

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-15116

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<b>In the Matter of</b>	)
	)
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<b>BDO China Dahua CPA Co., Ltd.;</b>	)
<b>Ernst &amp; Young Hua Ming LLP;</b>	)
<b>KPMG Huazhen (Special General</b>	)
<b>Partnership);</b>	)
<b>Deloitte Touche Tohmatsu Certified</b>	)
<b>Public Accountants Ltd.;</b>	)
<b>PricewaterhouseCoopers Zhong Tian</b>	)
<b>CPAs Limited,</b>	)
	)
<b>Respondents.</b>	)
	)

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**RESPONSE OF RESPONDENT DELOITTE TOUCHE TOHMATSU CPA, LTD. TO  
DIVISION OF ENFORCEMENT'S MOTION TO CONSOLIDATE**

Respondent Deloitte Touche Tohmatsu Certified Public Accountants Ltd. ("DTTC"), by and through its undersigned counsel, respectfully submits this response to the Motion to Consolidate ("Motion") filed by the Division of Enforcement (the "Division").<sup>1</sup> DTTC consents to consolidation of *In the Matter of Deloitte Touche Tohmatsu CPA Ltd.*, A.P. No. 3-14872 (the

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<sup>1</sup> By filing this response, DTTC does not waive or intend to waive any applicable defenses, including defenses asserting improper service and lack of jurisdiction, nor does the pre-Answer nature of this filing constitute a waiver of or intention to waive any other applicable defenses and denials which will be set forth in DTTC's Answer in this proceeding. The Division of Enforcement agrees that all defenses, including those as to service and jurisdiction, are preserved and that the filing of this response does not constitute waiver of any defense by DTTC.

“DTTC Proceeding”), with the above-captioned proceeding, *In the Matter of BDO China Dahua CPA Co., Ltd., et al.*, Administrative Proceeding File No. 3-15116 (the “Omnibus Proceeding”). As stated in the Motion, the two proceedings “present the same or similar legal issues and similar fact patterns, and the legal questions commonly raised by these two OIPs are best addressed by one Hearing Officer in one administrative proceeding.” Motion at 1. DTTC concurs.

DTTC responds separately to address briefly two issues. *First*, consolidation will resolve in a single, profession-wide proceeding issues related to the inability of China-based accounting firms to produce workpapers from China directly to the Securities and Exchange Commission (“SEC” or the “Commission”) in the United States. *Second*, although the DTTC Proceeding was filed first, the procedural posture of the two proceedings is similar, and Judge Cameron Elliot’s December 13, 2012 Order in the DTTC Proceeding facilitates consolidation.

A. **The Issues Raised Should be Addressed in a Profession-Wide Consolidated Proceeding.**

On May 9, 2012, the Commission filed an Order Instituting Proceedings against DTTC (the Second Corrected OIP will be cited as “DTTC OIP”) pursuant to SEC Rule of Practice 102(e)(iii). The DTTC Proceeding presents the issue of whether DTTC “willfully refused” to comply with the SEC’s request for the production of workpapers pursuant to Section 106 of the Sarbanes-Oxley Act because producing the documents directly to the SEC would violate China law. DTTC OIP ¶¶ 17-18. DTTC filed an Answer to the DTTC OIP on June 4, 2012, and on June 20, 2012, moved to dismiss, arguing that the DTTC OIP was not properly served and that the enforceability of the Section 106 request must be litigated in federal court prior to the initiation of an administrative proceeding. While briefing on that motion was ongoing, the Division sought a six-month stay of the DTTC proceeding so that it could attempt to negotiate with the China Securities Regulatory Commission (“CSRC”) a government-to-government

resolution of the profession-wide issue of workpaper access. The Chief ALJ postponed the DTTC Proceeding for six months and vacated the then-existing pre-hearing schedule. See Order (July 19, 2012).<sup>2</sup>

Unfortunately, the SEC-CSRC negotiations were unsuccessful. See Status Report at 3. The Commission immediately turned to another profession-wide mechanism to address the issue of workpaper access by initiating the Omnibus Proceeding against five major China-based accounting firms, including DTTC. Like the DTTC OIP, the Omnibus OIP was issued pursuant to SEC Rule 102(e)(iii) and alleges that each of the five Respondents “willfully refused” to comply with one or more Section 106 requests issued by the Commission, and it directs the Hearing Officer to issue an initial decision within 300 days.

Accordingly, in addition to the reasons advanced by the Division, the identical issues raised by these OIPs should be addressed in a consolidated profession-wide proceeding.

**B. Judge Elliot’s December 13 Order Facilitates Consolidation.**

Contemporaneous with the pending Motion, the Division filed a status report with Judge Elliot providing notice of the status of negotiations and requesting that Commission approval be sought for an extension of the 300-day deadline for an initial decision. Judge Elliot entered an Order dated December 10, 2012 directing that briefing on DTTC’s Motion to Dismiss resume and, *inter alia*, denying without prejudice an extension of the initial decision deadline. After counsel for DTTC and the Division had an opportunity to address with Judge Elliot the potential effect of that order on consolidation, Judge Elliot issued a new order on December 13 that facilitates consolidation—postponing *sine die* the filing of DTTC’s reply in support of its motion

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<sup>2</sup> The Chief ALJ also noted that only the Commission had the authority to extend the 300-day period for filing the initial decision. See Order n.l.

to dismiss and, *inter alia*, postponing the hearing previously set for February 4 to February 25, only “if necessary” (*i.e.*, in the event that the proceedings were not consolidated).

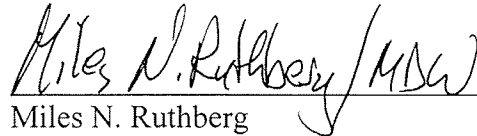
As a result, the procedural posture of these two cases is similar, and because the briefing on DTTC’s motion to dismiss was adjourned, all respondents can be heard at the same time on any issues raised in motions to dismiss in a consolidated proceeding. If consolidation occurs, the only outstanding procedural issue in the DTTC proceeding will be the alignment of the schedule for an initial decision in the DTTC Proceeding to coincide with the October 3, 2013 deadline in the Omnibus Proceeding. With a hearing date in the DTTC Proceeding of February 25, there is ample opportunity for the Hearing Officer assigned to the consolidated proceedings to seek to align these deadlines.

#### **CONCLUSION**

DTTC, including for the reasons set forth above, supports consolidation of the DTTC and Omnibus Proceedings and joins in the Division’s request that the Initial Decision deadline in the DTTC Proceeding be set for the same 300-day schedule as in the Omnibus Proceeding.

Dated: Washington, D.C.  
December 17, 2012

Respectfully submitted,

Handwritten signature of Miles N. Ruthberg in black ink, written over a horizontal line.

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