



GRANTED WITH MODIFICATIONS

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Transaction ID: 5637949
Case No. 7163-VCL



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE CHINA AGRITECH, INC.
SHAREHOLDER DERIVATIVE
LITIGATION

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Cons. C.A. No. 7163-VCL

[PROPOSED] SCHEDULING ORDER

WHEREAS, Plaintiff Thang D. Nguyen, defendants Yu Chang, Xiao Rong Teng, Gene Michael Bennett, Lun Zhang Dai, Hai Lin Zhang, Yau-Sing “Gareth” Tang, Ming Fang Zhu, Charles Law, Zheng “Anne” Wang, Xuenong Zhang and Kelvin Sim and nominal defendant China Agritech, Inc. have made application, pursuant to Court of Chancery Rules 23(e) and 23.1(c), for an order: (i) approving distribution of the Notice of Pendency and Settlement of Class Action and Derivative Action and Settlement Hearing (the “Notice”) attached as Exhibit B to the Stipulation and Agreement of Compromise, Settlement, and Release dated November 12, 2014 (the “Stipulation”); and (ii) determining certain additional matters in connection with the proposed settlement (the “Settlement”) of the above-captioned putative class and derivative action (the “Action”) and for dismissal of the Action in accordance with the Stipulation;

WHEREAS, all capitalized terms contained herein shall have the same meanings as set forth in the Stipulation (in addition to those capitalized terms defined herein); and

WHEREAS, this Court, having considered the Stipulation and the exhibits annexed thereto and having heard the arguments of the parties, if any;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. For purposes of settlement only, and pending the Settlement Hearing (defined below):

(a) the Court preliminarily finds and concludes that (i) the Settlement Class (defined below) is so numerous that joinder of all Settlement Class members in the Action is impracticable; (ii) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (iii) the claims of the Plaintiff are typical of the claims of the Settlement Class; (iv) Plaintiff and his counsel have fairly and adequately represented and protected the interests of all of the Settlement Class Members; (v) the prosecution of separate actions by individual Settlement Class Members would create a risk of inconsistent or varying adjudications with respect to individual Settlement Class Members which would establish incompatible standards of conduct for Defendants, and as a practical matter, the disposition of this Action will influence the disposition of any pending or future identical cases brought by other Settlement Class Members; and (vi) there were allegations that Defendants acted or refused to act on grounds generally applicable to the Settlement Class;

(b) this Action is temporarily certified as a class action for the purposes of the settlement only pursuant to Court of Chancery Rules 23(a) and 23(b)(1) and (b)(2) on behalf of a class consisting of any and all beneficial stockholders and stockholders of record of China Ag's common stock as of October 17, 2012, including any and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns, or transferees, immediate and remote, and any Person acting for or on behalf of, or claiming under, any of them, and each of them (the "Settlement Class"), and that such stockholders shall not have the right to opt out of the Settlement Class. Excluded from the Settlement Class are Defendants, all current and former officers and directors of China Ag and any person, firm, trust, corporation, or other entity related to, or affiliated with the current and former directors and officers of China Ag. Notwithstanding the foregoing, the Settlement Class shall include The Carlyle Group, Carlyle Asia Growth Partners IV, L.P., CAGP IV Co-Investment, L.P., Carlyle Group Management L.L.C., Carlyle Group L.P., Carlyle Holdings II GP L.L.C., Carlyle Holdings II L.P. and TC Group Cayman Investment Holdings Sub L.P., and all of their predecessors and successors, and all present and former parents, subsidiaries, divisions, and related or affiliated entities; and

(c) The Court provisionally certifies Plaintiff Thang D. Nguyen as class representative and the law firms of Prickett, Jones & Elliott, P.A. and Kessler

Topaz Meltzer & Check, LLP (“Plaintiff’s Counsel”) as class counsel. Plaintiff’s Counsel are authorized to act on behalf of the Settlement Class with respect to all acts required by, or which may be undertaken pursuant to, the Stipulation or such other acts that are reasonably necessary to consummate the proposed Settlement set forth in the Stipulation.

2. A hearing (the “Settlement Hearing”) shall be held before this Court on _____, 2014, at _____.m. at the Court of Chancery, 500 N. King Street, Wilmington, Delaware, 19801, to:

(a) determine whether the temporary class action certification made herein should be made final;

(b) determine whether to certify Plaintiff Thang D. Nguyen as class representative and Prickett, Jones & Elliott, P.A. and Kessler Topaz Meltzer & Check, LLP as Class Counsel;

(c) determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate and in the best interests of the Settlement Class, China Ag and its stockholders;

(d) determine whether the Plan of Distribution for the proceeds of the Settlement should be approved by the Court as fair and reasonable;

(e) hear and rule on objections to the Settlement, if any;

- (f) consider Plaintiff's Counsel's Fee and Expense Application;
- (g) determine whether the Final Order and Judgment, substantially in the form attached as Exhibit D to the Stipulation, should be entered herein, *inter alia*, dismissing the Action with prejudice; and
- (h) rule on such other matters as the Court may deem appropriate.

3. Plaintiff's Counsel is hereby authorized to retain Strategic Claims Services as the Claims Administrator in connection with the Settlement to supervise and administer the notice and claims procedures as well as the processing of claims as more fully set forth below and in the Stipulation.

4. The Court approves, as to form and content, the Notice (attached to the Stipulation as Exhibit B) and finds that the mailing and distribution of the Notice substantially in the manner and form set forth in this Scheduling Order meets the requirements of Court of Chancery Rules 23 and 23.1, due process, and applicable law, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

5. No later than twenty (20) calendar days after entry of this Scheduling Order (the "Notice Date"), the Claims Administrator shall cause a copy of the Notice and the Claim Form, substantially in the forms attached to the Stipulation as Exhibits B and C, respectively, to be mailed by first-class mail, postage prepaid, to all China Ag stockholders as of a date between the date of this Order and the

mailing of Notice (“Current China Ag Stockholders”) and all members of the Settlement Class who may be identified through reasonable effort, including through the cooperation of China Ag and/or its transfer agents to provide stockholder lists as set forth in the Stipulation.

6. The Claims Administrator shall use reasonable efforts to give notice to brokers and other nominees who held China Ag common stock for the benefit of another Person entitled to notice provided herein. The Court will request these brokers and other nominees to either: (a) send the Notice and Claim Form to all such beneficial owners, postmarked within ten (10) calendar days of receipt of the Notice; or (b) send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) calendar days of receipt of the Notice, in which event the Claims Administrator shall mail the Notice and Claim Form to such beneficial owners within ten (10) calendar days after receipt thereof. The Claims Administrator is authorized to pay the costs of providing Notice from the Escrow Account. Upon full compliance with this Scheduling Order, including the timely mailing of the Notice and Claim Form to beneficial owners, such brokers and other nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Scheduling Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought and reflecting compliance with these instructions,

including timely mailing of the Notice and Claim Form. Such properly documented expenses incurred by nominees in compliance with the terms of this Scheduling Order shall be paid from the Gross Settlement Fund in accordance with the provisions of the Stipulation, subject to further order of this Court with respect to any dispute concerning such compensation.

7. All papers in support of the Settlement and the Fee and Expense Application shall be filed by Plaintiffs' Counsel with the Court and served at least twenty-one (21) calendar days prior to the Settlement Hearing. The parties shall file with the Court and serve responses to any objections filed pursuant to ¶ 9 below at least seven (7) calendar days prior to the Settlement Hearing.

8. Any Current China Ag Stockholder or Settlement Class Member may appear and show cause, if he, she or it has any reason why the terms and conditions of the proposed Settlement should not be approved as fair, reasonable and adequate; why a Final Order and Judgment should not be entered thereon; or why the Fee and Expense Application should not be approved; provided, however, that unless otherwise ordered by the Court, no Current China Ag Stockholder or Settlement Class Member shall be heard or entitled to contest the approval of all or any of the terms and conditions of the proposed Settlement, the Fee and Expense Application, or, if approved, the Final Order and Judgment to be entered thereon approving the same, unless at least fourteen (14) calendar days prior to the

Settlement Hearing directed herein: (a) a written notice of intention to appear; (b) evidence proving (i) with respect to Current China Ag Stockholders, current ownership of China Ag common stock, and (ii) with respect to Settlement Class Members, membership in the Settlement Class, including the number of shares of China Ag common stock held as of October 17, 2012; (c) a detailed statement of such stockholder's objection to any matters before the Court; and (d) the grounds for such objections and/or the reasons that such persons desires to appear and be heard as well as all documents and writings such Person desires the Court to consider shall be filed with the Register in Chancery, Court of Chancery, 500 N. King Street, Wilmington, Delaware 19801, and on or before such filing shall be served electronically, or by overnight mail or hand delivery upon the following counsel of record:

Paul A. Fioravanti, Jr.
PRICKETT, JONES & ELLIOTT, P.A.
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Wilmington, DE 19899

Counsel for Plaintiff

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Counsel for Defendants Yu Chang, Xiao Rong Teng, Yau-Sing Tang, Gene Michael Bennett, Lun Zhang Dai, Hai Lin Zhang, Ming Fang Zhu, Zheng Wang, Xuenong Zhang, and Kai Wai Sim

David A. Jenkins
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Counsel for Nominal Defendant China Agritech, Inc.

Bradley R. Aronstam
SEITZ ROSS ARONSTAM & MORITZ LLP
100 South West Street, Suite 400
Wilmington, DE 19801

Counsel for Defendant Charles Law

Any Current China Ag Stockholder or Settlement Class Member who does not make his, her or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement as incorporated in the Stipulation and to the Fee and Expense Application, unless otherwise ordered by the Court, but shall otherwise be bound by any Final Order and Judgment entered and any releases given.

9. Any Settlement Class Member who wishes to be eligible to participate in the Net Settlement Fund must timely submit a valid Claim Form to the Claims Administrator, at the Post Office Box indicated in the Notice, postmarked no later than one hundred and twenty (120) calendar days following the Notice Date. Such deadline may be extended further by Court order. A Claim Form shall be deemed to be submitted when mailed, if received with a postmark indicated on the

envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator. To be valid, a Claim Form must: (a) be completed in a manner that permits the Claims Administrator to determine the eligibility of the claim as set forth in the Claim Form; (b) include the release by the claimant of all Released Parties as set forth in the Stipulation; and (c) be signed with an affirmation that the information contained therein is true and correct. As part of the Claim Form, each Settlement Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted, and shall (subject to the effectuation of the Settlement reflected in the Stipulation) agree and enter into the release as provided in the Stipulation. All Settlement Class Members who do not submit a valid and timely Claim Form shall be barred forever from receiving any payments from the Net Settlement Fund, but will, in all other respects, be subject to and bound by the provisions of the Stipulation and the Final Order and Judgment, if entered, whether favorable or unfavorable and whether or not they submit a Claim Form.

10. If the Settlement, including any amendment made in accordance with the Stipulation, is not approved by the Court or shall not become effective for any reason whatsoever, the Settlement (including any modification thereof) and any actions taken or to be taken in connection therewith (including this Scheduling

Order and any judgment entered herein), shall be terminated and shall become void and of no further force and effect except as set forth in the Stipulation.

11. Neither the Stipulation, nor any act performed or document executed pursuant to or in furtherance of the Stipulation: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Class Claim or Released Derivative Claim or of any wrongdoing or liability of Defendants; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal, other than in such proceedings as may be necessary to consummate or enforce the Stipulation or the Final Order and Judgment, except that Defendants may file the Stipulation and Final Order and Judgment: (a) in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim; or (b) to challenge on the basis of double recovery the ability of any member(s) of the Settlement Class to recover damages or any form of settlement in any subsequent action, including but not limited to the action captioned *Resh v. China Agritech, Inc., et al.*, No. 2:14-cv-05083 (C.D. Cal).

12. All Current China Ag Stockholders and all Settlement Class Members shall be bound by all orders, determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable thereto.

13. All proceedings in the Action, other than as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended pending final determination of whether the Settlement shall be approved.

14. Pending final determination of whether the Settlement should be approved, no China Ag stockholder, either directly, derivatively, representatively, or in any other capacity, shall commence or further prosecute against any of the Released Persons any action or proceeding in any court or tribunal asserting any of the Released Derivative Claims or Released Class Claims.

15. The Court reserves the right to adjourn the date of the Settlement Hearing or modify any other dates set forth herein without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof, and retains jurisdiction to consider all further applications arising out of or connected with any stockholder's rights and this Settlement.

16. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to Current China Ag Stockholders or Settlement Class Members.

IT IS SO ORDERED.

DATED: _____

Vice Chancellor

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: J Travis Laster

File & Serve

Transaction ID: 56327294

Current Date: Nov 14, 2014

Case Number: 7163-VCL

Case Name: CONF ORD ON DISC - CONS W/ 6420-VCL IN RE CHINA AGRITECH, INC
SHAREHOLDER DERIVATIVE LITIGATION

Court Authorizer: Laster, J Travis

Court Authorizer

Comments:

A hearing shall be held on Friday, February 13, 2015, at 10:00 a.m.

/s/ Judge Laster, J Travis