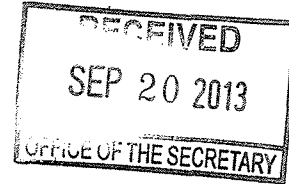
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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 PARTNERSHIP),
DELOITTE TOUCHE TOHMATSU CERTIFIED PUBLIC ACOUNTANTS LTD., and
PRICEWATERHOUSECOOPERS ZHONG TIAN CPAs LIMITED

The Honorable Cameron Elliot,
Hearing Officer

POST-HEARING REPLY BRIEF OF THE DIVISION OF ENFORCEMENT

David Mendel (202) 551-4418
Amy Friedman (202) 551-4520
Douglas Gordimer (202) 551-4891
Marc E. Johnson (202) 551-4499
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-5971
COUNSEL FOR DIVISION OF ENFORCEMENT

September 20, 2013

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The Division of Enforcement (the "Division") of the U.S. Securities and Exchange Commission ("SEC" or "Commission") respectfully submits this Post-Hearing Reply Brief.

PRELIMINARY STATEMENT

Section 106 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley" or the "Act"), as amended, plainly requires foreign public accounting firms ("foreign firms"), including Respondents, to produce audit workpapers and related documents to the SEC upon request. These documents are indisputably central to the SEC's investigations of potential financial fraud at companies traded in U.S. markets that use foreign firms as their auditors. These documents are also important to the SEC's assessment of the quality of audit work that foreign firms perform for U.S. issuers. Respondents nevertheless proffer a construction of Sarbanes-Oxley under which, unless and until the *Division* proves an *absence* of any conflicting foreign law, (1) foreign firms need not comply with any Section 106 request, and (2) the SEC is powerless to remedy such refusals to comply. Thus, Respondents contend that they have a permanent free pass to continue auditing U.S. issuers in the future, even though Respondents have refused to comply with the SEC's ten Section 106 requests ("Requests") involving their issuer-clients ("Clients") that are the focus these proceedings. Yet Section 106 does not even reference foreign law, let alone say that the Division has a burden of proving the absence of foreign law.

Respondents' construction is unsupported by Sarbanes-Oxley or its legislative history, and must be rejected. Consistent with the language and structure of the Act and decades of judicial and Commission precedent, a foreign firm commits a "willful refusal to comply" with a Section 106 request when it knowingly fails to produce documents in response to such a request. *See* Division of Enforcement's Post-Hearing Brief at 46-63 ("Division's Brief"). Respondents contend that, by combining the terms "willful" and "refusal," Congress intended to depart from

the long-standing interpretation of the word "willful" as volitional, and to impose on the Division the burden of demonstrating a foreign firm's lack of good faith. According to Respondents, because the word "refusal" already indicates volition, Congress would not have chosen a modifier, "willful," that also merely connotes volition. But this argument fails, among many reasons, because it ignores the common usage that Congress and courts have given these terms. The word "refusal" has long been used interchangeably with the word "failure," and courts have expressly held that "willful" means no more than volitional conduct when modifying either one. *See, e.g.*, *Fields v. United States*, 164 F.2d 97, 100 (D.C. Cir. 1947) (holding that an individual willfully defaulted on a Congressional subpoena because "'[t]he word '*willful*' does not mean that the *failure* or *refusal* to comply with [an] order . . . must necessarily be for an evil or a bad purpose. The reason or the purpose of [a] *failure to comply* or *refusal to comply* is immaterial, so long as the refusal was deliberate and intentional and was not a mere inadvertence or an accident.'" (Emphasis added)).

Respondents' other main statutory construction argument, that the Division's interpretation of "willful refusal" renders the entire subsection (e) of Section 106 surplusage, is also wrong. The definition of a "violation" in Section 106(e) clarifies the circumstances in which the Commission can take any number of actions based on a foreign firm's non-compliance. The Commission may seek not only a censure and a suspension of the firm's privilege of appearing and practicing before it under Rule 102(e) (which also requires the firm to have acted willfully), but also, among other things, penalties under Section 21(d)(3) of the Securities Exchange Act of 1934 ("Exchange Act"), which does not have a separate willfulness requirement. Thus, even were this Court to consider the canon disfavoring surplusage in construing Section 106(e), Respondents' argument fails because there is no surplusage.

Comity principles also do not support Respondents' position. Respondents continue to ignore the fact that nothing the Division seeks through these proceedings could require Respondents to take any illegal action in China. Far from "riding roughshod over foreign laws" (Respondents' Post-Hearing Brief ("Respondents' Brief") at 3), the Division seeks a remedy that (1) affects Respondents' prerogatives only within the United States under U.S. law; and (2) is designed to protect the SEC's oversight of U.S. markets. Respondents' reliance on legislative history is similarly unavailing, as nothing in that history reflects a Congressional desire to subordinate to foreign law the SEC's ability to conduct investigations or to protect its processes from non-compliant registrants. Nor does the Act's history indicate that SEC investigations should be put on hold while the SEC tries to negotiate with foreign governments over the terms of foreign firms' compliance under Section 106. This is particularly true where, as here, the foreign government for years resisted cooperating with the SEC in a way that would have meaningfully assisted the SEC, despite both nations' status as signatories to an existing multilateral agreement that seeks to ensure such cooperation.[1] To the contrary, the Act and its policies give every indication that Congress sought to preserve the full scope of Commission authority in this area.

Under this analysis, there can be no real question that Respondents willfully violated Sarbanes-Oxley by willfully refusing to comply with the Requests, and, therefore, the ALJ and the Commission should impose an appropriate remedy under Rule 102(e). As Respondents' witnesses and documents made clear during the hearing, Respondents have always known that Chinese law might impair their ability to comply with their U.S.-law production obligations. Furthermore, the Public Company Accounting Oversight Board ("PCAOB" or "Board") clarified

[1] Unfortunately, the China Securities Regulatory Commission ("CSRC") still today cannot be regarded as a viable and dependable gateway for the production of audit workpapers from China.

from the outset of Respondents' registrations with it that *Respondents* bore the risk of such a conflict of law. *See* Division's Brief at 9-10. These and other facts confirm Respondents' willfulness, regardless of any constraints that may have been imposed by Chinese law.

Even assuming the content of Chinese law needs to be considered in assessing Respondents' conduct, the hearing record refutes their contentions that they did not act willfully. Respondents have not carried their burden of showing – and in any event the Division has disproven – that producing *any* documents "would have exposed Respondents to *criminal* sanctions." Respondents' Brief at 6. Respondents also fail to show that any written Chinese law actually compelled their non-compliance, or to provide assurance that the alleged, secret, and unverifiable oral directives they followed should provide the basis for exonerating their non-compliance with Section 106.

Ultimately, Respondents seek to scare the Commission into condoning their behavior, warning that the Division's proposed remedy would amount to "disbar[ring] the vast bulk of the auditing profession from an entire country through Rule 102(e) proceedings." Respondents' Brief at 4. However, Respondents mischaracterize the remedy, which is targeted solely at Respondents, and would have no effect on the numerous other firms that have audited U.S. issuers' Chinese components. Indeed, the majority of even Respondents' U.S. substantial role and referred work engagements would not be affected by the proposed remedies. Respondents also exaggerate the negative collateral effects of the limited bar proposed by the Division, ignore substantial scholarship showing that it would benefit investors, and show no recognition that the status quo, and their willful violations, cannot be tolerated.

ARGUMENT

I. THE LANGUAGE, STRUCTURE, HISTORY, AND POLICIES OF SARBANES-OXLEY, REINFORCED BY DECADES OF PRECEDENT, DEMONSTRATE THAT "WILLFUL REFUSAL TO COMPLY" MEANS A KNOWING FAILURE TO PRODUCE DOCUMENTS

A. The Language and Structure of Section 106 Do Not Require The Division To Show Bad Faith

1. The Joinder of "Willful" With "Refusal" Does Not Override The Longstanding Securities-Law Meaning of Willfulness

Respondents do not dispute that the long-standing meaning of "willful" in many contexts (including under the securities laws) is "'merely intent to do the act which constitutes a violation of law,' and not 'intent to violate the law' or 'bad purpose.'" Respondents' Brief at 9. They nevertheless continue to argue that this meaning should not apply under Section 106(e) because the word "willful" modifies the word "refusal," which, according to Respondents, already connotes volitional behavior. This argument continues to lacks merit for numerous reasons. *First*, under the securities laws, the word "willful" is used to define violations in a variety of other contexts, including other activity that might be considered independently volitional. For example, Section 19(h)(4) of the Exchange Act authorizes sanctions against an officer or director of a self-regulatory organization where, assuming other criteria are met, such person has "willfully violated" relevant regulatory provisions *or* "willfully *abused* his authority." 15 U.S.C. § 78s(h)(4) (emphasis added). The word "abuse" might independently signify volitional conduct; however, this does not mean that the modifier "willfully" is properly understood to take on a heightened meaning when modifying "abused" but retain its usual meaning when modifying "violated." Respondents' construction of "willful refusal" would inject inconsistency into the statutory scheme, by making the word "willful" contingent on the word it is modifying.

Second, when assessing a person's liability for "refusing" to provide information in response to a lawful demand, the D.C. Circuit has consistently interpreted the word "willful" in precisely the narrow manner now urged by the Division. In *Fields*, the D.C. Circuit upheld the conviction of an individual for willfully withholding documents in response to a Congressional subpoena under 2 U.S.C. § 192. *See* 164 F.2d at 101. In rejecting the defendant's contention that he was not liable because he had not acted with "an evil or a bad purpose," the court held that the individual's motive was immaterial to whether his "failure or *refusal to comply*" was "willful." *Id.* at 100 (internal quotations omitted) (emphasis added). Similarly, in *Dennis v. United States*, 171 F.2d 986 (D.C. Cir. 1948), the D.C. Circuit, following *Fields*, held that a person's "justification" for failing to answer the Congressional committee's questions was irrelevant to whether the person's conduct was "willful" under the same criminal statute, *id.* at 990. The court explained, "It is only in very few criminal cases that 'willful' means 'done with a bad purpose.' Generally, it means 'no more than that the person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law.'" *Id.* These two cases alone completely refute the notion that Congress viewed the term "willful refusal" in Section 106(e) as a special "formulation" that requires the Division to meet a heightened burden of proof.[2]

Third, even apart from these cases' holdings, Respondents' construction of Section 106 ignores the way in which Congress and courts have used the words "refusal" and "failure"

[2] Additional precedents further undermine Respondents' position. Shortly after *Dennis*, the D.C. Circuit gave the very same, narrow interpretation of "willful" to the terminology of the Exchange Act, concluding that a broker-dealer had willfully failed to provide accurate pricing information to her clients, notwithstanding her stated belief that her operations were compliant with the law. *See Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949). The common understanding that "willful" means "knowing" or "volitional" has been consistently applied under the securities laws ever since, regardless of the particular word that "willful" modifies under those laws. *See, e.g., Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 802 n.15 (D.C. Cir. 1965); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965); Division's Brief at 47-50.

interchangeably in the context of information requests. Section 192 of Title 2 of the U.S. Code, for example, is captioned "*Refusal* of witness to testify or *produce papers*," and states, "Every person" who is summoned to appear before or produce documents to a Congressional committee but "willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor." *Id.* (emphasis added). Applying this provision in *Fields*, the D.C. Circuit stated that the defendant had "*failed* to produce the subpoenaed records" to the select committee, 164 F.2d at 98 (emphasis added); was cited "[f]or his *failure* to produce the records called for by the subpoena," *id.* at 99 (emphasis added); and was found by the jury to have "*willfully withheld*" documents from the committee, *id.* (emphasis added); *see also id.* at 99 ("Prior to the adoption of our Constitution colonial assemblies frequently assumed authority to punish for contempt any person who *refused* to appear in answer to a summons or who *failed* to disclose information required for the effective administration of government") (emphasis added).

Similarly, in *SEC v. Razmilovic*, --- F.3d ---, 2013 WL 3779339, at *4, 6 (2d Cir. Jul. 22, 2013), the Second Circuit affirmed the district court's decision that a defendant in an SEC civil action had "*fail[ed]* to obey an order to provide . . . discovery" under FRCP 37 because his "*refusal* to comply with [the court's] Order was willful and intentional" (emphasis added). *See also Dennis*, 171 F.2d at 988-89 (a person who did not appear and orally answer a Congressional committee's questions "was indicted and convicted for *willful default* in answering a lawful subpoena," in a case that involved "the question of whether he *willfully failed* to respond to the subpoena") (emphases added). As all of these examples demonstrate, words such as "refusal," "failure," "default," and "withhold," with or without the modifying word "willful," have long been used to connote the basic concept of non-cooperation with an information request. Each of

them can imply some degree of volition depending on the circumstances. To isolate and to ascribe a special volitional meaning to the word "refusal" under Section 106, as Respondents propose, improperly defies this historical, common usage. *See Societe Internationale Pour Participations Industrielles et Commerciales v. Rogers*, 357 U.S. 197, 208 (1958) (construing "refusal" to be synonymous with "failure" under former version of FRCP 37(b)).

Finally, Respondents have no cogent answer to the fact that the Commission already has approved the PCAOB's interpretation of "refusal" to mean "failure" under Title I of Sarbanes-Oxley, Release No. 34-49704; File No. PCAOB-2003-07 (May 14, 2004), or that, in *In re R.E. Bassie & Co.,* Accounting and Auditing Enforcement Act Release No. 3354, 2012 WL 90269 (Jan. 10, 2012), the Commission upheld the Board's determination that "*failure* to produce documents in response to the [Board's demands]" justified sanctions against the accounting firm under Sarbanes-Oxley, *see id.* *8. Although Respondents contend that the *Bassie* decision did not "squarely address[]" the issue of whether "failure" could constitute "refusal" under the Act (Respondents' Brief at 18), this contention misreads the decision. The Commission repeatedly and interchangeably referenced the firm's failure or refusal to produce, or withholding of documents, as legitimate grounds for disciplining the firm. *See Bassie*, 2012 WL 90269, at *7 ("Applicants *did not produce* any documents . . . effectively *refusing* to cooperate with the investigation . . . .") (emphasis added); *id.* ("Applicants continued to *withhold* the documents . . . ") (emphasis added); *id.* at *9 (Applicants allegedly relied on legal advice "in *refusing to produce* the documents") (emphasis added); *id.* at *11 (referencing applicants' "*failure to cooperate*") (emphasis added); *id.* at *12 (Board staff had warned Applicants "of the consequences of a *failure to cooperate*") (emphasis added).[3]

[3] Even the one citation by Respondents to the Commission's finding that Applicants "'refused' to cooperate" mischaracterizes the decision through selective quotation. Respondents' Brief at 18 (quoting

2. The Division's Construction Does Not Render Section 106(e) Superfluous

Respondents argue for the first time in their Post-Hearing Brief that the Division's construction of "willful refusal" renders Section 106(e) a nullity, because under this construction the conduct that may be "deemed a violation of the Act" would be the same conduct that is already subject to sanction under Rule 102(e). Respondents' Brief at 10-11. This argument fails for at least three reasons.

First, Respondents ignore Section 106(e)'s place in the broader statutory scheme. By expressly defining a statutory violation, Section 106(e) performs a function quite different from that of Rule 102(e). Section 106(e) specifies conduct that can bring about consequences under a variety of statutory or regulatory provisions that include, but are not limited to, Rule 102(e). For example, Section 21(d)(3) of the Exchange Act authorizes the SEC to bring an action in U.S. district court seeking money penalties "[w]henever it shall appear to the Commission that any person has *violated* any provision of this title." 15 U.S.C. § 78u(d)(3) (emphasis added). Section 3(b)(1) of Sarbanes-Oxley provides that a violation of that Act "shall be treated for all purposes in the same manner as a violation of the [Exchange Act]." 15 U.S.C. § 7202(b)(1). Thus Sarbanes-Oxley Section 106(e) clarifies (among other things) that the SEC's authority to seek monetary penalties under Exchange Act Section 21(d)(3) extends to a foreign firm's "willful refusal to comply" with a Section 106 demand for documents. That Rule 102(e) separately authorizes certain remedial measures (*i.e.*, censure and debarment) against foreign firms for having "willfully violated" securities laws (including Section 106) does not indicate a

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Bassie, 2012 WL 90269, at *12). The full sentence states: "In light of this course of conduct, we find that Applicants' *deliberate or reckless refusal to cooperate* with the investigation satisfies the statutory standard for the imposition of a civil penalty." 2012 WL 90269, at *12 (emphasis added). By using the word "deliberate" to modify "refusal," the Commission further confirmed that, even if the word "refusal" is independently suggestive of volition, adjectives such as "deliberate" or "willful" naturally may be used to clarify its exact meaning in particular circumstances.

different meaning of "willful" under Section 106(e). To the contrary, ascribing a different meaning would make no sense, because then the Division would have to meet different standards of proof in seeking different types of remedies under the two provisions.[4]

Second, even ignoring other Exchange Act provisions, by expressly defining a statutory violation, Section 106(e) clarifies that the SEC has a number of options *under Section 106* when faced with a willful refusal to comply. Respondents correctly point out that Section 106(b)(1) creates a mandatory obligation on the part of a foreign firm to produce audit workpapers upon request by the SEC. *See* Respondents' Brief at 10. Nevertheless, absent Section 106(e)'s clear statement that a "willful refusal to comply . . . shall be deemed a violation of the Act," conceivably an argument might be raised that the SEC's only recourse for noncompliance is an enforcement action in district court under Section 106(b)(1)(B). Putting aside that argument's hypothetical merits, Section 106(e) makes clear that the SEC may pursue *other* remedial options, including, as here, an administrative proceeding under Rule 102(e). This is so regardless of whether Section 106(e)'s "willful refusal" standard substantially duplicates Rule 102(e)'s "willfully violated" standard. *See* Order on Motions for Summary Disposition As To Certain Threshold Issues, at 8 (4/30/13) ("Summary Disposition Order") (Section 106(b)(1) and Section 106(e) "[t]aken together . . . provide a basis for me to determine whether Respondents have

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[4] Notably, the Exchange Act authorizes other types of actions to address statutory "violations." *See* Section 21(d)(1) [15 U.S.C. § 78u(d)(1)] (authorizing SEC injunctive action "[w]henever it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation of any provision of this title"); Section 21C(a) [15 U.S.C. § 78u-3(a)] (authorizing cease-and-desist order "[i]f the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this title"). It is of no consequence to the legal interpretation of Section 106(e) that, here, the SEC decided only to institute an administrative proceeding under Rule 102(e), and not to seek other types of remedies or sanctions under any of these other various provisions.

willfully violated the securities laws for purposes of Commission Rule 102(e)(1)(iii)");[5] *Public Citizen, Inc. v. Rubber Manufacturers Ass'n*, 533 F.3d 810, 818 (D.C. Cir. 2008) ("[A] provision that may at first glance appear to be textual surplusage, may in fact 'perform[] a significant function simply by clarifying.'" (Internal citation omitted)).[6]

Finally, the canon of statutory construction that avoids surplusage "is not absolute," and no such canon "justifies construing the actual statutory language beyond what the terms can reasonably bear." *Public Citizen*, 533 F.3d at 816 (internal quotations omitted). This is particularly true for statutes that do not impose criminal liability. *See Bailey v. United States*, 516 U.S. 137, 145 (1995) (noting that "resistance" to statutory interpretations creating surplusage "should be heightened when the words describe an element of a criminal offense").[7] Even assuming Section 106(e) were surplusage under the Division's construction (which it is not), that construction still would be preferable to Respondents' construction, under which a foreign firm's

[5] Even with the presence of Section 106(e), Respondents argued that they were entitled to summary disposition on the ground that the SEC was first required to bring an enforcement action in U.S. district court, before seeking remedial relief under Rule 102(e). This ALJ properly rejected that argument. *See* Summary Disposition Order at 8.

[6] For this same reason, no incongruity is presented by, on the one hand, the PCAOB's authority to bring a disciplinary proceeding against a registrant when it "refuses" to cooperate with an Accounting Board Demand ("ABD") under Sarbanes-Oxley Section 105(b)(3)(A), and, on the other hand, Rule 106(e)'s provision that a "willful refusal to comply . . . shall be deemed a violation of this Act." *See* Respondents' Brief at 16 n.13. Section 105(b)(3)(A) merely delineates the *Board's* authority to bring a disciplinary proceeding. Rule 102(e) and Section 106(e), by contrast, identify circumstances authorizing pursuit of remedial action by the *Commission*. These circumstances include not only a "willful refusal to comply" with a Section 106 demand, but also a registrant's willful violation of PCAOB rules that require cooperation with ABDs. *See* Division's Consolidated Opposition to Respondents' Motions For Summary Disposition As To Certain Threshold Issues, at 39-40 (2/22/13) ("Division's Consolidated Opposition"); Summary Disposition Order 9.

[7] Furthermore, as Respondents' own case law makes clear, interpretations of "willfulness" in the criminal context have no bearing on its meaning in civil statutes. *See Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 60 (2007) (analysis of term "willfulness" from the "criminal side of [a] law" is "beside the point in construing the civil side" of the same law"). Therefore, cases such as *Arthur Andersen LLP v. United States*, 544 U.S. 696 (2005), *Bryan v. United States*, 524 U.S. 184 (1998), and *Potter v. United States*, 155 U.S. 438 (1894), are simply irrelevant to the interpretation of Section 106(e), notwithstanding Respondents' attempts to invoke them for that purpose, *see* Respondents' Brief at 11, 22, and 17, respectively.

reference to foreign law could nullify the Commission's ability to protect its regulatory oversight of the securities markets.

B. The Act Should Not Be Construed To Require A Showing Of Bad Faith Absent A Clear Textual Basis

Although Respondents argue that legislative history and the principle of "prescriptive comity" necessitate an interpretation of Section 106(e) that requires the Division to prove bad faith, neither proposition is true.

1. Legislative History Does Not Support Respondents

The ALJ and the Commission need not resort to legislative history, because the language of Section 106(e) is sufficiently clear, particularly in light decades of judicial precedent on the terms used therein. At any rate, legislative history fully supports the Division's construction of "willful refusal," under which foreign firms can be held to account for their non-compliance with Section 106(b)'s production requirement. In Dodd-Frank, not only did Congress explicitly expand the triggering conditions for the requirement that a foreign firm produce audit workpapers under Section 106; it also added Section 106(e). *See* Division's Consolidated Opposition to Respondents' Motions For Summary Disposition As To Certain Threshold Issues, at 19-24, 35 (2/22/13) ("Division's Consolidated Opposition"). Moreover, it included the term "willful" eight years after Congress, in Sarbanes-Oxley, codified Rule 102(e), which also used the term. This history establishes a heavy presumption that Congress intended to incorporate the traditional, securities-law meaning of willful in Section 106(e). *See* Division's Brief at 50-51.

In support of their "legislative history" argument, Respondents point only to Section 106(f) – which is not legislative history at all – and to unrelated Congressional testimony regarding the PCAOB's ability to provide assistance to foreign regulators. Respondents' Brief at 11-13. That Congress explicitly gave the SEC and the Board the *option* of permitting foreign

firms to meet their production obligations through alternative means, or authorized the Board to share inspection information with foreign regulators, does not speak to the SEC's authority to protect its processes from foreign firms that willfully refuse to comply with document demands under Section 106.

2. Prescriptive Comity Does Not Require A Different Interpretation of Section 106

Nor does the doctrine of prescriptive comity require an interpretation of Section 106(e) that imposes on the Division the burden of showing an *absence* of conflict with foreign law. Respondents' Brief at 13-14. As the Division has explained, comity principles are irrelevant to the proper interpretation of Section 106(e), because the Commission does not seek through these proceedings a remedy that would infringe on the decision-making authority of any foreign sovereign. *See* Division of Enforcement's Pre-Hearing Brief at 45-46 ("Division's Pre-Hearing Brief"); Division's Brief at 58-60, 96-97. Respondents have offered no rebuttal to this point.

Assuming, *arguendo*, that comity principles are potentially relevant, by no stretch of the imagination could they impose on the Division the burden urged here by Respondents. In *Societé Nationale Industrielle Aérospatiale v. U.S. Dist. Ct. for Southern Dist. of Iowa*, 482 U.S. 522, 544 n.29 (1987), the Supreme Court rejected the contention of the French corporate defendants that they did not have to comply with discovery demands under the Federal Rules of Civil Procedure ("FRCP"), on the asserted ground that the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters ("Hague Convention") provided the "exclusive and mandatory" means for obtaining documents and information located within the territory of a foreign signatory such as France. *Id.* at 529. The Court ruled that it would be improper to construe the treaty as displacing the FRCP "[i]n the absence of explicit textual support" for such a construction. *Id.* at 536-37. Doing so would "effectively subject every American court hearing

a case involving a national of a contracting state to the internal laws of that state," and, further, "would subordinate the court's supervision of . . . [the] proceedings to the actions or, equally, to the inactions of foreign judicial authorities." *Id.* at 539.

The Court in *Societé Nationale* also rejected the alternative contention that the Hague Convention required "first resort to Convention procedures whenever discovery is sought from a foreign litigant." *Id.* at 542. French penal law had allegedly prevented the defendants from responding to discovery demands that did not comply with the Hague procedures. *Id.* at 526. Nevertheless, the Court noted that "[i]n many situations" those procedures "would be unduly time consuming and expensive, as well as less certain to produce needed evidence than direct use of the Federal Rules." *Id.* at 542-43. The Court expressly disagreed that comity principles required the rule of first resort, concluding, "If such a duty were to be inferred from the Convention itself, we believe it would have been described in the text of that document." *Id.*

Societé Nationale forecloses Respondents' construction of Sarbanes-Oxley that would *require* the SEC either (1) to seek foreign firms' audit workpapers through Section 106(f), or (2) to find lack of good faith before taking remedial action for non-compliance. For the SEC effectively to oversee issuers' public disclosures, it must have prompt access to audit workpapers. Section 106 plainly provides a procedure that meets this regulatory need. Yet under Respondents' construction, a foreign firm could circumvent SEC oversight merely by invoking foreign law, thereby subordinating such oversight "to the actions or, equally, to the inactions of foreign . . . authorities." *Id.* at 539. Respondents' attempt to graft a foreign-law exception onto Section 106's production requirements, without any "plain statement of [such] a pre-emptive intent" in the statute, *id.* at 539, must be rejected. *See also United States v. Vetco, Inc.*, 691 F.2d 1281, 1286 (9th Cir. 1981) (affirming contempt sanction against audit firm and

holding that nothing in Swiss-U.S. treaty or U.S. code barred use of IRS summons overseas notwithstanding assertion that Swiss penal law prevented compliance of the summons).

3. The SEC's Ability To Address Foreign Law Constraints Through Its Exemption Authority Further Undermines Respondents' Position

The SEC's exemption authority under Section 106(c) further confirms that Sarbanes-Oxley provides no foreign-law exemption to foreign firms. Section 106(c) authorizes the Commission, as it "determines necessary or appropriate in the public interest or for the protection of investors," to issue a rule or order that "either unconditionally or upon specified terms and conditions exempt[s] any foreign . . . firm, or any class of such firms, from any provision of this Act or the rules of the Board or the Commission issued under this Act." 15 U.S.C. § 7216(c). Thus, the SEC can relieve foreign firms from their direct production responsibilities if the SEC determines that doing so is in the public interest or will protect investors. Crucially, however, the statute gives the *Commission*, not any foreign firm, the authority to make this decision. The Commission's apparent ability to account for comity concerns, if it so chooses under this provision, further counsels against a construction of "willful refusal" that would tie the SEC's hands in the face of foreign law or an assertion of foreign law.

C. Willfulness Under Section 106(e) Does Not Permit A Defense Based On Good Faith Inability To Comply Due to Foreign Legal Impediments

Respondents continue to argue that, even under the Division's construction of "willful," a foreign firm does not act willfully if it fails to produce documents because of foreign law constraints. Respondents' Brief at 21-22. Respondents are wrong on the law. Both courts and the Commission have confirmed that good faith is immaterial to whether a person charged with a legal duty has acted willfully. In *Fields*, the court expressly rejected the argument that "'willfully', as used in the statute, implies an evil or a bad purpose," and "*that appellant's acts*

assertedly constituting good faith had a bearing on the issue of willfulness." 164 F.2d at 99 (emphasis added). "The reason or the purpose of [a] failure to comply or refusal to comply [with a document demand] is immaterial, so long as the refusal was deliberate and intentional and was not a mere inadvertence or an accident." *Id.* at 100; *see also Dennis*, 171 F.2d at 990-91. Similarly, in *In the Matter of Gearhart & Otis, Inc. McCoy & Willard.*, File Nos. 8-2729, 8-3389, 1964 WL 66325 (Jun. 2, 1964), in revoking a broker-dealer's registration based on various securities law violations, the Commission rejected the respondents' assertions that their violations were not "willful" because "they relied in good faith on the advice of counsel," *id.* at *5. *See also In the Matter of Marc N. Geman*, Exch. Act. Rel. 43963, 2001 WL 124847, at *17 (Apr. 5, 2000) (determining respondent's claim of good faith to be irrelevant), *aff'd*, *Geman v. SEC*, 334 F.3d 1183 (10th Cir. 2003).

Likewise, under Section 106(e), a foreign firm willfully refuses to comply with a Section 106 demand regardless of its claim that it relied in good faith on the possibility of sanction under foreign law. Where a foreign firm contravenes the clear production requirement of Section 106(b) and risks a U.S.-law sanction, even if it does so out of fear of a sanction under foreign law, it takes action that is "intentional and deliberate." *Dennis*, 171 F.2d at 991 (defendant's refusal to testify constituted violation of 2 U.S.C. § 192 regardless of his reasons). Respondents' citations to cases outside the securities-law context (Respondents' Brief at 21), are inapposite, as each of these cases addressed whether the non-compliant party's actions were willful under an irrelevant construction of willfulness that equates the word with "bad faith" or "fault."[8] "'In

[8] In *Societe Internationale*, 357 U.S. at 212, *In re Westinghouse Elec. Corp. Uranium Contracts Litig.*, 563 F.2d 992, 996-97 (10th Cir. 1977), and *Shcherbakovskiy v. Da Capo Al Fine, Ltd.*, 490 F.3d 130, 139 (2d Cir. 2007), (all cited in Respondents' Brief at 21) the courts addressed the very different question of how a party might be sanctioned under FRCP 37 for failure to comply with a discovery order under the particular facts and circumstances of those cases. In that different context, the courts assessed, among a variety of factors, whether the non-compliant party had acted in good faith. Crucially, however, none of

construing a statute, penal as well as others, we must look to the object in view, and never adopt an interpretation that will defeat its own purpose, if it will admit of any other reasonable construction.'" *Dennis*, 171 F.2d at 991 (quoting *The Emily and The Caroline*, 9 Wheat. 381 (1824)). Accordingly, in *Gearhart & Otis*, the Commission rejected a good-faith defense to willfulness because otherwise the statutory provision's "remedial purpose . . . would be frustrated." 1964 WL 66325, at *5. So too here. Respondents' attempt to import a foreign-law defense into the willfulness inquiry must be rejected as contrary to the objective of Section 106 generally, and the remedial purpose of Section 106(e) specifically.

II. RESPONDENTS' ARGUMENTS DO NOT ALTER THE CONCLUSION THAT RESPONDENTS WILLFULLY REFUSED TO COMPLY WITH THE REQUESTS

Respondents' refusals to comply with the Requests were "willful" under any of the standards urged by the parties in these proceedings; their refusals were volitional, and they exhibited a lack of good faith. Respondents' arguments fail to overcome the Division's proof that all Respondents willfully violated Section 106.

A. Respondents, Not the SEC or Investors, Assumed the Risk That Their Participation in U.S. Markets Could Lead to A Conflict of Law

As Respondents concede, they acknowledged in their applications for Board registration that Chinese law might impair their ability to comply with U.S. regulators' document requests. *See* Respondents' Brief at 53-54. Contrary to Respondents' contentions, these

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these decisions held that "good faith" could constitute a defense to "willfulness" as that term is understood under the securities laws. Nor did these cases involve a specific category of documents for the production of which Congress had made special provision through statute, as part of a U.S. agency's regulatory mission. Finally, even in Respondents' cited cases, a party that acted in good faith still could be sanctioned. Thus, the cases do not support the proposition that good faith defeats the availability of sanctions under Section 106. *See Societe Internationale*, 357 U.S. at 212-13 (lower court could consider sanctions such as unfavorable inferences against the non-producing party); *see also Westinghouse*, 563 F.2d at 997 ("[F]oreign illegality does not necessarily prevent a local court from imposing sanctions when, due to the threat of prosecution in a foreign country, a party fails to comply with a valid discovery order.").

acknowledgments, together with Respondents' other actions and knowledge upon entering, and then staying in, U.S. markets, demonstrate willfulness. *See* Division's Brief at 64-73. Given this evidence, the ALJ and the Commission should find that Respondents willfully refused to comply with the Requests without even considering the question of what Chinese legal constraints, if any, were actually imposed on Respondents.

1. Respondents Plainly Understood That U.S. Law Required Them To Produce Documents To U.S. Regulators

Respondents rely on language that was included in Section 106 when that provision was enacted in 2002, and subsequently removed by the Dodd-Frank amendments, for the proposition that that when "Respondents registered with the PCAOB, it was not at all clear that the inability to produce audit workpapers to the SEC would constitute a violation of law." Respondents' Brief at 55. But Respondents cannot deny that, at the time of their registrations, Board rules unequivocally required them to produce audit workpapers to the Board upon demand in connection with Board investigations. *See* 15 U.S.C. § 7215(b)(2); Board Rule 5103.[9] In the event a foreign firm failed to cooperate with such a demand, the Board could bring a disciplinary proceeding seeking sanctions, including suspension or revocation of the firm's registration. *See* 15 U.S.C. § 7215(b)(3); Board Rules 5110, 5300. Additionally, the *SEC* also could bring a proceeding seeking remedial action against the firm under Rule 102(e), in the same manner as for a violation of the Exchange Act. *See* 15 U.S.C. § 7215(b)(2); Division's Consolidated Opposition 39-40 (explaining statutory framework); Order on Summary Disposition at 9. Meanwhile, in the event the Board *or the SEC* issued a separate request to a foreign firm under the pre-Dodd-Frank Section 106, the foreign firm ignored such a request at its peril; that

[9] The Board adopted its rules on investigations and adjudications through PCAOB Release No. 2003-015 (dated September 29, 2003), available at http://pcaobus.org/Rules/Rulemaking/Pages/Docket005.aspx. The Commission approved these rules on May 14, 2004, before any Respondent was registered with the PCAOB. *See* Release No. 34-49704, File No. PCAOB-2003-07, 2004 WL 1439833 (May 14, 2004).

provision stated that, if certain conditions were met, the foreign firm "shall be deemed to have consented – (A) to produce its audit workpapers for the Board or the Commission in connection with any investigation by either body with respect to that audit report; and (B) to be subject to the jurisdiction of the courts of the United States for the purposes of enforcement of any request for production of such workpapers." Pub. L. 107-204, 116 Stat. 745 § 106(b) (2002) **(ENF 279)**. These unambiguous requirements were confirmed by the testimony of Respondents' own witnesses; they uniformly testified that, when they registered, they understood Chinese law could conflict with their *then-current obligation* to produce documents to U.S. regulators upon request. *See* Division's Brief at 10-11 (citing and quoting testimony).

Even assuming that foreign firms' production obligations under U.S. law were ambiguous when they registered, which they were not, Dodd-Frank removed any such ambiguity. Yet Respondents continued business as usual. They continued servicing their existing U.S.-issuer clients, took on *additional U.S.-issuer clients*, and by their own testimony and exhibits continued to expand their U.S.-focused business. *See* Division's Brief at 66-68. Meanwhile, they confirmed their understanding of their obligations under the amended Section 106 by designating U.S. agents as required under Section 106(d). *See id.* at 12-13.[10] In sum, Respondents had more than sufficient notice of their production obligations under U.S. law before arriving at their current predicament.

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[10] Respondents contend that, by the time of Dodd-Frank, DTTC already had begun its Client A and Client G engagements, and KPMG Huazhen already had begun its Client F engagement. Respondents' Brief at 55. Of course, these Respondents were not required to continue these engagements, and in any event Respondents took on engagements with several of the Clients even after Dodd-Frank. *See, e.g.,* Client B Form 8-K (11/17/10) **(ENF 41)** (announcing engagement of EYHM); Client E Form 8-K (1/17/11) **(RX 521)** (announcing engagement of KPMG); Client I Form 8-K (12/6/10) **(ENF 109)** (announcing engagement of PwC Shanghai).

2. Respondents Cannot Shift Blame For Their Own Gamble To U.S. Regulators

Respondents next contend that, when they registered, they had an "expectation" that "any obstacles to production would be resolved on a sovereign-to-sovereign basis" and that this expectation was "shared" by the Board. Respondents' Brief at 55. The record is devoid of contemporaneous evidence supporting these supposed expectations. But regardless of what Respondents or the Board may have hoped for in the way of future negotiations, agreements among the sovereigns were by no means assured, as Respondents well knew. In the meantime, the Board made crystal clear to Respondents that *foreign firms* remained responsible for complying with their production obligations under U.S. law. The Board provided this clarification both in writing directly to each Respondent upon its registration, and through responses to frequently asked questions that were posted to the Board's website. *See* Division's Brief at 8-10. Respondents' witnesses consistently testified that they understood, at the time of their registration, that the Board rejected the notion that Chinese legal constraints, if they existed, exempted Respondents from their production obligations. *See id.* at 11, 66.

Respondents can point to no Board action that mitigates the willfulness of Respondents' conduct. If Respondents had "expectations" of future sovereign agreements, these were of their own making. Moreover, as Board registrants responsible for complying with U.S.-law production obligations (including relevant Board rules), they are decidedly *not* "in the same position as the PCAOB itself." Respondents Brief at 7.

In contending that the Board allowed them (at Respondents' own urging) to register in the first instance and did not then de-register them (*see* Respondents' Brief at 7, 56-58 & n. 43), Respondents appear to suggest a reliance-based estoppel defense to these proceedings. But such a defense – whether asserted as equitable estoppel or re-packaged as "good faith" – is without

merit. "As a general matter, a party asserting estoppel against the government must not only satisfy the traditional elements of estoppel, but must also carry a heavy burden to outweigh the strong, countervailing interest in obedience to the law." *In the Matter of Kingsley, Jennison, McNulty and Morse Inc.*, 51 S.E.C. 904, Admin. Proc. File No. 3-7446, 1993 WL 538935, at *4 n.29 (Dec. 23, 1993)); *see also Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51, 60 (1984); *SEC v. KPMG LLP*, Case No. 03-cv-671 (DLC), 2003 WL 21976733, at *2 (Aug. 20, 2003). At no time did either the Board or the Commission make "a 'definite' representation" to Respondents that they need not comply with their U.S. production obligations. *See Graham v. SEC*, 222 F.3d 994, 1007 (D.C. Cir. 2000) (rejecting estoppel claim against SEC). Furthermore, any reliance by Respondents on the Board or SEC's conduct, for the notion "that foreign firms like Respondents would not be placed in the middle of conflicting law" (Respondents' Brief at 58 n.43), could not have been "'reasonable,'" *Graham*, 222 F.3d at 1007 (quoting *Heckler*, 467 U.S. at 59). Indeed, the Board expressly told Respondents that they *could* get caught in a legal conflict. *See* PCAOB FAQ (stating that if any firm performed audit work for non-U.S. clients without assurance of necessary consents under non-U.S. law, the firm took "the risk that it may later have to choose between providing information with the client's consent or facing a Board sanction for failing to provide the information") **(ENF 11).**[11]

[11] Respondents' suggestion that the Board has impliedly condoned their behavior, by not de-registering them and by allowing them to remain registered "after recent changes in corporate forms" (Respondents' Brief at 7), is also wrong. In fact, the Board's Division of Enforcement and Investigations ("Board Division") informed some of the Respondents that it intended to recommend disciplinary proceedings against them for failing to comply with Accounting Board Demands for the same documents sought by the SEC's Section 106 demands. In informing KPMG Huazhen of this decision, the Board Division reminded the firm that the Board "had expressly stated to KPMG Huazhen during the registration process [that] the Board's approval of the Firm's registration application, notwithstanding its failure to supply 'Consents to Cooperate with the Board,' did not relieve the Firm from complying with Board demands." PCAOB letter to KPMG Hong Kong and KPMG Huazhen, at 2 (10/3/11) **(RX 544).**

In short, the U.S. Government put Respondents on more than sufficient notice of their U.S. legal obligations. Respondents' "expectations" about future sovereign-to-sovereign agreements – whether or not once shared by the Board – are factually unsupported and legally irrelevant.

3. Respondents Chose To Violate U.S. Law

Respondents' contention that they did not make "a voluntary 'choice' to comply with Chinese law rather than U.S. law" (Respondents' Brief at 59), ignores the record. First, Respondents made such a choice when they chose to enter and to stay in U.S. markets with knowledge of potential legal constraints. They did this with the assumption that, if there ever *were* an actual conflict, they would comply with what they perceived were the requirements of Chinese law, at the expense of *not* complying with U.S. law. *See, e.g.*, Tr. 1719:14-1721:11 (George) (stating that DTTC's "pre-existing position, and it's been pre-existing since 2004 when we did the Form 1, is that there are legal impediments to the direct production of audit working papers to the SEC"); Tr. 2001:24-2002:2 (Yan) ("As I said, our firm is facing the PRC, our people are facing the PRC. We simply have to comply with the PRC regulations."). This conduct alone constituted a voluntary "choice" not to comply with their U.S.-law production requirements, including the requirements of Section 106(b). Dahua's decision to withdraw from working for U.S. issuers, thereby avoiding possible future conflicts with Chinese law, perfectly illustrates this point. Tr. 2051:7-18 (Ji).

Second, Respondents "chose" to comply with Chinese law rather than U.S. law when they informed the SEC that they would not be producing documents in response to the Requests. *See Dennis*, 171 F.2d at 991 (the "intentional and deliberate" nature of subpoena recipient's refusal was made "perfectly clear" by his failing to answer questions when asked). At least four

of the five Respondents admitted, in either their testimony or their correspondence to the SEC, that they "chose" or "decided" not to comply with the Requests. *See* Division's Brief at 70-73 (reciting statements of PwC Shanghai, EYHM, KPMG Huazhen, and Dahua). Following these repeated admissions, certain other, later-testifying witnesses of Respondents tried to avoid similar admissions. Instead, they tried to testify that they had "no choice" but to comply with alleged Chinese law. *See, e.g.*, Tr. 1716:14-18 (George); Tr. 2001:23-24 (Yan). On this score it is Respondents, not the Division, who have "engaged in semantics" about the meaning of the word "choice." Respondents' Brief at 60 n.46. Not only does such plainly rehearsed testimony lack credibility, it is illogical. Respondents contend that they had "no choice" because the Chinese government threatened to sanction them (such as by revoking their licenses) if they produced documents to the SEC. But at the same time, Respondents faced possible sanctions from U.S. regulators, such as censure, debarment, or deregistration, for violating their U.S.-law production obligations. Tr. 2002:23-2003:1 (Yan). Thus the course followed by Respondents merely reflected their preference for which risk of sanction to bear. That Respondents perceived the likely costs of Chinese sanctions to be higher than the likely costs of U.S. sanctions does not make Respondents' decisions any less of a "choice."[12]

[12] In any event, Respondents' witnesses' assertions that they had "no choice" largely broke down on cross-examination. *See* Tr. 2003:12-20 (Yan) ("Q: Who at your firm decided that it had no choice but to comply with Chinese law? Was it just you, Sir? A: No. I think we've got a management committee and we've got our chairman so the decision is not mine alone. Q: You participated in the decision, correct? A: Yes."). As the Division has explained, Respondents have not carried their burden of showing that they reasonably could have incurred criminal liability except as to the relatively small subsets of the requested documents in their possession that posed a genuine risk of containing state secrets. *See* Division's Brief at 86-87, 107-08. But even to the extent that violating Chinese laws could have exposed Respondents to criminal sanction, Respondents' decisions to avoid such sanctions still reflected a "choice."

B. Respondents' Refusals Supported A Blockade Against U.S. Regulators

To the extent this ALJ or the Commission decides that it is necessary to consider Chinese law in determining Respondents' liability under Section 106, the content of this law further supports a finding of willfulness. Respondents' Post-Hearing Brief confirms that their refusals to comply were willful because Respondents willingly complied with a purported legal regime that sought to block ***all channels*** by which audit workpapers might be provided to the SEC from China. Indeed, that was the very purpose of supposed Chinese government directives that allegedly guided Respondents' conduct.

State Secrecy Laws Did Not Prevent Respondents From At Least Partially Complying With The Requests. Assuming, *arguendo*, that state secrecy could justify the withholding of *any* of the requested documents, it could not have been a significant reason for the withholding of *all* such documents. Respondents do not dispute that their Clients were required under Chinese law to identify state secrets that they provided to Respondents, or that Respondents could have consulted with their Clients to assess which documents might contain state secrets. While no fewer than eight of the Clients, all located in China, produced documents to the SEC, there is *no* evidence that any of these Clients or their personnel have been sanctioned by the Chinese government. This record confirms that China's laws and procedures that specifically address state secrets – had they been followed – themselves did not prevent Respondents from making at least partial productions of their workpapers in response to the Requests. This is consistent with the CSRC's response to the IOSCO questionnaire when it applied for membership to that organization, stating, "[o]nly in the extremely particular situation, information requested by

overseas securities and futures authorities may be related to Chinese state secrets." Tafara letter to CSRC (7/5/11) **(ENF 212)**; Tr. 993:20-994:13 (Arevalo).[13]

Respondents challenge the Division's evidence of the productions from the Clients, and from other auditors, as "conclusory" and "self-serving," going so far as to question whether the Division even received the auditors' productions. *See* Respondents' Brief at 43 ("The Division did not introduce into evidence either the produced workpapers themselves or any other documents or evidence showing the manner in which the productions were made, *if at all*." (emphasis added)). Respondents' claims are factually incorrect and, in any event, unpersuasive. The Division *did* introduce evidence showing how other documents were produced. *See* Patrizio & Zhao and GHP Horwath cover letters **(ENF 320-323)**; Tr. 187-192 (Rana). Eight different Division witnesses, each knowledgeable about a specific investigation involving a particular Client (and seven of whom participated in the investigations), testified that they received Client productions, and four testified that they received other auditors' workpapers. *See* Division's Brief, Fact Section IV; *infra* Section V.D.2. Division witnesses provided information about the volume and types of documents they received.[14] No Division witness testified that any Client or auditor had asserted a state secrecy claim, and eight witnesses affirmatively testified that the

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[13] In order for the CSRC to be admitted to the IOSCO, the Screening Group was required to "conclude that state secret exceptions to MMOU cooperation would be rare and extraordinary." Tafara Letter to CSRC (7/5/11) **(ENF 212)**.

[14] Tr. 57:9-19 (Josephs) (DTTC Client A produced documents to the Division, including financial statements and internal correspondence); Tr. 610:10-25 (Weinstein) (Dahua Client A produced documents to the Division); Tr. 474:21-475:6 (Hubbs) (Client B produced documents including business records, emails, and board documents); Tr. 740:13-23 (Kazon) (Client D produced documents to the Division); Tr. 174:14-23 (Rana) (Client E provided documents including internal e-mails, financial records, and a copy of the company's general ledger); Tr. 789:7-17 (Boudreau) (Client F produced documents to the Division); Tr. 696:16-697:1 (Chang) (Client G produced documents including "financial records, general ledgers, invoices and purchase orders"); Tr. 858:17-858:21 (London) (Client H produced documents to the Division).

Clients had not made such a claim. None of the Respondents tried to cross-examine the Division's witnesses on whether they had *received* any of the productions.

In addition, Respondents ignore the fact that, months before the hearing, the Division (pursuant to SEC Rule of Practice 230(a)) provided or made available to Respondents all of the documents that the Clients and auditors collectively had produced to the Division, along with the Division's correspondence to and from these entities. Respondents cannot credibly contest that the Clients and other auditors collectively produced over a million pages of documents to the Division.[15] The Division's receipt of these documents defeats the notion that *all* of Respondents' own workpapers for the Clients reasonably could have been expected to contain state secrets, or that Respondent could not have at least tried to segregate documents that were unlikely to contain state secrets.

Respondents Understood That Their Refusals To Comply Effectively Would Block The SEC's Investigations. Respondents knew that, as a result of their refusals to comply with the Requests, the SEC would be unable to obtain the documents that the Division needed for its investigations involving the Clients. Respondents could not reasonably have expected the SEC to obtain the documents via the CSRC, because Respondents had no assurance that the CSRC was, in fact, willing and able to serve as a viable gateway for the production of audit workpapers to the SEC. To the contrary, DTTC's experience with its workpapers for Clients A and G indicated just the opposite.

Respondents contend that they "promptly produced documents to the CSRC each time they were requested to do so, and their intent and expectation was that those documents would be

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[15] Although Respondents fault the Division for not offering actual document productions as evidence during the hearing (Respondents' Brief at 43), the large volumes would have made it impracticable to do so.

made available to the SEC." Respondents' Brief at 62. But this alleged obedience to the CSRC was almost an entirely empty gesture as far as the Requests were concerned. Although Respondents' formulation is somewhat ambiguous, their cited evidence makes clear that they produced documents to the CSRC only in response to requests *from the CSRC*; there is no evidence that they made any efforts to facilitate the production of documents *to the Division*, either directly or via the CSRC. With the possible exception of DTTC Client A, prior to these proceedings Respondents did not actually provide any workpapers to the CSRC in response to the Requests.[16] In any event, no Respondent reasonably could have had the "intent and expectation" that its workpapers would be made available to the SEC through the CSRC. *See* Division's Brief at 81-83.

And while Respondents claim they have "nothing to hide" by refusing to produce the workpapers (Respondents' Brief at 60), of course without the documents the Division has no way to verify such a statement. Moreover, the investigations conducted to date for certain of the Clients casts doubts on this blanket assertion. *See, e.g.*, Division's Brief at 26 n.16 (describing questions about the adequacy of EYHM's audit of Client C); Tr. 634:12-635:4 (Weinstein) (noting it was unclear whether Dahua examined material transaction undertaken by issuer even though it issued an unqualified audit opinion).

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[16] DTTC provided its Client A workpapers to the CSRC in July 2010, before the SEC's Section 106 demand for those workpapers. According to the testimony of DTTC's professional practice director for northern China, Chiu Chi Man, DTTC screened the Client A workpapers for state secrets starting in early 2012, but the record is unclear as to whether DTTC actually provided any of the workpapers to the CSRC at this time. *See* Tr. 1778:6-1779:23 (Chiu) (DTTC reported findings regarding state secrets to CSRC which performed "redaction and removal" in the CSRC's office). PwC contends that it provided certain summaries of information to the CSRC in response to the Division's informal request in its investigation of Client I, but this occurred prior the SEC's Section 106 demands to PwC. *See* Client I Section 106 Request (3/22/12) **(ENF 117)**; Response to Client I Section 106 Request, at 3-4 **(ENF 118)** (describing October 2011 conversations with CSRC regarding PwC Shanghai's chronologies). Meanwhile, Respondents' deliveries of workpapers to the CSRC *in 2013* could shed no light on Respondents' expectations before commencement of these proceedings.

C. Respondents Cannot Demonstrate The Existence of Chinese Law That Mitigates Their Willfulness Under Section 106(e)

Respondents' Post-Hearing Brief further confirms that the alleged "law" upon which Respondents purported to rely in refusing to comply with the Requests was not established, written Chinese law, but alleged oral directives issued in secret by the Chinese government only to a small group of accounting firms. Assuming, *arguendo*, that the substance of *any* Chinese law or directive could matter to the inquiry under Section 106(e), the alleged oral directives do not militate against a finding that Respondents' refusals to comply were willful. In assessing whether foreign laws impose a hardship on parties asked to respond to U.S. information requests, courts consider both the severity of any potential foreign sanction and the likelihood that the sanction will be imposed. *See, e.g.*, *Vetco*, 691 F.2d at 1290; *Gucci America v. Weixing*, Case No. 10cv4974 (RJS), 2011 WL 6156936, at *11 (S.D.N.Y. Aug. 23, 2011). Here, the record shows, at most, that Respondents were subject only to the possibility of non-criminal sanctions for disobeying any of the alleged oral directives, and that the chance such sanctions actually would have been imposed was highly speculative.

Written Chinese Law Did Not Prohibit Direct Production to the SEC Absent CSRC Approval. Respondents highlight various written laws and correspondence that supposedly reflect the CSRC's legal "authority" to prohibit them from producing documents directly to the SEC. Respondents' Brief at 33-38 (discussing Article 179 of the Securities Law and Regulation 29, among other items). But the question of the CSRC's authority is not in dispute. The relevant question is whether the CSRC has *asserted* its authority through any written document to impose an express prohibition on Respondents and, in so doing, to create a reasonable likelihood of liability under Chinese law. *See Gucci America v. Weixing*, 2011 WL 6156936, at *11 (Chinese bank's claim of liability under Chinese law if it were to produce records was "unduly

speculative" where bank could not point to similar case in which the government actually imposed sanction). Respondents have not documented any such assertion. Respondents repeatedly contend that the three October 2011 letters from the CSRC (collectively, the "Reply") must be "read in context" and "against the backdrop of . . . numerous oral directives" (Respondents' Brief at 38); but this is just an admission that the Reply, standing alone, creates no liability for Respondents; *see also id.* at 36 (conflating the CSRC's "oral and written directive to Respondents").[17]

Respondents would have the Commission dismiss as a mere "quibble," or "nitpicking" (Respondents' Brief at 32-33), the crucial distinction between, on the one hand, the written requirement that China's State Archives Administration ("SAA") approve the transfer of archives overseas, and, on the other, the alleged requirement that the *CSRC* approve the production of workpapers to the SEC. The difference is no mere nit. The SAA has established broadly-applicable procedures on its website for obtaining its approval. *See* Expert Report of Donald Clarke ¶¶41-42 (6/17/13) ("Clarke Initial Report"). Presumably these procedures are designed to accommodate the Chinese government's interests in protecting archives generally.[18] The alleged requirement that Respondents obtain CSRC approval, however, had no established process, was of indefinite duration, and was targeted specifically to Respondents' audit

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[17] Lacking any credible argument based on a plain reading of the Reply, Respondents seek to characterize the interpretation of the Reply offered by the Division's Chinese law expert, Professor Clarke, as an outlier in the face of competing opinions from Respondents' cadre of paid experts. Respondents' Brief at 38 n.25 ("[O]nce again, Professor Clarke is alone in his view to the contrary."). Professor Feinerman, however, agreed with Professor Clarke that the Reply "does not purport to create new law, but recapitulates the relevant Chinese laws, reminding Chinese accounting firms of their pre-existing obligations under Chinese law." Expert Report of James Feinerman (6/17/13) ¶36 ("Feinerman Initial Report"); Rebuttal Report of Donald Clarke¶15 ("Clarke Rebuttal Report").

[18] There is no evidence that DTTC, EYHM, or PwC Shanghai even tried to contact the SAA, and even according to their own evidence, KPMG Huazhen and Dahua abandoned that agency's procedures without even a letter from the agency. *See* Division's Brief at 78, 80; Division's Pre-Hearing Brief at 43-44 & n.16 (describing purported efforts of KPMG Huazhen and Dahua to contact SAA).

workpapers. By all appearances, the alleged requirement had nothing to do with advancing China's interest in protecting "archives," *per se*, and everything to do with blocking the SEC's access to Respondents' documents.[19]

The CSRC's Alleged Oral Directives Provide An Insufficient Basis On Which To Conclude That Respondents' Refusals Were Not Willful. Respondents recite the various private meetings in which the CSRC allegedly instructed them not to produce workpapers directly to the SEC (Respondents' Brief at 24-29); yet not once, despite all of these alleged, repeated communications, did the CSRC put its secret instructions in writing, let alone into any kind of public record. Thus, the only evidence of these alleged instructions is the testimony and prior writings of the Respondents themselves, all of whom are obviously biased on the issue. Neither the Division nor the SEC can confirm from any independent source: (1) the actual content of the alleged instructions; (2) that the instructions reflected the considered judgment of the Chinese government unaffected by any influence from the foreign firms themselves; or (3) the vigor with which Respondents tried to change the Chinese government's mind on the issue and obtain whatever approvals were allegedly required. In short, the oral directives – whether or not "*neibu*" – are a black box wholly incapable of independent verification by the SEC.[20]

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[19] Respondents contend that they were justified in restricting their contact with the Chinese government to the CSRC because eventually, in *2013 – after these proceedings were instituted* – the CSRC allegedly adopted a "new process . . . which centers around the CSRC" for handling requests for audit workpapers. *Id.* at 39. But this contention ignores the procedures for archives that were in place when Respondents refused to comply with the Requests in 2011 and 2012. In any event, the CSRC's alleged new process is not documented in writing anywhere either, and, therefore does not support Respondents' contention that CSRC approval was required by written Chinese law.

[20] As the Division has noted, a number of facts and circumstances, including Respondents' attempt to re-write the CSRC's Reply to make it more restrictive, casts doubt on the suggestion that in all instances it was the CSRC, and not Respondents themselves, that sought to impose the alleged restriction on producing documents to the SEC. Division's Brief at 93-95. At a minimum, it illustrates the serious difficulties that would be presented by the SEC's considering, merely on faith, Respondents' claimed "inability to comply." Respondents try to downplay the significance of KPMG Huazhen's attempt to edit the Reply, characterizing the edit as only "add[ing] a few words." Respondents' Brief at 62 (addressing

Tellingly, Respondents cite no case in which a U.S. court or agency concluded that a foreign government's *oral* statement provided a basis for relieving a recipient of an information request from complying with that request, or from any sanction for its non-compliance. Meanwhile, Respondents' complaint that Professor Clarke opined only on Chinese written law, and not on the significance of the alleged oral directives (Respondents' Brief at 30), does not undermine his well-founded conclusion that written Chinese law did not "requir[e] Respondents to report and get approval from the CSRC prior to producing documents in response to a request from a foreign regulator such as the SEC," Clarke Initial Report ¶12; *see also* Tr. 2334:9-21 (Clarke). That Professor Clarke did not also opine on the alleged oral law is unremarkable: the Division did not ask him to do so. Rather, the Division asked Professor Clarke to opine on the only legal authorities that the Division and the SEC themselves could independently review and analyze: the principles, standards, and rules promulgated by the Chinese government and memorialized in written documents. Thus, Professor Clarke provided the only expert opinion that he reasonably could have been expected to offer, or that the SEC potentially should consider in assessing Respondents' conduct under Section 106(e) (assuming, *arguendo*, Chinese law matters at all).[21]

ENF 335A). This attempted deflection is unpersuasive, however. The precise wording of the Reply was exceedingly important to Respondents, as reflected by not only the attempted edit itself, but also their own belated efforts to substitute multiple new translations of the Reply as exhibits in these proceedings. *See* RX 20-A, 245-A, 246-A, 546-A.

[21] Like the two Chinese law experts hired by Respondents, Professor Clarke was not privy to any of the private communications that Respondents had with the Chinese government; the only "evidence" that he could have considered before submitting his expert reports in these proceedings were Respondents' lawyer-crafted statements describing the communications, set forth in Respondents' various written submissions to the SEC. Of course, this was no evidence at all. While Respondents' experts formed their opinions about the oral directives based on the spoon-fed facts from counsel representing one of the Respondents – and *not* from any person who actually participated in any of the communications, *see* Tr. 2442:6-2444:14 (Tang); 2550:9-:2552:6 (Feinerman) – the content of these directives as relayed by the experts does not reflect any expert analysis. By focusing on Chinese written law at the Division's

Respondents' attempt to buttress the significance of the oral directives by arguing that the testimony that Respondents offered in which they allegedly described the directives was not hearsay (Respondents' Brief at 31), also fails. First, whether or not such testimony is technically "hearsay" does not control whether the directives can or should be relied upon as a defense in these proceedings. In no event can the SEC verify the content or circumstances of the directives. Second, the notion that Respondents are not relying on the directives for "the truth of the matter asserted" defies logic. The theory of Respondents' defense is that they were actually, legally constrained by what the Chinese government allegedly told them. Thus, Respondents' subjective understanding of their legal obligations in light of the government's oral statements, reflected by their "state of mind," is irrelevant. Neither this ALJ nor the Commission can determine whether Respondents' actions were in fact consistent with the purported Chinese government's instructions without knowing the content of those instructions, and those instructions could potentially matter only if they are, in fact, "true."[22]

Finally, even if the content of the alleged oral directives is considered, the record does not show that the directives presented anything more than a speculative chance of a non-criminal sanction that the Chinese government might later (through unexplained processes) decide to

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request, Professor Clarke provided the most salient opinion (and, in the Division's view, the only potentially useful opinion) for purposes of assessing Respondents' willfulness.

[22] The contrast with Respondents' cited authority, *United States v. Baird*, 29 F.3d 647 (D.C. Cir. 1994), is instructive. In *Baird*, the court determined that testimony regarding out-of-court statements was improperly excluded when that testimony was offered by the hearsay declarant, whose recounting of a discussion he had had with the defendant was offered to demonstrate the defendant's state of mind. *Id.* at 653. Here, however, the hearsay declarants are the CSRC and MOF, and not Respondents. Respondents' witnesses' testimony regarding what they (or, in many cases, their colleagues) were purportedly told is therefore not analogous to the testimony admitted in *Baird*. If Respondents wished to testify directly as to their own states of mind, they could have done so. Instead, they make the circular argument that the oral instructions they allegedly received – the only evidence of which is their own testimony – confirm their states of mind, and their supposed states of mind confirm the contents of those uncorroborated instructions, and none of this is hearsay. Plainly, their testimony regarding the oral instructions is not legitimately offered to corroborate their states of mind.

impose on Respondents. "The potential of criminal, rather than civil, liabilities typically weighs in favor of the objecting party." *Gucci America, Inc. v. Curveal Fashion*, 2010 WL 808639, at *7 (S.D.N.Y. Mar. 8, 2010). Here, however, there was no persuasive showing that disobeying the CSRC's oral directives could result in *criminal* liability under Chinese law.[23]

Furthermore, although several of Respondents' witnesses testified that the Chinese regulators raised the prospect of revoking the firms' licenses, the likelihood that they would have done so is entirely unclear. Tr. 1916:17-20 (Yan) ("*If* the case is *serious*, they did say that they [sic] *may* lose our license." (Emphasis added)). Courts have routinely rejected claims of hardship under Chinese law as unduly speculative, particularly where no regulator "has actually imposed sanctions or even made an actual determination as to whether [the party] will *face* any sanctions aside from a 'severe warning.'" *Gucci America v. Weixing Li*, Case No. 10-cv-4974, 2012 WL 1883352, at *4 (S.D.N.Y. May 18, 2012) (emphasis in original); *see also Vetco*, 691 F.2d at 1291 (affirming contempt finding absent showing of "a substantial likelihood of a successful Swiss prosecution"). For this same reason, Respondents' reliance on the alleged oral directives for the proposition that they were "unable to comply" with the Requests is inherently

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[23] Neither Professor Tang nor Professor Feinerman testified that disobeying the oral directives could result in a criminal sanction. *See* Division's Brief at 107. Testimony from Respondents' percipient witnesses that they feared unspecified punishments – *e.g.*, "putting personnel at risk," Tr. 1314:9-10 (Chao) – do not make such a showing either. *See Curveal Fashion*, 2010 WL 808639, at *7 ("If the likelihood that the objecting party will be prosecuted is slight and speculative, a court may order disclosure." (internal quotations omitted)). Furthermore, as the Division and its expert have shown, China's Archives Law also did not present risk of criminal liability, as none of the workpapers at issue are state-owned archives. *See* Clarke Initial Report ¶40; Division's Brief at 87 & n.42. Respondents contend that the Division does not "dispute" the opinion of Professor Tang "that the unauthorized production of workpapers here could expose Respondents to criminal penalties under the Archives Law" (Respondents' Brief at 71 n. 57), but this is wrong. The Division has disputed and refuted this opinion. Professor Clarke, in his expert reports and testimony, did not specifically address Professor Tang's reliance on Article 24 of the Archives Law, because Professor Tang cited this provision for first time during cross-examination at the hearing (after Professor Clarke already had testified). For the reasons stated in the Division's Brief, because Respondents' audit workpapers are not state-owned archives, Article 24 cannot reasonably be understood to have imposed any genuine risk of criminal liability with respect to the unauthorized transfer of those workpapers.

flawed. The instructions' oral nature makes it impossible for the Commission to assess the likelihood that any sanction would "actually" be imposed. While the alleged potential sanction of license revocation is "not insignificant, the Court cannot conclude that the prospect of hardship is anything more than mere speculation." *Curveal Fashion*, 2011 WL 6156936, at *11.

III. COMITY CONSIDERATIONS ONLY REINFORCE RESPONDENTS' LIABILITY UNDER SECTION 106(e)

A. The United States' Interests In Obtaining Audit Workpapers, And In Protecting Its Processes When It Cannot Do So, Vastly Outweigh China's Interests In Blocking Production

Respondents contend that, because productions of audit workpapers are allegedly "forthcoming" from the CSRC, the Division's interest in these proceedings is "exceedingly limited." The predicate of Respondents' assertion, that the CSRC will be producing audit workpapers relevant to these proceedings, is wholly unproven. *See infra* Section III.B. But even if that prediction later proves true, Respondents' conclusion does not follow. The SEC's interest in protecting its processes, by holding Respondents responsible for the harm that they have caused through their willful refusals to comply with the Requests, is paramount. So too is the United States' interest in enforcing the securities laws generally. By comparison, China's legitimate interest in blocking the SEC's access to critical documents for over three years is non-existent. *See SEC v. Banca Della Svizzera Italiana*, 92 F.R.D. 111, 112 (S.D.N.Y. 1981).

B. The Absence of Alternative Means Further Supports A Liability Finding

1. There Is No Current Alternative Means That Mitigates Respondents' Liability

Respondents proclaim that there is now "a 'viable gateway' for obtaining workpapers from the CSRC" (Respondents' Brief at 64), but any present-day thaw in the CSRC's historical intransigence is wholly irrelevant to Respondents' liability under Section 106(e) stemming from their *pre-OIP* conduct. Current developments could not retroactively make the Requests

"unenforceable" when they were issued. Nor can new developments undo the significant harm to the Division's conduct of its investigations that already has resulted from Respondents' willful refusals. Investigations already have been stalled, narrowed, or halted altogether because of Respondents' actions, while statutes of limitations for certain potential remedies have continued to run for potential enforcement actions. *See* Division's Brief at 116-17. Thus, new developments are relevant, if at all, only to prospective remedies.

In any event, Respondents' boldly sanguine assessment of the current state of affairs ignores reality. Even today, well over *three years* after the SEC sent its June 2010 request for assistance to the CSRC seeking DTTC's audit workpapers for Client A, not a single Client A workpaper has been produced to the SEC. In addition, the SEC still has not received any of the DTTC workpapers for Client G – the only other workpapers that were both subject to a Section 106 demand and sought by an SEC request for assistance to the CSRC before the July 2013 hearing in these proceedings. The absence of any such production is particularly glaring because not only has the CSRC now had the DTTC Client A workpapers *in its possession* for over three years, but, according to DTTC's testimony, DTTC has now twice reviewed these workpapers for state secrets and reported to the CSRC about its findings.[24] And even though DTTC claims to have *again* delivered its Client A workpapers (this time with redactions completed) to the CSRC in "mid-May" (2013), and to have delivered the Client G workpapers in "early July" (2013), still today – four and two months later respectively – no such workpapers have arrived to the SEC.

[24] *See* Tr. 1774:2-1779:23 (Chiu) (testifying that, starting in February 2012, DTTC screened Client A workpapers and reported results to CSRC which then conducted redaction and removal of alleged state secrets); Tr.1785:18-1786:7, 1791:12-17 (Chiu) (testifying that, after another meeting with CSRC in 2013, "[w]e go back to the work paper files on Client A . . . and start the screening and removing of the state secret information").

In short, audit workpapers are not "now flowing" from the CSRC (Respondents' Brief at 70). The CSRC does not (at least yet) appear to be a "viable gateway" for obtaining audit workpapers from China; certainly it is not a dependable gateway for such documents. Other recent events involving the CSRC do not change this assessment. Although the SEC has received audit workpapers relating to the Longtop investigation, the CSRC only sent these documents as the hearing in these proceedings commenced in 2013, 11 months after the SEC sent a request for assistance to the SEC seeking them. *See* OIA email and letter (8/6/12) **(ENF 229-230)**; Tr. 1034:8-1035:20 (Arevalo). Moreover, the CSRC made its production only *after* important junctures had been reached in the SEC's district court action to enforce its Longtop subpoena, namely: (1) on April 22, 2013, the district court granted the SEC's motion to lift the stay of that action after four months of strenuous resistance by DTTC, *see* Longtop Order and Longtop Docket, entries 36, 37, 42-45, 48-53, 55, 58, 60, 61 **(Reply Exhibit 1 hereto)**, and (2) on May 30, 2013, the parties completed briefing of the merits of that action, thereby clearing the way for the district court to order DTTC to respond to the subpoena, *see* Longtop Docket, entry 66.[25] The CSRC's sudden willingness to produce documents with one of its major regulated, domestic entities under imminent threat of a U.S. court order should not, by itself, be taken to signal sustained, long-term cooperation by the CSRC in other SEC investigations requiring audit workpapers.[26]

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[25] The Division is in the process of reviewing the CSRC's production of Longtop documents for completeness and assessing the scope and materiality of information withheld from the production on state secrets grounds or for other reasons. Respondents' statement that "the SEC stayed its hand in the *Longtop* action pending review of the documents" (Respondents' Brief at 65), is a mischaracterization of the SEC's position. The SEC simply filed a Notice to the Court stating that the CSRC indicated that it would be producing the Longtop documents, and that when the SEC "has had a chance to review and assess them, [the SEC] will advise the Court of the impact, if any, on the subpoena enforcement action." **(RX 633).**

[26]

For similar reasons, even were the CSRC to provide the workpapers for DTTC Clients A and G in the coming weeks, such productions by themselves – coming against the backdrop of possible sanctions against Respondents in these proceedings – would not demonstrate that the CSRC is an acceptable alternative means for obtaining audit workpapers from China. This is particularly true given: (1) the length of time for which the CSRC has now held the Client A workpapers; and (2) the length of time (at least seven months) for which the CSRC allegedly has had its new procedures in place. *See* Tafara letter to Tong (3/4/13) **(ENF 241)** ("I understand that under the new procedures you expect to be able to provide us with documents in a matter of weeks."). Notably, when OIA staff (not the Division) wrote to the CSRC about conditions in which "we would expect to be able to discontinue the proceedings," OIA made clear that it first would need to receive from the CSRC, "in accordance with the terms of the IOSCO MMOU, the *full array of documents and information that the SEC has sought from the firms*." *Id.* (emphasis added). This means, at a minimum, that the SEC would need to receive from the CSRC all of the documents that the SEC seeks through requests for assistance to the CSRC, which the SEC also

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[REDACTED] *See* Division of Enforcement's Second Notice of Post-Hearing Production (9/13/13), Ex. 1 (SEC_SUPP AUDIT 0000297 to 0000300) [REDACTED] [UNDER SEAL]. [REDACTED]

Division's Notice of Production and Motion For Order Clarifying Division's Production Obligation (9/9/13), Ex. 1 (SEC_SUPP AUDIT 0000292 to 0000293) [REDACTED]

Id. (SEC_SUPP AUDIT 0000296) [REDACTED] [UNDER SEAL]. [REDACTED]

has sought through the Requests to Respondents. Until such time as the SEC receives these documents, it is premature to assess whether the CSRC has become a viable and dependable gateway for the production of audit workpapers from China.[27]

2. Respondents Concede That The Division Had No Alternative Means Of Obtaining The Requested Workpapers At The Time The Requests Were Made

The Division conclusively established through hearing testimony, its exhibits (including detailed declarations submitted by OIA officials in the *Longtop* matter **(ENF 325-327)**, and its Post-Hearing Brief (pages 82, 101-105), that, at least prior the commencement of the July 2013 hearing, the CSRC did ***not*** constitute alternative means for the SEC to obtain audit workpapers from China. Respondents do not argue to the contrary. Rather, they argue a different point: that the "passage of time preceding the CSRC's" production of the Longtop documents and other supposed "evidence" allegedly fail to establish that the CSRC is not *now* "a viable gateway to obtain documents from China." Respondents' Brief at 67-70. As noted, this point is irrelevant to whether the Requests were "enforceable" when issued. Having conceded that no alternative means existed *during the relevant (pre-OIP) time period*, Respondents' entire comity argument fails. In any event, Respondents' scattershot attempts to create excuses for the CSRC's non-cooperation, or to challenge the SEC's diligent efforts over years to obtain audit workpapers

[27] Mr. Tafara's March 4, 2013 letter to the CSRC stated that, once the SEC received documents and information already requested under the IOSCO MMOU, "the SEC will make additional requests in the matters where we have yet to make an IOSCO MMOU request." **(ENF 241)**

through the CSRC, are fantastical revisionist history. An alternative means for obtaining documents abroad (other than compulsion under U.S. law) exists only if the means is "*reasonable*." *Wultz v. Bank of China*, 910 F. Supp. 2d 548, 558 (S.D.N.Y. 2012) (emphasis in original). The following assertions by Respondents fail in fact and law.

(1) Respondents contend that "the CSRC had never before attempted to produce audit workpapers to a foreign regulator, and the unprecedented process took time." Respondents' Brief at 67. Whatever the internal reasons for the CSRC's inability to provide workpapers, if the agency cannot do so, the agency is not an alternative means. *See Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1475 (9th Cir. 1992) (alternative means exist if information "can easily be obtained"). In any event, the first-time nature of the task does not explain why, after three years, the CSRC still has not produced any DTTC Client A workpapers; why the CSRC has proffered multiple different excuses, *see* Division summary exhibit re CSRC explanations **(ENF 275)**; Tr. 974:6-16 (Arevalo), or what work possibly could remain now that DTTC has twice screened the documents for state secrets.

(2) Respondents contend, based on a single SEC letter from July 2011, that "the SEC consistently told the CSRC that bank records—*not* audit workpapers—were its priority." Respondents' Brief at 67. There could be no confusion that obtaining DTTC's Client A workpapers were an extremely high priority for the SEC from June 2010 through the present day, as reflected by the SEC's 54 communications (including emails, letters, phone calls, and in-person meetings) with the CSRC about audit workpapers, 39 of which specifically addressed the DTTC Client A workpapers. *See* Division summary exhibit re SEC communications **(ENF 274A)**. Former Chairman Shapiro's visit to the CSRC in China in July 2012, in which she

discussed the SEC's access to workpapers, further underscored the importance of these documents to the SEC.

(3) Respondents contend that "the CSRC did, in fact, produce some documents to the SEC (albeit not workpapers)." Respondents' Brief at 67. This does not refute the facts that, during the three years that preceded the hearing, the CSRC did not produce any audit workpapers; that in response to the vast majority of the SEC's other requests for assistance since 2009 the CSRC did not produce *any* documents to the SEC; or that the few productions the CSRC did make to the SEC did not constitute meaningful assistance.[28]

(4) Respondents contend that "the CSRC offered to produce workpapers to the SEC on certain interim conditions, which the SEC rejected." Respondents' Brief at 68. As Mr. Arevalo explained, starting in March 2012, the CSRC started to insist that the SEC agree that it would not use any of the workpapers that it might receive "in any legal action or for any related purpose," and that it not disclose any "fact or content of the information . . . to any third party without written authorization of the CSRC." Draft Letter of Consent, attached to CSRC email (3/30/12) **(ENF 253)**; Tr. 1009:11-1011:12 (Arevalo). Thus, under the CSRC's stated terms, the Division would be unable to show the documents to any witness in an investigation or to use the documents as exhibits in a litigated enforcement action, absent additional permission from the CSRC. These terms were contrary to the MMOU and rendered the requested documents

[28] As set forth in Mr. Arevalo's declarations in the *Longtop* matter, the CSRC did not produce any documents at all in response to most of the SEC's requests for assistance since 2009. *See* Arevalo Decl. ¶¶6-8, 11-24, 26-27, 33, 55-58 **(ENF 326)**; Second Arevalo Decl. ¶9 **(ENF 327)**. As to the CSRC production referenced in Respondents' Post-Hearing Brief (p. 67), as Mr. Arevalo explained in his testimony and his declaration, the CSRC produced information after the relevant investigation had closed (10 months after the request was made), and so the production did not constitute meaningful assistance, Tr. 1220:11-1222:16 (Arevalo); Arevalo Decl. ¶9 **(ENF 326)**. That Mr. Arevalo could not, in response to defense counsel's questions during testimony, remember the specific details of this non-audit workpaper request made three years ago (among the SEC's 22 other requests) without reviewing the request is of no consequence.

"useless for investigative purposes," and, therefore, were unacceptable. Tr. 1011:13-17 (Arevalo); *see also* Arevalo Decl. ¶¶37-42, 62 **(ENF 326)**. To make matters worse, the CSRC also stated that it would produce only the workpapers that *the CSRC* determined were relevant to the SEC's investigation. CSRC email (4/9/12) **(ENF 255)**; Tr. 1015:6-1016:10 (Arevalo).

(5) Respondents suggest that the SEC was unwilling to negotiate with the CSRC – that the SEC "took an all-or-nothing position with the CSRC – a 'my way or the highway' approach." Respondents' Brief at 69. The truth could not be more different. In response to the CSRC's stated conditions in March 2011, the SEC promptly proposed an alternative version of the Letter of Consent that was consistent with the IOSCO MMOU. Tafara email to CSRC and attachment (4/10/12) **(ENF 221)**; Tr. 1013:4-7, 1018:16-1019:20 (Arevalo). The CSRC, however, immediately rejected the SEC's proposal. CSRC email (4/12/12) **(ENF 256)**; Tr. 1020:1-1022:15 (Arevalo). In addition, following former Chairman Shapiro's visit to China, to accommodate the CSRC's concern that it needed a new, comprehensive bilateral agreement with the SEC, the SEC sent a proposal to the CSRC and even sought a stay of the DTTC-only administrative proceeding (File No. 3-14872) to allow time for the CSRC to consider it. *See* Tafara e-mail and attachment (7/9/12) **(ENF 224, 225)**; Tr. 1027:5-1032:6 (Arevalo). The CSRC rejected this proposal as well. *See* Tr. 1032:7-1033:5 (Arevalo); Arevalo Decl. ¶¶41-42, 50-53 (describing SEC's proposals of alternative Letter of Consent and bilateral framework).

(6) Respondents contend that OIA former director Ethiopis Tafara (whom Respondents subpoenaed but then decided not to call to testify) disagreed "that the IOSCO MMOU unambiguously covers audit workpapers." Respondents' Brief at 69 n. 53. Respondents' suggestion that that the IOSCO does *not* cover audit workpapers – like their attempt to expose differences in opinion among SEC staff on the issue – is self-defeating. To the

extent the IOSCO MMOU does not cover audit workpapers, this circumstance would only undermine Respondents' contention that the CSRC did – or does now – constitute an "alternate means" for obtaining these documents. *See* Tr. 1218:23-1219:9 (Arevalo) (stating that if neither the IOSCO MMOU nor the existing 1994 bilateral MOU covers audit workpapers, no other international agreement is available). In any event, contrary to Respondents' contention, the record does not show that Messrs. Tafara and Arevalo disagreed about the IOSCO MMOU. The testimony and document cited by Respondents (Arevalo Tr. 1089:3-1090:24; ENF 325 ¶26) show only that Mr. Arevalo initially had a different understanding than Mr. Tafara regarding the 1994 bilateral MOU between the SEC and CSRC, which is an entirely different international protocol. Respondents' record cites are thus wholly irrelevant to the CSRC's obligations under the IOSCO MMOU.

(7) Respondents contend that the Division "demanded that the CSRC produce huge volumes of documents in short periods of time that were tied specifically to its litigation strategy." Respondents' Brief at 69. The Division's request that the CSRC deliver the Longtop audit workpapers within three months of the request – well over a year after DTTC, according to its court filings, already had started to gather and prepare the documents for production – was not unreasonable. *See* Arevalo Decl. ¶¶44, 55 **(ENF 326)**. Moreover, when the SEC did not receive the documents by the requested deadline (October 1, 2012), it waited an additional two months before filing a motion in the district court to lift the stay of that action. *See id.* ¶¶62-64.

(8) Respondents contend that, "having invoked Section 106(f) in these two instances [involving DTTC Clients A and G], the Staff cannot now punish DTTC for not producing the requested documents directly to the SEC." Respondents' Brief at 70 n. 55. The courts consistently have rejected this position. In *Wultz*, 910 F. Supp. 2d 548, the court sent a Letter of

Request to China's Ministry of Justice under the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the "Hague Convention") in furtherance of the plaintiffs' discovery against the Bank of China, *id.* at 550. After 13 months passed without a response to the Letter, the court granted the plaintiffs' motion to compel the bank to produce documents allegedly protected by Chinese secrecy laws. *See id.* at 551. According to the court, "the elapsed time since the submission of this Court's Letter of Request has already sufficiently demonstrated that plaintiffs' requested discovery material cannot be *easily obtained* through the Hague Convention process." *Id.* at 558 (internal quotation omitted; emphasis in original); *see also Gucci Am., Inc. v. Weixing Li*, 2011 WL 6156936, at *8 (ordering Bank of China to produce documents from China; "[T]he mere fact that the Hague Convention provides an alternative method for obtaining the documents is not proof that it is necessarily an effective, or efficient, method for doing so in this case."). So too here, the SEC's attempt to obtain documents through the CSRC did not preclude it from also issuing mandatory requests directly to DTTC under Section 106(b), particularly in the face of CSRC stonewalling.

C. The Other Comity Factors Similarly Support a Liability Finding

Importance of the Documents to the Investigation. Faced with a record that overwhelmingly demonstrates the importance of audit workpapers to SEC investigations (including statements by their own experts), Respondents resort to mischaracterizing that record. They state that, "[i]n *most* cases, Respondents did not even issue audit opinions and performed only *cursory* work before resigning or being fired." Respondents' Brief at 73 (emphasis added). In fact, Respondents issued or played a substantial role in the audit reports of half of the Clients.[29] And even where no audit report was issued, Respondents' audit work was often, if not

[29] Respondents signed audit reports for three Clients (DTTC Client A, Dahua Client A, and EYHM Client C), *see* various Form 10-Ks and 20-Fs **(ENF 31, 50, 120-124)**, and played a substantial role in the audit

in all cases, substantial. PwC Shanghai was engaged by Clients H and I for approximately 18 months and a year, respectively.[30] Although Respondents were engaged for shorter periods by Clients B (five months), E (four months), and G (six months), their audit work nevertheless merited reports by the Respondents to the Clients or their audit committees, or descriptions of their work in SEC filings.[31] And regardless of whether the Division assesses "audit quality" (Respondents' Brief at 73), it still requires audit workpapers to assess potential fraud at the company, *see* Division's Brief at 105-06. Finally, although Respondents attempt to downplay the importance of the audit workpapers, they admit that "workpapers can play an important role in government investigations." Respondents' Brief at 105.

Hardship of Compliance. As the case law makes clear, the possibility of "civil and criminal liability under China's . . . secrecy laws" and alleged "clear potential for PRC sanctions . . . for a production unauthorized by the PRC government," alone do not justify non-production in response to a lawful U.S. document demand. *Wultz*, 910 F. Supp. 2d at 553-54; *see id.* at 554 (ordering production notwithstanding "'severe warning' from Chinese banking regulators"). Here, Respondents have not carried their burden of demonstrating that they reasonably could have expected to incur criminal liability under any Chinese law or directive for any of the requested documents which Respondents determined, using their own "sound judgment," were

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reports issued by a Hong Kong affiliate for two other Clients (KPMG Huazhen Clients D and F), *see* PCAOB Form 2s **(ENF 21, 22)** and Form 10-Ks **(62, 80)**; 2145:18-2146:3, 2283:12-2283:20 (J. Wong) (testifying that KPMG Huazhen performed more than 90% of the audit work for Clients D and F).

[30] *See* Client H Form 6-K, 4-27-10 **(ENF 100)**; Client H Form 6-K, 9-27-11 **(ENF 102)**; Client I Form 8-K, 12-6-10 **(ENF 109)**; Client I Form 8-K, 10-5-11 **(ENF 111)**; PWC Shanghai letter (9/19/11) **(ENF 98)** (detailed seven-page report to Client H's audit committee describing work performed and issues encountered).

[31] *See* Client B Form 8-K (11/17/10) **(ENF 41)**; Client B Form 8-K, (3/18/11) **(ENF 42)**; EYHM's 24-page PowerPoint Presentation to Client B's audit committee (3/8/11) **(ENF 49)**; Client E Form 10-K, 4-13-12 **(ENF 70)**; 16-page KPMG report to Client E's audit committee (12/31/10) **(ENF 77)**; Client G Form 8-K (3/3/10) **(ENF 91)**; Client G Form 8-K (9/13/10) **(ENF 92)**; Client G Form 8-K outlining work performed and issues identified by DTTC (9/13/10) **(ENF 92)**.

unlikely to contain state secrets. *See* Division's Brief at 79-80, 85-88, 107-08. Nor have they shown, notwithstanding the vague threats allegedly made by the CSRC or MOF during the October 10, 2011 meeting, a reasonable likelihood that their licenses would have been revoked. *See supra* Section II.C.

IV. RESPONDENTS WILLFULLY REFUSED TO COMPLY WITH THE REQUESTS REGARDLESS OF CLAIMS THAT THEY WERE BEING "OBJECTIVELY REASONABLE"

Respondents continue to attempt an end-run around the securities-law meaning of "willfulness," by claiming that their actions are "objectively reasonable." Respondents' Brief at 76-79. Respondents argue that they were uncertain as to their legal obligations under Section 106 and had expectations that regulators would reach a "cooperative arrangement." But these are just recycled arguments that Respondents acted in "good faith." In all events their arguments fail. Whether Respondents were objectively reasonable is irrelevant to the question of whether they acted willfully, because willfulness does not require a showing of recklessness. *See* Division's Brief at 108-109 (refuting Respondents' reliance on *Safeco*). The D.C. Circuit has repeatedly confirmed this point. *See Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949); *Dennis*, 171 F.2d at 990 (concluding that subpoena recipient had willfully defaulted, following general rule "that a mistake of law upon the part of the accused does not constitute justification for his act;" the accused's conduct was unlawful "even though the motive of the accused may be of the highest."); *Fields*, 164 F.2d at 100 ("[t]he reason or the purpose of [a] failure to comply or refusal to comply is immaterial" to willfulness, "so long as the refusal was deliberate and intentional and was not a mere inadvertence or an accident." (Internal quotation omitted)).

The Commission's analysis of "willful" has been no different. In *Gearhart & Otis*, the Commission confirmed that "[w]e have never considered a careless disregard of the law to be necessary for a finding of willfulness." 1964 WL 66325, at *5. The Commission also clarified

that willfulness did not depend on whether SEC staff had previously warned respondents that their behavior was unlawful. The Commission explained: "That [a careless disregard for the law] has been found to constitute willfulness or that, as in the *Hughes* case, the conduct of a respondent who deliberately chose to continue a method of operation in spite of repeated warnings that it was unlawful was found willful, does not mean that either situation is the minimum required for such finding." *Id.* To conclude otherwise would have "frustrated" the Exchange Act's "remedial purpose." *Id.; see also Geman*, 2001 WL 124847, at *17 (reiterating that "it would 'make no sense' to permit ignorance of the law to serve as a defense," particularly where respondents were "part of a highly regulated industry and, as such, required to know the law that is applicable to their conduct within that industry" (quoting *Jacob Wonsover*, 69 SEC Docket 694, 713 (Mar. 1, 1999), *aff'd*, 205 F.3d 408 (D.C. Cir. 2000))).

These decisions foreclose Respondents' arguments that they could not have acted willfully because they were being objectively reasonable. Respondents contend that they were uncertain about their legal obligations, because the SEC had never previously sought judicial enforcement of a Section 106 request. But under this theory, Respondents *never* could be found liable under Section 106 because a court always first would need to determine whether a particular request is enforceable under the particular facts of a given case. For good reason, this ALJ already has rejected this argument. *See* Summary Disposition Order at 6-10.

V. THE DIVISION'S PROPOSED REMEDY PROTECTS INVESTORS AND IS APPROPRIATELY TAILORED TO RESPONDENTS' WILLFUL VIOLATIONS

The Division proposes a three-part remedy: a) censure; b) a bar against Respondents serving as principal auditors and issuing audit opinions ("Principal Auditor Bar"); and c) a bar against Respondents serving as *de facto* principal auditors by playing a 50% or greater role in the

preparation or furnishing of an audit report filed with the Commission ("50% Role Bar").[32] Parts "b" and "c" of this proposed remedy are referred to as the "Proposed Bar."

The proposed remedy is necessary to address Respondents' demonstrated, ongoing harm to SEC oversight; no lesser remedy will suffice. The remedy is appropriate under the traditional *Steadman* factors, and neither Respondents' analysis of those factors, nor any of the "three limitations" on Commission sanctions posited by Respondents (Respondents' Brief at 82-83), alter this conclusion. The proposed remedy comports with relevant law and policies, minimizes negative collateral impacts to the extent compatible with its remedial effects, and benefits investors and markets.

A. The Division's Proposed Remedy Will Have Remedial Effect

The Division's proposed remedy meets the test set forth by Respondents: it "focus[es] principally on—and [is] rationally related to—preventing future misconduct." Respondents' Brief at 83. The misconduct that the Division seeks to remedy through this proceeding is the performance of audit work that provides, or is intended to provide, at least half of the basis of an audit opinion for a U.S. issuer, but which cannot be tested or reviewed. Respondents have already caused this harm to the Commission's processes, and they all but promise that they will continue to do so in the future, absent a changed approach by the Chinese government. But the

[32] More specifically, as set forth in the Division's Pre-Hearing Brief (at pages 64-65), the 50% Role Bar would prohibit Respondents from performing:

> (A) Audit work that a public accounting firm uses or relies on in issuing all or part of its audit report with respect to any issuer, where the engagement hours or fees for such services constitute 50% or more of the total engagement hours or fees, respectively, provided by the principal auditor in connection with the issuance of all or part of its audit report with respect to any issuer; and
>
> (B) The majority of audit work with respect to a subsidiary or component of any issuer, the assets or revenues of which constitute 50% or more of the consolidated assets or revenues of the issuer.

Commission cannot submit the integrity of its processes to the whims of a foreign regulator, particularly where, as here, the regulator has persistently declined to provide cooperation.

Rather than simply seek a full bar on any U.S. audit work, as Rule 102(e) would permit, the Division tailored the Proposed Bar specifically to prevent such misconduct; the relation between Respondents' misconduct and the Proposed Bar could not be more apparent. Unless the Principal Auditor Bar is imposed, Respondents may continue to issue audit opinions relied upon by the investing public while at the same time preventing any Commission oversight of, or inquiry into, their underlying audit work. The 50% Role Bar will preclude the issuance of audit opinions for which the majority of audit work is not susceptible to Commission review; put another way, it prevents Respondents from serving as *de facto* principal auditors.[33]

Respondents recognize – and the Division agrees – that "Rule 102(e) does not give the Commission the authority to order the production of documents."[34] Respondents' Brief at 111. But whereas Respondents suggest this shows the inappropriateness of the Division's remedy proposal, it in fact demonstrates the opposite: the Division has already tried, in most cases several times, to obtain the audit workpapers. By insisting that the *only* appropriate remedy for Respondents' illegal withholding of workpapers would be for the Division to obtain the very workpapers that Respondents have repeatedly refused to produce, Respondents seek to render any remedy impossible. *See, e.g.*, DTTC letter to CSRC (1/9/12) **(RX 132A)** (promising that DTTC "will continue to refuse to provide relevant documents to the SEC directly"). The Division presented Respondents with a clear path to avoiding remedies: compliance with their

[33] The need for the 50% Role Bar is clearly demonstrated by the conduct of KPMG Huazhen, which has never issued an audit opinion despite having audited 90% or more of the assets or revenues of Clients D, E, and F. *See* Tr. 2283:12-20 (J. Wong).

[34] That authority derives from Section 106(b), Respondents' disregard of which is the very basis of this proceeding.

legal obligations. They may not now escape the consequences of their refusal to comply by arguing that the only consequences to which they should be subject are the very document productions that they have willfully refused to make.

Befitting its remedial status, the Proposed Bar is purely prospective in nature: Respondents may not in the future embark on any principal auditor engagements, nor may they play a 50% or greater role in any audit. The Division does not seek any monetary penalty for their past misconduct.

B. The Proposed Bar Is Appropriately Tailored and Proportionate to Respondents' Conduct

Respondents argue that "the Commission must exercise reasoned decisionmaking" when imposing sanctions (Respondents' Brief at 82), and contend that it cannot do so under the Division's recommendation. To the contrary, the Division's recommended remedy is appropriate to Respondents' violations and proportionate to the harm they have caused.

1. The Traditional *Steadman* Factors Support The Proposed Remedy

Respondents initially seek to distinguish the factors articulated in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981), by noting that they were "not developed for the present context, where competing regulatory demands render the entire Chinese accounting profession unable to produce documents directly to the SEC" (Respondents' Brief at 84). Respondents make no attempt to explain why, even if their characterization of the facts were accurate, *Steadman* analysis would be inappropriate. Moreover, Respondents' claim that those factors "weigh decisively in Respondents' favor" rests on faulty reasoning, bare *ipse dixit*, and an stubborn unwillingness to acknowledge the seriousness of the harm their violations have already caused to ten enforcement investigations, and would cause to untold numbers of future investigations.

The **egregiousness** of Respondents' violations is apparent in their impact on the underlying investigations. Respondents' willful misconduct is more than sufficient to meet *Steadman*'s "egregious" standard, as made clear by *In re Gregory M. Dearlove, CPA*, 92 SEC Docket 1427, 2008 WL 281105 (Jan 31, 2008). *Dearlove* shows that an accountant's negligent misconduct may be considered sufficiently egregious under *Steadman* to warrant total debarment pursuant to Rule 102(e)(1). *Id.* at *30. Nothing in that decision limits its applicability to proceedings pursuant to Rule 102(e)(1)(iv), rather than Rule 102(e)(1)(iii). Respondents' attempt to distinguish *Dearlove*'s holding is thus wholly unsupported. Nor are Respondents correct in arguing that the Division should have brought this action under Rule 102(e)(1)(iv)(B), which addresses accountants' violations of professional standards. Without access to Respondents' workpapers, the Commission is unable to assess whether Respondents have complied with those standards, much less to bring an action alleging violations thereof. That the subsection addressed in *Dearlove* "enumerates two specific types of negligent conduct specific to accountants" is true but irrelevant, particularly given that Section 106 addresses conduct specific to accountants also.[35]

Respondents' misconduct is not **isolated**, and their attempts to argue otherwise ignore the basic fact each Respondent (other than Dahua) refused to comply with multiple Section 106 demands. They seem to suggest that the Commission should have issued repeated Section 106 requests related to each Client engagement (Respondents' Brief at 86), but of course that would have accomplished nothing. The fact that the Division sent Requests to certain Respondents close in time to each other did not transform those Respondents' willful refusals into only a single violation by each.

[35] Indeed, this only confirms that accountants may be sanctioned under Rule 102(e) for negligence.

For *Steadman* purposes, Respondents acted with sufficient **scienter** to justify the recommended remedies. Notwithstanding Respondents' efforts to redefine the choice between (a) violating US law, (b) allegedly violating PRC law, and (c) violating no law and exiting from U.S. markets, as constituting "no choice" at all, Tr. 1716:14-18 (George), it is clear that Respondents in fact willfully chose to withhold workpapers, and thus to violate U.S. law.

Respondents invent out of whole cloth the notion that "**sincerity of assurances against future violations** is relevant only where past violations are based on voluntary actions." Respondents' Brief at 88. This proposition has no support in law, nor does it deserve any. Respondents provide no explanation as to why those who egregiously violate securities laws through willful, or even unintentional, actions should not be required to make assurances against future violations.

Similarly devoid of support is that idea that **recognition of wrongfulness** "is inapplicable to a situation in which Respondents are bound by foreign legal impediments." *Id.* Assuming that Respondents were bound by Chinese law to withhold workpapers, then the "right" course of action for them is plain – they should not have incurred conflicting U.S. production obligations. Having incurred such obligations, under U.S. law the "right" course of action is compliance. Respondents' failure to take responsibility for creating a situation in which, as they see things, they could not avoid violating the laws of one sovereign, is the perfect expression of their inability to recognize the wrongfulness of their behavior.

Absent the Proposed Bar, Respondents will have virtually unlimited **opportunities for future violations**. The Commission still lacks a gateway that is both viable and dependable for obtaining Respondents' workpapers, and, even more, lacks a means of doing so in a sufficiently timely manner to act on evidence contained therein. Respondents have repeatedly indicated that

they will continue to violate these exact same obligations in perpetuity unless circumstances beyond their control or the control of the Commission change.

2. The Proposed Remedy Is Not Indiscriminate Or Disproportionate

Because the Proposed Bar is conduct-based, it will necessarily have some differential impacts as between Respondents. This does not, however, show that [redacted] *Id.* at 109 [SEAL]. To the contrary, the remedy applies to all Respondents in an equal fashion, with good reason. The Division seeks to prevent Respondents from serving as principal auditors or *de facto* principal auditors for U.S. issuers; the amount of such work previously or currently performed by each Respondent is irrelevant. The Proposed Bar goes exactly as far as is necessary to achieve this prophylactic effect, and no farther: [redacted], and would not prevent Respondents from taking on new engagements to do referred work or substantial role work for U.S. issuer components, provided such work falls below the 50% threshold.

There is also some irony in Respondents' complaints that [redacted] given DTTC's longstanding position that the SEC should seek to resolve this case on a "profession-wide" basis. *See* DTTC Resp. to Mot. To Consolidate, at 2 (12/17/12) ("The Issues Raised Should be Addressed in a Profession-Wide Consolidated Proceeding").

C. The Proposed Remedy Is Consistent With Current Law and Historic Policies

Respondents argue that "sanctions may not arbitrarily and capriciously conflict with longstanding policies and practices" (Respondents' Brief at 112), but they fail to show that the Proposed Bar departs from any relevant practice or policy. Respondents do not argue that the

Proposed Bar is inconsistent with past practice in cases under 106(e), nor could they: because the provision was only enacted in 2010, there is no past practice. Moreover, the proposed remedy is not excessive by comparison with past sanctions against accountants or other regulated entities for withholding documents.[36] *See In the Matter of Peak Wealth Opportunities, LLC*, Exchange Act Rel. No. 69036, Admin. Proc. 3-14979, 2013 WL 812635, at *10 (ALJ Order Mar. 5, 2013).

Respondents attempt to simply repackage their arguments against liability as points against the Bar, arguing that "[i]mposing sanctions under these circumstances . . . would be inconsistent with the Commission's longstanding practice of working with foreign counterparts to resolve such matters." Respondents' Brief at 112. This claim also should be disregarded. The questions of whether the Commission has historically relied on foreign regulators to obtain documents located overseas (*id.* at 113-14), and whether the Division should have sought documents through the CSRC in certain cases even after the CSRC proved unwilling or unable to turn over workpapers (*id.* at 114-15), are irrelevant to the appropriateness of the Division's proposed remedy.

D. The Division's Proposed Remedy Appropriately Considers and Minimizes Negative Collateral Consequences

Respondents do not deny that the proposed remedy would, in fact, prevent Respondents from issuing or playing a 50% or greater role in the issuance of unverifiable audit opinions. Rather, Respondents focus on the negative collateral consequences that would purportedly ensue from imposition of the Proposed Bar, and argue both that the Division failed to consider those

[36] Respondents suggest that the sunk costs they voluntarily incurred in growing their businesses somehow militate against the Proposed Bar (Respondents' Brief at 106-107), but, even under the bar, Respondents can apply their U.S. audit capabilities to unaffected engagements. In any event, Respondents must bear the risk of their own business decisions.

consequences, and that those consequences would be unacceptably high. Neither argument bears scrutiny.

Respondents' claim that the proposed remedy's collateral consequences were "unexamined by the Division" (Respondents' Brief at 90), is flatly false. To the contrary, the Division has given close consideration to possible consequences, including by hiring an expert to perform an extensive analysis of Respondents' actual prior engagements to estimate the impact of the Proposed Bar. *See* Initial Report and Rebuttal Report of Anthony Jordan [SEAL]. [redacted] [SEAL]. [redacted], the Division has also considered the potential costs of inaction and the benefits of the Proposed Bar. *See* Report of Chyhe K. Becker, *passim*; Tr. 98:14-100:7 (Simmons) [SEAL]. The Division's proposed remedy reflects a reasoned cost-benefit analysis, and Respondents' suggestion to the contrary is just empty rhetoric.

Respondents' "analysis" of the remedy's "likely consequences" proceeds initially from the assumption that, if the Proposed Bar is ordered, each of Respondents' current clients for which they serve as principal auditor, or play at least a 50% role in the audit of an issuer parent, may choose to either replace the relevant Respondent or delist from the U.S. exchange on which its securities are currently listed. *See* Expert Report of Laura Simmons, at ¶¶ 38 ("Simmons Initial Report"). *See also* [redacted] [SEAL]. Following this analysis, the collateral consequences for the small subset of clients affected by the Proposed Bar would

consist of either (a) the potential costs (and benefits) of engaging new auditors, or (b) the potential costs of delisting from a U.S. exchange.

1. Respondents' Claims of "Significant" Costs From Replacing Respondents Are Unsupported

Respondents contend that the costs to clients of engaging new auditors would be "significant" (Respondents' Brief at 98), and that those costs would be passed along to issuers' shareholders. However, Respondents do not support these assertions with any detailed explanation. Thus, the extent or actual financial impact of the "search costs, renegotiation costs, and the time to educate a new auditor" (*id.*), are unproven for these particular clients. Respondents also claim that "[s]witching from a large, well-known auditor to a smaller, less well-known auditor *can* also lead to" certain financial costs including increased debt costs and share price declines (*id.*) (emphasis added), but Respondents offer no evidence of the likelihood that, in these particular cases, they *would* lead to such costs.[37] Thus, Respondents fail to show that, insofar as affected issuer clients opt to retain their listings on U.S. exchanges and replace Respondents, there would be any meaningful negative collateral consequences for those issuers or their shareholders.

2. Respondents Do Not Demonstrate That Their Clients Are Likely To Delist As A Result Of The Proposed Bar

Respondents argue at length that some indeterminate but allegedly high proportion of their affected clients who prefer to remain listed in the U.S. will be unable to do so because "there are no adequate substitutes for Respondents in China."[38] *Id.* at 92. As an initial matter,

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[37] Respondents also ignore the possibility that issuers could negotiate more advantageous fee arrangements with replacement auditors, and fail to recognize that increased issuer transparency resulting from the replacement of a non-compliant Respondent auditor could enhance shareholder value and reduce debt costs.

[38] Respondents argue that the Division "has failed to provide a single concrete example of an accounting firm qualified, ready, and willing to take on Respondents' clients." Respondents' Brief at 91. The

Respondents erroneously assume that only China-based audit firms matter, even though evidence plainly demonstrates that audit firms based elsewhere, including in the U.S. and Hong Kong, can and do perform audit work in China. Moreover, several such firms have already demonstrated their willingness to comply with Section 106 Requests from the Commission. Tr. 479:21-480:9 (Hubbs) (Crowe Horwath produced audit workpapers for EYHM's Client B); Tr. 187:11-188:1, 189:9-192:14, (Rana) (Patrizio & Zhao and GHP Horwath produced audit workpapers for KPMG Huazhen's Client E); Tr. 699:16-700:10 (Chang) (Frazer & Frost produced audit workpapers for DTTC's Client G); Tr. 374:7-24, 375:3-5 (Kaiser) (PKF, Certified Public Accountants produced audit workpapers for PwC Shanghai's Client I). Additionally, in claiming the complete absence of adequate potential substitutes, Respondents [REDACTED]

[REDACTED]

[REDACTED]. Jordan Rebuttal par. 15 [SEAL].

Even assuming, despite the contrary evidence, that only China-based auditors could substitute for Respondents, Respondents' claim of "no adequate substitutes" is unsupported.

[REDACTED]

[REDACTED] Respondents' Brief at 92-93. Respondents' claim that *none* of those firms are adequate substitutes relies primarily on the fact that Respondents are larger and more experienced than other PCAOB-registered auditors

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Division acknowledges that it has not undertaken to interview potential replacement auditors and to determine which of them would be amenable to prospective engagements; it is unclear, however, what legal provision or principle saddles the Division with this burden. Respondents also mischaracterize the testimony of Laura Josephs, an Assistant Director in the Division who was involved in the DTTC Client A investigation, asserting that she "testified that the Division had not considered replacement auditors and did not see the need for such consideration." *Id.* But Ms. Josephs testified only as to her personal knowledge of the Chinese audit industry. Respondents again fail to explain why Ms. Josephs bears the burden of identifying prospective replacement auditors for DTTC Client A.

based in China. But Respondents do not show – or even attempt to show – that their competitors are so small or inexperienced as to be incapable of performing competent audit work for U.S. issuers. The Division does not contest that in general Respondents are larger than most of their China-based competitors. This does not show, however, that their competitors are too small to provide adequate audit services. Indeed, both Dahua and KPMG Huazhen are smaller than BDO China Shu Lun Pan Certified Public Accountants LLP and Grant Thornton, [redacted] [redacted], and ShineWing Certified Public Accountants [redacted] *See* Simmons Rebuttal Exhibit A [SEAL]; Simmons Initial Report Ex. 4. Under Respondents' logic, those firms must provide better quality audit services than Dahua and KPMG Huazhen. But such rudimentary comparisons shed more heat than light.

Nor does the Division dispute that Respondents DTTC, PwC Shanghai, and EYHM have issued more audit reports than their competitors.[39] [redacted] [redacted] [redacted] Respondents' Brief at 92-93. [redacted] [redacted] [redacted] *Id.* at 93 n.84. Because auditors that issue opinions do not report their substantial role work, neither Respondents nor the Division can know the number of substantial role engagements performed by the three non-Respondent auditors that issued opinions in the year ended March 31, 2013. (For the same reason, no public data reflect the substantial role work performed during that time period by Respondents other than KPMG Huazhen). In addition,

[39] Once again, Dahua and KPMG Huazhen are eclipsed by several non-Respondent auditors. Simmons Initial Report, Ex. 4.

Respondents present no data regarding their competitors' referred audit work for U.S. issuers, which would surely constitute relevant experience for replacement auditors.

Respondents' claim that their competitors do not constitute adequate alternatives is particularly bold given that, through their violations, Respondents prevent any assessment of the adequacy of their own work: at the present time, the SEC has no way of measuring the quality of Respondents' audit work. Further, there is no basis for Respondents' apparent assumption that if the Proposed Bar is implemented, their competitors will not expand and enhance their capabilities, just as Respondents say they have done. Respondents' Brief at 106-07. Respondents' self-aggrandizing argument against the adequacy of their competitors boils down to the claim that Respondents are simply "too big to sanction" under 102(e).

[REDACTED]

[REDACTED] *Id.* at 93 [SEAL]. Although Respondents claim that "[t]here is no reason to conclude that those firms that did not withhold consent would be willing to assume the audit work for issuers impacted by the Proposed Bar," *id.* at 93, the evidence shows that it is Respondents, and not their peers based in China or elsewhere, who have proven to be outliers in their willful withholding of lawfully requested workpapers. Given the cooperation shown by other firms, it makes no sense to presume, as Respondents do, that even firms that have *provided* blanket consents in public filings with the PCAOB would now shirk their production obligations in response to specific 106 Requests. To be sure, it is possible that some China-based auditors may follow Respondents' example and decline to comply with 106 Requests. But even if all China-based auditors are ultimately unable to audit U.S. issuers or their China components because they decide to defy their U.S. obligations, it would not mean that the Proposed Bar is inappropriate. If China-based

auditors, with or without instruction from the Chinese government, choose to block U.S. regulators' access to critical issuer information, then Chinese issuers may not belong on U.S. markets. The Division certainly does not seek such a result. However, should the Commission be forced to choose between sustaining the de-registration of a subset of issuers or granting their auditors a blanket exemption from core disclosure requirements, the safety of U.S. investors would surely weigh in favor of enforcing those requirements, which benefit investors and compliant issuers alike.

3. Respondents Exaggerate The Costs Of Any Delistings That Would Occur

After blithely assuming away the adequacy of potential audit services provided by dozens of competitors, Respondents provide a distorted view of the "likely consequences" that would ensue for issuers that either choose to delist or decide to maintain their listings but are unable to find replacements for Respondents. Respondents concede that "the likelihood that impacted issuers would fail to find substitute auditors cannot be determined with any specificity," but argue that the Division "cannot deny that delisting could occur, or that it is likely for a significant number of issuers." Respondents' Brief at 99. The Division does not deny that delisting *could* occur, but it does deny that any showing has been made that delisting "is likely for a significant number of issuers." Ultimately, any discussion regarding the likelihood or prevalence of delisting is speculative.

Respondents' contention that some significant portion of their clients will delist from U.S. exchanges relies on the *ipse dixit* of a witness with no particular knowledge of the Chinese audit market, Simmons Initial Report ¶¶1-2 (describing no qualifications specific to China), offered with no factual or analytical foundation. To the extent some of those affected issuer clients choose to delist rather than replace Respondents, relevant scholarship shows that the

stock-price effects of such voluntary delistings should be insignificant; as Respondents do not dispute, share price declines are minimal in cases of voluntary delisting. *See* Division's Brief at 108. And in the event that affected issuers are unable to find replacement auditors, the efficient market hypothesis on which Respondents mistakenly rely shows that the share price effects of resultant delistings should be limited at most. As explained by the Division's expert, given public awareness of US regulators' difficulties overseeing audits of Chinese issuers, the current share prices of potentially-affected clients should already reflect both the opacity of those issuers' financial statements, meaning that those prices retain less of a premium for U.S. listings than they otherwise would, and would therefore suffer a less significant decline upon delisting than might otherwise occur. Tr. 2609:3-2613:9 (Becker). Likewise, given the public nature of this proceeding and the remedy requested by the Division, the efficient market hypothesis suggests that the share prices of issuers audited by Respondents should currently incorporate the possibility that those issuers would need to replace Respondents.

Thus, Respondents' claims of excessive collateral consequences for issuer clients and their shareholders are unsupported. Similarly overstated are their claims regarding the Proposed Bar's likely consequences for their affiliated "network firms." Respondents claim that "multinational clients of the network firms would lose their China audit firms . . ." Respondents' Brief at 108. This description is misleading at best. Stated more accurately, if the Proposed Bar is ordered, Respondents' network affiliates that maintain audit engagements for multinational clients with 50% or more of their assets or revenues in China (or that require 50% or more of audit hours or fees be expended in China) may need to retain new component auditors. This should present at most only moderate hardship: it would affect only a small subset of the affiliates' clients (multinational companies exceeding the 50%-in-China threshold), and those

affiliates [redacted]

[redacted].[40] *See* Jordan Rebuttal Report, at ¶ 15 [UNDER SEAL].

4. The Proposed Bar Would Benefit Investors And Markets

Not only do Respondents vastly inflate the negative collateral consequences of the Proposed Bar, they ignore completely both the benefits of the Proposed Bar and, relatedly, the negative consequences of maintaining the status quo. As conclusively demonstrated by the Division's expert, enforcement of U.S. securities law obligations brings great benefits to issuers listed on U.S. exchanges and their investors. Becker Report *passim*; Tr. 2582:1-2584:13 (Becker). In addition, by ensuring the Commission's ability to oversee future audits of Chinese-listed issuers or Chinese components, imposition of meaningful remedies here will help protect investors from issuer fraud, auditor incompetence, and accountant misconduct. Finally, in addition to its instrumental value, enforcement of law is an end in itself.

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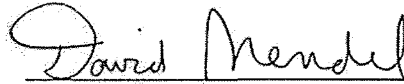
[40] The Division does not claim, or seek to prove, "that 'large multinational issuers' would be unaffected by the Proposed Bar." Respondents' Brief at 103 (emphasis added). [redacted] Thus, the Division expects tha [redacted] the Proposed Bar would have a very limited impact on capital formation and deployment in the United States, or for that matter anywhere else outside of China.

CONCLUSION

For the reasons set forth above and in the Division's initial Post-Hearing Brief, and in light of the record as a whole, the Court should find that that Respondents willfully violated Sarbanes-Oxley Section 106, and should impose the Division's remedy outlined above.

Dated: September 20, 2013

Respectfully submitted,



David Mendel (202) 551-4418
Amy Friedman (202) 551-4520
Douglas Gordimer (202) 551-4891
Marc E. Johnson (202) 551-4499
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-5971

COUNSEL FOR DIVISION OF ENFORCEMENT

Exhibit 1 to

Post-Hearing Reply Brief of the Division of Enforcement

(September 20, 2013)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION Petitioner, v. DELOITTE TOUCHE TOHMATSU CPA LTD., Respondent.	Civil Action No. 11-mc-512 (GK/DAR)

ORDER

Petitioner Securities and Exchange Commission ("SEC") filed an Application for Order to Show Cause and for Order Requiring Compliance with a Subpoena on September 8, 2011 [Dkt. No. 1]. On August 7, 2012, Magistrate Judge Deborah A. Robinson entered a minute order granting an Unopposed Motion for Stay of this Action.

On December 3, 2012, the SEC filed a Motion to Lift the Stay [Dkt. No. 36]. Respondent Deloitte Touche Tohmatsu CPA Ltd. ("Deloitte") opposed that motion on January 7, 2013 [Dkt. No. 42], and filed a Motion to Extend the Stay [Dkt. No. 43]. The SEC opposed Deloitte's motion on January 24, 2013 [Dkt. No. 45] and filed a Reply in Support of its Motion to Lift the Stay [Dkt. No. 44]. On March 4, 2013, the Magistrate Judge issued a

Memorandum Opinion and Order granting granted the SEC's Motion to Lift the Stay and denying Deloitte's Motion to Extend the Stay ("Order") [Dkt. No. 49].

Deloitte objected to the Order within fourteen days as permitted by Federal Rule of Civil Procedure 72(a) [Dkt. No. 53]. The SEC responded to Deloitte's objections [Dkt. No. 55]. Upon consideration of the Order, the Objections, the Responses, the lengthy, and informative, oral argument held before this Court on April 11, 2013, and the entire record herein, it is hereby

ORDERED, that Deloitte's objections to Magistrate Judge's decision to grant the SEC's Motion to Lift the Stay and deny Deloitte's Motion to Extend the Stay are **overruled;** and it is hereby

ORDERED, that because the original Application for Order Requiring Compliance with Subpoena was dismissed without prejudice [Dkt. No. 33], the Court will establish a new briefing schedule for the renewed Application. The SEC's Memorandum in Support of its Application will be due May 1, 2013. Deloitte's Opposition will be due May 15, 2013, and the SEC's reply, if any, will be due May 22, 2013;[1] and it is hereby

[1] The parties are free to resubmit their original briefs and attachments, but the Court will not consider the filings and declarations that have been made since the SEC's renewed

ORDERED, that the referral to Magistrate Judge Robinson for full case management is terminated.

April 22, 2013

/s/
Gladys Kessler
United States District Judge

Copies to: attorneys on record via ECF

Application was filed on December 3, 2012, unless they are properly filed during this round of briefing.

US District Court Civil Docket

U.S. District - District of Columbia
(Washington, DC)

1:11mc512

U.S. Securities And Exchange Commission v. Deloitte Touche Tohmatsu Cpa Ltd.

This case was retrieved from the court on Wednesday, September 18, 2013

Date Filed:	**09/08/2011**	**Class Code:**	**OPEN**
Assigned To:	**Judge Gladys Kessler**	**Closed:**	
Referred To:		**Statute:**	
Nature of suit:	**Other Statutory Actions (890)**	**Jury Demand:**	**None**
Cause:		**Demand Amount:**	**$0**
Lead Docket:	**None**	**NOS Description:**	**Other Statutory Actions**
Other Docket:	**None**		
Jurisdiction:	**U.S. Government Plaintiff**		

Litigants	Attorneys
U.S. Securities And Exchange Commission Petitioner	David Stuart Mendel LEAD ATTORNEY;ATTORNEY TO BE NOTICED SECURITIES & EXCHANGE COMMISSION Division Of Enforcement 100 F Street, Ne Washington , DC 20549 USA (202) 551-4418 Fax: (202) 772-9282 Email:Mendeld@sec.Gov
	Jan M. Folena ATTORNEY TO BE NOTICED UNITED STATES SECURITIES AND EXCHANGE COMMISSION Enforcement Division, Trial Unit 100 F Street, Ne Washibgton , DC 20549 USA (202) 551-4738 Email:Folenaj@sec.Gov
	Mark Lanpher ATTORNEY TO BE NOTICED Shearman & Sterling LLP 801 Pennsylvania Avenue, Nw Washington , DC 20004 USA (202) 508-8120 Fax: (202) 661-7321 Email:Mark.Lanpher@shearman.Com
Deloitte Touche Tohmatsu Cpa Ltd. Respondent	Michael Dana Warden LEAD ATTORNEY;ATTORNEY TO BE NOTICED

SIDLEY AUSTIN, LLP
1501 K Street, Nw
Washington , DC 20005-1401
USA
(202) 736-8080
Fax: (202) 736-8711
Email:Mwarden@sidley.Com

Miles N. Ruthberg
LEAD ATTORNEY;ATTORNEY TO BE NOTICED
LATHAM & WATKINS LLP
885 Third Avenue
New York , NY 10022-4834
USA
(212) 906-1688
Email:Miles.Ruthberg@lw.Com

David A. Gordon
ATTORNEY TO BE NOTICED
SIDLEY AUSTIN, LLP
One South Dearborn
Chicago , IL 60603
USA
(312) 853-7159

Gary Bendinger
ATTORNEY TO BE NOTICED
SIDLEY AUSTIN, LLP
787 Seventh Avenue
New York , NY 10019
USA
(212) 839-5387

Jamie L. Wine
ATTORNEY TO BE NOTICED
LATHAM & WATKINS LLP
885 Third Avenue
New York, Ny 1002-4834

(212) 906-2904
Email:Jamie.Wine@lw.Com

Date	#	Proceeding Text	Source
09/08/2011	1	MOTION for Order to Show Cause and for Order Requiring Compliance with Subpeona by U.S. SECURITIES AND EXCHANGE COMMISSION. (No Fee Required) (Attachments: # 1 Memorandum in Support, # 2 Declaration of Lisa Deitch Pursuant to 28 USC 1746, # 3 Text of Proposed Order Requiring Compliance with Subpoena, # 4 Text of Proposed Order to Show Cause)(kb) (Entered: 09/09/2011)	
09/09/2011	2	ORDER REFERRING CASE to a Magistrate Judge for all purposes.. Signed by Judge Gladys Kessler on 9/9/11. (CL,) (Entered: 09/09/2011)	
09/09/2011	3	Case Reassigned to Magistrate Judge Deborah A. Robinson for all purposes. Judge Gladys Kessler no longer assigned to the case. (kb) (Entered: 09/12/2011)	
09/20/2011		Motion Hearing set for Friday, 10/7/2011 @ 03:30 PM in Courtroom 4 before Magistrate Judge Deborah A. Robinson. (EW) (Entered: 09/20/2011)	
09/26/2011	4	MOTION for Order Returning Case to Docket of a United States District Judge by U.S. SECURITIES AND EXCHANGE COMMISSION (Lanpher, Mark) (Entered: 09/26/2011)	
09/30/2011	5	AMENDED ORDER: This case is referred to Magistrate Judge Robinson for full case management. Signed by Judge Gladys Kessler on 9/30/11. (CL,) (Entered: 09/30/2011)	
10/03/2011	6	Case Reassigned to Judge Gladys Kessler for all purposes and Magistrate Judge Deborah A. Robinson for full case managment. (jeb,) (Entered: 10/03/2011)	
10/07/2011		Minute Entry for proceedings held before Magistrate Judge Deborah A. Robinson: Case	

		called for Motion Hearing on 10/07/2011 regarding Application for Order to Show Cause and for Order Requiring Compliance with a Subpoena (Document No. 1); counsel for Petitioner present; no appearance by or on behalf of Respondent. (Court Reporter Bowles Reporting.) (lm) (Entered: 10/07/2011)
10/07/2011		MINUTE ORDER: by Magistrate Judge Deborah A. Robinson on 10/7/11.For the reasons set forth on the record, counsel for Petitioner by no later than October 14, 2011, shall file a memorandum of law to address (1) the authority for the proposition that the court can require Respondent to appear to show cause where Respondent has not been served and has not appeared, and (2) the authority for the request that service be permitted pursuant to Rule 4(f)(3) of the Federal Rules of Civil Procedure rather than Rule 4(f)(1). Pending consideration of said memorandum, further consideration of Application for Order to Show Cause and for Order Requiring Compliance with Subpoena (Document No.1) is STAYED.(lm) (Entered: 10/07/2011)
10/13/2011	7	MEMORANDUM re 1 MOTION for Order to Show Cause and for Order Requiring Compliance with Subpeona filed by U.S. SECURITIES AND EXCHANGE COMMISSION by U.S. SECURITIES AND EXCHANGE COMMISSION. (Lanpher, Mark) (Entered: 10/13/2011)
10/13/2011	8	AFFIDAVIT re 7 Memorandum in furhter support of Plaintiff's Application for Order to Show Cause by U.S. SECURITIES AND EXCHANGE COMMISSION. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Lanpher, Mark) (Entered: 10/13/2011)
10/17/2011	9	TRANSCRIPT OF PROCEEDINGS before Magistrate Judge Deborah A. Robinson. Status Hearing held on 10/7/2011; Page Numbers: 1-14. Date of Issuance:10/15/2011. Court Reporter/Transcriber Bowles Reporting Service, Telephone number (860) 464-1083, For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at ww.dcd.uscourts.gov. Redaction Request due 11/7/2011. Redacted Transcript Deadline set for 11/17/2011. Release of Transcript Restriction set for 1/15/2012.(znmw,) (Entered: 10/18/2011)
01/04/2012	10	MEMORANDUM OPINION AND ORDER: It is ORDERED that Petitioner's Application for Order to Show Cause (Document No. 1 , Part 1) is GRANTED, and that a show cause will be conducted in accordance with the Order to Show Cause filed on this date. Signed by Magistrate Judge Deborah A. Robinson on 01/04/2012. (lcdar3) (Entered: 01/04/2012)
01/04/2012	11	ORDER TO SHOW CAUSE: Signed by Magistrate Judge Deborah A. Robinson on 1/4/12. ORDERED, that DeLoitte Touche Tohmatsu CPA Ltd. (the "Respondent") appear on Wednesday, February 1, 2012 at 2:00 PM before the United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC, 20001, Courtroom 4, to show cause, if there be any, why it should not be ordered by the Court to produce documents pursuant to the commission's administrative subpoena served on it by the Commission on May 27, 2011 in connection with the investigation styled, In the Matter of Longtop Financial Technologies Limited, SEC File No. Ho-11698; IT IS FURTHER ORDERED, that this Order, together with copies of the Application for Order to Show Cause and Order to compel Obedience with a Subpoena, Memorandum of Points and Authorities and a Declaration of Lisa Deitch, and the proposed Order Requiring Compliance with a Subpoena be served upon the Respondent by representatives of the Commission by overnight mail facsimile or electronic mail delivery upon their counsel, no later than January 5, 2012; and IT IS FURTHER ORDERED that no later than Friday, January 20, 2012, Respondent shall deliver to the Commission by (i) overnight courier service or (ii) electronic mail or facsimile with simultaneous U.S. mailing, and file with the Court, any Statement of points and authorities and other papers in opposition to the Application; and IT IS FURTHER ORDERED that no later than Friday, January 27, 2012, Commission shall deliver to the Respondent by (i) overnight courier service or (ii) electronic mail or facsimile with simultaneous U.S. mailing, and file with the Court, any reply papers in further support of the Application. (lm) (Entered: 01/05/2012)
01/11/2012	12	Unopposed MOTION to Vacate 11 Order to Show Cause, Set Deadlines/Hearings,,,,,,,,,,,,, only as to Deadlines/Hearings by DELOITTE TOUCHE TOHMATSU CPA LTD. (Warden, Michael) (Entered: 01/11/2012)
01/11/2012	13	MOTION to Clarify Order to Show Cause by DELOITTE TOUCHE TOHMATSU CPA LTD.

		(Warden, Michael) (Entered: 01/11/2012)
01/12/2012	14	Memorandum in opposition to re 13 MOTION to Clarify Order to Show Cause filed by U.S. SECURITIES AND EXCHANGE COMMISSION. (Lanpher, Mark) (Entered: 01/12/2012)
01/13/2012		MINUTE ORDER by Magistrate Judge Deborah A. Robinson on 1/13/2012 granting 12 Unopposed Motion to Vacate. (EW) (Entered: 01/13/2012)
01/13/2012	15	ORDER: Signed by Magistrate Judge Deborah A. Robinson on 1/13/12. Vacating the Schedule set out in the Order To Show Cause and Requiring the Parties to Negotiate an New Schedule. (See Attachment)(lm) (Entered: 01/13/2012)
01/20/2012		MINUTE ORDER by Magistrate Judge Deborah A. Robinson on 01/20/2012: It is hereby ORDERED, that Respondent shall file its reply to [Petitioner's] Memorandum in Opposition to Respondent's Motion to Clarify the Court's Order to Show Cause (Document No. 14), by no later than Wednesday, January 25, 2012. (lcdar3) (Entered: 01/20/2012)
01/20/2012		Set/Reset Deadlines: Respondent's Reply due by 1/25/2012. (lcdar3) (Entered: 01/20/2012)
01/23/2012	16	Unopposed MOTION for Extension of Time to submit a schedule by DELOITTE TOUCHE TOHMATSU CPA LTD. (Warden, Michael) (Entered: 01/23/2012)
01/23/2012		MINUTE ORDER granting 16 Respondent's Motion for Extension of Time; Respondent shall have up to and including January 27, 2012, in which to submit a joint schedule (or, if Respondent and Petitioner cannot agree, separate proposed schedules). Signed by Judge Gladys Kessler on 1/23/12. (CL,) (Entered: 01/23/2012)
01/23/2012		Set/Reset Deadlines: Joint Schedule due by 1/27/2012 (CL,) (Entered: 01/23/2012)
01/25/2012	17	REPLY to opposition to motion re 13 MOTION to Clarify Order to Show Cause filed by DELOITTE TOUCHE TOHMATSU CPA LTD.. (Warden, Michael) (Entered: 01/25/2012)
01/27/2012	18	NOTICE of Filing of Proposed Schedule by DELOITTE TOUCHE TOHMATSU CPA LTD. (Warden, Michael) (Entered: 01/27/2012)
01/27/2012	19	NOTICE of Filing of Proposed Briefing Schedule by U.S. SECURITIES AND EXCHANGE COMMISSION (Lanpher, Mark) (Entered: 01/27/2012)
02/01/2012		MINUTE ORDER by Magistrate Judge Deborah A. Robinson on 02/01/2012: It is ORDERED that Motion of Respondent Deloitte Touche Tohmatsu CPA Ltd., to Clarify the Court's Order to Show Cause (Document No. 13), is DENIED for the reasons offered by Petitioner in its Opposition to Respondent's Motion to Clarify the Courts Order to Show Cause (Document No. 14). (lcdar3) (Entered: 02/01/2012)
02/07/2012	20	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Gary Bendinger, :Firm- Sidley Austin LLP, :Address- 787 Seventh Avenue New York, NY 10019. Phone No. - (212) 839-5387. Fax No. - 212.839.5599 by DELOITTE TOUCHE TOHMATSU CPA LTD. (Warden, Michael) (Entered: 02/07/2012)
02/07/2012	21	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- David A. Gordon, :Firm- Sidley Austin LLP, :Address- One South Dearborn Chicago, IL 60603. Phone No. - 312.853.7159. Fax No. - 312.853.7036 by DELOITTE TOUCHE TOHMATSU CPA LTD. (Warden, Michael) (Entered: 02/07/2012)
02/08/2012		MINUTE ORDER by Magistrate Judge Deborah A. Robinson on 2/8/12 granting 20 & 21 Motion for Admission Pro Hac Vice of Gary Bendinger, Sidley Austin, LLP 787 Seventh Avenue, New York, NY 10019 (212) 839-5387 and David A. Gordon, Sidley Austin, LLP, One South Dearborn, Chicago, IL 60603 (312) 853-7159. (EW) (Entered: 02/08/2012)
03/21/2012	22	SCHEDULING ORDER: Respondent's opposition is due by 4/11/2012; Petitioner's reply is due by 5/2/2012. Hearing with respect to the pending application is scheduled for 5/4/2012 at 10:00 AM in Courtroom 4 before Magistrate Judge Deborah A. Robinson. The parties' attention is directed to the attached order. Signed by Magistrate Judge Deborah A. Robinson on 03/21/2012. (lcdar3) (Entered: 03/21/2012)
04/11/2012	23	Memorandum in opposition to re 1 MOTION for Order to Show Cause and for Order Requiring Compliance with Subpeona filed by DELOITTE TOUCHE TOHMATSU CPA LTD.. (Attachments: # 1 Declaration Declaration of Xin Tang, # 2 Declaration Declaration of James Feinerman, # 3 Declaration Declaration of Charles Lip, # 4 Declaration Declaration of Michael Warden, # 5 Exhibit Exhibit Part 1 to Declaration of Michael Warden, # 6 Exhibit Exhibit Part 2 to Declaration of Michael Warden, # 7 Exhibit Exhibit Part 3 to Declaration of Michael Warden, # 8 Exhibit Exhibit Part 4 to Declaration of Michael Warden, # 9 Exhibit Exhibit Part 5 to Declaration of Michael Warden, # 10 Exhibit Exhibit Part 6 to Declaration of Michael Warden, # 11 Exhibit Exhibit Part 7 to Declaration of Michael Warden)(Warden, Michael) (Entered: 04/11/2012)

04/11/2012	24	MOTION to Quash the Order to Show Cause by DELOITTE TOUCHE TOHMATSU CPA LTD. (Warden, Michael) (Entered: 04/11/2012)
04/25/2012	25	Unopposed MOTION for Extension of Time to File Reply Brief, For Permission to File an Oversized Brief, and to Adjourn the Hearing by U.S. SECURITIES AND EXCHANGE COMMISSION (Lanpher, Mark) (Entered: 04/25/2012)
04/25/2012		MINUTE ORDER by Magistrate Judge Deborah A. Robinson on 04/25/2012: granting Unopposed Motion for Extension of Time to File Reply Brief, for Permission to File an Oversized Brief, and to Adjourn the Hearing (Document No. 25); Set/Reset Deadlines/Hearings: Petitioner's Reply due by 5/23/2012 (reply brief shall not exceed 30 pages); Hearing with respect to Petitioner's pending application (Document No. 1) set for 6/8/2012 at 10:00 AM in Courtroom 4 before Magistrate Judge Deborah A. Robinson. (lcdar3) (Entered: 04/25/2012)
04/28/2012		MINUTE ORDER by Magistrate Judge Deborah A. Robinson on 04/28/2012: On April 11, 2012, Respondent filed its Protective Motion to Quash the Order to Show Cause (Document No. 24). Pursuant to Local Civil Rule 7(b), Petitioner was to file its memorandum of points and authorities in opposition to the motion within 14 days of the date of service. Petitioner has neither filed its opposition brief, nor sought for an enlargement of time to do so. It is ORDERED that Petitioner shall file its opposition by no later than May 1, 2012. (lcdar3) (Entered: 04/28/2012)
04/28/2012		Set/Reset Deadlines/Hearings:, Set/Reset Deadlines: Opposition due by 5/1/2012. (lcdar3) (Entered: 04/28/2012)
05/01/2012	26	Memorandum in opposition to re 24 MOTION to Quash the Order to Show Cause filed by U.S. SECURITIES AND EXCHANGE COMMISSION. (Lanpher, Mark) (Entered: 05/01/2012)
05/18/2012	27	Unopposed MOTION for Extension of Time to File Reply Brief and to Adjourn the Hearing by U.S. SECURITIES AND EXCHANGE COMMISSION (Lanpher, Mark) (Entered: 05/18/2012)
05/18/2012	28	ORDER signed by Magistrate Judge Deborah A. Robinson on 05/21/2012: It is ORDERED that Petitioner's Unopposed Motion for Extension of Time to File Reply Brief and to Adjourn the Hearing (Document No. 27) is GRANTED. It is FURTHER ORDERED that Petitioner shall file its reply brief by no later than July 23, 2012. It is FURTHER ORDERED that counsel for the parties shall appear for a hearing with respect to the pending application at 2:00 p.m. on Tuesday, August 9, 2012. (lm,) (Entered: 05/21/2012)
05/23/2012		Status Conference with respect to the pending application set for 8/9/2012 at 02:00 PM in Courtroom 4 before Magistrate Judge Deborah A. Robinson. (lm) (Entered: 05/23/2012)
07/18/2012	29	Unopposed MOTION to Stay this Action by U.S. SECURITIES AND EXCHANGE COMMISSION (Lanpher, Mark) (Entered: 07/18/2012)
07/23/2012		Telephone Conference set for Wednesday, 7/25/2012 @ 05:00 PM before Magistrate Judge Deborah A. Robinson. (EW) (Entered: 07/23/2012)
07/25/2012		Minute Entry for proceedings held before Magistrate Judge Deborah A. Robinson: Telephone Conference held on 7/25/2012, (Telephone Conference set for Thursday, 7/26/2012 @ 03:30 PM before Magistrate Judge Deborah A. Robinson.). (EW) (Entered: 07/25/2012)
07/26/2012		Minute Entry for proceedings held before Magistrate Judge Deborah A. Robinson: Telephone Conference held on 7/26/2012. (lcdar3) (Entered: 08/02/2012)
08/02/2012		Set/Reset Deadlines/Hearings: Status Conference set for 8/7/2012 at 04:00 PM in Courtroom 4 before Magistrate Judge Deborah A. Robinson. (lcdar3) (Entered: 08/02/2012)
08/07/2012		Minute Entry for proceedings held before Magistrate Judge Deborah A. Robinson: Status Conference conducted on 8/7/2012. (Court Reporter Bowles Reporting.) (lm) (Entered: 08/07/2012)
08/07/2012		MINUTE ORDER by Magistrate Judge Deborah A. Robinson on 08/07/2012: In accordance with the undersigned's rulings from the bench, it is ORDERED that the Unopposed Motion for Stay of this Action (Document No. 29) is GRANTED. It is FURTHER ORDERED that no later than August 9, 2012, the parties shall file a proposed order which includes the terms of the dismissal of the two pending motions (Document Nos. 1 , 24) without prejudice. It is FURTHER ORDERED that by no later than January 18, 2013, the parties shall jointly file a report regarding the status of their negotiations. (lcdar3) (Entered: 08/08/2012)

08/09/2012	30	NOTICE of Filing of Proposed Order by DELOITTE TOUCHE TOHMATSU CPA LTD., U.S. SECURITIES AND EXCHANGE COMMISSION (Lanpher, Mark) (Entered: 08/09/2012)
08/09/2012	32	ORDER: Signed by Magistrate Judge Deborah A. Robinson on 9/8/12 denying without Prejudice 24 Motion to Quash. (lm) (Entered: 08/15/2012)
08/09/2012	33	ORDER: Signed by Magistrate Judge Deborah A. Robinson on 8/9/12. denying without prejudice 1 Motion for Order to Show Cause. (lm) (Entered: 08/15/2012)
08/12/2012	31	TRANSCRIPT OF PROCEEDINGS before Magistrate Judge Deborah A. Robinson held on August 07, 2012; Page Numbers: 1-11. Date of Issuance:August 12, 2012. Court Reporter/Transcriber Bowles Reporting Service, Telephone number (860) 464-1083, For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at ww.dcd.uscourts.gov.. Redaction Request due 9/2/2012. Redacted Transcript Deadline set for 9/12/2012. Release of Transcript Restriction set for 11/10/2012. (jf,) (Entered: 08/14/2012)
09/13/2012	34	NOTICE of Appearance by David Stuart Mendel on behalf of U.S. SECURITIES AND EXCHANGE COMMISSION (Mendel, David) (Entered: 09/13/2012)
09/14/2012	35	NOTICE of Withdrawal of Mark Lanpher as counsel (other counsel remains) by U.S. SECURITIES AND EXCHANGE COMMISSION (Lanpher, Mark) (Entered: 09/14/2012)
12/03/2012	36	MOTION to Lift Stay by U.S. SECURITIES AND EXCHANGE COMMISSION (Attachments: # 1 Text of Proposed Order Lifting Stay)(Mendel, David) (Entered: 12/03/2012)
12/03/2012	37	MOTION Application for Order Requiring Compliance With Subpoena re 36 MOTION to Lift Stay by U.S. SECURITIES AND EXCHANGE COMMISSION (Mendel, David) (Entered: 12/03/2012)
12/03/2012	38	REPLY to opposition to motion re 1 MOTION for Order to Show Cause and for Order Requiring Compliance with Subpeona filed by U.S. SECURITIES AND EXCHANGE COMMISSION. (Attachments: # 1 Declaration of Ethiopis Tafara, # 2 Exhibit 1 to Tafara Declaration, # 3 Exhibit 2 to Tafara Declaration, # 4 Exhibit 3 to Tafara Declaration, # 5 Declaration of Alberto Arevalo, # 6 Declaration of Donald Clarke, # 7 Exhibit 1 to Clarke Declaration, # 8 Declaration of Sarah Williams, # 9 Exhibit A to Williams Declaration, # 10 Exhibit B to Williams Declaration)(Mendel, David) (Entered: 12/03/2012)
12/14/2012	39	STIPULATION For Extension of Time by DELOITTE TOUCHE TOHMATSU CPA LTD., U.S. SECURITIES AND EXCHANGE COMMISSION. (Warden, Michael) (Entered: 12/14/2012)
12/14/2012		MINUTE ORDER by Magistrate Judge Deborah A. Robinson on 12/14/2012: Upon consideration of the Joint Stipulation for Extension of Time 39 , it is ORDERED that Respondent file a response to Petitioner's Motion to Lift Stay 36 by no later than January 7, 2012; it is FURTHER ORDERED that Petitioner file its reply by no later than January 24, 2012. In the future, parties shall request extensions of time by motion. (lcdar1) (Entered: 12/14/2012)
12/20/2012	40	NOTICE of Appearance of Miles N. Ruthberg and Jamie L. Wine for by DELOITTE TOUCHE TOHMATSU CPA LTD. (Warden, Michael) (Entered: 12/20/2012)
01/07/2013	41	NOTICE of Name Change by DELOITTE TOUCHE TOHMATSU CPA LTD. (Warden, Michael) (Entered: 01/07/2013)
01/07/2013	42	Memorandum in opposition to re 36 MOTION to Lift Stay filed by DELOITTE TOUCHE TOHMATSU CPA LTD.. (Attachments: # 1 Declaration of Brian E. Kowalski, # 2 Exhibit 1 to Declaration of Brian E. Kowalski, # 3 Exhibit 2 to Declaration of Brian E. Kowalski, # 4 Exhibit 3 to Declaration of Brian E. Kowalski)(Warden, Michael) (Entered: 01/07/2013)
01/07/2013	43	MOTION to Stay or to Extend the Stay by DELOITTE TOUCHE TOHMATSU CPA LTD. (Attachments: # 1 Text of Proposed Order)(Warden, Michael) (Entered: 01/07/2013)
01/08/2013		Set/Reset Hearings: Status Conference set for 1/29/2013 at 10:00 AM in Courtroom 4 before Magistrate Judge Deborah A. Robinson. (lcdar1) (Entered: 01/08/2013)
01/24/2013	44	REPLY to opposition to motion re 36 MOTION to Lift Stay filed by U.S. SECURITIES AND EXCHANGE COMMISSION. (Mendel, David) (Entered: 01/24/2013)
01/24/2013	45	Memorandum in opposition to re 43 MOTION to Stay or to Extend the Stay filed by U.S.

		SECURITIES AND EXCHANGE COMMISSION. (Attachments: # 1 Text of Proposed Order) (Mendel, David) (Entered: 01/24/2013)
01/28/2013	46	NOTICE of Appearance by Miles N. Ruthberg on behalf of DELOITTE TOUCHE TOHMATSU CPA LTD. (Ruthberg, Miles) (Entered: 01/28/2013)
01/28/2013	47	NOTICE of Appearance by Jamie L. Wine on behalf of DELOITTE TOUCHE TOHMATSU CPA LTD. (Wine, Jamie) (Entered: 01/28/2013)
01/29/2013		Minute Entry for proceedings held before Magistrate Judge Deborah A. Robinson: Status Conference held on 1/29/2013. Court ruling under advisement. (Court Reporter Bowles Reporting.) (lm,) (Entered: 02/08/2013)
02/28/2013	48	TRANSCRIPT OF PROCEEDINGS before Magistrate Judge Deborah A. Robinson. Status Conference held on 1/29/2013; Page Numbers: 1-48. Court Reporter/Transcriber Bowles Reporting Service, Telephone number (860) 464-1083, For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at ww.dcd.uscourts.gov. Redaction Request due 3/21/2013. Redacted Transcript Deadline set for 3/31/2013. Release of Transcript Restriction set for 5/29/2013.(znmw,) (Entered: 02/28/2013)
03/04/2013	49	MEMORANDUM OPINION AND ORDER granting 36 Petitioner's Motion to Lift the Stay; denying 43 Respondent's Motion to Extend the Stay. Set/Reset Hearings: Motion Hearing scheduled for Wednesday, March 13, 2013 at 2:30 PM in Courtroom 4 before Magistrate Judge Deborah A. Robinson. Signed by Magistrate Judge Deborah A. Robinson on 3/4/2013. (lcdar1) (Entered: 03/04/2013)
03/06/2013	50	Emergency MOTION to Continue March 13, 2013 Hearing by DELOITTE TOUCHE TOHMATSU CPA LTD. (Attachments: # 1 Text of Proposed Order)(Ruthberg, Miles) (Entered: 03/06/2013)
03/08/2013		MINUTE ORDER by Magistrate Judge Deborah A. Robinson on 3/8/2013: It is hereby ORDERED, sua sponte, that Petitioner shall file its opposition, or other response, to Respondent's Emergency Motion for Continuance of March 13, 2013 Hearing (Document No. 50) by no later than March 11, 2013. (lcdar1) (Entered: 03/08/2013)
03/11/2013	51	Memorandum in opposition to re 50 Emergency MOTION to Continue March 13, 2013 Hearing filed by U.S. SECURITIES AND EXCHANGE COMMISSION. (Attachments: # 1 Text of Proposed Order)(Mendel, David) (Entered: 03/11/2013)
03/11/2013	52	REPLY to opposition to motion re 50 Emergency MOTION to Continue March 13, 2013 Hearing filed by DELOITTE TOUCHE TOHMATSU CPA LTD.. (Ruthberg, Miles) (Entered: 03/11/2013)
03/11/2013	53	RESPONSE TO ORDER OF THE COURT re 49 Order on Motion to Lift Stay, Order on Motion to Stay, Set/Reset Hearings,,, filed by DELOITTE TOUCHE TOHMATSU CPA LTD.. (Ruthberg, Miles) (Entered: 03/11/2013)
03/11/2013		MINUTE ORDER by Magistrate Judge Deborah A. Robinson on 3/11/2013 denying 50 Respondent's Emergency Motion for Continuance of March 13, 2013 Hearing. (lcdar1) (Entered: 03/11/2013)
03/13/2013		Minute Entry for proceedings held before Magistrate Judge Deborah A. Robinson: Hearing conducted with respect to Petitioner's Application for Order Requiring Compliance with Subpoena 37 ; said motion taken under advisement. (Court Reporter: Bowles Reporting) (lcdar1) (Entered: 03/13/2013)
03/20/2013	54	NOTICE of Declaration of James Edward Jamison by DELOITTE TOUCHE TOHMATSU CPA LTD. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Ruthberg, Miles) (Entered: 03/20/2013)
03/28/2013	55	RESPONSE re 53 Response to Order of the Court filed by U.S. SECURITIES AND EXCHANGE COMMISSION. (Mendel, David) (Entered: 03/28/2013)
03/28/2013	56	REPLY re 54 Notice (Other) re Declaration of James Edward Jamison filed by U.S. SECURITIES AND EXCHANGE COMMISSION. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10)(Mendel, David) (Entered: 03/28/2013)

Date	#	Docket Text
04/04/2013		MINUTE ORDER setting a Motions Hearing on SEC's Motion to Lift the Six Month Stay for April 11, 2013, at 10:00 a.m. Signed by Judge Gladys Kessler on 4/4/13. (CL,) (Entered: 04/04/2013)
04/04/2013		Set/Reset Hearings: Motion Hearing set for 4/11/2013 10:00 AM in Courtroom 26A before Judge Gladys Kessler. (CL,) (Entered: 04/04/2013)
04/04/2013	57	REPLY re 56 to Petitioner's Opposition and Response Addressing Post-Hearing Declaration filed by DELOITTE TOUCHE TOHMATSU CPA LTD.. (Attachments: # 1 Exhibit 1) (Ruthberg, Miles) Modified to add link on 4/5/2013 (znmw,). (Entered: 04/04/2013)
04/05/2013		MINUTE ORDER by Magistrate Judge Deborah A. Robinson on 4/5/2013: By a Memorandum Opinion and Order (Document No. 49) filed on March 4, 2013, the court granted Petitioner's motion to lift the stay of these proceedings and denied Respondent's motion to extend the stay. Respondent's objections (Document No. 53) to said Memorandum Opinion and Order are pending. On March 11, 2013, the court heard argument with respect to Petitioner's Application for Order Requiring Compliance with Subpoena (Document No. 37), and took said motion under advisement. On April 4, 2013, the assigned United States District Judge scheduled a hearing with respect to Respondent's objections for April 11. Upon consideration of the District Court's minute order scheduling the hearing, it is hereby ORDERED that this court will STAY further consideration of Petitioner's Application for Order Requiring Compliance with Subpoena (Document No. 37) pending the District Court's resolution of Respondent's objections. (lcdar1) (Entered: 04/05/2013)
04/08/2013	58	REPLY re 49 Order on Motion to Lift Stay, Order on Motion to Stay, Set/Reset Hearings,,, (Reply Memorandum in Support of Objections to Magistrate Judge's March 4, 2013 Order) filed by DELOITTE TOUCHE TOHMATSU CPA LTD.. (Ruthberg, Miles) (Entered: 04/08/2013)
04/09/2013	59	NOTICE of Appearance by Jan M. Folena on behalf of U.S. SECURITIES AND EXCHANGE COMMISSION (Folena, Jan) (Entered: 04/09/2013)
04/11/2013		Minute Entry for proceedings held before Judge Gladys Kessler: Motion Hearing held on 4/11/2013. Arguments on memorandum Opinion and Order dated 03/04/2013 heard; held in abeyance. (Court Reporter Patty Gels.) (rje) (Entered: 04/11/2013)
04/22/2013	60	ORDER that Deloitte's objections to Magistrate Judge's decision to grant the SEC's Motion to Lift the Stay and deny Deloitte's Motion to Extend the Stay are OVERRULED; the SEC's Memorandum in Support of Its Application will be due by May 1, 2013; Deloitte's Opposition will be due May 15, 2013; SEC's reply, if any, will be due May 22, 2013; the referral to Magistrate Judge Robinson for full case management is terminated. Signed by Judge Gladys Kessler on 4/22/13. (CL,) (Entered: 04/22/2013)
04/22/2013	61	MEMORANDUM OPINION to the Order overruling Deloitte's objections to the Magistrate Judge's decision. Signed by Judge Gladys Kessler on 4/22/13. (CL,) (Entered: 04/22/2013)
04/22/2013		Set/Reset Deadlines: Memorandum in Support of Application due by 5/1/2013. Responses due by 5/15/2013. Replies due by 5/22/2013. (CL,) (Entered: 04/22/2013)
05/01/2013	62	SUPPLEMENTAL MEMORANDUM to re 37 MOTION Application for Order Requiring Compliance With Subpoena re 36 MOTION to Lift Stay filed by U.S. SECURITIES AND EXCHANGE COMMISSION. (Attachments: # 1 Text of Proposed Order, # 2 Declaration Lisa Deitch, # 3 Declaration Sarah Williams, # 4 Exhibit 1, # 5 Exhibit 2, # 6 Exhibit 3, # 7 Exhibit 4, # 8 Exhibit 5, # 9 Exhibit 6, # 10 Exhibit 7, # 11 Exhibit 8, # 12 Exhibit 9, # 13 Exhibit 10, # 14 Declaration Alberto Arevalo (First), # 15 Declaration Alberto Arevalo (Second), # 16 Declaration Ethiopis Tafara)(Mendel, David) (Entered: 05/01/2013)
05/15/2013	63	MEMORANDUM in Opposition re 62 Supplemental Memorandum by DELOITTE TOUCHE TOHMATSU CPA LTD.. (Attachments: # 1 Declaration of Charles Lip Sai-Wo, # 2 Declaration of James Edward Jamison with Exhibits, # 3 Declaration of James V. Feinerman with Exhibits, # 4 First Declaration of Xin Tang with Exhibits, # 5 Second Declaration of Xin Tang with Exhibits, # 6 Declaration of Michael D. Warden, # 7 Exhibits 1-2 to Declaration of Michael D. Warden, # 8 Part 1 of Exhibit 3 to Declaration of Michael D. Warden, # 9 Part 2 of Exhibit 3 to Declaration of Michael D. Warden, # 10 Exhibits 4-5 to Declaration of Michael D. Warden, # 11 Exhibits 6-8 to Declaration of Michael D. Warden, # 12 Exhibits 9-20 to Declaration of Michael D. Warden, # 13 Exhibit 1, # 14 Exhibit 2)(Ruthberg, Miles) Modified event title and link on 5/16/2013 (znmw,). (Entered: 05/15/2013)
05/21/2013	64	Unopposed MOTION for Extension of Time to File Response/Reply , Unopposed MOTION for Leave to File Excess Pages by U.S. SECURITIES AND EXCHANGE COMMISSION

		(Mendel, David) (Entered: 05/21/2013)
05/21/2013		MINUTE ORDER granting 64 the SEC's Motion for Extension of Time to File and for Leave to File Excess Pages; the SEC shall have up to and including May 30, 2013, in which to file a Reply Brief; such brief may be up to 35 pages, plus supporting documents. Signed by Judge Gladys Kessler on 5/21/13. (CL,) Modified on 5/21/2013 (CL,). (Entered: 05/21/2013)
05/21/2013		Set/Reset Deadlines: Replies due by 5/30/2013. (CL,) (Entered: 05/21/2013)
05/28/2013	65	NOTICE OF SUPPLEMENTAL AUTHORITY by DELOITTE TOUCHE TOHMATSU CPA LTD. (Attachments: # 1 Exhibit 1)(Ruthberg, Miles) (Entered: 05/28/2013)
05/30/2013	66	REPLY to opposition to motion re 37 MOTION Application for Order Requiring Compliance With Subpoena re 36 MOTION to Lift Stay filed by U.S. SECURITIES AND EXCHANGE COMMISSION. (Attachments: # 1 Declaration Donald Clarke, # 2 Exhibit 1 to Clarke Declaration, # 3 Declaration Donald Clarke (Second))(Mendel, David) (Entered: 05/30/2013)
07/10/2013	67	NOTICE to the Court by U.S. SECURITIES AND EXCHANGE COMMISSION (Mendel, David) (Entered: 07/10/2013)

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