

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 882 / September 18, 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 ADMITTING
PARTNERSHIP),	:	EXHIBITS AND CLOSING
DELOITTE TOUCHE TOHMATSU CERTIFIED	:	THE HEARING RECORD
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 Rule 201(a) of the Commission's Rules of Practice. The hearing took place between July 8 and July 31, 2013, in Washington, D.C.

On September 9, 2013, the Division of Enforcement (Division) filed a Notice of Production and Motion for Order Clarifying Division's Post-Hearing Production Obligation (Motion), which stated that the Division was producing to Respondents and this Office copies of additional correspondence between the Commission's Office of International Affairs (OIA) and the China Securities Regulatory Commission (CSRC) and sought clarification of my instructions during the hearing concerning the production of subsequent correspondence between the Commission and CSRC. Motion, pp. 1-2. The additional correspondence was filed as Exhibit 1 to the Motion and was filed under seal pursuant to the May 8, 2013, Stipulated Protective Order. Specifically, the Division seeks clarification of my statements made at two points during the hearing indicating that the Division should notify this Office and Respondents about additional productions of documents from the CSRC. *Id.*, pp. 2-5; Tr. 2319-20, 2693-94. The Division requests that its production obligation be limited to "correspondence between OIA and the CSRC that indicates that the CSRC is producing, has produced, or intends to produce documents sought by any of the Section 106 requests . . . at issue in these proceedings." Motion, p. 2.

On September 16, 2013, Respondents filed a joint Opposition to Division's Motion (Opposition), opposing the Division's request and arguing that these further communications between OIA and the CSRC "bear directly on Respondents' good faith, bolster Respondents' position on Chinese law, and help to confirm that Respondents are subject to a larger negotiation between two sovereigns and that it would be highly irregular and unfair to sanction them." Opposition, pp. 1, 7-10.

On September 13 and 17, 2013, the Division filed a Second Notice of Post-Hearing Production (Second Notice) and a Third Notice of Post-Hearing Production (Third Notice), respectively, stating that the Division was producing to this Office and Respondents copies of additional correspondence between OIA and the CSRC. The additional correspondence was filed as Exhibit 1 to the Second Notice and Exhibit 1 to the Third Notice and was filed under seal pursuant to the May 8, 2013, Stipulated Protective Order.

I have reached the conclusion that it is impractical and unmanageable to continue receiving additional correspondence between the Commission or OIA and the CSRC and to make those materials part of the administrative record, without receiving additional hearing testimony. Without the ability to hear testimony from sponsoring witnesses, the probative value of the additional evidence is unclear. For example, Exhibit 1 to the Second Notice may or may not represent significant action by the CSRC; without testimony or additional evidence on this point, I am not sure what to make of that Exhibit. Also, the hearing record cannot be kept open indefinitely. If additional relevant events have transpired since the close of the hearing, or transpire in the future, then the appropriate remedy is for the parties to petition the Commission to adduce additional evidence if the matter is appealed. See 17 C.F.R. § 201.452; e-Smart Tech., Inc., 57 S.E.C. 964 (2004). Accordingly, the Division no longer must comply with my instructions given during the hearing regarding post-hearing production obligations.

The additional correspondence between OIA and the CSRC filed under seal and attached to the First, Second, and Third Notices will be marked as exhibits and admitted to the record as follows:

ENF 359	Exhibit 1 to the First Notice	SEC_SUPP AUDIT_0000292 – 96
ENF 360	Exhibit 1 to the Second Notice	SEC_SUPP AUDIT_0000297 – 300
ENF 361	Exhibit 1 to the Third Notice	SEC_SUPP AUDIT_0000301 – 45

These exhibits shall be maintained under seal pursuant to the May 8, 2013, Stipulated Protective Order because the benefit of publicly disclosing them is substantially outweighed by the potential costs of disclosure.

The record is now closed.

The Division's September 18, 2013, Unopposed Motion for Extension of Time in Which to File Reply in Support of Motion is DENIED AS MOOT. Because this Order rules in the Division's favor, there is no need for such a Reply.

SO ORDERED.

Cameron Elliot
Administrative Law Judge