

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 768/June 26, 2013

ADMINISTRATIVE PROCEEDING

File Nos. 3-14872, 3-15116

In the Matter of

BDO CHINA DAHUA CPA CO., LTD.,	:	
ERNST & YOUNG HUA MING LLP,	:	
KPMG HUAZHEN (SPECIAL GENERAL	:	ORDER GRANTING IN PART
PARTNERSHIP),	:	SUBPOENA REQUEST
DELOITTE TOUCHE TOHMATSU CERTIFIED	:	
PUBLIC ACCOUNTANTS LTD., and	:	
PRICEWATERHOUSECOOPERS ZHONG	:	
TIAN CPAs LIMITED	:	

The Securities and Exchange Commission (Commission) instituted these proceedings on May 9, 2012, and December 3, 2012, pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice. The two proceedings were consolidated on December 20, 2012, pursuant to Commission Rule 201(a). The Orders Instituting Proceedings (OIP) allege that Respondents willfully refused to provide the Commission with audit workpapers and other documents relating to their audit or interim review work for certain clients, in violation of Section 106 of the Sarbanes-Oxley Act of 2002 and the Securities Exchange Act of 1934 (Exchange Act). The hearing is set to commence on July 8, 2013, in Washington, D.C.

The Division of Enforcement (Division) submitted a Request for the Issuance of Subpoenas Directed at Respondents (Subpoena Request) on June 7, 2013. Respondents jointly submitted a Motion to Quash the Subpoena Request (Motion) on June 14, 2013. The Division submitted a Response to the Motion (Response) on June 19, 2013, and the Motion is now ripe for decision.

Except as to Respondent BDO China Dahua CPA Co., Ltd. (Dahua),¹ the Division seeks five categories of documents: (1) communications between Respondents and the government of China related to producing audit workpapers and/or related documents, (2) communications between Respondents and those of their clients cited in the OIP concerning any request for audit workpapers, (3) documents sufficient to show all China-based U.S. issuers for which Respondents are currently engaged to perform certain audit work, (4) communications between Respondents and any principal auditors constituting the transmission of audit workpapers, and (5) certain financial and billing information for Respondents. Subpoena Request, pp. 2-6. As to

¹ Respondent BDO China Dahua CPA Co., Ltd., is now known as Dahua CPA Co., Ltd.

Dahua, the Division also seeks details regarding substantial role or referred work.² *Id.*, pp. 6-7. Respondents argue, among other things, that the Subpoena Request is overbroad, but they have agreed to produce a narrow class of documents that fall within the first category. Motion, pp. 6, 8.

A party may request the issuance of a subpoena requiring the production of documentary or other tangible evidence. 17 C.F.R. § 201.232. However, a subpoena may be quashed “[i]f compliance with the subpoena would be unreasonable, oppressive or unduly burdensome.” 17 C.F.R. § 201.232(e)(2). Additionally, I may sua sponte refuse to issue a subpoena, or modify it, if the “subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome.” 17 C.F.R. § 201.232(b).

As to the first category of requested documents, Respondents have agreed to produce “communications between them and the Chinese government regarding how to address U.S. requests for audit workpapers associated with the Clients at issue in this proceeding,” to the extent not already produced. Motion, p. 8. Additionally, the Division believes that Respondents have not fully produced the “Correspondence[] from Respondents to [China Securities Regulatory Commission (CSRC)] from October 12, 2011 to May 11, 2012,” cited in the Expert Report of Xin Tang. Response, p. 2 n.1. Collecting and producing the documents relied on by Respondents’ expert would presumably impose a negligible burden on Respondents, and is entirely reasonable. Accordingly, these two subcategories of the first category of requested documents must be produced.

Otherwise, I generally agree with Respondents that the Subpoena Request is unreasonable and excessive in scope. Motion, pp. 6-7. The Subpoena Request reads like a discovery request, not a trial subpoena, and it is puzzling why some of the requested documentation was not at least requested during the investigation leading to this proceeding. In particular, the use of the term “reflecting” in the first, second, and fourth categories is overbroad because it may reach a very large number of documents of only marginal relevance. The third and fourth (and sixth, as to Dahua) categories refer to “every,” “each,” or “all” China-based U.S. issuer for which Respondents are currently engaged or for which they performed substantial role or referred work; surely these categories can be narrowed to something more reasonable and pertinent to this proceeding. The fourth category is vague, because it is not clear whether the “transmission” of audit workpapers refers only to recipients such as the Commission, or to the CSRC, or to any other person or entity. I will not order the second, third, fourth, or sixth categories of documents to be produced.

As to the fifth category, Respondents argue that the Subpoena Request seeks irrelevant information. They also argue, with no specific support, that it is overly burdensome. Motion, pp. 10-11. I disagree. On June 24, 2013, Respondent KPMG Huazhen (Special General Partnership) submitted a redacted prehearing brief (KPMG Brief), which asserts that four of the Respondents perform audit “support” for both China-based U.S. issuers and large multinational corporations. KPMG Brief, pp. 30-31. Information regarding Respondents’ China-based books of audit-related business relative to the rest of their books of business would at least aid the

² The Division correctly notes that Dahua raises no separate specific objection to the sixth category of documents. Motion, pp. 10-11; Response, p. 7. However, I interpret the Motion as treating the sixth category as essentially a subset of the fifth category. Motion, p. 4 n.3.

Division in recommending a potential remedy. For example, it would be helpful to know if a permanent bar on practicing before the Commission for any purpose, even in connection with performing audit work for non-China-based U.S. issuers, would essentially put a Respondent out of business entirely. Additionally, Respondents all appear to be large and professional enough that one would expect the information requested by category five would be readily available, perhaps even in the form of an annual report or the equivalent. In that respect, the timing of the Subpoena Request does not present an undue burden. Accordingly, I find that the fifth category of requested documents is not unreasonable, oppressive, excessive in scope, or unduly burdensome.

The Subpoena Request is therefore GRANTED IN PART and DENIED IN PART. Respondents are ORDERED to respond only to the following portions of the Subpoena Request, to the extent such documents have not already been produced:

1. Communications between Respondents and the Chinese government regarding how to address U.S. requests for audit workpapers associated with the Clients at issue in this proceeding.
2. Correspondence from Respondents to the China Securities Regulatory Commission from October 12, 2011 to May 11, 2012, cited in the Expert Report of Xin Tang.
3. The fifth category of documents sought in the Subpoena Request.

Cameron Elliot
Administrative Law Judge