

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 764/June 5, 2013

ADMINISTRATIVE PROCEEDING

File Nos. 3-14872, 3-15116

In the Matter of

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| BDO CHINA DAHUA CPA CO., LTD., | : | |
| ERNST & YOUNG HUA MING LLP, | : | |
| KPMG HUAZHEN (SPECIAL GENERAL | : | ORDER DENYING SUBPOENA |
| PARTNERSHIP), | : | REQUEST WITHOUT |
| DELOITTE TOUCHE TOHMATSU CERTIFIED | : | PREJUDICE |
| 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.

Respondents jointly submitted a Request for the Issuance of a Subpoena Directed at the Commission (Subpoena Request) on May 24, 2013. The Division of Enforcement (Division) filed an Opposition to the Subpoena Request (Opposition) on May 28, 2013. The Commission's Office of General Counsel, on behalf of the Commission's Office of International Affairs, also filed an opposition on May 28, 2013. Respondents jointly submitted a Reply (Reply) on June 3, 2013.

Respondents seek three categories of documents: (1) communications between the Commission and the China Securities Regulatory Commission (CSRC) concerning various topics, (2) communications between the government of China and/or the CSRC and the Commission regarding audit workpapers associated with those clients of Respondents referenced in the OIP (Clients), and (3) documents concerning meetings, negotiations, or communications between the Commission, the U.S. government in general, or the Public Company Accounting Oversight Board (PCAOB), and the government of China and/or the CSRC, concerning various topics. Subpoena Request, Ex. 1, pp. 4-5. The Division argues, among other things, that the Subpoena Request is overbroad. Opposition, pp. 4-9.

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).

The first and third categories of requested documents are patently excessive in scope. The first category seeks all documents “constituting, reflecting, or referring to communications,” at any time after January 1, 2011, between the Commission and the CSRC “concerning access to or production of audit workpapers, cross-border cooperation, [and] requests for assistance,” among other things. Subpoena Request, Ex. 1, p. 4. The third category seeks all documents “concerning, referencing, or reflecting any meetings, negotiations, or communications” between apparently any component of the U.S. government (as well as PCAOB) and apparently any component of the government of China, at any time after January 1, 2011, “relating to access to audit workpapers, inspections of accounting firms, or any other international or cross-border audit issues.” *Id.*, pp. 4-5. Responsive documents would be expected to include numerous utterly irrelevant items, such as records of pending investigations of Chinese issuers (where there has been a request for assistance), records of service efforts on Chinese issuers pursuant to the international treaties, for example, in administrative actions brought under Section 12(j) of the Exchange Act (assuming any “cross-border cooperation” was sought), and records pertaining to meetings and negotiations over auditing standards. I agree with the Division that these two categories are “vastly overbroad,” and the Subpoena Request as to them is accordingly denied. Opposition, p. 5.

The second category is limited to “communications . . . regarding audit workpapers associated with the Clients,” and is thus more narrowly tailored. Subpoena Request, Ex. 1, p. 4. It is nonetheless also excessive in scope because responsive documents would presumably include communications pertaining to audit workpapers generated by auditors other than Respondents.

Respondents may be correct that the “larger context of diplomatic negotiations” is relevant to this proceeding. Reply, p. 7. Here, though, the documents sought extend well into irrelevant contexts. I also note that a suitably narrow subpoena request directed to PCAOB may be more effective than an overly broad subpoena, regarding PCAOB-related subject matter, directed to the Commission.

The Subpoena Request is therefore DENIED in its entirety, without prejudice to renewal, particularly as to the second category of documents.

SO ORDERED.

Cameron Elliot
Administrative Law Judge