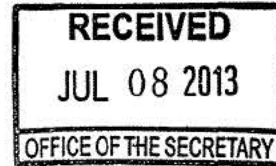


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File Nos. 3-14872, 3-15116



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In the Matter of )  
 )  
BDO China Dahua CPA Co., Ltd.; )  
Ernst & Young Hua Ming LLP; )  
KPMG Huazhen (Special General Partnership); )  
Deloitte Touche Tohmatsu CPA Ltd.; )  
PricewaterhouseCoopers Zhong Tian CPAs Limited) )  
 )  
Respondents. )  
\_\_\_\_\_)

The Honorable Cameron Elliot,  
Administrative Law Judge

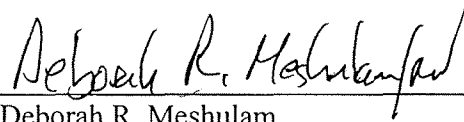
**REBUTTAL EXPERT REPORT OF XIN TANG**

Respondents Dahua CPA Co., Ltd.; Ernst & Young Hua Ming LLP; KPMG Huazhen (Special General Partnership); Deloitte Touche Tohmatsu Certified Public Accountants Ltd.; and PricewaterhouseCoopers Zhong Tian CPAs Limited (collectively, "Respondents") hereby submit a redacted copy for public filing of the Rebuttal Expert Report of their Chinese law expert, Xin Tang, attached hereto as Exhibit A.

REDACTED VERSION FOR PUBLIC FILING

Dated: July 1, 2013

Respectfully submitted,



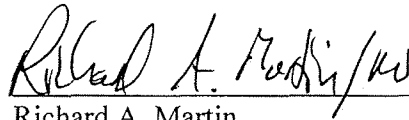
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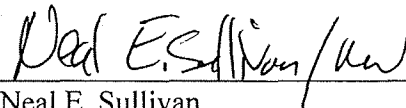
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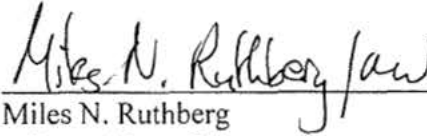
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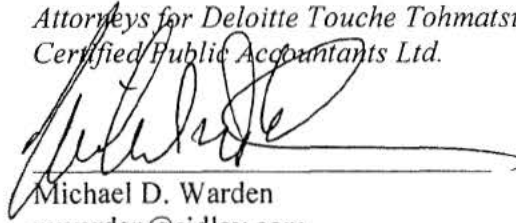
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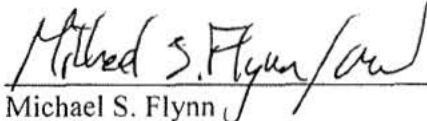
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**EXHIBIT A**

**Rebuttal Expert Report of  
Xin Tang**

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File Nos. 3-14872, 3-15116

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In the Matter of	)	
	)	
BDO Dahua CPA Co., Ltd.;	)	
Ernst & Young Hua Ming LLP;	)	
KPMG Huazhen (Special General	)	
Partnership);	)	The Honorable Cameron Elliot,
Deloitte Touche Tohmatsu Certified	)	Administrative Law Judge
Public Accountants Ltd.;	)	
PricewaterhouseCoopers Zhong Tian	)	
CPAs Limited,	)	
	)	
Respondents.	)	
	)	
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**REBUTTAL EXPERT REPORT OF PROFESSOR XIN TANG**

I, Xin Tang, hereby make the following statement.

1. This rebuttal expert report is further to my Expert Report executed on June 17, 2013 (“**Tang First Report**”) and in response to the expert report of Prof. Donald Clarke dated June 17, 2013 (“**Clarke Report**”). Terms that have been defined in Tang First Report that appear in this report shall have the same meaning unless otherwise provided.
2. In this report, I will respond to the issues raised in the Clarke Report. Among other things, the Clarke Report states that the Respondents generally and DTTC specifically had no obligation under Chinese law to notify the CSRC of the SEC’s requests for Audit Workpapers or to seek the CSRC’s permission prior to a direct production of the Audit Workpapers to the SEC in response to its cross-border requests. The Clarke Report also sets forth a potential path pursuant to the State Secrets law and other Chinese laws which it contends that the Respondents could have taken to “reduce or eliminate the risk of uncertainty.” Taken together, the Clarke Report’s opinion is that the Respondents could have shipped the Audit Workpapers from China directly to the SEC without notice to, consent from or even the knowledge of the CSRC.

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3. Of course, any party in any country can choose to follow a course of action without the knowledge of government authorities; and should the government not discover its conduct, there will be no governmental actions or sanctions. But that does not make the party's conduct legal or even reasonable. It is my opinion that had any of the Respondents followed the course of action suggested by the Clarke Report and shipped the documents directly to the SEC without any notice to or approval from their primary regulators, namely the CSRC and the MOF, and that the Respondent's conduct later been discovered by the Chinese government, that Respondent would face the most severe of the sanctions set forth in the Tang First Report – dissolution of the firm and imprisonment of the responsible individuals.
  4. The Clarke Report fails properly to consider various requirements under Chinese law (such as Regulation 29) imposed on the CPA firms in a sensitive and important cross-border area such as in this case, where the Chinese government authorities repeatedly stated its views, both in generally applicable laws and regulations and in specific directives to the Respondents that audit workpapers shall not be provided directly to overseas regulators without prior approval. To the extent that the Clarke Report suggests that any of the Respondents should have produced documents to the SEC without alerting the CSRC, such a position is not only contrary to China law, but also would be contrary to the advice of any reasonable practicing lawyer in China.
  5. I understand that my role in this proceeding is to assist the Administrative Law Judge in understanding China law and how it operates. I have done that to the best of my ability in the Tang First Report and in this report, and I will continue to do that at the hearing.
  6. This report will discuss the issue of whether the Respondents need, under the requirements of Chinese law including Regulation 29 and the Reply, to seek and obtain CSRC's approval before providing the Audit Workpapers to the SEC. I will also provide my comments on the relevant issues discussed in the Clarke Report with regard to Chinese laws on state secret protection and archive preservation.
  7. In this report and based on my review of the Clarke Report, I maintain my opinions in Tang First Report that (1) the Respondents are required under PRC law including Regulation 29 to seek and obtain the CSRC's approval before the Audit Workpapers can be provided to the SEC, and (2) the Respondents will likely violate Chinese laws on state secret protection and will violate Chinese laws on archive preservation, if they directly provide the Audit Workpapers to the SEC.
  8. In reaching my opinions, I have relied on my education, training and experience, and I also have reviewed the documents listed in Exhibit 1 to this report. I have also attached to this report, as Exhibit 2, an English translation of the PRC laws and regulations referenced in this report.

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## I. CSRC's Approval Authority under Chinese Law

9. The CSRC is authorized by the PRC Securities Law and the State Council to function as the exclusive Chinese government authority in regulating matters of co-operative securities regulation with foreign regulators. The Clarke Report agrees with me that the CSRC has jurisdiction over Chinese CPA firms, and that the CSRC has the authority to impose duties on Chinese CPA firms to obtain authorization before providing workpapers directly to foreign regulators (*See*, Clarke Report, Paras. 17, 54).
10. Despite our agreement that the CSRC has jurisdiction over Chinese CPA firms and the authority to require authorization for production of documents, the Clarke Report asserts that Chinese law, including Regulation 29, does not require Chinese CPA firms to notify and/or to seek approval from the CSRC before producing audit workpapers to the SEC in the United States (*See*, Clarke Report, Paras. 12, 44-45).
11. I respectfully disagree with the Clarke Report's above interpretation of the relevant Chinese laws, and continue to hold my opinion in the Tang First Report that, under the Chinese law the CSRC has the authority to instruct the Respondents that they must not provide the Audit Workpapers directly to the SEC without first reporting the request of producing Audit Workpapers to the CSRC and obtaining approval from the CSRC and has exercised that authority. In this report, I will discuss the legal basis for this opinion in more detail.
12. In accordance with its authority, it is within the CSRC's discretion to approve or not to approve the production of audit workpapers to foreign regulators in the context of cross-border cooperation on securities law enforcement, and the CSRC has exercised that discretion here. This can be demonstrated in several ways, including:
  - (1) The Reply. The CSRC has exercised such authority by issuing the Reply and providing oral instructions to the Respondents. The Reply indicates that Chinese CPA firms must not provide audit workpapers to foreign regulators without the CSRC's approval, and the relevant Chinese CPA firms are legally bound to follow the Reply.
  - (2) Articles 6 and 7 of Regulation 29. Under Articles 6 and 7 of Regulation 29, the CSRC is one of the relevant in-charge authorities whose approval must be obtained before workpapers "involving state secrets, national security or vital interests of the State" can be provided to foreign regulators. From a practical perspective, such provisions indicate that when facing a foreign regulator's on site or off-site inspection requests, Chinese CPA firms first have to obtain approval from the CSRC before providing *any* workpapers directly to the foreign regulator.

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(3) Article 8 of Regulation 29. On top of the aforementioned Articles 6 and 7 of Regulation 29, Article 8 of Regulation 29 further provides that the CSRC is authorized to “take charge” (*fuze*) of all “cross-border securities regulatory matters” in both on-site and off-site inspections, and therefore indicates that Chinese CPA firms must obtain the CSRC’s approval before providing workpapers directly to foreign regulators in the off-site inspection scenario.

13. The above three points jointly, along with other laws set forth in the Tang First Report, form the legal basis for the CSRC’s authority in considering the production of workpapers to foreign regulators. In addition, the SEC itself has recognized the CSRC’s regulatory power concerning audit workpapers. Below, I will discuss each of these points one by one.

The Reply

14. The Clarke Report agrees with me that the CSRC has the authority under the PRC law to regulate Chinese CPA firms on the issue of document production and restrict CPA firms from making production without the CSRC authorization. The Clarke Report asserts that the CSRC has not exercised that authority, it also asserts that the Reply does not “unequivocally state[] that Respondents may not hand over documents to the SEC without the approval of the CSRC” (*See*, Clarke Report, Para. 44). A comprehensive reading of the Reply demonstrates that this is clearly not the case.

15. As already discussed in the Tang First Report (*See*, Tang First Report, Paras. 36-37, 48), the Reply indicates the position of the CSRC and the MOF that Chinese CPA firms must not provide audit workpapers to foreign regulators without the prior approval of the CSRC. The Reply states that “[t]hose, who in violation of the relevant laws, regulations, and provisions, provide the audit archives and other documents overseas without authorization shall be subject to legal liabilities imposed by the relevant government departments.” In my opinion, any assertion that no prior approval of the CSRC is needed before providing audit workpapers to foreign regulators is contrary to the Reply.

16. The actions of the CSRC confirm the meaning of the Reply, and the Clarke Report ignores the effect of those actions. Those actions, including the oral instructions, the fact of the meetings with the Respondents, and the CSRC’s continued negotiation with the SEC concerning whether these same documents should be transmitted to the United States, show how the CSRC understands its own directive: “authorization” is required before “provid[ing] the audit archives and other documents overseas.”

17. As already discussed in the Tang First Report, the PRC Securities Law and the State Council authorize the CSRC to take charge of cross-border securities regulatory issues



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(See, Tang First Report, Para. 33). The Clarke Report agreed that it is reasonable to view that such grant of authority to the CSRC has been made by Chinese law (See, Clarke Report, Para. 52). The Clarke Report is of the view that the CSRC simply has not yet asserted such authority by promulgating rules (See, Clarke Report, Para. 51), and that the Chinese law granting the authority is too abstract and general (See, Clarke Report, Para. 52).

18. In my opinion, the CSRC in fact already asserted its authority by promulgating the rules including the Reply and Regulation 29. Indeed, although the Clarke Report attempts to parse the language of the Reply (incorrectly, in my view), the mere fact that the CSRC issued the Reply indicates that it has asserted its authority in this area.
19. Moreover, the CSRC has provided oral instructions to the Respondents<sup>1</sup>. Such instructions coming orally from a Chinese regulator are not unusual and nonetheless must be obeyed at a Chinese citizen's peril. And even without knowing the exact words used in such oral instructions, the fact that the CSRC summoned Chinese CPA firms to the October 10, 2011 meeting to discuss the SEC's requests confirms an affirmative assertion of authority over the subject matter of those requests.

Articles 6 and 7 of Regulation 29

20. The CSRC's approving authority can also be found in Regulation 29. Regulation 29 indicates the Chinese government sets forth a clear path for notice to and approval of the CSRC, and accounting firms are required to follow that path. First, I address Articles 6 and 7 of Regulation 29, which the Clarke Report has ignored.
21. Article 6 of Regulation 29 provides that:

*"Any archives, including workpapers, which are created in mainland China by the securities company and securities service institution providing relevant securities service in the course of any overseas issuance and listing of the securities, shall be stored in mainland China.*

*In the event that the workpapers referred to in the preceding paragraph involve any state secrets, national security or vital interests of the State, such workpapers shall not be stored in, processed with or transferred via any non-confidential computer information systems; without the approval of the relevant in-charge authorities, such workpapers shall not be carried or shipped overseas, or delivered to overseas institutions or individuals through any means*

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<sup>1</sup> Records of the meetings and oral instructions were cited in the Clarke Report, Footnote 26. I notice that the Clarke Report does not address the effect of such oral instructions (See, e.g., Clarke Report, Para. 44).

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such as information technology.” (Underline added.)

22. The last half sentence of Article 6 expressly provided that “approval of the relevant in-charge authorities” must be obtained before “such workpapers” can be provided to “overseas institutions” including the SEC. Here, “such workpapers” refer to “the workpapers referred to in the preceding paragraph” involving “any state secrets, national security or vital interests of the State”. The “relevant in-charge authorities” include the CSRC, the State Secrecy Bureau (“SSB”) and the State Archives Administration (“SAA”), which is evident from the first sentence of Article 7 of Regulation 29 as follows:

“The relevant in-charge authorities such as the China Securities Regulatory Commission, the State Secrecy Bureau and the State Archives Administration shall establish a coordination mechanism to regulate and inspect, within their respective scopes of authority and in accordance with the law, matters involving protection of secrets and archive administration in the course of any overseas issuance and listing of the securities of an overseas listed company.”<sup>2</sup>  
(Underline added.)

23. As such, the CSRC, the SSB and the SAA shall work jointly through a “coordination mechanism” in regulating and inspecting the matters involving protection of state secrets and archive administration in the course of any overseas issuance and listing of the securities of an overseas listed company. In my opinion, provision of audit workpapers of such overseas listed company is part of the exercise as referred to under Article 6 of Regulation 29. That indicates that the CSRC, as a governmental organ separate from the SSB and the SAA, functions out of its independent authority in determining whether or not to allow for production of audit workpapers involving “state secrets, national security or vital interests of the State” to foreign regulators. As discussed above, the independent authority of the CSRC granted by the PRC Securities Law and the State Council is to function as the exclusive Chinese government authority in regulating cross-border supervision and co-operative enforcement matters. Therefore, Articles 6 and 7 of Regulation 29 indicate clearly that the approval of the CSRC must be separately sought and obtained.
24. As noted, under Article 6 of Regulation 29, the approval from the CSRC, as a coordinating entity with the other authorities, must be obtained before production to the SEC of the workpapers involving any “state secrets, national security or vital interests of the State”. Given that the scope of “state secrets” is broad under Chinese law and that there is no authoritative or uniform definition under Chinese law of either “state security”

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<sup>2</sup> I note that this translation of Article 7 is not literally the same as that provided in Item 15 of Exhibit 2 of Tang First Report and Item 4 of Exhibit 2 of this report (unofficial translation from Westlaw China), yet I found the translation here to be more accurate to its original Chinese language.

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or “vital interests to the State”, without express permission of the Chinese government, none of the Respondents is a competent party to make an authoritative conclusion that the concerned workpapers do or do not contain any “state secrets, national security or vital interests of the State”. In this light, it is unacceptably risky if, as the Clarke Report suggests, any Respondent made an inadequate determination on whether the information contained in the Audit Workpapers constitutes a “state secret”, “state security” or “vital interests to the State” and directly provided the Audit Workpapers to the SEC without authorization from the competent Chinese government authorities. Such move will likely lead to severe sanctions. From a practical perspective, considering the real risk of violating Chinese law, including Regulation 29, and the suffering of severe sanctions, I believe that no reasonable or rational accounting firm in China would choose to provide audit workpapers directly to foreign regulators based on its own judgment on “state secrets, national security or vital interests of the State” without obtaining a prior approval from the CSRC. The Clarke Report is incorrect on that issue.

Article 8 of Regulation 29

25. Another legal basis of CSRC’s approving authority lies in Article 8 of Regulation 29, which provides the following:

*“CSRC shall be responsible for carrying out exchanges and co-operation with overseas securities regulatory authorities and other relevant bodies with regard to cross-border securities regulatory matters involved in the confidentiality and archives administration during the process of overseas issuance and listing of securities.*

*Where overseas securities regulatory authorities and other relevant entities propose to conduct on-site inspection in mainland China on an overseas listed company, securities company or securities service institution providing securities services for overseas issuance and listing of securities (including such affiliates of the overseas securities company or securities service institution that are established in mainland China as a member entity, representative entity, joint venture or cooperative entity), the relevant overseas listed company, securities company and securities service institution shall report the same to the China Securities Regulatory Commission and the relevant in-charge authorities in advance, and shall obtain prior approvals from the relevant authorities for matters for which such prior approvals are required to be obtained. On-site inspection shall be conducted mainly by the regulatory authorities of the PRC, or shall rely on the results of the inspection conducted by the regulatory authorities of the PRC.*

*Where overseas securities regulatory authorities and other relevant entities propose to conduct off-site inspection on an overseas listed company, securities company or securities service institution providing securities services for overseas issuance and listing of securities (including such affiliates of the overseas securities company or securities service institution that are established in mainland China as a member*

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*entity, representative entity, joint venture or cooperative entity), the relevant overseas listed company, securities company and securities service institution shall report any matter involving state secrets to the in-charge authorities with examination and approval power for approval in accordance with the law and shall make a filing with the secrecy administrative department at the same level for records. The relevant overseas listed company, securities company and securities service institution shall report any matter involving archives administration to the State Archives Administration for approval in accordance with the law. If any matter is required to be approved in advance by any other relevant authorities, the relevant overseas listed company, securities company or securities service institution shall obtain approval from such other relevant authorities in advance."*  
(Underline added.)

26. Under Para. 3 of Article 8, the CSRC is one of the "other relevant authorities" whose prior approval must be obtained before any audit workpapers can be provided to foreign regulators requesting for off-site inspections.
27. The Clarke Report disagrees and argues that the reference in Para. 2 of Article 8 to the CSRC and the relevant in-charge authorities for purposes of on-site inspections means that the CSRC is precluded from off-site inspections under Para. 3 of Article 8, which authority is given to "other relevant authorities" which must be informed prior to inspection (*See*, Clarke Report, Para. 54). The Clarke Report's argument that by referencing the CSRC in Para. 2 and not referencing the CSRC in Para. 3 means that the CSRC need not be notified for off-site inspections is incorrect.
28. First, when interpreting Article 8, the structure of Article 8 should be taken into consideration, as the Clarke Report agreed (*See*, Clarke Report, Para. 53).
29. The Clarke Report, however, states that the structure of Article 8 can be interpreted to mean that the CSRC is not an authority that Chinese CPA firms shall seek and obtain approval from in light of a foreign regulator's off-site inspection request. I respectfully disagree.
30. Article 8 begins with Para. 1, which provides for the CSRC's authority in taking charge of all the cross-border securities supervisory and regulatory issues involved in state secret protection and archive administration in the context of overseas issuance and listing of securities, and in taking charge of communication and cooperation with foreign securities regulators. It is my view that Para. 1 of Article 8 serves as a foundation for the CSRC's authority that equally applies to both the on-site inspection scenario and the off-site inspection scenario, as set out in the following Para. 2 and Para. 3 of the same Article 8 respectively. This is because both on-site inspection and off-site inspection may involve cross-border securities regulatory matters, such as whether to allow foreign investigation staff to enter into China and whether to allow documents generated within China to exit the country. In this light, the CSRC's regulatory authority must be

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respected by Chinese CPA firms in both on-site and off-site inspection scenarios.

31. Second, I noticed that the Clarke Report agreed that the CSRC's approval is required for on-site inspections as provided under Para. 2 of Article 8 (*See*, Clarke Report, Para. 47). For the reasons discussed above, I found it unacceptable that Para. 3 of Article 8 can be interpreted to mean that for off-site inspections, the CSRC's approval would not be necessary, or that the CSRC is simply not a relevant regulatory authority. I disagree with the Clarke Report on the structure of Article 8 and believe Para. 3 does require CPA firms to obtain approvals from the relevant authorities, including the CSRC. Given that Article 7 of Regulation 29 indicates that "relevant authorities" include the CSRC, the SSB and the SAA under the coordination mechanism, I do not think it would be reasonable to come to conclusion that the CSRC's approval is not required in off-site inspections, simply because the CSRC is not expressly mentioned under Para. 3 of Article 8. In fact, the laws and regulations as discussed above have demonstrated that the CSRC should be notified and its approval should be sought before production of audit workpapers can be made to foreign regulators.
32. Third, the requirement under Articles 6 and 7 of Regulation 29 makes it necessary for CSRC to be one of the "other relevant authorities" referred to under Para. 2 and Para. 3 of Article 8. As discussed above, as required by Articles 6 and 7, the approval of the CSRC must be obtained before audit workpapers involving "any state secrets, national security or vital interests of the State" can be provided to foreign regulators. Any interpretation of Para. 3 of Article 8 would have to be consistent with the requirement set forth by Articles 6 and 7.
33. The Clarke Report asserts that Chinese CPA firms have no duty to seek and obtain the CSRC's approval in off-site inspections, and that the CSRC is not the approving authority contemplated by Para. 3 of Article 8 (*See*, Clarke Report, Para. 49). This interpretation is in conflict with Articles 6 and 7 because, in off-site inspections contemplated by Para. 3 of Article 8, at least there is the possibility that the requested audit workpapers may involve "any state secrets, national security or vital interests of the State", and in that case, Chinese CPA firms must seek approval from, among other authorities, the CSRC. If the CSRC was not among the approving authorities in Para. 3 of Article 8, then it would render Articles 6, 7 and 8 inconsistent with each other, thereby making such interpretation of Article 8 unreasonable.
34. I do not mean to suggest that under Para. 3 of Article 8, Chinese CPA firms would have the duty to obtain the CSRC's prior approval only when the audit workpapers involve "(any) state secrets, national security or vital interests of the State". In fact, as discussed above in Para. 23, the CSRC has a broader authority in taking charge of all cross-border securities regulatory matters in the context of provision of audit workpapers from China to overseas regulators, and therefore regardless the workpapers involve "any

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state secrets, national security or vital interests of the State” or not, CSRC’s prior approval is always required for both on-site and off-site inspections as contemplated under Para. 2 and Para. 3 of Article 8. Yet, my point here is that, the requirement under Articles 6 and 7 of Regulation 29 is circumstantial evidence demonstrating that the Clarke Report’s interpretation of Para. 3 of Article 8 cannot be correct.

SEC’s Recognition of CSRC’s Regulatory Power

35. In the Tang First Report, I discussed in detail the SEC’s recognition of the CSRC’s regulatory authority. The SEC initially requested the CSRC to obtain DTTC Client A’s Audit Workpapers from DTTC, and the CSRC asked DTTC for those workpapers rather than allowing them to be provided directly by DTTC to the SEC. The CSRC and the SEC have been engaged in active and continued discussions with respect to the provision of the Audit Workpapers as early as 2010. The SEC even applied for stay of the DTTC Proceeding in July 2012 for the purpose to allow time for the two regulators to continue negotiating on bilateral framework for share of audit workpapers (*See*, Tang First Report, Para. 49). In my opinion, the Clarke Report’s assertion that Chinese CPA firms would not need to seek and obtain the CSRC’s approval before providing the audit workpapers to the SEC is not consistent with the SEC’s recognition of the CSRC’s authority.

**II. State Secrets**

The Respondents Owe Statutory Obligation to Protect State Secrets and Intelligence and Other Items That Cannot Be Satisfied Without Approval of Relevant Chinese Authorities

36. As required under Article 3 of the State Secret Law, the Respondents, just as any other entities or individuals, owe the obligation to protect state secrets in the PRC. This obligation is also reflected under Articles 6 and 7 of Regulation 29, where audit workpapers containing state secrets shall not be provided overseas without prior approval of the relevant authorities. The dilemma here is that the Respondents are well aware of their foregoing obligation, yet under Article 20 of the State Secret Law, only the SSB has the final determination as to what constitute “state secrets” when uncertainty arises as to whether information contained in Audit Workpapers are regarded as “state secrets”. Accordingly, in my opinion, a procedure by which Chinese CPA firms made unilateral determinations concerning state secrets would not reduce risk of government action against the Chinese CPA firms.
37. I note that the Clarke Report had suggested the Respondents could turn to their audited companies to seek determination on whether the Audit Workpapers contain state secrets (*See*, Clarke Report, Para. 27). However, as explained in the preceding paragraph, the SSB has the final determination on what constitutes “state secrets”. Accordingly, in my opinion, a procedure by which Chinese CPA firms relied exclusively on unilateral determinations concerning state secrets made by audited companies would not reduce risk of government action against the Chinese CPA firms.

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38. In respect of Intelligence and Other Items contained in the Audit Workpapers, they might have not been marked as state secrets, yet they are also afforded protection similar to that of a state secret under Chinese law. Therefore, any illegal disclosure of Intelligence and Other Items will result in the same level of penalty as if state secrets were illegally disclosed (*See*, Tang First Report, Para. 39). As such, the Respondents would also have to protect Intelligence and Other Items contained in Audit Workpapers as they do with state secrets.
39. The Clarke Report had asserted that “the Respondents could have made for themselves a judgment that their work papers...contained no state secrets, and produced the requested documents...to the SEC without necessarily violating any Chinese law on state secrets” (*See*, Clarke Report, Para. 55). With due respect, I cannot agree. As stated above, I am not aware that the Respondents were vested with the authority in classifying, thus having the power to judge, whether state secrets are contained in the Audit Workpapers.<sup>3</sup>

### III. Archives

*Audit Workpapers shall be Archived in accordance to Chinese law, and Chinese CPA Firms must get Approval before Providing Audit Workpapers to Overseas Regulator*

40. The Clarke Report agrees that Regulation 29 (co-issued by the SAA), recognized audit workpapers as “archives” (*See*, Clarke Report, Para. 36).<sup>4</sup> Generally speaking, under the Accounting Firms Audit Rule No. 1131 on Audit Workpapers (“**Audit Rule No. 1131**”)<sup>5</sup>, Chinese CPA firms are required to archive audit workpapers. Articles 17 and 19 of the Audit Rule No. 1131 specified that audit workpapers shall be archived within 60 days after signing of the audit report, and require retention for at least 10 years.
41. The Clarke Report had suggested that it cannot see the internal management practice of the Chinese CPA firms reflecting the archive-governance of audit workpapers under Chinese law (*See*, Clarke Report, Para. 39). Yet, from the document retention policies of PwC Shanghai made available in this administrative proceeding, one could tell Chinese CPA firms do archive audit workpapers in accordance with the aforementioned requirements under Chinese law, i.e. requiring audit workpapers to be archived within 60 days after signing of the audit report and retention of at least 10 years (*See*, Section 391.02.01 “HK/CN<sup>6</sup>: Archiving Audit Files” and Section 391.02.03 “HK/CN: File Retention and Destruction - guidance” in the appendixes of Letter from Michael S. Flynn to Hemma B. Ramrattan dated November 2, 2011).

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<sup>3</sup> I note that the Clarke Report had suggested that the rejection of the SSB towards some of the Respondents who had already approached them “seems contrary to Chinese law” (*See*, Clarke Report, Para. 29). In my opinion, the SSB is in the best position to judge whether its conduct is in accord with Chinese law.

<sup>4</sup> I note that the Clarke Report calls Regulation 29 a “recent change in policy.” As discussed in this paragraph, I do not agree. Regulation 29 merely confirms that audit workpapers are “archives.” Moreover, it is unclear why the Clarke Report makes this point. Regulation 29 is effective, regardless of when it was issued. And I note that it was issued prior to the amendments to Sarbanes-Oxley in 2010 and, accordingly, prior to the issuance of any of the document requests at issue in this proceeding.

<sup>5</sup> Promulgated by the MOF on February 15, 2006 and revised on November 1, 2010.

<sup>6</sup> Under the context of PwC Shanghai’s document retention policies, I understand “CN” here stands for mainland China as opposed to “HK” which stands for Hong Kong.

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42. In any event, the ways in which audit firms archive audit workpapers raise a separate question from whether such archives may be provided to foreign regulators without approval, a topic which I will now address.

Approval required for Archives to be Provided to Overseas Regulators

43. As audit workpapers are archived under Chinese laws, I notice the Clarke Report echoed that provision of workpapers overseas would require prior "permission from the SAA" (See, Clarke Report, Para. 40). The Clarke Report also identified such permission/approval process posted on the SAA website (See, Clarke Report, Para. 42).
44. I agree with the Clarke Report's finding of the above, which I also happened to discuss in my first report, i.e. approval is required for providing archives overseas (See, Tang First Report, Paras. 59-60). Therefore, I understand that the Clarke Report agrees with me on the issue that any of the Respondents will violate the provisions of the Chinese archives laws if it directly provides the Audit Workpapers to the SEC without obtaining approval from the relevant Chinese regulators.

**IV. DTTC's Report to CSRC upon Receipt of Section 106 Request**

45. The Clarke Report challenged that the CSRC's oral instructions on having its approval before provision of Audit Workpapers to the SEC took place *after* DTTC received the Section 106 Request in relation to DTTC Client A (See, Clarke Report, Para. 42), implying that DTTC was not required to report to the CSRC when it received the Section 106 Request served on March 11, 2011. I respectfully disagree on this matter. As explained above in Section I and in the Tang First Report, the CSRC had already had full authority at that time to regulate provision of audit workpapers to overseas regulators under Chinese law (e.g. the Securities Law and Regulation 29). Therefore, DTTC's report to the CSRC upon receipt of the Section 106 Request was in compliance with Chinese law.
46. Most importantly, one should not overlook the fact that the CSRC was already exercising its regulatory authority back in 2010 before the Section 106 Request was served on DTTC in 2011.

[REDACTED]

[REDACTED] On July 6, 2010, the CSRC, "on behalf of a foreign regulator", requested that DTTC produce the foregoing requested Audit Workpapers. DTTC followed the instruction of the CSRC and provided the requested Audit Workpapers on July 23, 2010 (See, DTTC Answer, Para. 8, DTTC Proceeding). [REDACTED]

[REDACTED]

[REDACTED] In my opinion, any reasonable person would realize that the CSRC, with the recognition of the SEC, was exercising its regulatory authority over provision of audit workpapers to overseas regulators, in particular on the provision of DTTC Client A's Audit Workpapers. Therefore, it was understandable for DTTC to report to the CSRC upon receipt of the Section 106 Request.



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47. The alternative suggested by the Clarke Report is not a reasonable one. Having realized that the CSRC affirmatively asserted jurisdiction over the provision of audit workpapers to overseas regulators, and knowing that the SEC had acknowledged that authority, it would not be reasonable advice to suggest that DTTC should provide Audit Workpapers to the SEC without informing the CSRC.
48. One need only look at the correspondence between the SEC and the CSRC to understand the reason why the Clarke Report's approach would create such danger. If DTTC had followed the Clarke Report's approach, it would have defied the will of the CSRC at the very same time the SEC was informing the CSRC of what it was doing. Thus, the Clarke Report essentially recommends that DTTC hide the existence of the SEC's request from the CSRC at the same time the SEC was informing the CSRC of that request. Under this scenario, not only would DTTC have violated Chinese law, but it would be in the position of having affirmatively decided to hide its conduct from its local regulator, only to have a foreign regulator report the violation. Pretending that no consequences would result from such a circumstance is implausible.

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**Exhibit 1 Documents Reviewed in Preparing This Report**

1. Answer of Respondent Deloitte Touche Tohmatsu CPA Ltd. to Order Instituting Disciplinary Proceedings dated June 4, 2012 (“DTTC Answer”)
2. Correspondences between SEC and CSRC from June 7, 2010 to March 14, 2013
3. Expert Report of Professor Donald Clarke dated June 17, 2013 (“Clarke Report”)
4. Expert Report of Professor Xin Tang dated June 17, 2013 (“Tang First Report”)
5. Letter from Michael S. Flynn to Hemma B. Ramrattan dated November 2, 2011

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**Exhibit 2 Translation of the PRC Laws and Regulations Referred to in This Report**

<b>Item</b>	<b>Title</b>	<b>Scope of Translation</b>
1.	Accounting Firms Audit Rule No. 1131 on Audit Workpapers ("Audit Rule No. 1131")	Articles 17 and 19
2.	CSRC's Replying Letter Concerning Providing Archive Files (Including Audit Workpapers) Overseas by Certain CPA Firms dated October 26, 2011 ("Reply")	Full Text
3.	Law of the People's Republic of China on Guarding State Secrets ("State Secret Law")	Articles 3 and 20
4.	Provisions on Strengthening Confidentiality and Archives Administration of Overseas Issuance and Listing of Securities ("Regulation 29")	Full Text