

03 CV 11306

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

LEI ZHANG, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

-against-

JA SOLAR HOLDINGS CO., LTD.,  
HUAJIN YANG and DANIEL LUI,

Defendants.

Civil Action No.

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

**NATURE OF THE ACTION**

1. Plaintiff Lei Zhang by his undersigned attorneys, bring this action (the "Action") on behalf of himself and all other similarly situated persons or entities (the "Class," further defined *infra*) who purchased or otherwise acquired the American Depository Shares ("ADS") of JA Solar Holdings Co., Ltd. ("JA Solar" or the "Company"), from August 12, 2008 to November 12, 2008, inclusive (the "Class Period") for violations of the federal securities laws. Plaintiff seeks to recover damages caused to the Class by Defendants' false statements and failure to disclose material facts about the Company in violation of §§10(b) and 20(a) of the Securities Exchange Act of 1934, and SEC Rule 10b-5 promulgated thereunder.

2. The allegations made in this Complaint are based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and upon information and belief as to all other matters. Plaintiff's information and belief is based on his investigation (made by and through their attorneys), which investigation included, *inter alia*, a review and analysis of: (1) public documents pertaining to JA Solar and the Individual Defendants, as defined herein; (2) filings by

JA Solar with the Securities and Exchange Commission (“SEC”); (3) press releases published by JA Solar; (4) analyst reports concerning JA Solar; pleadings in other litigations where JA Solar is a party; (5) media coverage such as newspaper and magazine articles and web logs regarding JA Solar and the Individual Defendants; and (6) transcripts from the Company conference calls with analysts. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### INTRODUCTION

3. Defendant JA Solar was founded in May 2005 by Defendant Huaijin Yang and maintains its headquarters in the northern Shanghai district of Zhabei, China. The Company manufactures solar cells designed to be incorporated into photovoltaic modules and conversion systems. The Company sells its components directly to photovoltaic system manufacturers, primarily in China.

4. During the Class Period, Defendants made materially false and misleading statements about the Company’s financial condition and operating results. Specifically, Defendants failed to disclose that JA Solar purchased from a subsidiary of Lehman Brothers Holdings Inc. (“Lehman Brothers”) a three month, \$100 million note (the “Lehman note”) on or about July 9, 2008. At the time of this purchase, Lehman Brothers, which guaranteed the Lehman note, was under severe financial distress and credit crunch, and headed for inevitable bankruptcy.

5. Defendants failed to disclose to investors that: (a) JA Solar had made a highly speculative and material investment in a subsidiary of Lehman Brothers, an entity that was on the brink of insolvency and headed toward bankruptcy; (b) the value of the Company’s investment in the Lehman note had diminished considerably; and (c) Defendants’ positive statements

concerning JA Solar's financial performance, outlook and earnings guidance for 2008 and 2009 were materially false and misleading and such statements were made without any reasonable basis. Further, Defendants made affirmatively false and misleading statements about the state of their Lehman Brothers investment even when purporting to make a full disclosure to investors in mid-September 2008.

6. On November 12, 2008, the Company shocked investors when it announced its 3Q 2008 results for the period ending September 30, 2008, and revealed a \$100 million impairment on short-term investments purchased from Lehman Brothers Treasury Co. B.V. and a loss of \$7.35 million in derivatives deals with the investment bank.

7. As a result, JA Solar revised its 2008 revenue outlook to between \$849.5 million and \$878.9 million. The Company had previously told investors to expect revenue of between \$1.05 billion to \$1.17 billion in 2008. The Company also cut its 2009 revenue forecast to between \$1.5 billion and \$1.7 billion, materially lower than the previously announced forecast of \$2 billion to \$2.2 billion.

8. On this news, JA Solar's ADS price dropped from \$3.34 on November 11, 2008 to close at \$2.38 per share on November 12, 2008. The decline represented a one-day drop of 28.7%, and JA Solar ADS declined more than an 86% from the Class Period-high trading price.

#### **JURISDICTION AND VENUE**

9. Jurisdiction is conferred by §27 of the Securities Exchange Act of 1934 (the "Exchange Act"). The claims asserted herein arise under §§10(b) and 20(a) of the Exchange Act and Rule 10b-5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§1331 and 1337, and §27 of the Exchange Act.

10. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C. §1391(b), as many of the acts and practices complained of herein occurred, in substantial part, in this District. The Company's ADS traded on National Association of Securities Dealers Automated Quotations ("NASDAQ") Global Market, which is based in this District.

11. In connection with the acts and conduct alleged herein, Defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the United States mails and the facilities of the national securities exchanges.

### **PARTIES**

12. Plaintiff Lei Zhang purchased JA Solar ADS on the NASDAQ during the Class Period, as set forth in the attached certification, and was damaged thereby.

13. Defendant JA Solar, through its subsidiaries, designs, develops, manufactures, and sells photovoltaic solar cells in the People's Republic of China and internationally. JA Solar sells its products primarily through a team of sales and marketing personnel to solar module manufacturers, who assemble and integrate its solar cells into modules and systems that convert sunlight into electricity. The Company was founded in 2005 and is based in Ningjin, the People's Republic of China. JA Solar USA, Inc. is located at 860 Hillview Court, Suite 100, Milpitas, California.

14. On February 7, 2007, JA Solar completed an initial public offering ("IPO") of 15 million ADS, each representing three of the Company's ordinary shares, at \$15 per ADS. The JA Solar IPO ADS sold at a high of \$21.10 on February 23, 2007 and closed at \$19.80 on March 8, 2007, up 32% from the initial offering price. During the Class Period JA Solar's ADS trade under the symbol JASO on the NASDAQ Global Market.

15. Defendant Huaijin (Samuel) Yang (“Yang”) is the founder of the Company and is, and was at all relevant times, Chief Executive Officer (“CEO”) and a Director of JA Solar.

16. Defendant Daniel Lui (“Lui”) is, and was at all relevant times, Chief Financial Officer (“CFO”) of JA Solar.

17. Yang and Lui are collectively referred to herein as the “Individual Defendants.” Collectively, the Individual Defendants and JA Solar are referred to herein as “Defendants.” Because of their positions and access to material, non-public information available to them, the Individual Defendants knew the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the affirmative representations which were being made were then materially false and misleading. The Individual Defendants are liable for the false statements pleaded herein, as each was either made by the particular Individual Defendants or was “group-published” information, the result of the collective actions of the Individual Defendants.

## **SUBSTANTIVE ALLEGATIONS**

### **False and Misleading Statements**

18. On August 12, 2008, JA Solar issued a press release reporting the Company’s 2Q 2008 results. Defendants stated, in pertinent part:

#### Second Quarter 2008 Highlights

- Revenue increased 171% to RMB 1.24 billion (US\$180.3 million), compared to RMB 457.0 million (US\$66.6 million) in Q2 2007
- Total gross profit increased 162% to RMB 288.4 million (US\$42.1 million), compared to RMB 110.1 million (US\$16.1 million) in Q2 2007
- Gross margin of 23.3%, compared to 24.1% in Q2 2007 and 21.0% in Q1 2008
- Income from operations increased 155% to RMB 216.3 million (US\$31.5 million), compared to RMB 85.0 million (US\$12.4 million) in Q2 2007

- GAAP net income/loss of RMB 2.06 (US\$0.30) per basic ADS and fully diluted ADS of RMB -0.04 (US\$-0.01), compared to basic ADS of RMB 0.55 (US\$0.08) and fully diluted ADS of RMB 0.54 (US\$0.08) in Q2 2007
- Non-GAAP net income of RMB 1.04 (US\$0.15) per basic ADS and fully diluted ADS of RMB 0.99 (US\$0.14), adjusted for stock based compensation and change in fair value of certain non-cash derivative gain and loss (Please refer to reconciliation on page 10)
- Shipped 65.7 MW of solar cells during the quarter compared to 24.0 MW in Q2 2007
- Cash and cash equivalents sequentially increased to RMB 3.57 billion (US\$519.8 million), as compared to RMB 1.45 billion (US\$211.5 million) in Q1 2008, as a result of concurrent closing of its senior convertible public offering of US\$400 million of senior convertible notes

\* \* \*

***Samuel Yang, JA Solar's Chief Executive Officer***, said, "JA Solar continues to be recognized as one of the global cost leaders in the solar market. The strong second quarter operating results are a testament to the execution of our high growth business plan. Overall demand and ASP for the second half of 2008 remain strong and steady. ***We are confident that our diversified customer base, long term competitively priced polysilicon wafer contracts, and strategic alliances with key upstream and downstream industry players will continue to drive JA Solar's sales revenue growth as planned into 2009 with gross margin in excess of 20%.***"

\* \* \*

#### Second Quarter 2008 Balance Sheet

As of June 30, 2008, JA Solar had cash and cash equivalents of RMB 3.57 billion (US\$519.8 million), compared with RMB 1.57 billion (US\$228.3 million) at the end of the second quarter 2007, and RMB 1.45 billion (US\$211.5 million) at the end of the first quarter 2008.

On May 19, 2008, the Company issued US\$400 million 4.50% senior convertible notes due May 15, 2013 ("Notes"). The terms of the Notes include certain conversion, early redemption option and conversion rate adjustment features. The Notes are convertible into shares of the Company's stock, cash, or a combination of stock and cash. Concurrent with this offering, the Company entered into capped call transactions with financial institutions that are affiliates of the joint book-running managers of the Notes offering. The capped call transactions are expected to reduce the potential dilution upon conversion of the Notes. Total issuance costs of the senior convertible notes were approximately US \$11 million. Total consideration of the capped call options was approximately US\$32 million.

\* \* \*

*Daniel Lui, JA Solar's CFO*, said, "Steady wafer supply coupled with fast ramp up of new solar cell manufacturing lines and continued production process improvement helped drive second quarter revenue and profit growth. For the second quarter, margins fluctuated from the prior quarter due to a higher percentage of solar processing revenue that was partly due to faster than scheduled ramp up of our production facilities in Hebei, and partly due to solar cells sale back to certain strategic long term wafer suppliers. Operating profit sequentially increased to RMB 216.3 million in the second quarter from RMB 163.6 million in first quarter as a result of our scheduled capacity expansion and tight control of operating costs. ***As we head into the second half of 2008, the Company has a high level of cash on hand.***"

\* \* \*

#### 2008 Outlook

Based on current customer demand and market forecasts, the Company reiterated its expectations for revenue for the full year 2008 in the range of RMB 7.22 billion (US\$1.05 billion) to RMB 8.02 billion (US\$1.17 billion). The revenue guidance in RMB remains unchanged from the first quarter of 2008. The higher amount in USD is due to a lower USD/RMB exchange rate used in the second quarter 2008 than in the first quarter 2008. Gross margin for 2008 is expected to remain above 20%.

Our target for total production output has been updated to the range of 340MW to 350MW for 2008, with total annual production capacity in the range of 500MW to 600MW by year-end 2008. Ten new solar cell manufacturing lines are scheduled to go on line in Ningjin, Hebei province, where four of these lines were installed as of July 31, 2008 and the remaining six will be installed by October 31, 2008. At the new Yangzhou production facility, the Company plans to install three 25 MW lines by the end of the fourth quarter 2008, totaling 75 M W of new capacity at this facility. Total capital expenditures for 2008 are expected to be RMB 966.8 million (US\$141.0 million), primarily for capacity expansion. R&D expense is expected to be RMB 34.3 million (US\$5.0 million).

(Emphasis added.)

19. On the same day, JA Solar held its 2Q 2008 earnings conference call. During the conference call, Defendant Yang said, in relevant part:

[A] state of the art business intelligence system and a governance risk and control system have also been concurrently deployed to provide real-time what-if analysis to executives and keep track of the corrective action status of all control issues identified by the routine soft [Sarbanes Oxley section] 404 testing of controls. In fact, since the controls represent more than soft 404 compliance to JA, management is convinced that internal controls are about transparency, scientific cost control, management efficiency and, most important of all, continuous improvement of operation processes.

\* \* \*

We are very pleased with the progress we have made in the second quarter and are very excited about the Company's market position going into the second half of '08 and into '09. Our management team is working diligently to maximize our supply relationship and to broaden our diversified customer base. We see robust growth opportunities, both between China and internationally, and plan to capitalize on these markets going forward. Thank you very much.

20. On the same conference call, Defendant Lui said, in relevant part:

First, I'd like to discuss our financial position. On May 19, 2008, the Company issued \$400m 4.5% senior convertible notes, due May 15, 2013, for financing of our production capacity expansion and wafer material prepayment plans. This has significantly strengthened our competitive financial position.

And as of the period end, we have working capital of \$739m, including approximately \$520m of cash on hand and approximately \$294m of supplier advances that were made to secure raw material needs of silicon wafers, which will then be offset against future purchases.

*At such a dynamic period in the industry and financial markets, we believe our strong financial position and projected operating cash inflows will provide us with necessary financial flexibility to take up any industry challenges and make strategic investments.*

Concurrent with the issuance of our convertible bond, we entered into capped call options that are expected to reduce the potential dilution upon conversion of the notes.

\* \* \*

Now, turning to guidance. To reiterate Samuel's comments with regard to capacity, our target for total production output is in the range of 340 megawatts to 350 megawatts for 2008, with a total annual production capacity in the range of 500 megawatts to 600 megawatts by year end 2008. We expect 2009 production output in the range of 650 megawatts to 700 megawatts. ***Based on our current customer demand and market forecast, we reiterate our expectations for revenue for the full year 2008 in the range of \$1.05b to \$1.17b.*** Our revenue guidance in RMB remains unchanged from Q1. The higher amount in US dollars is due to lower US dollar/RMB exchange rate used in the second quarter 2008 than the first quarter 2008. Gross margin for 2008 is expected to remain above 20%.

(Emphasis added.)

21. In response to analysts' questions, Defendant Lui made the following statements during the 2Q 2008 earnings conference call:

Jesse Pichel, Analyst with Piper Jaffray:

Well, what is your dollar exposure and do you have any hedge out there? I was under the impression that you had a hedge.

\* \* \*

Defendant Lui:

As opposed to using a hedge, because that will not be a very effective hedge that we consider, we have -- instead, we have adopted the -- used the short-term investments instead to manage the exposure. *During the quarter, we have engaged Credit Suisse, Lehman Brothers and Citigroup to help manage our cash.* Altogether, we had approximately \$400m in cash in our bank at the end of June -- at the end of Q2. And these funds have invested our cash in some capital protected funds, to help boost the return of those cash that are not used.

Sanjav Shrestha, Analyst with Lazard Capital Markets:

[G]oing back to Jesse's question here, guys, you guys had a great quarter but I think all this one-time non-operational (inaudible) end up masking what your true earnings power is on a reported number basis, right. So how should we then start to think about going forward, whether it's related to foreign currency gain, or loss or the derivative-related line item that ends up impacting exactly what the true earnings power of the Company is? Is there a better way that you guys are thinking about how you might actually start to manage that going forward?

Defendant Lui:

Okay. Thank you for the question. I think, first, let's go back to the foreign loss - foreign exchange loss question, answer that question first. As I said, I think, first things first, I don't think-- a simple forward contract to hedge the US dollar on hand would only cause us to recognize a one-time loss instantly, rather than waiting for like six months, 10 months down the road, so we elected to choose not to do that, because that's not effective.

\* \* \*

That's why we have engaged three professional firms to help manage the idle funds, so that hopefully, at the end of the day, at least parts of the, if not all the, foreign exchange loss will be offset by the extra interest income we will receive from those funds.

Julie Chen, Analyst with CRT Capital:

I'm just doing a delta difference in terms of your cash position as of last quarter and the net proceeds that you received from your \$400m capital raised and what you reported this quarter, so that's the difference. So I would like to know -- and

that difference is the \$90m I'm referring to, so I'd like to know where that cash burn is happening.

Defendant Lui:

Okay. So the big ones are going to be the amounts to the prepayments, because that was one of the major reasons we raised the convertible bond. And another reason was the CapEx, as we continue to ramp up our production facilities -- I mean to install our production capacities in Yangzhou. And these two are the big ones. ***But otherwise, you know we had a positive operating cash flow, otherwise we would have positive operating cash flow from our Ningjin plant.***

(Emphasis added.)

22. On August 18, 2008, JA Solar filed Form 6-K with the SEC that included the Company's financial results for 2Q 2008. Defendant Yang signed the Form 6-K.

23. On September 16, 2008, JA Solar issued a statement regarding its relationship with Lehman Brothers. The Company stated, in pertinent part:

On May 19, 2008, JA Solar Holdings Co., Ltd. ("JA Solar") (Nasdaq:JASO) closed its public offerings of \$400 million aggregate principal amount of senior convertible notes due 2013 and up to 13,125,520 American Depositary Shares, or ADSs, which ADSs were borrowed by Lehman Brothers International (Europe) ("Lehman Europe") and Credit Suisse International ("CS"), affiliates of Lehman Brothers Inc. and Credit Suisse Securities (USA) LLC who were the joint book-running managers of the notes offering, pursuant to ADS lending agreements with JA Solar.

In connection with the senior note offering, JA Solar entered into a 6.56 million share lending agreement with each of Lehman Europe and CS. Under the stock lending agreement with Lehman Europe, the shares must be returned to the Company no later than May 15, 2013, the maturity date of the Senior Notes. Until that time, the shares are considered to be issued and outstanding for corporate law purposes. The Company is investigating the bankruptcy and insolvency proceedings involving Lehman Brothers Holdings Inc. ("Lehman") and Lehman Europe. At this time, the Company is unaware of the intentions of Lehman Europe with respect to the return of the 6.56 million shares attributed to Lehman Europe under the share lending agreement or whether Lehman Europe will be able to fulfill its obligation to return the borrowed shares in 2013. Until such further information is available, the Company will continue to consider the shares not outstanding for the purpose of computing and reporting per share results. The Company intends to vigorously assert its rights with respect to such shares, including, taking advantage of applicable insolvency laws that specifically protect financial market transactions similar to these.

Also in connection with the Convertible Notes, JA Solar entered into a capped call transaction with Lehman Brothers OTC Derivatives Inc. to reduce the ultimate dilution that would otherwise occur as a result of new common stock issuances upon conversion of the Senior Notes. The capped call transaction effectively increases the conversion price of the Senior Notes to \$37.375 per share compared to the actual Senior Notes conversion price of \$30.475 per share. To date, the Company has paid approximately \$16.2 million for the capped call transaction to Lehman. The Company intends to work with other investment banks to determine its best course of action to maintain the original intent of the capped call transaction. Lehman Brothers OTC Derivatives Inc. is not presently the subject of insolvency proceedings.

In addition, the Company has approximately \$100 million worth of USD 3-Month LCMNER Index-Linked Note (the "Note"), issued by Lehman Brothers Treasury Co. B. V. incorporated in The Netherlands, guaranteed by Lehman. Lehman Europe is the dealer of the Note. This note is linked to an index of Lehman Brothers Commodity Alpha Trading Strategies I Excess Return (LCMNER). The maturity date of the Note is October 9th, 2008, with 100% principal protection. We are monitoring the development of the Lehman insolvency proceedings closely, but based on our review of the information made publicly available by Lehman, Lehman Brothers Treasury Co. B. V., the issuer with respect to this transaction, is not presently the subject of insolvency proceedings.

Defendant Lui stated:

"The agreements in question are with affiliates of Lehman Brothers Holdings Inc., some of which have not filed for bankruptcy protection. In addition, these financial markets transactions are structured to provide JA Solar with as much legal protection as is customarily available in transactions such as these, and the law protects such transactions even in circumstances of insolvency," said Dan Lui, Chief Financial Officer. "While the ultimate impact of the situation is expected to unfold over the next few months, we are availing ourselves of all legal remedies to protect our Company and its shareholders in this very fluid situation."

"We have funds on deposit with other international commercial banks," continued Lui. "We have sufficient cash to complete our Yangzhou facility and support our other operating needs as we drive to profitability in 2009."

Defendant Lui then concluded:

***"At this point, we do not foresee that these financial transactions with Lehman Brothers will impact our 2008 and 2009 outlook. As such, we are reconfirming our full year 2008 guidance with revenue in the range of RMB 7.22 billion (US\$1.05 billion) to RMB 8.02 billion (US\$1.17 billion) and gross margin in excess of 20%, along with our full year 2009 guidance with revenue in the range of RMB 13.6 billion (US\$2.0 billion) to RMB 15.0 billion (US\$2.2 billion) and gross margin in excess of 20%."***

(Emphasis added.)

24. On the same day, JA Solar's management conducted a conference call with analysts and investors in which Defendants discussed the Company's Lehman Brothers investment. Defendants Yang and Lui stated, in pertinent part:

Defendant Yang:

I wanted to take this opportunity to open today's call by providing a few remarks related to our recent financial transaction with Lehman Brothers, and the potential impact on JA Solar of the Chapter 11 filing on Monday. We issued a press release early today that outlines the three transactions related to our May year 2008 convertible offering with Lehman, along with the \$100 million worth of notes issued by Lehman Brothers Treasury Company incorporated in the Netherlands. We are working closely to evaluate alternatives for these transactions in order to limit our potential exposure. I will turn it over to our CFO, Dan Lui.

Defendant Lui:

Thanks, Samuel. As outlined in today's release, we completed our public offering of \$400 million equity principal amount of senior convertible notes through 2013 and up to 13,125,520 American Depository Shares, or ADS, which ADS were followed by Lehman Brothers International Europe and hereafter we call them Lehman Europe, and Credit Suisse international, hereinafter we call them CS. Affiliates of Lehman Brothers, Inc., and Credit Suisse Securities USA, LLC, who were the joint stock-running managers of the notes offering pursuant to ADS lending agreement with JA Solar.

In connection with the senior note offering, we entered into a 6.56 million share lending agreement with each of Lehman Europe and CS. Under the stock lending agreement with Lehman Europe, the shares must be returned to the company no later than May 15th, 2013. The maturity date of the senior notes, until that time, the shares are considered to be issued and outstanding for corporate law purposes. In connection with the senior note offering, JA Solar entered into a 6.56 million share lending agreement with the -- the company is investigating the bankruptcy and insolvency proceedings involving Lehman Brothers Holdings, Inc., hereafter we call them Lehman, and Lehman Europe. At this time the company is unaware of the intentions of Lehman Europe with respect to the return 6.56 million shares attributed to Lehman Europe under the share lending agreement, or whether Lehman Europe will be able to fulfill its obligation to return the borrowed shares in 2013.

\* \* \*

In addition, we have an approximately \$100 million US three-month LCMNER index linked notes, hereafter we call them the notes, issued by Lehman Brothers Treasury Company, incorporated in the Netherlands, guaranteed by Lehman. Lehman Europe is the dealer of the note. This note is linked to an index of Lehman Brothers commodity alpha trading strategies, except recurred. The maturity date of

the note is October 9th, 2008, with 100% principal protection. We are monitoring the development of the Lehman insolvency proceedings closely, but based on our review of the information made publicly available by Lehman, Lehman Brothers Treasury Company believes the issuer with respect to this transaction is not presently the subject of insolvency proceedings.

\* \* \*

While the ultimate impact of the situation is expected to unfold over the next few months, we are availing ourselves of all legal remedies to protect our company and its shareholders in this very dynamic situation. We have funds on deposit with other international commercial banks. We have sufficient cash to complete our Yangzhou facility as planned. And support our other operating needs as we drive to profitably in 2009. *At this point, we do not foresee that these financial transactions with Lehman brothers will impact our 2008 and 2009 outlook. As such, we are reconfirming our full year 2008 guidance with revenue in the range of RMB 7.22 billion, US dollar \$1.05 billion, to RMB 8.02 billion, or US \$1.17 billion, and gross margin in excess of 20%, along with our full year 2009 guidance with revenue in the range of RMB 13.6 billion, or US dollar \$2.0 billion to RMB 15 billion, or US dollar \$2.2 billion, and gross margin in excess of 20%.*

(Emphasis added.)

25. In response to analysts' questions, Defendant Lui made the following statements during the conference call:

Emily Louis, Analyst with Aretes Research:

I have a question regarding the short-term investment you mentioned you made with Lehman Brothers. You referred to \$100 million US I see on the index, I didn't see the item -- I know there's an item called available for sale security in the first quarter of the balance sheet, about \$109 million, and I didn't see the item in second quarter. I just wondered, when you guys entered this contract with Lehman Brothers. Did it happen during the third quarter?

Defendant Lui:

Yes that is correct. Actually, I had disclosed this process our plan to the Street at the Q2 earnings announcement conference call, because at the time we already knew that the prime was pretty much in that zone, and the Company decided to act prudent, but it's quite unfortunate it was the benefit of hind sight, pretty unfortunate, but at the time the Company decided to treat the net proceeds of the commercial bond into full portion, for \$100 million a pop. One part, the money market fund.

Emily Louis:

That's current, what? Current situation? Current.

Defendant Lui:

With Citigroup -- sorry.

\* \* \*

And the other three parts with Lehman, Credit Suisse, and Citigroup Asset Management, Trust Management Company, and in that case we tried to diversify our exposure and quite unfortunately end up one of our three trustees got stuck in this current turmoil.

Emily Louis:

Okay. And just another follow-up on that. Can you tell, what exactly the content of available for sale security, in the first quarter balance sheet? Because I noticed that there are also a loss from sales investment during the second quarter 2008 -

Defendant Lui:

Related to other marketable securities, housing for one, comprised of when they sold the stock and the so-called currency accrual.

Emily Louis:

Okay. And to follow up, this \$100 million worth of index notes, is it nominal value or the actual transaction value of the contract? Even like the structure, nominal value, nominal contract value was not how much premium paid to get option to buy.

Defendant Lui:

It's in the form of a note to that particular index fund. Basically Lehman has a fund, has a special fund incorporated, and under the UK firm, and that fund, its mandate is to invest in other trusts between -- commodity fund. Like I said earlier, it's supposed to be principal protection, and it's a three-month long. At the end of the three months, there will be principal and interest returned to us, and maturity is -

\* \* \*

Hermie Lee, Analyst with Goldman Sachs:

Thank you. One more question on the short-term investment. The \$100 million short-term investment issued by Lehman Brothers Netherlands is not guaranteed by any entity, right?

Defendant Lui:

*It's guaranteed by Lehman Holdings, Inc.*

Hermie Lee:

It actually has filed bankruptcy, right? It's not technically, I guess, accurate when you said that the issue has not filed bankruptcy but is a shell company.

Defendant Lui:

*It had filed for Chapter 11. So it's still operating. It's just that right now the administrator, they have appointed PWW as their asset administrator, and now it's no longer - the assets are no longer under control of the Lehman management.*

Hermie Lee:

Sure. I understand. But my point, I guess is Lehman Brothers Netherlands is basic a shell company that's ultimately being backed by Lehman Brothers, Inc., which is the company that filed Chapter 11.

Defendant Lui:

*That part again I don't know because when we purchased the investment, Lehman Netherlands was unrated, which the Lehman holdings with Standard & Poor's were great.*

Hermie Lee:

Right, right. If Lehman Brothers Netherlands had been a shell company, no ability to repay, it will have recourse back to Lehman Brothers, Inc., which is under the liquidation provision right now.

Defendant Lui:

Yes.

(Emphasis added.)

26. Defendants' foregoing statements were false and materially misleading because Defendants knew and/or recklessly disregarded and concealed true facts about JA Solar including that:

(a) JA Solar had made a material, highly risky investment in a subsidiary of Lehman Brothers, an entity that was on the brink of insolvency and headed toward bankruptcy;

(b) The value of the Company's investment in the Lehman note had diminished considerably; and

(c) The Defendants' positive statements concerning JA Solar's financial performance, outlook and earnings guidance for 2008 and 2009 were materially false and misleading and Defendants made such statements without any reasonable basis.

### **The Truth Emerges**

27. On November 12, 2008, the Company shocked investors when it announced its 3Q 2008 results for the period ending September 30, 2008, and revealed a \$100 million impairment on short-term investments purchased from Lehman Brothers Treasury Co. B.V. as well as a loss of \$7.35 million in derivatives deals with the investment bank. The Company's press release stated, in pertinent part:

Total revenue in the third quarter of 2008 was RMB 2.12 billion or \$312.3 million, an increase of 149.5 percent from third quarter of 2007 revenue of RMB 850.0 million or \$125.2 million, and an increase of 71.5 percent from the second quarter of 2008 revenue of RMB 1.24 billion or \$182.1 million.

Total gross profit in the third quarter of 2008 was RMB 458.1 million or \$67.5 million compared with RMB 199.3 million or \$29.4 million in the third quarter 2007, and RMB 288.4 million or \$42.5 million in the second quarter 2008. Gross margin was 21.6 percent in the third quarter 2008, compared with 23.45 percent in the third quarter 2007, and 23.3 percent in the second quarter 2008.

Interest expense in the third quarter of 2008 was RMB 63.5 million or \$9.4 million, compared with RMB 1.3 million or \$0.19 million in the third quarter of 2007. This compares with RMB 32.9 million or \$4.9 million in the second quarter of 2008.

Net loss available to ordinary shareholders in the third quarter 2008 was RMB 142.8 million or \$21.0 million compared with net profit of RMB 165.9 million or \$ 24.4 million in the third quarter 2007, and RMB 318.6 million or \$46.9 million in the second quarter 2008.

Basic and diluted loss per ADS was RMB 0.92 or \$0.13 and RMB 2.47 or \$0.36, respectively. This compares with basic and diluted net income per ADS of RMB 1.20 or \$ 0.18 and RMB 1.18 or \$ 0.17, respectively, in the same period of 2007; and RMB 2.06 or \$0.30 and RMB -0.04 or \$-0.01, respectively, in the second quarter 2008.

The bankruptcy of Lehman Brothers and its affiliates had a material impact on our third quarter net income and EPS. *Firstly, the company recorded a \$100 million other than temporary impairment adjustment against short term investments purchased from Lehman Brothers Treasury Co. B. V. ("Lehman Treasury") due to its bankruptcy and related default on repayment of this investment at maturity of 9th October 2008.* Further in connection with the senior convertible notes offering, JA Solar entered into a 6.56 million share lending agreement with Lehman Brothers International (Europe) ("Lehman Europe"). Under the share lending agreement with Lehman Europe, the shares must be returned to the Company no later than May 15, 2013, the maturity date of the senior notes. Until that time, the shares are considered to be issued and outstanding for corporate law purposes. Under current accounting rules, since there was an obligation of Lehman Europe to return the borrowed shares, such shares would have been excluded from the company's per share calculation. However, due to the recent bankruptcy filing by Lehman Europe, the Company will now include these shares in its per share calculation on a weighted average basis. Approximately 1.1 million shares were included in the per share computation for the third quarter related to the Lehman Europe share lending arrangement. *Also in connection with the senior note offering, JA Solar entered into a capped call transaction with Lehman Brothers OTC Derivatives Inc. ("Lehman OTC") and the company recorded a \$7.35 million loss in Q3 given Lehman OTC bankruptcy.*

(Emphasis added.)

28. As a result, JA Solar revised its 2008 revenue outlook to between \$849.5 million and \$878.9 million. The Company had previously told investors to expect revenue of between \$1.05 billion to \$1.17 billion in 2008. The Company also cut its 2009 revenue forecast to between \$1.5 billion and \$1.7 billion, materially lower than the \$2 billion to \$2.2 billion previously forecast.

29. On this news, JA Solar's ADS price dropped from \$3.34 on November 11, 2008 to close at \$2.38 per share on November 12, 2008. The price change represented a one-day drop of 28.7%, JA Solar ADS declined more than 86% from the high trading price during the Class Period.

### **LOSS CAUSATION / ECONOMIC LOSS**

30. As detailed herein, Defendants made false and materially misleading statements during the Class Period that artificially inflated JA Solar's ADS price and operated as a fraud or deceit on the Class. As further detailed herein, the Company's ADS price fell when Defendants' prior false statements, material misrepresentations and fraudulent conduct began to reach the market and artificial inflation in the ADS price was removed. As a direct result, Plaintiff and the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

### **SCIENTER**

31. Defendants had both the motive and opportunity to conduct fraud during the Class Period. Defendants had actual knowledge of the falsity of the statements they made and/or acted in reckless disregard of the truth or falsity of such statements. As alleged herein, Defendants violated the federal securities laws by, *inter alia*, knowingly and/or recklessly disregarding that the public documents and statements issued or disseminated by the Individual Defendants, including in the name of JA Solar, were false and materially misleading and that such statements or documents would be issued or disseminated to the investing public.

32. Defendants also received information reflecting the true facts regarding JA Solar, had control over, received and/or modified JA Solar's false and materially misleading statements or were otherwise privy to confidential proprietary information about JA Solar reflecting the true state of the Company and contradicting public statements made by the Individual Defendants and/or the Company.

### **NO SAFE HARBOR**

33. To the extent Defendants made or issued oral or written forward-looking statements accompanied by purported statutory "safe harbor" warnings, such warnings were

ineffective to shield those statements from liability. Defendants are liable for false or materially misleading forward-looking statements made during the Class Period because the speaker or issuer knew that the forward-looking statement was false or misleading, and/or such forward-looking statements were authorized and/or approved by an executive officer who knew that the forward-looking statement was false. Defendants also did not make or issue contemporaneous, meaningful cautionary “safe harbor” statements identifying important factors that could cause actual results or circumstances to differ materially from those in the forward-looking statements.

**APPLICABILITY OF PRESUMPTION OF RELIANCE:  
FRAUD-ON-THE-MARKET DOCTRINE**

34. At all times relevant hereto, the market for JA Solar ADS was an efficient market in that the market promptly digested current information regarding JA Solar from all publicly-available sources and the price of JA Solar ADS reflected such information. During the Class Period:

(a) JA Solar ADS met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) JA Solar, a regulated issuer, filed periodic public reports with the SEC and the NASDAQ; and

(c) JA Solar communicated with public investors and the market via established mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press, analysts and other similar reporting services.

35. As a result of Defendants’ misconduct (including Defendants’ false and materially misleading statements), the market for JA Solar ADS was artificially inflated. Under such

circumstances, all persons or entities who purchased JA Solar ADS during the Class Period suffered similar injuries, and the presumption of reliance available under the “fraud-on-the-market” theory applies.

36. Plaintiff and the Class relied on the integrity of the market price for JA Solar ADS. Plaintiff and the Class were damaged as a direct and proximate result of their purchases of JA Solar securities at artificially inflated prices and the subsequent decline in the value of those securities upon disclosure of the truth about JA Solar.

37. Plaintiff and the Class would not have purchased JA Solar ADS at inflated prices had Plaintiff and the Class known of the material adverse information that Defendants did not disclose or been aware of the truth that lay behind Defendants’ false and materially misleading statements.

38. Plaintiff are also entitled to the *Affiliated Ute* presumption of reliance to the extent that Defendants’ statements were materially misleading in failing to disclose material facts about JA Solar that would have caused Plaintiff and the Class not to have purchased JA Solar ADS at the artificially inflated prices at which such securities traded during the Class Period.

### **CLASS ACTION ALLEGATIONS**

39. Plaintiff brings this Action as a class action under Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of all persons who purchased or acquired the securities of JA Solar during the Class Period and were damaged thereby (the “Class”). Excluded from the Class is JA Solar, the Individual Defendants, any entity in which a Defendant has or had a controlling interest, members of the Individual Defendants’ families and the legal representatives, agents, affiliates, heirs and successors in- interest or assigns of any such excluded party.

40. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. During the Class Period, thousands of persons owned the outstanding ADS of JA Solar. Record owners and other class members may be identified from records maintained by JA Solar and/or its transfer agents, and such owners and class members may be notified of the pendency of this Action by mail, using a form customarily used in securities class actions.

41. Plaintiff's claims are typical of the claims of the Class. Plaintiff and all members of the Class sustained damages as a result of Defendants' misconduct alleged herein.

42. Plaintiff will fairly and adequately protect the interests of the Class and have retained competent counsel with significant experience in class action litigation and litigation involving alleged violations of the federal securities laws. Plaintiff has no interests that are contrary to, or in conflict with, those of the Class that Plaintiff seeks to represent in this Action.

43. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, including because joinder of all members of the Class is impracticable and damages suffered by individual Class members may be relatively small whereas the expense and burden of individual litigation make it virtually impossible for the members of the Class to individually redress the wrongs done to them by Defendants. There will be no difficulty in the management of this Action as a class action.

44. There is a well-defined community of interest in the questions of law and fact involved in this Action. The questions of law and fact common to the members of the Class which predominate over questions that may affect individual Class members are:

(a) whether Defendants' acts and omissions complained of herein violated the federal securities laws;

(b) whether Defendants misrepresented material facts;

(c) whether documents, including, *inter alia*, the Company's SEC filings and press releases, and Defendants' other public statements made during the Class Period contained misstatements of material fact or omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading;

(d) whether the market price for JA Solar's ADS was artificially inflated during the Class Period due to the false and materially misleading statements, including non-disclosures, complained of herein;

(e) with respect to Plaintiff's claims under Section 10(b) of the Exchange Act, whether Defendants acted with the requisite state of mind in making false and materially misleading statements, including non-disclosures, in documents filed with the SEC, press releases and other public statements;

(f) with respect to Plaintiff's claims pursuant to Section 20(a) of the Exchange Act, whether Defendants named in such claims are controlling persons of JA Solar; and

(g) whether the members of the Class have sustained damages as a result of the misconduct complained of herein and, if so, the appropriate measure of such damages.

## COUNT I

### **For Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Against All Defendants**

45. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

46. Plaintiff brings this Claim pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by the SEC on behalf of Plaintiff and members of the Class who purchased JA Solar securities during the Class Period against JA Solar and the Individual Defendants.

47. Throughout the Class Period, Defendants individually and together, directly and indirectly, by the use and means of instrumentalities of interstate commerce and the facilities of a national securities exchange: employed devices, schemes and artifices to defraud; made untrue statements of material fact; materially misrepresented facts, including by omitting to state material facts necessary to make statements not misleading; and engaged in acts, practices and a course of business which operated as a fraud and deceit upon Plaintiff and the Class. Such acts were in violation of Section 10(b) of the Exchange Act and Rule 10-b5 promulgated thereunder by the SEC.

48. Defendants' false and materially misleading statements were made with scienter and were intended to and did: deceive the investing public, including Plaintiff and the Class; artificially create, inflate and maintain the market for and market price of JA Solar securities; and cause Plaintiff and the Class to purchase JA Solar securities at artificially inflated prices.

49. Defendants were individually and collectively responsible for making the statements and omissions alleged herein by virtue of having prepared, approved, signed and/or

disseminated documents which contained untrue statements of material facts and/or omitted material facts necessary to make the statements contained therein not misleading.

50. During the Class Period, the Individual Defendants were executives at JA Solar and had access to, and were provided with, non-public information concerning the Company. Each of them knew or recklessly disregarded the adverse facts specified herein and omitted to disclose those facts.

51. As set forth herein, Defendants made false statements and materially misleading statements, including by omitting to state material facts, knowingly and intentionally or in an extremely reckless manner as to constitute willful deceit and fraud upon Plaintiff and the Class who purchased JA Solar ADS during the Class Period. Throughout the Class Period, Defendants had a duty to disclose new, material information that rendered their prior statements to the market materially false and misleading. There is a substantial likelihood that disclosure of these omitted facts would have been viewed by Plaintiff and the Class, as reasonable investors, as significantly altering the 'total mix' of information available about the Company.

52. Defendants made the false and materially misleading statements, including omissions of material facts, complained of herein in connection with the purchase or sale of the Company's securities.

53. Plaintiff and the Class purchased JA Solar ADS at artificially inflated prices during the Class Period in ignorance of the false and materially misleading nature of Defendants' statements and upon the integrity of the market price for JA Solar securities. Plaintiff and the Class would not have purchased JA Solar securities but for Defendants' fraud.

54. As described in detail herein, the market price for JA Solar ADS declined materially upon public disclosure of the facts that Defendants had previously misrepresented or omitted to disclose.

55. Plaintiff and the Class were damaged as a direct and proximate result of their purchases of JA Solar securities at artificially inflated prices and the subsequent decline of the value of such securities when the truth about the Company was disclosed.

56. Accordingly, Defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by the SEC, and are liable to Plaintiff and the Class. This claim was brought within two years after discovery of Defendants' fraud and within five years of the making of the statements alleged herein to be false and/or materially misleading.

## **COUNT II**

### **For Violations of Section 20(a) of the Exchange Act Against the Individual Defendants**

57. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

58. Plaintiff brings this claim pursuant to Section 20(a) of the Exchange Act against the Individual Defendants on behalf of Plaintiff and the Class who purchased JA Solar ADS during the Class Period.

59. As set forth herein, JA Solar is liable to Plaintiff and the Class who purchased JA Solar ADS based on the false and materially misleading statements, including omissions, set forth above, pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by the SEC.

60. Throughout the Class Period, the Individual Defendants were controlling persons of JA Solar within the meaning of Section of 20(a) of the Exchange Act and culpable participants in the fraud at JA Solar, as set forth above.

61. Each Individual Defendant exercised control over JA Solar during the Class Period by virtue of, *inter alia*, their executive positions with the Company, the key roles they played in the management of JA Solar and their direct involvement in the Company's operations, including its financial reporting and accounting functions.

62. Given then the Individual Defendants' personal and collective responsibilities for managing JA Solar during the Class Period, the Individual Defendants were regularly presented to the market as the persons responsible for JA Solar's day-to-day business and operations and the Company's overall strategic direction. At JA Solar, the Individual Defendants had ultimate responsibility for, and control over, the Company's internal activities and public statements, and no one else at JA Solar exercised similar degrees of responsibility and control.

63. As set forth herein, the Individual Defendants' false and materially misleading statements, including omissions, artificially inflated the market price of JA Solar securities during the Class Period. As more fully described above, the presumption of reliance available under the "fraud on the market theory" applies under such circumstances. Plaintiff and the Class relied upon either the integrity of the market or upon the statements and reports of the Individual Defendants in purchasing JA Solar securities at artificially inflated prices.

64. Accordingly, each of the Individual Defendants are liable to Plaintiff and the Class, each of whom has been damaged by the underlying violations of the federal securities laws. This claim was brought within two years after discovery of the Individual Defendants'

fraud and within five years of the making of the statements alleged herein to have been false and/or materially misleading.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff on behalf of himself and the Class, prays for judgment as follows:

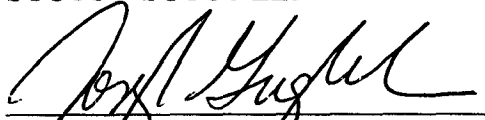
- A. Declaring this Action to be a class action properly maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. Awarding Plaintiff and other members of the Class compensatory damages;
- C. Awarding Plaintiff and members of the Class pre-judgment and post judgment interest, as well as reasonable attorneys' fees, expert witness fees and other costs and disbursements;
- D. Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity and the federal statutory provisions sued hereunder, pursuant to Fed. R. Civ. P. 64 and 65 and any appropriate state law remedies to assure that the Class has an effective remedy; and
- E. Awarding Plaintiff and other members of the Class such other relief as this Court may deem just and proper under the circumstances.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: December 31, 2008

Respectfully submitted,  
SCOTT + SCOTT LLP



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*Attorneys for Plaintiff*

**PLAINTIFF CERTIFICATION  
PURSUANT TO FEDERAL SECURITIES LAWS**

Lei Zhang ("Plaintiff"), declares, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed the Complaint and retains Scott + Scott, LLP and such co-counsel it deems appropriate to associate with to pursue such action on a contingent fee basis.
2. Plaintiff did not purchase the security that is the subject of this action at the direction of Plaintiff's counsel, or in order to participate in any private action.
3. Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.
4. Plaintiff's transaction(s) in the JA SOLAR HOLDINGS CO., LTD (JASO) security that is the subject of this action during the Class Period is/are as follows:

Please See Attached Schedule A  
Lei Zhang JA Solar Trade Record

5. During the three years prior to the date of this Certification, Plaintiff has never served, nor sought to serve, as a class representative in a federal securities fraud case.
6. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond the Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 17 day of Dec, 2008, at City of Industry, CA (city, state).

Your Printed Name: Lei Zhang

Signature: 

Mailing Address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

**REDACTED**

Schedule A  
Lei Zhang JA Solar Trade Record

Action	Quantity	Price	Date
Bought	15	\$3.3500	11/11/2008
Bought	1870	\$3.4999	11/11/2008
Bought	1000	\$3.4000	11/11/2008
Bought	230	\$5.6450	11/5/2008
Bought	5000	\$6.3499	11/4/2008
Sold	-3000	\$6.3650	11/4/2008
Bought	200	\$6.3289	11/4/2008
Bought	100	\$6.3299	11/4/2008
Bought	2000	\$6.3299	11/4/2008
Bought	100	\$6.3299	11/4/2008
Bought	200	\$6.3299	11/4/2008
Bought	100	\$6.3299	11/4/2008
Bought	100	\$6.3299	11/4/2008
Bought	100	\$6.3299	11/4/2008
Bought	100	\$6.3299	11/4/2008
Bought	2000	\$6.6299	11/4/2008
Sold	-100	\$6.2801	11/4/2008
Sold	-300	\$6.2801	11/4/2008
Sold	-100	\$6.2801	11/4/2008
Sold	-100	\$6.2801	11/4/2008
Sold	-100	\$6.2801	11/4/2008
Sold	-100	\$6.2801	11/4/2008
Sold	-600	\$6.2900	11/4/2008
Sold	-200	\$6.2801	11/4/2008
Sold	-300	\$6.2801	11/4/2008
Sold	-100	\$6.2801	11/4/2008
Sold	-100	\$6.1001	11/4/2008
Sold	-200	\$6.1001	11/4/2008
Sold	-500	\$6.1001	11/4/2008
Sold	-300	\$6.1001	11/4/2008
Sold	-1300	\$6.1001	11/4/2008
Sold	-30	\$6.1001	11/4/2008
Sold	-100	\$6.1001	11/4/2008
Sold	-200	\$6.1001	11/4/2008
Sold	-170	\$6.1150	11/4/2008
Sold	-100	\$6.1101	11/4/2008
Sold	-1000	\$6.1100	11/4/2008
Sold	-400	\$6.1150	11/4/2008
Sold	-200	\$6.1001	11/4/2008
Sold	-200	\$6.1001	11/4/2008
Sold	-100	\$6.1101	11/4/2008
Sold	-100	\$6.1101	11/4/2008
Bought	700	\$6.1500	11/4/2008
Bought	55	\$6.1500	11/4/2008
Bought	1564	\$6.1500	11/4/2008
Bought	65	\$6.1300	11/4/2008
Bought	100	\$6.1300	11/4/2008
Bought	516	\$6.1500	11/4/2008
Bought	100	\$5.6599	11/3/2008
Bought	1700	\$5.6599	11/3/2008
Bought	100	\$5.6598	11/3/2008
Bought	100	\$5.6599	11/3/2008