12, 2007 stating: “I thought the book was closed ... How big do you want to make this deal? You want me to make one more call and get another few million?”

56. Siris responded as if he were in charge of the deal: “The book is closed. Don’t get any more.”

57. In other communications, the same “consultant” pressed Siris to close the deal quickly. Siris responded: “This is my deal. I have been working on it longer than you have. I have people who I promised would be involved. I also told them they could get a second chance to meet management.”

58. On August 9, 2007, China Yingxia announced the completion of the second round of financing whereby it sold \$8,725,130 worth of restricted securities to 20 investors. Virtually all of the 20 investors were introduced to China Yingxia through Siris and the two other “consultants” rather than through the official placement agent.

59. After the PIPE closed in August 2007 and the amount raised became clear, Siris contacted Company Representatives concerning payment. Siris emailed Individual B stating

“[y]our father indicated that we are due our share of money from the fund raise. He quoted a specific amount. I am curious how and when we handle this?”

60. In response, the Company Representatives and Siris facilitated the execution of a backdated consulting agreement between Individual A’s Consulting Firm and Hua Mei.

61. The agreement, in an attempt to conceal the true nature of the services provided, concerned supposed “strategic consulting services,” and stated that Hua Mei would provide the Consulting Firm with certain services, including “assisting the company in press releases, conference calls, etc.; communicating with investors, accompanying investors to visit the facilities of the [Consulting Firm’s] clients; and providing other consulting assistance.”

62. Despite the stated services in the consulting agreement, Siris, through Hua Mei, in fact received transaction-based fees for raising money for China Yingxia and not for providing consulting services.

63. In total, Siris introduced seven investors and \$2,150,000 worth of investments to China Yingxia through the August 2007 PIPE. In return, Hua Mei received payment of \$107,500, which equaled exactly 5% of the amount of investments Siris introduced to China Yingxia. The Consulting Firm paid Hua Mei by check with a memo line stating “CYXI finance commission” with funds from the August 2007 PIPE.

64. No disclosures were made to potential or actual investors concerning payments to the three so-called consultants, including Siris, for assisting the Company raise money through its August 2007 PIPE.

## **V. Siris and Hua Mei Maintained Consulting Relationships with China Yingxia**

65. After the August 2007 PIPE closed, Siris continued his consulting work with China Yingxia. Siris also maintained similar consulting relationships with other companies in which his funds invested.

66. Facilitated by the Company Representatives, Siris, on behalf of Hua Mei, entered into a third consulting agreement dated July 4, 2007 with an unidentified “China Yingxia International Inc., shareholder” for a term of 12 months. Pursuant to this agreement, Hua Mei would receive roughly \$4,000 per month for “strategic consulting services,” including assisting in press releases, communicating with investors in the private placement, accompanying investors to visit China Yingxia, and translation and other services.

67. Although the term of the third agreement ran for one year, and payment was not made for the entire 12 month term, Siris and Hua Mei provided guidance to the Company beyond the stated term continuing through its demise in March 2009. Indeed, Siris maintained a fiduciary or other relationship of trust and confidence relating to the Company from the time he began work with the Company until it ceased operation.

68. Siris and Hua Mei performed a broad range of services for China Yingxia beyond those listed in any agreement. As part of their work, Siris reviewed China Yingxia’s Commission filings, including its quarterly financial statements on Forms 10-Q. Siris provided comments to one of the Company Representatives, who drafted the filings on behalf of the Company.

69. Siris’s comments on Company matters carried considerable weight. For example, on November 13, 2007, Siris wrote:

I ... would urge everyone to delay the [quarterly earnings] call by a few days- even the [Form 10-Q] filing by a day or two- to make sure these are the right

numbers and that we have a good explanation for them. I would also like to have a call with management discussing these numbers before the conference call.

70. One day later, the Company filed with the Commission a Form 12b-25 Notification of Late Filing for its Form 10-Q.

71. In addition to reviewing the Company's Commission filings, Siris provided guidance to the Company on key hiring and other business decisions. Siris recommended and facilitated the hiring of the Company's CFO in June 2008. Siris also made recommendations for director positions, and the Company Representatives vetted and cleared candidates through Siris. Further, Siris had multiple conference calls or communications with the Company's CEO, including for the purpose of providing advice on how the Company should best present itself to the public.

72. While Siris generally disclosed the existence of Hua Mei's consulting relationships to investors in his funds, without typically identifying the specific companies he worked for, only some of the "consulting" services that Hua Mei provided were disclosed to investors. Various materials given to investors indicated that Hua Mei helped find additional investors, and provided investor relations, investment banking, and risk management and corporate governance services. Hua Mei failed to disclose, however, that it provided drafting assistance for press releases and Commission filings, translation services, management preparation in advance of conference calls, and officer recommendations.

#### **VI. Siris Repeatedly Engaged in Insider Trading in China Yingxia Stock**

73. During the relevant period, Siris owed a fiduciary duty to China Yingxia and its shareholders due to, among other things, his consulting relationship and course of dealings with the Company. Siris had access to China Yingxia's material, non-public information, such as the Company's financial picture, key hiring decisions, and operational matters. In violation of this

duty, Siris repeatedly traded the securities of China Yingxia while in possession of material, non-public information.

74. Siris knew that he could not trade China Yingxia while in possession of material, non-public information. For instance, as part of his work for a New York-based publication, in addition to writing about companies in which his funds invested, including China Yingxia, Siris authored several articles concerning the pitfalls of insider trading.

75. Further, Siris once advised Individual B not to share certain information with an investor concerning the CFO hiring decision for China Yingxia – which information was regularly provided to Siris – absent a non-disclosure agreement to avoid “the risk of passing on inside information.”

76. After China Yingxia eventually retained a CFO in June 2008, based on Siris’s recommendation, the CFO frequently sought Siris’s input on Company matters.

77. The CFO understood Siris to be an advisor to the Company. At one point in late 2008, the CFO asked Siris whether he wanted to review a draft of the current Form 10-Q before it was filed with the Commission. The CFO did this because he understood from the Company Representatives that Siris had signed a non-disclosure agreement with the Company.

78. China Yingxia, through its management and the Company Representatives, kept Siris intimately informed about Company matters. Indeed, Siris was copied on numerous confidential, internal Company emails from 2007 through 2009.

79. By mid-February 2009, various issues began to reemerge concerning suspected illegal fundraising activity by the CEO. Allegations concerning the CEO had previously been identified by one of Siris’s analysts in July 2008. By early 2009, the CEO had reportedly gone into hiding as Chinese nationals she had taken “loans” from started to demand repayment. Due

to his relationship with the Company, the CEO personally wrote Siris a letter, dated February 17, 2009, which was translated from Chinese to English roughly a day or two later.

80. The CEO wrote to Siris: “I would like to tell you the truth about current rumor and the current situation . . . .” The CEO then disclosed to Siris the illegal fundraising, and “some drastic behavior” by Chinese nationals that caused business disruptions, preventing employees from going to work. The CEO ended her letter to Siris asking for his advice and recommendation.

81. From the CEO’s letter, Siris had possession of material, non-public information directly from the CEO confirming her illegal activities and the status of the Company’s operations. At this point in time, China Yingxia had not made any public disclosure or disseminated information to investors in the U.S. via any press release consistent with the Company’s typical practice.

82. Siris nevertheless began to sell shares on February 19, 2009, shortly after receipt of the CEO’s personal letter to him. In particular, as set forth in the following chart, from February 19 through March 2, 2009, Siris sold 628,660 shares of China Yingxia and avoided losses of approximately \$130,516.30 (using the closing price on March 9, 2009, the first trading day after China Yingxia publicly disclosed its problems in the March 6 press release). During this period, Siris’s trading accounted for between 34% and 80% of the stock’s volume:

<b>Date</b>	<b>Order Qty</b>	<b>Executed Qty</b>	<b>Average Price</b>	<b>Volume</b>	<b>Ill-Gotten Gains</b>
2/19/09	75,000	65,000	.36	34%	\$21,775.00
2/23/09	140,000	83,000	.26	64%	\$19,505.00
2/24/09	730,000	120,000	.24	34%	\$25,800.00
2/25/09	160,000	105,000	.22	67%	\$20,475.00
2/26/09	168,200	117,800	.21	63%	\$21,793.00
2/27/09	190,000	127,860	.18	37%	\$19,818.30
3/02/09	10,000	10,000	.16	80%	\$1,350.00
<b>Total:</b>		<u>628,660</u>			<u>\$130,516.30</u>

83. Siris received new material, non-public information on March 3, 2009. On this date, Siris learned that China Yingxia planned to issue a press release informing the investing public of problems at the Company affecting its ability to continue operations, among other things. Before this time, China Yingxia remained quiet, without issuing any release about the events surrounding the CEO's activities or closure of a Company-owned facility.

84. On March 3, 2009, the CFO emailed the Company Representatives, a director, and Siris stating "many investors are asking what happened with the company. Should we issue a press release...." Siris encouraged the CFO to issue a press release and keep shareholders informed. Later that day, the CFO circulated a draft press release to the Company Representatives, a director, Siris, and a new attorney for the Company.

85. Siris responded in all-capital letters, "PLEASE REMOVE ME FROM ALL DISTRIBUTION LISTS."

86. This was the first time Siris asked to be removed from any internal emails, having been closely involved in the tasks of the Company and receiving internal Company communications since 2007, including draft press releases, without any such response.

87. One day after notice that the Company planned to issue a press release, Siris increased the size of his orders to sell. Between receipt of the draft press release in the late afternoon on March 3, 2009 and its issuance on March 6, 2009, Siris sold hundreds of thousands of shares. Then, he suddenly stopped all trading in China Yingxia.

88. Despite his sales from February 19 to March 6, 2009, which represented most of the sales Siris directed in China Yingxia throughout his entire relationship with the Company, Siris did not trade again from March 6 – when the press release was issued – until almost three weeks later on March 25, 2009.

89. After issuance of the press release, China Yingxia’s stock price ultimately collapsed, going from \$.08 on March 6 to \$.025 on March 9, on increased volume of 607,484 shares, up from 173,600 shares on March 6. Siris’s trading after first learning China Yingxia planned to issue a press release, set forth below, yielded his funds additional ill-gotten gains of approximately \$41,925.

<b>Date</b>	<b>Order Qty</b>	<b>Executed Qty</b>	<b>Average Price</b>	<b>Volume</b>	<b>Ill-Gotten Gains</b>
3/4/09	205,000	200,000	.13	44%	\$21,000.00
3/5/09	235,000	180,000	.10	36%	\$13,500.00
3/6/09	170,000	135,000	.08	78%	\$7,425.00
<u>Total:</u>		<u>515,000</u>			<u>\$41,925.00</u>

90. Siris directed the sales in China Yingxia, while in possession of material, non-public information, from February 19 to March 6, 2009, in breach of a fiduciary or other relationship of trust and confidence.

91. As a result of this illegal insider trading, Siris’s funds obtained ill-gotten gains of approximately \$172,441.30.

**VII. Siris Made Various Misrepresentations and Omitted Material Information In Communications with His Investors Concerning China Yingxia**

92. Around the time of China Yingxia’s downfall, Siris wrote in his monthly letter to investors, dated March 3, 2009, that the funds encountered a “serious fundamental problem” with China Yingxia.

93. Siris wrote in general terms about the CEO’s illegal fundraising, but stated there “is reason to believe a restructuring can be achieved” given that China Yingxia’s management “is very prominent” in China. Further, Siris wrote that:

“We have visited this company on many occasions... There is a real business here, with exceptional products....” Siris continued, however, “[w]e are in the process of taking legal action against the company, its management, its Directors, the investment bankers, the lawyers, and auditors. We believe the existence of

these loans, which existed prior to our financing, is material ... In addition, *the investment banker continued to handle the SEC filings, hired the CFO, and selected directors. We believe the bankers have significant liability.*” (Emphasis added.)

94. Siris’s statements concerning the investment banker’s role were misleading because they did not disclose Siris’s leading role in those very same activities.

95. Further, Siris omitted from the letter material information concerning his own role as a paid consultant and dealings with China Yingxia, including the receipt of stock for supposedly conducting due diligence on the Company; that Siris himself had aided the Company in its Commission filings and played a leading role in the selection of the CFO and directors; and, further, that he had information concerning the CEO’s suspected illegal conduct as early as July 2008, when one of his analysts reported on allegations of such conduct.

96. One day later, on March 4, 2009, Siris sent an email to select investors in China Yingxia, including three investors in his Hua Mei Partners fund. He wrote, among other things, that:

“Over the past few weeks” we have become concerned about China Yingxia. The CEO told “us she owes ... about \$1.3 million [in loans]. However, we have not ascertained whether this number is correct. Information on a website in Chinese has indicated the amount could be significantly higher. ... It is ... possible she is running a Madoff like Ponzi scheme. For all we know, she could have accounted for the money as ‘sales’ and ‘earnings.’ ... There is a real business. The question is what are the real numbers?”

97. Siris again indicated that he wanted to take legal action against China Yingxia, the investment bankers, the auditors, and “anyone else we can find.” Further, Siris wrote that:

*The investment bankers* are in a particularly vulnerable position ... after raising money, they continued to work with the company. *They actually wrote and filed the financial documents. They hired the CFO and the consultant. The consultant is the sister of the auditor. So there are a lot of issues here.* (Emphasis added.)

98. Siris again made no mention of his role with the Company's Commission filings, the hiring of the CFO, prior knowledge of the consultant's relationship to the auditor, or generally his role with China Yingxia.

99. Siris deprived his investors of information concerning his role with the now-failed Company and gave the false and misleading impression that others should be sued for the very conduct in which Siris himself engaged.

100. The misrepresentations and omissions in the March 2009 communications were material in that reasonable investors, in making their investment decisions, including any decisions to redeem, would find it important that Siris had been involved with China Yingxia's filings and hiring decisions, among other things.

#### **VIII. Siris and Guerrilla Capital Engaged in Extensive Insider Trading Before Public Announcement of Ten Confidential Deals**

101. Siris and Guerrilla Capital engaged in unlawful insider trading in connection with ten confidential securities offerings by selling or selling short the issuers' securities prior to the public announcement of the offerings.

102. Upon announcement of the offerings or deals, the volume of trading in the issuers' securities increased considerably, and the price of the issuers' securities upon announcement almost always declined significantly given, among other things, the dilutive effect of the offerings.

103. Despite agreeing to maintain the offering information in confidence and not to trade on the information, Siris breached his duty and traded the securities of the issuers from July 2009 to December 2010. The trades were made while in possession of material, non-public information concerning the offerings. Siris's funds generated substantial ill-gotten gains (profits and/or losses avoided) of approximately \$161,213.51 as a result of the illegal trading.

104. For the ten offerings, Siris was confidentially solicited by phone and brought “over-the-wall” by four different placement agents, underwriters, or broker-dealers. (Being brought “over-the-wall” refers to Siris being given access to material, non-public confidential information on a securities offering after agreeing not to trade while in possession of the information.)

105. “Broker-Dealer A” solicited Siris in connection with four offerings. “Broker-Dealer B” solicited Siris in connection with four offerings. “Broker-Dealer C” and “Broker-Dealer D” each solicited Siris and/or Guerrilla Capital in connection with one offering.

106. Underwriters, placement agents, broker-dealers, and others frequently solicited Siris and his funds to participate in securities offerings involving Chinese companies, including PIPEs, registered direct or other confidentially marketed public offerings. (Registered direct offerings and confidentially marketed public offerings are different than traditional PIPEs, in that, they both involve the offering of shares previously registered under an existing and effective registration statement.)

107. The ten deals involved confidential solicitations done by phone wherein Siris agreed to go “over-the-wall” with certain restrictions for a specific period of time. In general, Siris agreed not to share the information he received with anyone nor trade on the information from the time of going “over-the-wall” until the public announcement of the offering or deal. After going “over-the-wall,” Siris and his funds were generally privy to information such as the name of the issuer doing the deal, anticipated and actual timing for closing, the book or list of investors involved in the offering, anticipated and actual pricing, and updates on other particulars of the deals. Siris was also generally given the opportunity to meet with management for the various companies, which he did on at least one occasion.

**a. Siris and Guerrilla Capital Engaged in Insider Trading on Four Deals Involving Broker-Dealer A**

108. In March 2005, Siris executed a Master Acknowledgement Agreement with Broker-Dealer A providing, among other things, that receipt of confidential information “will restrict [Siris’s] ability to trade in ... the Issuer.”

109. On July 2, 2009, Broker-Dealer A confidentially solicited Siris by phone and brought him “over-the-wall” concerning a registered direct or confidentially marketed public offering for China Green Agriculture, Inc. (“China Green”). Consistent with the practice of the salesperson that solicited Siris on many of the Broker-Dealer A offerings, he informed Siris that Broker-Dealer A was working on a confidential transaction and, if disclosed, Siris would be “restricted” in that issuer’s name. The restrictions would include no trading in the issuer’s securities and no discussion of the transaction with others until the deal was publicly announced.

110. After obtaining Siris’s oral agreement to be restricted, Broker-Dealer A shared the name of the issuer doing the deal, China Green, and then sent Siris a confirmatory email stating:

The existence of the proposed transaction by China Green Agriculture, Inc is highly confidential. Your firm has agreed to maintain in confidence the Confidential Information, and ... You and any other representatives of your firm to whom the Confidential Information has been disclosed further agreed not to transact in the securities of China Green Agriculture, Inc ... until such time the Confidential Information is publicly announced.

111. Days after being restricted, on July 16 and 17, 2009, Siris used the information he received and directed sales of a total of 39,200 shares of China Green.

112. The offering was publicly announced on July 21, 2009, and the stock price significantly declined following the announcement. Siris’s funds participated in the offering, buying shares at a discount to the market price.

113. Siris’s funds made ill-gotten gains of approximately \$25,621.98.

114. Having received material, non-public information concerning China Green after expressly agreeing to maintain that information in confidence and not to trade on it or discuss it with others, Siris and Guerrilla Capital owed a fiduciary or other duty of trust or confidence to China Green and/or its agents.

115. Siris and Guerrilla Capital breached that duty of trust or confidence by trading while in possession of material, non-public information relating to the China Green deal.

116. The same salesperson at Broker-Dealer A solicited Siris for three other offerings and followed the same procedure as described above, including obtaining an express oral agreement from Siris and thereafter sending Siris written confirmations.

117. On July 20, 2009, Broker-Dealer A confidentially solicited and brought Siris “over-the-wall” concerning a registered direct or confidentially marketed public offering for Harbin Electric, Inc. Siris directed sales of 6,900 shares on July 21, 22, and 24, 2009. The offering was publicly announced on July 30, 2009. Siris’s funds participated in the offering, buying shares at a discount to the market price. One of Siris’s funds made ill-gotten gains of approximately \$5,639.39.

118. On December 9, 2009, Broker-Dealer A confidentially solicited Siris and brought him “over-the-wall” concerning a registered direct or confidentially marketed public offering for Yongye International, Inc. at 10:55 am EST. Minutes after solicitation, Siris directed sales of 21,900 shares. The offering was publicly announced on December 17, 2009. Siris’s funds participated in the offering, buying shares at a discount to the market price. Siris’s funds made ill-gotten gains of approximately \$32,258.70.

119. On February 10, 2010, Broker-Dealer A confidentially solicited Siris and brought him “over-the-wall” concerning a registered direct or confidentially marketed public offering for

Sutor Technology Group, Ltd. From February 11, 2010 through March 4, 2010, Siris directed sales of 157,233 shares. The offering was publicly announced on March 5, 2010. Siris's funds made ill-gotten gains of approximately \$46,000.

**b. Siris and Guerrilla Capital Engaged in Insider Trading on Four Deals Involving Broker-Dealer B**

120. Broker-Dealer B solicited Siris in connection with four offerings. Broker-Dealer B generally only verbally brought potential investors "over-the-wall" via telephone conversations and did not send written confirmations of the relevant trading restrictions. For one deal, however, Broker-Dealer B also sent a confirmatory email to which Siris responded and confirmed the restrictions in writing.

121. On December 4, 2009, Broker-Dealer B confidentially solicited Siris and brought him "over-the-wall" concerning a PIPE for Gulf Resources, Inc. On December 9 and 10, 2009, Siris directed short sales of 18,100 shares. On December 11, 2009, the offering was publicly announced. Siris's funds participated in the offering, buying shares at a discount to the market price. Siris's funds made ill-gotten gains of approximately \$10,439.36.

122. On December 7, 2009, Broker-Dealer B confidentially solicited Siris and brought him "over-the-wall" concerning a registered direct or confidentially marketed public offering for Universal Travel Group, Inc. On December 9 and 10, 2009, Siris directed short sales and sales of 7,300 shares. The offering was publicly announced on December 10, 2009, after Siris's sales at issue. Siris's funds participated in the offering, buying shares at a discount to the market price. Siris's funds made ill-gotten gains of approximately \$9,882.30.

123. On February 1, 2010, Broker-Dealer B confidentially solicited Siris and brought him "over-the-wall" concerning a registered direct or confidentially marketed public offering for Puda Coal, Inc. ("Puda Coal"). On February 4 and 11, 2010, Siris directed short sales of 6,000

shares. The offering was publicly announced on February 12, 2010. Siris's funds participated in the offering, buying shares at a discount to the market price. Siris's funds made ill-gotten gains of approximately \$1,440 on the February 4 sales (the February 11 sales also violated Rule 105 of Regulation M, and are discussed below).

124. On November 23, 2010, Broker-Dealer B again confidentially solicited Siris and brought him "over-the-wall" concerning a registered direct or confidentially marketed public offering for Puda Coal. Broker-Dealer B sent Siris a confirmatory email for this deal, which Siris responded to confirming the various restrictions, including that he would not "engage in market transactions relating to Puda Coal securities or effect any other transactions in such securities until 9:30 am E[S]T on December 8<sup>th</sup>, 2010 (by which time such Confidential Information shall have been publicly disclosed ...)." On December 7, 2010, Siris directed sales of 3,900 shares of Puda Coal. The offering was publicly announced on December 8, 2010. Siris's funds participated in the offering, buying shares at a discount to the market price. Siris's funds made ill-gotten gains of approximately \$13,102.98.

**c. Siris and Guerrilla Capital Engaged in Insider Trading in One Deal Involving Broker-Dealer C**

125. On April 28, 2010, Broker-Dealer C confidentially solicited Siris orally and in a confirmatory email and brought him "over-the-wall" concerning a registered direct or confidentially marketed public offering for China Agritech, Inc. At 9:47 am EST – which was within two minutes of the email transmission from Broker-Dealer C at 9:45 am EST confirming restrictions – Siris began directing short sales, which totaled 4,800 shares. The offering was publicly announced later that same day, at 6:30 pm EST. Siris's funds participated in the offering, buying shares at a discount to the market price. Siris's funds made ill-gotten gains of approximately \$8,448.

**d. Siris and Guerrilla Capital Engaged in Insider Trading on One Deal Involving Broker-Dealer D**

126. On July 30, 2010, Broker-Dealer D confidentially solicited Guerrilla Capital orally and in a confirmatory email and brought it “over-the-wall” concerning a registered direct or confidentially marketed public offering for HQS Sustainable Maritime Industries, Inc. Broker-Dealer D sent Guerrilla Capital an email stating “[p]lease be aware that you have received certain material, non-public information ... we hereby confirm your agreement to treat as confidential the Information ... and not to use the Information ... or trade on it.” On August 6, 2010, Siris directed sales of 6,000 shares. The offering was publicly announced on August 10, 2010. Siris’s funds made ill-gotten gains of approximately \$8,380.80.

127. Siris directed trades in the ten issuers identified herein as alleged above with knowledge of the impending offering announcements, after expressly agreeing to trading restrictions that he intentionally or recklessly disregarded.

**IX. Siris Made Materially False Representations in a Securities Purchase Agreement**

128. In connection with at least one securities offering, Siris made materially false representations to Universal Travel to induce the issuer to sell its securities to Siris’s funds.

129. Broker-Dealer B confidentially solicited and brought Siris “over-the-wall” no later than December 7, 2009. At such time, Siris agreed to be restricted from, among other things, trading the securities of Universal Travel until public announcement of the offering.

130. Two days after going “over-the-wall,” on December 9, 2009, Siris directed short sales of 7,000 shares of Universal Travel. On the afternoon of December 9, Siris signed a securities purchase agreement (“SPA”), which stated:

The Investor [Siris] represents that *since the date on which the Placement Agent first contacted such Investor about the Offering [December 7, 2009], Investor has not engaged in any purchases or sales of the securities of the Company*

(including, without limitation, any Short Sales (as defined below) involving the Company's securities. Each Investor covenants that it will not engage in any purchases or sales of the securities of the Company (including Short Sales) *prior to the time the transactions contemplated by this Agreement are publicly disclosed*. (Emphasis added.)

131. The following morning after signing the SPA, on December 10, 2009, Siris directed additional sales of 300 shares of Universal Travel before the public announcement of the offering.

132. In all, Siris directed short sales and/or sales of 7,300 shares for ill-gotten gains of approximately \$9,882.30 (as described above in § VIII.b.), after being contacted about the offering and in advance of its public announcement. Siris's funds participated in the December 2009 offering for Universal Travel.

133. Siris knowingly or recklessly made and disregarded the representations made to Universal Travel as he directed trades in Universal Travel, including short sales, contrary to the representations made in the SPA.

#### **X. Siris Violated Rule 105 of Regulation M**

134. Since October 9, 2007, Rule 105 of Regulation M prohibits any person who made a short sale during the restricted period, generally the five business days before pricing of a securities offering, from purchasing *any* securities of that issuer in a follow-on and/or secondary offering done on a firm commitment basis.

135. Siris directed trades in the five-day restricted period in violation of Rule 105 in connection with at least two follow-on offerings done on a firm commitment basis: Smarheat, Inc. ("Smarheat") and Puda Coal.

**a. Smartheat, Inc.**

136. On September 18, 2009, Siris, for his funds, purchased 50,000 shares of Smartheat at \$9.00 per share in a publicly marketed firm commitment follow-on offering. During the five business days before pricing of this offering, which occurred after the close of the market on September 17, 2009, Siris's funds sold short 25,000 shares of Smartheat at prices between \$9.91 and \$10 per share. In violation of Rule 105, Siris's funds realized a profit of approximately \$24,247.50 from the illicit trading, and \$73,500 from "overage" shares, consisting of the 25,000 shares not sold short during the restricted period but purchased in the offering.

**b. Puda Coal, Inc.**

137. On February 12, 2010, Siris, for his funds, purchased 180,000 shares of Puda Coal at \$4.75 per share in a confidentially marketed firm commitment follow-on offering. Puda Coal's underwriter, Broker-Dealer B, confidentially solicited and brought Siris "over-the-wall" in connection with the offering on February 1, 2010. Although Siris's funds sold short a total of 6,000 shares in the days leading up to the announcement and after being brought "over-the-wall" on February 1, 2010, during the five business days before pricing of this offering, which occurred before the market opened on February 12, 2010, Siris's funds sold short 3,600 shares of Puda Coal at \$5.68 per share. In violation of Rule 105, Siris's funds realized a profit of approximately \$3,340.08 from the illicit trading (this conduct also constituted illegal insider trading; however, disgorgement of such ill-gotten gains are included here), and \$26,100 from "overage" shares purchased in the offering.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (Against Siris and Guerrilla Capital)**

138. Paragraphs 1 through 137 are realleged and incorporated by reference as though fully set forth herein.

139. Defendants Siris and Guerrilla Capital purchased and sold securities of issuers, while in possession of material, non-public information, in breach of a duty or relationship of trust and/or confidence that was owed directly, indirectly, or derivatively, to the sources of the material, non-public information. Defendants Siris and Guerrilla Capital breached duties of trust and/or confidence established by agreement, by history, pattern, or practice of sharing confidences, and by the sensitive nature of the professional services rendered. Defendant Siris also knowingly or recklessly made material misrepresentations with respect to trading in connection with the purchase of Universal Travel securities.

140. Defendants Siris and Guerrilla Capital, directly or indirectly, with scienter, by use of the means or instrumentalities of interstate commerce, or by use of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of securities:

(a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit.

141. By reason of the foregoing, defendants Siris and Guerrilla Capital violated, and unless enjoined will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

**SECOND CLAIM FOR RELIEF**  
**Violations of Section 17(a) of the Securities Act**  
(Against Siris and Guerrilla Capital)

142. Paragraphs 1 through 137 are realleged and incorporated by reference as though fully set forth herein.

143. Defendants Siris and Guerrilla Capital sold securities of issuers, while in possession of material, non-public information, in breach of a duty or relationship of trust and/or confidence that was owed directly, indirectly, or derivatively, to the sources of the material, non-public information. Defendants Siris and Guerrilla Capital breached duties of trust and/or confidence established by agreement, by history, pattern, or practice of sharing confidences, and by the sensitive nature of the professional services rendered.

144. Defendants Siris and Guerrilla Capital, directly or indirectly, with scienter, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, in the offer or sale of securities: (1) employed devices, schemes, or artifices to defraud; (2) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit.

145. By reason of the foregoing, defendants Siris and Guerrilla Capital have violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**THIRD CLAIM FOR RELIEF**  
**Violation of Section 206(4) of the Advisers Act and Rule 206(4)-8 Thereunder**  
(Against Siris)

146. Paragraphs 1 through 137 are realleged and incorporated as though fully set forth herein.

147. At all relevant times, Siris operated as an investment adviser as defined by Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)], and served in that capacity with respect to his clients and investors.

148. Defendant Siris, while acting as an investment adviser to pooled investment vehicles, by use of the mails or any means or instrumentalities of interstate commerce, directly or indirectly, made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to an investor or prospective investor in the pooled investment vehicles or otherwise engaged in acts, practices, or courses of business that are fraudulent, deceptive, or manipulative with respect to an investor or prospective investor in the pooled investment vehicles.

149. By reason of the foregoing, defendant Siris violated, and unless enjoined will again violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

**FOURTH CLAIM FOR RELIEF**  
**Violation of Rule 105 of Regulation M of the Exchange Act**  
(Against Siris and Guerrilla Capital)

150. Paragraphs 1 through 137 are realleged and incorporated by reference, as though fully set forth herein.

151. In connection with two offerings of securities for cash pursuant to a registration statement filed under the Securities Act, defendants Siris and Guerrilla Capital, on behalf of Siris's

funds, directed short sales of securities that were the subject of offerings of equity securities for cash pursuant to a registration statement or a notification on Form 1-A or Form 1-E filed under the Securities Act during the Rule 105 restricted period, and purchased the offered securities from an underwriter or broker or dealer participating in the offering.

152. By reason of the foregoing, defendants Siris and Guerrilla Capital violated, and unless enjoined will again violate, Rule 105 of Regulation M [17 C.F.R. § 242.105].

**FIFTH CLAIM FOR RELIEF**  
**Violation of Section 15(a) of the Exchange Act**  
(Against Siris)

153. Paragraphs 1 through 137 are realleged and incorporated as though fully set forth herein.

154. Defendant Siris, by use of the mails or any means or instrumentality of interstate commerce, effected transactions in, or induced or attempted to induce the purchase or sale of, securities when he was not registered with the Commission as a broker or dealer or associated with an entity registered with the Commission as a broker or dealer.

155. By reason of the foregoing, defendant Siris violated, and unless enjoined will again violate, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

**SIXTH CLAIM FOR RELIEF**  
**Violations of Section 5(a) and 5(c) of the Securities Act**  
(Against Siris and Hua Mei)

156. Paragraphs 1 through 137 are realleged and incorporated as though fully set forth herein.

157. Defendants Siris and Hua Mei, from August 14, 2007 to November 15, 2007, directly or indirectly, made use of the means or instruments of transportation or communication

in interstate commerce or of the mails, to sell securities without a registration statement being in effect as to those securities.

158. By reason of the foregoing, defendants Siris and Hua Mei violated, and unless enjoined will again violate, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. § 77e(a) and (c)].

### **PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

(a) Permanently enjoining defendants Siris and Guerrilla Capital from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and Rule 105 of Regulation M [17 C.F.R. § 242.105]; defendants Siris and Hua Mei from violating Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)]; and defendant Siris from violating Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8], and Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)];

(b) Ordering Defendants, jointly and severally, to pay disgorgement, together with prejudgment interest;

(c) Ordering defendant Siris to pay civil penalties under Sections 21(d)(3) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78u-1], Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80-b(9)(e)] for violations of the federal securities laws; and

(d) Granting any additional relief the Court deems just, appropriate, or necessary.

Dated: New York, New York  
July 30, 2012

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