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	:
PRICWATERHOUSECOOPERS ZHONG TIAN CPAs LIMITED	:

DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENTS' MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE, OR, IN THE ALTERNATIVE, CROSS-MOTION FOR LEAVE TO ADDUCE OTHER ADDITIONAL EVIDENCE

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STATUTES, RULES AND REGULATIONS

The Division of Enforcement ("Division") of the U.S. Securities and Exchange Commission ("SEC" or "Commission"), hereby opposes the motion of Respondents Ernst & Young Hua Ming LLP ("EYHM"), KPMG Huazhen (Special General Partnership) ("KPMG"), Deloitte Touche Tohmatsu Certified Public Accountants Ltd. ("DTTC"), and PricewaterhouseCoopers Zhong Tian CPAs Limited ("PwC") (collectively the "Big Four") for leave to adduce – and introduce into the record – additional evidence pursuant to Commission Rule of Practice 452 ("Respondents' Motion"). For the reasons stated below, Respondents' Motion should be denied. However, if the Commission determines to allow Respondents' additional evidence ("Additional Evidence"), the Division, in the alternative, respectfully moves the Commission for leave to adduce – and introduce into the record – other additional evidence ("Division's Additional Evidence") to provide fuller context.

INTRODUCTION

Respondents, including the Big Four, willfully refused to produce to the SEC their audit workpapers and related documents concerning ten Division investigations. The SEC had sought the documents under Section 106 of the Oxley Act of 2002 ("Sarbanes-Oxley"), as amended by Section 929J of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), and codified at 15 U.S.C. § 7216 ("Sarbanes-Oxley 106"). Respondents did not produce any of the requested workpapers even though: (1) Respondents have been registered with the Public Company Accounting Oversight Board ("PCAOB" or "Board") since between 2004 and 2006; (2) they knew when they registered that they could be required to produce documents to U.S. regulators; and (3) in 2010, as required by Dodd-Frank, they designated U.S. agents for receipt of exactly the type document requests the firms subsequently received

pertaining to the ten investigations. Given these and other facts, which are largely undisputed, the Administrative Law Judge ("ALJ") correctly ruled in his January 22, 2014 Initial Decision that Respondents willfully violated the securities laws by willfully refusing to comply with the Sarbanes-Oxley 106 requests, and imposed remedies on Respondents.

Respondents now renew their efforts to reopen the record, in an attempt to support legal theories that the Initial Decision and other ALJ rulings properly rejected. Specifically, Respondents would have the Commission consider evidence that, months after the July 2013 hearing in this proceeding, the SEC received documents for three of the ten investigations at issue from the China Securities Regulatory Commission ("CSRC"). These recent events, however, are irrelevant to Respondents' liability for willfully violating the securities laws under Commission Rule of Practice 102(e). Respondents variously contend that the Additional Evidence supports their arguments that they acted in good faith, that the CSRC is an "alternative means" of obtaining the requested documents, and that the Sarbanes-Oxley 106 requests are "unenforceable." But these characterizations of the Additional Evidence, whether accurate or not, simply have no bearing on whether Respondents willfully violated Sarbanes-Oxley.[1]

Even if the Additional Evidence were relevant (which it is not), Respondents have not "shown with particularity that such additional evidence is material." Rule of Practice 452, 17 C.F.R. § 201.452. Evidence purporting to demonstrate recent progress in the SEC's ability to obtain audit workpapers through cooperative mechanisms does not demonstrate that that CSRC was an "alternative means" of obtaining documents before the Commission instituted these

[1] Proposed Respondents' Exhibits 654 through 672 are confidential under the protective orders in this case and, accordingly, were filed under seal. As previously produced by the Division to Respondents, each page of these exhibits was endorsed with the header "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER-FILE UNDER SEAL." Due to an apparent processing error by Respondents, this endorsement was omitted from documents when re-formatted as exhibits for Respondents' filing. The Division understands that Respondents will make a corrective filing that replaces these exhibits with properly endorsed pages.

proceedings. Nor could the Additional Evidence excuse Respondents' decisions to enter and participate in U.S. markets and then flout U.S. laws. Meanwhile, Respondents' contention that the Additional Evidence undermines the Initial Decision's proposed remedy is both unexplained and wrong. Whatever the Additional Evidence may suggest about future prospects for CSRC cooperation, it is not in the "public interest" for Respondents to continue all of their U.S. business activities while blatantly disavowing their direct production obligations under U.S. law.

Respondents contend that the ALJ erred in not allowing Respondents to supplement the record with certain evidence of the recent productions, before the Initial Decision. But the ALJ did not err because that evidence, like the Additional Evidence, lacked relevance and probative value.

Respondents' efforts to inject irrelevant, post-hearing information into the proceeding should be rejected. But if the Commission determines to grant Respondents' Motion, the Commission also should consider the Division's Additional Evidence, which provides a fuller factual context for the CSRC's recent productions. The Division's Additional Evidence, to the extent it can be considered relevant, supports imposing a remedy for Respondents' willful violations of their direct production obligations under Sarbanes-Oxley 106. Accordingly, in the alternative, the Division requests that the Commission, pursuant to Rule 452, admit and consider the following evidence: (1) Proposed Division Exhibits 359 through 368, which constitute communications between the SEC's Office of International Affairs ("OIA") and the CSRC that occurred after December 4, 2013 (*see* Proposed Respondents Exhibit 671) through the present, concerning the ten investigations;[2] (2) Proposed Division Exhibits 369 through 372, which

[2] In December 2013, at Respondents' request, and subject to the protective orders in this proceeding, the Division produced to Respondents communications between OIA and the CSRC, dated on or after September 1, 2013 and concerning audit workpapers for one or more of the ten clients at issue in this proceeding. On February 27, 2014, also subject to the protective orders, the Division made a

constitute correspondence between the SEC and DTTC's respective litigation counsel in the Longtop subpoena enforcement action, concerning DTTC's supplemental productions of documents and other materials before that action was dismissed without prejudice; (3) Proposed Division Exhibit 373, which constitutes press reports containing CSRC statements in response to the Initial Decision and (4) Proposed Division Exhibits 374 through 375, which constitute declarations by Division attorneys involved in the investigations of DTTC Clients A and G, concerning their review of the recent CSRC productions.

BACKGROUND

A. The SEC's Requests for Assistance To The CSRC Through 2012

Before the Commission instituted this proceeding against all Respondents in December 2012, the SEC sent three requests to the CSRC seeking its assistance in obtaining DTTC's audit workpapers. All three requests were pursuant to the International Organization of Securities Commissions ("IOSCO") Memorandum of Understanding ("MMOU"). The first request, sent in June 2010, sought audit workpapers concerning DTTC Client A. *See* Division Exhibit ("Div. Ex.") 192; Initial Decision at 32. The second request, dated June 2011, sought workpapers and communications (including, expressly, emails) concerning DTTC Client G. *See* Div. Ex. 211; Initial Decision at 34. The third request, dated August 2012, sought workpapers, communications, and certain other documents concerning DTTC client Longtop Financial Technologies Limited ("Longtop"), *see* Div. Ex. 229-230; Division's Post-Hearing Reply Brief ("Div. Reply") at 36; the SEC's efforts to obtain the Longtop documents are not an asserted basis

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supplemental production of similar, later-occurring communications, which the Division has now filed under seal in connection with this brief, as Proposed Division Exhibits 359 to 368 (except for duplicate communications). The Division does not agree that the communications contain material exculpatory evidence under Commission Rule of Practice 230(b)(2) or *Brady v. Maryland*, 373 U.S. 83 (1963). *See* Respondents' Motion at 2.

for DTTC's liability in this proceeding, but were the subject of a subpoena-enforcement action in the District Court in the District of Columbia.[3]

As exhaustively described during the hearing and in the Division's post-hearing briefs, OIA made extraordinary efforts over the course of years to obtain documents sought by its MMOU requests. Initial Decision at 47-52 (describing testimony of Alberto Arevalo, OIA's chief of international cooperation and technical assistance); Division's Post-Hearing Brief ("Div. Br.") at 17, 36, 81-84, 101-105; Div. Reply at 38-43. To take just one data point, between June 2010 (the date of the DTTC Client A request) and March 2013, the SEC participated in 54 communications with the CSRC (including three in-person meetings, but not including correspondence received) relating to requests for audit workpapers, 39 of which related specifically to the audit workpapers for DTTC Client A. *See* Div. Ex. 274-A (summary exhibit re SEC communications). Despite these efforts [redacted] *See* Initial Decision at 48-52; Div. Br. 17. [redacted] *See* Initial Decision at 100; Div. Br. 41-42.

B. The SEC's 2011 and 2012 Sarbanes-Oxley 106 Requests

In March 2011, nine months after the SEC's MMOU request for Client A workpapers, the SEC issued a Sarbanes-Oxley 106 request to DTTC seeking such documents. From February to April 2012, the SEC issued nine other Sarbanes-Oxley 106 requests to Respondents seeking

[3] In September 2011, the Commission initiated the Longtop action to compel DTTC to comply with an administrative subpoena that the Commission had issued several months earlier, in connection with a Division investigation. The subpoena sought audit workpapers and other documents concerning DTTC's audits of Longtop. The District Court granted the parties' joint motion to dismiss the action without prejudice on January 27, 2014. *See* Prop. Resp. Ex. 677 (*SEC v.* DTTC, 11 Misc. 512 GK (Dkt. Nos. 72-73)).

audit workpapers and related documents for Clients A through I.[4] Respondents produced no workpapers to the SEC in response to any of the requests.

On May 9, 2012, the Commission instituted proceedings against DTTC arising from its failure to produce the Client A workpapers. On December 3, 2012, the Commission instituted proceedings against all Respondents arising from their other failures to produce. The two proceedings were then consolidated, and a hearing took place between July 8 and July 31, 2013, in Washington, D.C.

C. The CSRC's 2013 and 2014 Longtop Productions

In early July 2013 – as the hearing was getting underway – the CSRC notified the SEC that it was about to produce documents regarding Longtop, the subject of the subpoena enforcement action. *See* Respondents' Exhibit ("Resp. Ex.") 633. Shortly thereafter, the SEC received over 200,000 pages of DTTC's workpapers and related documents from the CSRC.[5] After an additional six months of discussions among the SEC, CSRC, and DTTC, in January 2014 the SEC received supplemental Longtop productions consisting of, among other materials, documents that had not been included in the July 2013 production, logs purporting to describe withheld documents (or portions thereof), and a certification by DTTC as to the completeness of the productions that DTTC has made to the CSRC. *See* Proposed Respondents' Exhibit ("Prop. Resp. Ex.") 677 (Joint Longtop Motion ¶ 6).

[4] The March 2011 Sarbanes-Oxley 106 request sought DTTC Client A documents. The Commission later issued another Sarbanes-Oxley 106 request for the workpapers and related documents of a client of Respondent BDO China Dahua CPA Co., Ltd. ("Dahua"), which this proceeding also refers to as "Client A."

[5] In addition to coinciding with the start of the hearing, the CSRC's Longtop production occurred in tandem with a meeting of the Economic Track of the U.S.-China Strategic and Economic Dialogue ("S&ED"), attended by the U.S. Treasury Secretary and Chinese Vice Premier, in Washington, D.C. on July 10-11, 2013. *See* Resp. Ex. 643 (Press Release). The production also occurred after the District Court agreed to lift the stay of the subpoena-enforcement action, and approximately a month after the parties completed briefing of the merits of that action. *See* Prop. Resp. Ex. 677 (*SEC v. DTTC*, 11 Misc. 512 GK, Joint Motion to Dismiss Without Prejudice ¶ 4 (1/27/14)).

D. [redacted] And Other Productions By The CSRC

[redacted] *See* Exhibit 1 to Division's Third Notice of Production (9/17/13), SEC_SUPP AUDIT_0000303 to SEC_SUPP AUDIT_0000341. [redacted]

To date, [redacted], the Division has received productions of audit workpapers for DTTC Clients A and G and EYHM Client C, from the CSRC.[6] The Division received these productions in November 2013 – approximately 28 months after the SEC's MMOU request for the Client G documents, and approximately 40 months after the MMOU request for the DTTC Client A documents. Although the MMOU request for Client G documents specifically sought DTTC's communications concerning this client, it appears that no emails solely among members of DTTC's engagement team for Client G ("internal-only emails") were produced. *See* Prop. Div. Ex. 375 (Declaration of Rhoda Chang ¶ 8). The Division has not received any withholding or privilege logs or certifications of completeness for at least two of these three productions. *See* Prop. Div. Ex. 374 (Declaration of Laura Josephs ¶¶ 8, 10); Prop. Div. Ex. 375 (Chang Decl. ¶¶ 10, 12). The Division has not received any documents for Dahua Client A, EYHM Client B, or PwC Client I.

[6] [redacted]

ARGUMENT

A. Respondents' Additional Evidence Is Immaterial

Respondents' Motion should be denied because Respondents cannot show with particularity that any of the Additional Evidence is material to the resolution of this proceeding.[7]

1. The Additional Evidence Is Irrelevant To Liability

The Additional Evidence cannot be material to Respondents' liability under Rule 102(e) because it has no bearing on whether Respondents willfully violated the securities laws by willfully refusing to comply with the ten Sarbanes-Oxley 106 requests. Sarbanes-Oxley 106 requires a foreign public accounting firm that performs "audit work" for U.S. issuers (or satisfies other conditions) to produce its audit workpapers and related documents concerning those issuers to the SEC upon request. *See* Section 106(b), 15 U.S.C. § 7216(b). A foreign firm's "willful refusal to comply, in whole or in part, with any request by the Commission . . . shall be deemed a violation of this Act." 15 U.S.C. § 7216(e). Respondents assert a litany of theories for why the recent productions could affect resolution of whether they willfully refused to comply with the requests. Each of these theories fails as a matter of law.

First, Respondents contend that the "recent productions demonstrate clear alternative means for obtaining the requested workpapers." Motion at 9-10. But whether the CSRC now constitutes, or ever did constitute, an alternative gateway for obtaining documents in China is irrelevant to whether Respondents violated their direct production obligations under Sarbanes-Oxley.[8] Respondents cite Sarbanes-Oxley 106(f); that provision, however, merely gives the SEC

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[7] In the context of the Commission Rule of Practice 230(b)(2) and *Brady v. Maryland*, 373 U.S. 83 (1963), "the test of materiality [is] whether there is a 'reasonable probability' that the evidence's disclosure would have resulted in a different outcome." *optionsExpress*, Release 34-70698, Admin. Proc. File No. 3-14848 (Oct. 16, 2013) (quoting *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)).

[8] It has always been the Division's position that Respondents willfully violated their direct production obligations under Sarbanes-Oxley irrespective of whether alternative means existed for obtaining the

the option of allowing a foreign firm to satisfy its duties under Section 106 by producing audit workpapers to foreign regulators. This provision plainly did not *require* the SEC to allow such alternative production in lieu of direct production. *See* Initial Decision at 98-100.[9]

Nor does it matter that [redacted] Respondents contend that "The Division cannot obtain the documents through 'alternative means' under Section 106(f) but nonetheless punish foreign firms for not producing documents directly to the Division." Motion at 10. But this argument mischaracterizes this proceeding, which seeks remedies (not "punish[ment]") to protect the Commission's processes, and [redacted] Respondents' argument also ignores the text and structure of Sarbanes-Oxley and contravenes sound policy. The Commission may simultaneously protect its processes from delinquent professionals, under Rule 102(e), and exercise its "discretion to seek documents in whatever fashion the law permits." Initial Decision at 100. Nothing in the statute suggests otherwise.[10]

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documents or Respondents acted in good faith. *See* Division's Consolidated Opposition to Respondents' Motions For Summary Disposition at 3 (2/22/13) ("Consolidated Opp."); Division's Pre-Hearing Brief at 3, 36-40 (6/24/13); Div. Br. at 2-3, 45-46; Div. Reply Br. at 3-4, 12-17. Respondents appear to suggest otherwise, stating "the Division devoted pages of its briefs and numerous witnesses to its purported inability to obtain the workpapers at issue from the CSRC." Motion at 9. This briefing and evidence responded to Respondents' various erroneous legal theories, including the assertion that the Commission could not avail itself of a remedy under Rule 102(e) unless it were first shown that the Sarbanes-Oxley requests at issue are "enforceable." The Initial Decision properly rejected this argument. *See* Initial Decision at 101. In any event, the Division has never argued that a lack of alternative means was a necessary predicate to a finding that Respondents willfully violated Sarbanes-Oxley 106.

[9] Section 106(f) states: "Notwithstanding any other provisions of this section, the staff of the Commission or the [PCAOB] may allow a foreign public accounting firm that is subject to this section to meet production obligations under this section through alternate means, such as through foreign counterparts of the Commission or the [PCAOB]." 15 U.S.C. § 7216(f).

[10] Respondents' argument would create absurd results, as reflected by the undisputed facts in this proceeding. Under Respondents' flawed logic, the Commission would be foreclosed from obtaining a remedy against DTTC for its willful refusals to comply with the Sarbanes-Oxley 106 requests for the Client A and G documents, merely because the Division earlier had sent MMOU requests to the CSRC.

Second, Respondents contend that the Additional Evidence "affirms that . . . Respondents acted in good faith." Motion at 2. However, as the Initial Decision correctly concluded, "the motive" for a Respondent's decision not to comply with a Sarbanes-Oxley 106 request "is irrelevant, so long as the Respondent knew of the request and made a choice not to comply with it." Initial Decision at 93. The Division need not demonstrate "bad faith" to prove a violation of the provision, "and good faith is not a defense." *Id.*

Third, Respondents contend that the Additional Evidence "remov[es] any doubt that the Section 106 requests at issue in this proceeding are unenforceable in the first instance." Motion at 10. But this argument misconstrues the purpose of this proceeding. The Commission instituted this to "protect 'the integrity of the Commission's own processes,'" and *not* to enforce the requests or obtain documents through these proceedings." Order on Motions for Summary Disposition as to Certain Threshold Issues, at 7 (4/30/13) (quoting *Marrie v. SEC*, 374 F.3d 1196, 1200-01 (D.C. Cir. 2004)); *see also* Division's Consolidated Opposition to Respondents' Motions for Summary Disposition at 30-31 (2/22/13); Div. Br. at 95-96. Thus, as the Initial Decision also correctly concluded, "it is irrelevant whether the Sarbanes-Oxley 106 requests are enforceable" in the sense that a federal court could compel production of the documents. *See* Initial Decision at 101; *see also id.* at 95.

For related reasons, Respondents' claim that the proceeding now lacks "any justification or basis" (Motion at 8) is also wrong. The Division is properly seeking to remedy Respondents'

According to Respondents, the CSRC's decision to produce Client A and G documents some 40 months and 28 months after the MMOU requests, respectively, would short-circuit the Commission's ability to obtain a remedy against DTTC. Respondents' position is also untenable as to the Client C investigation. According to Respondents, the Division would be foreclosed from seeking a remedy against EYHM for its willful refusal to comply, because the Division later decided to try to seek the documents through the CSRC and the CSRC provided cooperation in response to that request. Nothing in Sarbanes-Oxley requires the Division to choose between these two objectives.

prior misconduct that violated their statutory obligations and severely harmed ten Division investigations.[11]

2. The Timing of the Additional Evidence Also Makes It Immaterial

Even assuming alternative means, good faith, or enforceability were relevant to Respondents' liability (which they are not), the Additional Evidence could not be material to an assessment of these factors at the time Respondents committed their willful violations. The Additional Evidence – purporting to show CSRC productions at least 10 months *after* the second OIP – cannot demonstrate alternative means or unenforceability *before* the Commission instituted these proceedings, let alone at the time the Sarbanes-Oxley 106 requests were made and Respondents failed to act. Respondents make no particularized showing that even potentially could support this assertion. During the 30-month span stretching from June 2010 to the second OIP, the SEC did not receive any audit workpapers in response to the three requests it sent to the CSRC, despite the SEC's extensive follow-up efforts with the CSRC. *See* Div. Br. at 81-84, 101-105; Div. Reply at 38-4. [redacted] Initial Decision at 100.[12] Finally, Respondents themselves contend that the CSRC's alleged new procedures were

[11] Regardless of whether the Division belatedly receives documents for certain of the investigations, all of the investigations have been seriously delayed, narrowed, or stymied altogether by Respondents' misconduct. *See, e.g.*, Initial Decision at 8 (Dahua Client A), 18 (Clients B and C); 29 (Clients D, E, and F), 35 (DTTC Client A), 36 (Client G), 46 (Clients H and I).

[12] Meanwhile, DTTC had 14 months in which to comply with the Sarbanes-Oxley 106 request for the Client A workpapers, before the Commission initiated the first proceeding against DTTC in May 2012, yet DTTC did not do so. All Respondents had between seven and 10 months in which to comply with the other Sarbanes-Oxley requests at issue, before the Commission initiated the second proceeding in December 2012, yet they did not comply either.

approved by China's State Council only in February 2013 (Motion at 4) undercutting any assertion that the CSRC was an alternative means before that time.

Nor could proof that the CSRC *today* constitutes alternative means erase the willful violations of Sarbanes-Oxley that Respondents already committed many months or years earlier. If this were true, the SEC's ability to protect its processes would be rendered entirely subservient to the decisions of foreign governments and/or foreign firms belatedly to cooperate in the face of litigation. Such a scheme would make a mockery of Sarbanes-Oxley 106 and Rule 102(e), would neuter the agency's ability to protect its processes, and should be rejected. *See Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 20 (1995) ("It is an elementary rule of construction that 'the act cannot be held to destroy itself.'" (quoting *Texas & Pacific R. Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426, 446 (1907)).

Finally, the Additional Evidence could not materially "undermin[e]" (Motion at 10) the Initial Decision's conclusion that Respondents failed to act in good faith. Respondents grew their U.S.-based practices even as they were warned about document production obligations and designated U.S. agents for receipt of document requests. Respondents' subsequent attempt to extricate themselves from their U.S. obligations "does not demonstrate good faith, indeed, quite the opposite – it demonstrates gall." Initial Decision at 105. Whatever Respondents may have previously predicted about a "regulator-to-regulator solution" (Motion at 10), the Additional Evidence cannot undo Respondents' decisions to operate their auditing businesses "at risk," *see* Initial Decision at 105.

3. Respondents Have Not Shown With Particularity That The Additional Evidence Is Material To The Commission's Remedy

Respondents also have not carried their burden of demonstrating with particularity that the Additional Evidence requires the Commission to impose a different remedy. To the contrary,

Respondents' Motion is conclusory on the point. *See* Motion at 10. Respondents contend that the *Steadman* factors do not "support[] a six-month suspension of all the major audit firms from China when the SEC is in possession of requested workpapers and the CSRC is actively assisting several SEC investigations." *Id.* But the Initial Decision's analysis of the *Steadman* factors is in no way changed by Respondents' assertions even if true. The Initial Decision found that a suspension was warranted because the Big Four Respondents "have failed to recognize the wrongful nature of their conduct, their occupation presents opportunities for future violations, and their assurances against future violations are insincere." Initial Decision at 109. These findings remain true – and, indeed, are confirmed by Respondents' Motion – irrespective of the CSRC's recent actions.

Respondents' vague reliance on the "broader public interest" to support consideration of the Additional Evidence (which, in Respondents' view, weighs against a suspension) is also unavailing. Respondents steadfastly assert that they will not produce documents directly to the SEC without the CSRC's permission. At best, the Additional Evidence may show only that the CSRC is presently providing some level of assistance to the SEC, by serving as a conduit for the requested documents. However, Respondents do not contend – nor could they – that such cooperation is certain to improve or even continue. At bottom, Respondents simply seek an outcome that puts the risk of the SEC's future inability to obtain documents that are statutorily required, and indisputably necessary for the Division's investigations, squarely on the shoulders of U.S. investors, not the firms themselves. Such an outcome cannot be in the "broader public interest."

4. Prior Statements of SEC Staff Do Not Make The Additional Evidence Material

Respondents again highlight (as they have in prior briefing) OIA statements to their CSRC counterparts, in July 2012 and July 2013, about the future direction of these proceedings. *See* Motion at 8-9. These statements do not support re-opening the record to allow the Additional Evidence. The OIA staff did not, and could not, commit the Commission to discontinuing these proceedings in the event documents were produced. The decision whether to continue these proceedings resides with the Commission; the CSRC or Respondents cannot unilaterally control the status of these proceedings through their belated decisions to produce documents.

For similar reasons, the statements of the Division's prior trial counsel in July 2012 in support of a temporary stay of the DTTC proceeding – before the Commission even instituted the second proceeding against Respondents – also does not support Respondents' position. Trial counsel made these statements approximately 15 months before any DTTC Client A workpapers were produced by the CSRC. Assuming, *arguendo*, such statements potentially could have any relevance to the merits of the proceeding (which they do not), surely they are beside the point given that the Division had to endure another enormous delay and prosecute a three-week hearing before obtaining the documents at issue.

5. The ALJ's Statements Do Not Establish Materiality

Finally, the ALJ's cautionary statements during the hearing about correspondence from the CSRC, which were at least partially withdrawn by the ALJ's written orders, also fail to demonstrate that the record now should be re-opened. During the hearing, the ALJ stated that evidence of a "change in status" regarding the CSRC's production of documents sought by the Sarbanes-Oxley 106 requests would be "relevant to the Respondents' defense." Tr. 2319:20-

2320:17. The ALJ also instructed the Division to "[t]reat this as Brady material," *id.* 2320:16-17, and to disclose such evidence by "fil[ing] something," *id.* at 2320:9-10; *see also* 2693:10-2694:10. Heeding these instructions, the Division made three post-hearing filings [redacted] After the third such filing, however, the ALJ terminated his instructions to the Division. *See* Order Admitting Exhibits and Closing the Hearing Record at 2 (9/18/13) ("[T]he Division no longer must comply with my instructions during the hearing regarding post-hearing production obligations.").

The Initial Decision's reasoning fatally undercuts any argument that the ALJ's prior instructions now support re-opening the record. As explained above, the Initial Decision rejected all of Respondents' legal arguments that could conceivably make the Additional Evidence relevant to Respondents' liability. And, in any event, Respondents have not established the Additional Evidence's materiality as required by Rule 452. Nor are Respondents helped by the Initial Decision's hedging statement that evidence of recent CSRC productions is "potentially exculpatory." This statement is unexplained; does not conclude that the evidence is, in fact, exculpatory; and does not conclude that any such potentially exculpatory nature would be "material." Although this statement may have provided an opening for Respondents to argue "with particularity" here as to why the Additional Evidence should be considered, they have not met this burden.

B. The ALJ's Decision Not To Re-open The Record Was Not Erroneous

The ALJ's decision not to re-open the record to consider Respondents' last-minute, cherry-picked evidence of the CSRC's recent productions was well grounded and, in all events,

[redacted]

not erroneous. Respondents filed their motion to re-open in November 2013, over three months after the conclusion of the hearing. Briefing on Respondents' motion was not completed until December 3, 2013, seven weeks before the ALJ's already-extended initial decision deadline of January 20, 2013.

The ALJ correctly rejected Respondents' motion to re-open because the proffered evidence was irrelevant and immaterial, as discussed above. The ALJ's decision was separately justified because the proffered evidence had little probative value and was impractical to consider when offered. As the Division argued, Respondents' alleged evidence consisted largely of one-sided declarations by litigation counsel that, even on their own terms, failed to show that the Division had received everything it had asked for. *See* Division's Opposition to Respondents' Motion To Supplement the Record, at 4-7(11/27/13). Moreover, the Division had not yet reviewed the documents it had received, nor could the Division reasonably have been expected to do so before the initial decision deadline. *See id.* at 7-8. Then, as now, it was simply impossible to conclude from Respondents' proffered evidence alone that the CSRC is, and will remain, a reliable, alternative gateway for obtaining documents from China. *See id.* at 8. For these reasons and those in the Initial Decision, the ALJ properly exercised his discretion not to consider the evidence.

C. Alternatively, the Commission Also Should Consider The Division's Other Additional Evidence Relating To Recent Developments

If the Commission permits Respondents to supplement the record with the Additional Evidence, the Division respectfully asks the Commission to consider the Division's Additional Evidence as well. Respondents proclaim that their Additional Evidence "establishes that the SEC and CSRC have achieved a diplomatic resolution of workpaper access and that the production obligations concerning the produced workpapers have been satisfied under Section

106(f) of the Sarbanes-Oxley Act." Motion at 2. These arguments are legally flawed (*supra* Argument Section A) and factually incomplete. The Additional Evidence considered together with the Division's Supplemental Evidence reveals far more tenuous circumstances: future effective cooperation from the CSRC (and from the firms themselves) is not assured, and the Division is still waiting for numerous documents and other materials in response to its requests.

First, it still remains to be seen whether the Division, going forward, will be able to obtain complete productions of responsive documents on a sufficiently prompt time frame through the CSRC. The Division has received productions concerning DTTC Clients A and G, and EYHM Client C, but the CSRC had the Client A documents in its possession for over three years, and the MMOU request concerning Client G for over two years, before producing those documents. [redacted][14]

Second, at least one of the three productions that the Division has received from the CSRC, concerning the Clients at issue, appears to be incomplete. OIA's June 2011 request to the CSRC sought assistance in obtaining, among other documents, "communications, including emails, relating to [DTTC]'s audit" of Client G. The CSRC's production, however, does not

[14] [redacted]

contain internal DTTC emails (*i.e.*, emails exclusively among DTTC's engagement team members). *See* Prop. Div. Ex. 375 (Chang Decl. ¶ 8).

Third, the CSRC's procedures apparently create substantial risk that one or more firms – either now or in response to future Division requests – may seek to minimize the firm's cooperation by narrowly interpreting the instructions that it receives from the CSRC. With respect to Longtop, for example, the MMOU request to the CSRC sought assistance in obtaining "[a]ll communications relating to Longtop," among other documents. Div. Ex. 230 (SEC_SUPP_AUDIT 0000149). The CSRC's Investigation Notice to DTTC similarly required production of "all communication relating to Longtop." Resp. Ex. 636 (quoting English translation). Notwithstanding these requests, DTTC did not include internal emails in the first production to the CSRC, even though it had gathered these documents, assertedly because it misunderstood the CSRC's request.[15] [redacted][16] Thus, the Division's recourse to the MMOU process risks significant, additional delays to the extent firms, for whatever reason, take steps that constitute less than full cooperation in the first instance.

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[15] DTTC had already gathered the internal emails because it had assigned "control numbers" to them. *See* Proposed Div. Ex. 372 (Warden Letter to Mendel and Deitch (1/22/14), at 2). DTTC later explained it had "understood the language of the Notice to cover . . . communications between DTTC and third parties concerning Longtop, but not purely internal emails, and therefore DTTC's initial production to the CSRC did not include purely internal DTTC emails." Prop. Div. Ex. 371 (Certification as to Completeness Of Document Production ¶ 5). But DTTC could not have misunderstood that the SEC wanted production of the internal emails, as the SEC's May 2011 subpoena to DTTC clearly called for them. *See* Longtop Subpoena, *SEC v. DTTC*, 11 misc. 512 GK (D.D.C.), Revised Declaration of Lisa Deitch (Dkt. No. 62-2), Ex. C. By all appearances, DTTC strained to interpret the CSRC's Notice to avoid the production of potentially sensitive, internal documents.

[16] In addition, while DTTC said it would cooperate with CSRC requests for additional Longtop documents, the Division is still awaiting certain draft workpapers sought by the MMOU request. Prop. Div. Ex. 372 (1/22/14 Warden letter at 2-3).

Fourth, at least as to the productions for Clients A and G, the Division presently does not have information on (1) how the firms gathered documents, or (2) what documents were withheld from the productions on state secrets grounds or otherwise. *See* Prop. Div. Ex. 374 (Josephs Decl. ¶¶ 8, 10); Prop. Div. Ex. 375 (Chang Decl. ¶¶ 10, 12). In January 2014 in the Longtop matter, after months of discussions with DTTC and the CSRC, the Division received a certification that described DTTC's search for responsive documents and the firm's process for screening for supposed Chinese state secrets. *See* Prop. Div. Ex. 371; Prop. Resp. Ex. 677. The CSRC also produced to the SEC, among other materials, various logs of documents (or portions of documents) that had been withheld. *See* Prop. Resp. Ex. 677; [redacted]. However, the Division has not received any similar materials for the Client A or G productions.[17]

Fifth, the firms likely will disclaim responsibility for the accuracy of whatever representations they do make about the CSRC's productions to the Division. Such reluctance allegedly results from the CSRC's role as an intermediary. In Longtop, DTTC initially resisted providing withholding logs because, "once DTTC completed the screening process and produced the documents to the CSRC, DTTC no longer had any involvement in or knowledge of further processing that the CSRC performed before producing the documents to the SEC." Prop. Div. Ex. 369 (Warden Letter to SEC (9/30/13), at 2). "Thus, even if DTTC were permitted to produce

[17] On February 25, 2014, Division staff asked DTTC's U.S. counsel for DTTC's assistance in resolving certain issues concerning the Client A and G productions, including the provision of withholding logs and certifications and, as to Client G, any internal-only communications not yet produced. DTTC's counsel indicated that he would respond to the Division on these issues. In addition, Division staff are evaluating EYHM's Client C production to assess completeness, including by determining whether this production contains sufficient information about how the documents were gathered and what may have been withheld on Chinese state secrets or other grounds. According to Respondents' evidence, EYHM submitted four "reports" about the production to the CSRC (*see* Resp. Ex. 649A) but Division staff have not located these reports in the production, and EYHM's U.S. counsel have been unable to confirm whether the CSRC produced them to the SEC. Division staff are continuing to confer with EYHM's counsel on these issues.

a list of the documents it removed or redacted, DTTC would be unable to confirm the accuracy or completeness of such a list." *Id.* Ultimately, the CSRC produced Withholding Logs prepared by DTTC to the SEC. *See supra*. However, DTTC has not provided assurances about the accuracy of these lists, and Respondents likely also will refrain from providing such assurances.

Finally, [redacted] After the Initial Decision, the CSRC issued public statements obliquely suggesting a possible worsening of SEC-CSRC relations as a result of this very proceeding. *See* Prop. Div. Ex. 373 ("The SEC should bear all responsibility to possible consequences arising from the decision."). [redacted]

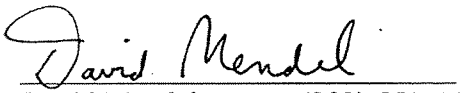
The Division has reasonable grounds for not previously adducing the Division's Additional Evidence. As noted, the Division is presenting this evidence only as an alternative response to Respondents' Motion; the Division's position has been, and remains, that the Commission need not consider any additional evidence to uphold the Initial Decision's conclusion that Respondents violated the securities laws and should be subject to remedies, including a practice bar. The Division has not yet had an appropriate occasion on which to submit the Division's Additional Evidence, all of which post-dates the hearing.

CONCLUSION

For the foregoing reasons, Respondents Motion for leave to adduce Respondents' Additional Evidence should be denied. If the Commission grants Respondents' Motion, the Commission also should grant the Division's Cross-Motion for leave to adduce the Division's Additional Evidence.

Dated: February 28, 2014

Respectfully submitted,



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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

CERTIFICATION OF COMPLIANCE WITH RULE 154(c)

I, David Mendel, certify that the foregoing Division of Enforcement's Opposition to Respondents' Motion For Leave To Adduce Additional Evidence, Or, In the Alternative, Cross-Motion For Leave To Adduce Other Additional Evidence complies with the word count limitation set forth in Rule 154(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.154(c), and that the foregoing brief contains 6,793 words, exclusive of pages containing the Table of Contents and Table of Authorities and attached Proposed Division Exhibits, as counted by the Word Count feature of our Microsoft Word word-processing program used to prepare the brief.

David Mendel

David Mendel

ENF EXS. 359-368

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ENF EX. 369

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September 30, 2013

By Email and First Class Mail

David Mendel
Assistant Chief Litigation Counsel
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Washington, DC 20549-5971

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Re: In the Matter of Longtop Financial Technologies Limited HO-11698

[redacted]

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ENF EX.
369

With respect to the staff's second question, however, providing a list identifying the

[redacted]

[redacted]

Very truly yours,

Michael D. Warden

cc: Miles N. Ruthberg

ENF EX. 370

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
100 F Street, N.E.
Washington, DC 20549-5971

DIVISION OF
ENFORCEMENT

David Mendel
Assistant Chief Litigation Counsel
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Facsimile: (202) 772-9282
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October 8, 2013

BY E-MAIL AND FIRST-CLASS MAIL

ENF EX.
370

Michael D. Warden
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

Re: *In the Matter of Longtop Financial Technologies Limited*, HO-11698

Dear Mr. Warden:

[redacted]

[redacted]

[redacted]

Sincerely yours,

David Mendel

David Mendel
Assistant Chief Litigation Counsel
Division of Enforcement

Cc: Miles N. Ruthberg

ENF EX. 371

Mendel, David S

From: Warden, Michael D. [redacted]
Sent: Tuesday, January 07, 2014 1:39 PM
To: Mendel, David S; Deitch, Lisa
Cc: [redacted]; Gordon, David A.
Subject: Longtop
Attachments: 2014-01-03 Certification on Longtop Production.pdf

David and Lisa-
As we discussed this morning, attached is DTTC's Certification as to Completeness of Document Production. Let us know if you have any questions.

Best, Mike

MICHAEL D. WARDEN
Partner

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ENF EX. 371

CERTIFICATION AS TO COMPLETENESS

OF DOCUMENT PRODUCTION

I, Charles Lip, Partner of Deloitte Touche Tohmatsu Certified Public Accountants LLP, hereby certify as follows:

1. On 8 April 2013 Deloitte Touche Tohmatsu CPA Ltd. ("DTTC") received an Investigation Notice (the "Notice") in Chinese from the China Securities Regulatory Commission (the "CSRC") seeking audit working papers and other documents relating to Longtop Financial Technologies Limited ("Longtop"). The Notice required DTTC to fulfil certain confidential screening obligations imposed by the CSRC and to provide copies of the requested documents within 20 business days.

2. DTTC performed a diligent search for documents, and produced to the CSRC all documents in its possession, custody, or control responsive to the Notice. DTTC's search for documents included diligent inquiry of and requested production from all of DTTC's partners and employees reasonably likely to have possession of documents responsive to the Notice. In addition, a diligent search has been made of other files in DTTC's possession, custody, or control that are reasonably likely to contain responsive documents, including but not limited to its electronic working paper archive system, general file areas, off-site document files, and e-mail files. The search included the files of Deloitte Touche Tohmatsu Certified Public Accountants LLP, to the same extent as if the files belonged to DTTC.

3. For completeness I note that (as the CSRC was informed at the time) DTTC's production did not include: (i) working papers of DTTC's Tax and Financial Advisory Services Groups save to the extent that their work product was incorporated into the archived audit work papers; (ii) eleven electronic working papers and 537 emails which could not be accessed either because of file damage or because they were originally passworded by the client and the password has now been lost; and (iii) identical duplicates, back-up copies and draft working papers the archived versions of which were produced to the CSRC.

4. In addition, pursuant to the confidential screening obligations imposed in the Notice, DTTC proposed and processed the redaction or removal of certain documents that contained information officially designated as state secret or the disclosure of which might directly or indirectly be harmful to China's national and/or public interest (collectively referred to as "State Secret Information"). DTTC was not allowed to remove or redact or propose the redaction or removal of documents on any other basis. DTTC provided its work product from the above exercise to the CSRC. DTTC has separately provided a log to the CSRC of documents which DTTC proposed should be removed or redacted in order to fulfil the confidential screening obligations (the "State Secrets Log").

5. I note that DTTC understood the language of the Notice to cover (amongst other things) communications between DTTC and third parties concerning Longtop, but not purely internal DTTC emails, and therefore DTTC's initial production to the CSRC did not include purely internal DTTC emails. The CSRC subsequently requested that DTTC

produce its internal emails, and DTTC has produced to the CSRC its non-privileged internal emails regarding Longtop up till 28 May 2011, the date of the Securities and Exchange Commission's ("SEC") subpoena to DTTC for Longtop documents. DTTC has separately produced to the CSRC a privilege log of those internal emails that it has withheld on the basis of attorney-client privilege and/or attorney work product (the "Privilege Log"). Some of the internal emails contained information relating to other DTTC clients and wholly unrelated to Longtop. DTTC has redacted or removed that information and has produced to the CSRC a log of the internal emails or attachments redacted or removed on that basis (the "Other Clients' Information Log"). DTTC has not removed or redacted or proposed the removal or redaction of internal emails on any basis other than those mentioned. DTTC provided its work product from the above exercise to the CSRC. DTTC has provided to the CSRC an updated State Secrets Log which separately includes DTTC's proposals concerning the internal emails requiring removal or redaction in order to fulfil the confidential screening obligations.

6. For completeness I note that DTTC's production of internal emails did not include (i) two emails and 12 attachments which could not be accessed either because of file damage or because they were originally passworded by the client and the password has now been lost; (ii) 1,696 duplicates of electronic working papers the archived versions of which were produced to the CSRC in the earlier production; and (iii) 58 email attachments which relate to other DTTC clients and are wholly unrelated to Longtop.

7. To the best of my knowledge and subject to the above paragraphs, all documents responsive to the Notice in the possession, custody, or control of DTTC (including Deloitte Touche Tohmatsu Certified Public Accountants LLP) and its partners and employees have been produced to the CSRC or identified in the Privilege Log, the State Secrets Log or the Other Clients' Information Log submitted to the CSRC, with the understanding that those documents and logs would be produced to the SEC. DTTC has a good faith basis to believe that each responsive document identified on the Privilege Log, State Secrets Log or Other Clients' Information Log provided to the CSRC is either covered by a bona fide privilege, recognized under applicable law, contains State Secret Information or consists wholly of information related to other clients and wholly unrelated to Longtop.

8. DTTC has neither sought nor obtained the approval of the CSRC for the giving of this certificate.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

DATED: 3rd January 2014

Charles Lip
Partner
Deloitte Touche Tohmatsu
Certified Public Accountants LLP

ENF EX. 372

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January 22, 2014

By Email and First Class Mail

David Mendel
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Lisa Deitch
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Re: In the Matter of Longtop Financial Technologies Limited HO-11698;
SEC v. Deloitte Touche Tohmatsu CPA Ltd., 1:11-mc-00512-GK-DAR

Dear Mr. Mendel and Ms. Deitch:

[redacted]

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[redacted]

[redacted]

[redacted]

Very truly yours,

Michael D. Warden

cc: Miles N. Ruthberg
Brian E. Kowalski
David A. Gordon
James J. Farrell

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China hits back at SEC over audit ban on US listings of Chinese companies

Mainland securities body warns that ruling 'ignored' cross-border co-operation efforts

Bloomberg in New York

PUBLISHED : Saturday, 25 January, 2014, 5:29am
UPDATED : Saturday, 25 January, 2014, 5:29am

Traders work on the floor of the New York Stock Exchange.

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China has warned the United States of "consequences" after the Securities and Exchange Commission (SEC) barred the four largest accounting firms from conducting audits of US-listed Chinese companies.

The decision to ban the Chinese affiliates of the accounting firms for six months "ignored" China's efforts and progress made on cross-border regulatory co-operation, the China Securities Regulatory Commission (CSRC) said. Chinese stocks traded in New York fell to a two-month low on Thursday as the ruling sparked concern that the companies will not be able to put together their 2013 earnings reports in time to meet US listing requirements.

"We hope the SEC will take into consideration the big picture of China-US regulatory co-operation, make the right judgment to resolve the situation properly," the CSRC, the nation's securities body, said on its microblog yesterday. "The SEC should bear all responsibility to possible consequences arising from the decision."

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373

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The ruling was made after the accounting firms' units on the mainland failed to comply with SEC orders for documents needed for a series of accounting fraud probes. The firms receiving six-month bans were Deloitte Touche Tohmatsu CPA, Ernst & Young Hua Ming, KPMG Huazhen and PricewaterhouseCoopers Zhong Tian CPAs.

The ruling, if finalised, could impact the 425 mainland companies - with a total market capitalisation of US$185 billion - traded in New York.

The sanctioned firms said they would appeal against the decision.

Qihoo 360 Technology, which uses Deloitte as its auditor, said the impact would be limited. Qihoo has scheduled its earnings date for around the end of February to early March. Its American depositary receipts plunged 3 per cent in New York trading on Thursday.

"The ruling will take months to be finalised and if the auditing firms appeal it could take years," Wu Jing, a director of investor relations for Qihoo, said yesterday. "We are closely monitoring the situation."

The SEC ruling would not affect 2013 annual reporting of US-listed Chinese stocks because the accounting firms may appeal and the ruling may take a long time to implement, China International Capital Corp said.

The iShares China Large-Cap ETF, the largest Chinese exchange-traded fund in the US, tumbled 4.5 per cent to US$35.02, the largest retreat since November 2011.

Stock declines triggered by the SEC ruling may be a good time to buy, especially internet shares such as Qihoo, Tencent and Sohu.com (http://Sohu.com) the CICC report said. Tencent dropped 4 per cent to HK$501 at the close in Hong Kong yesterday. The shares plunged 3.5 per cent in New York on Thursday.

Sohu.com (http://Sohu.com) which also uses PwC as its auditor, would adhere to its scheduled date for fourth-quarter earnings announcements, company spokeswoman Jiang Xin said.

The accounting firms have 21 days to file a so-called petition for review with the SEC before the decision by US Administrative Law Judge Cameron Elliot would become final and go into effect.

If the five-member commission were to uphold the judge's decision, the firms could then take it to the US Court of Appeals in Washington.

The SEC enforcement division was "gratified" by the decision, chief litigation counsel Matthew Solomon said.

This article appeared in the South China Morning Post print edition as China hits back at SEC over audit ban on US listings

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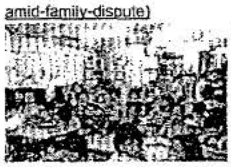

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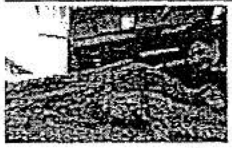

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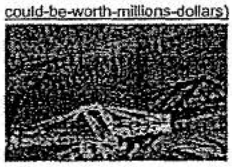

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Regulator 'regrets' US move on audits

Updated: 2014-01-25 03:02

By CAI XIAO (China Daily)

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The China Securities Regulatory Commission "regrets" that its United States counterpart, the Securities and Exchange Commission, "ignored" China's efforts to promote cooperation in cross-border supervision, Deng Ge, a CSRC spokesman, said on Friday.

The CSRC will pay close attention to the progress of the ruling on the Chinese units of the "Big Four" accounting firms, the spokesman said.

Cameron Elliot, an administrative law judge with the SEC, recommended on Wednesday that the Chinese affiliates of Deloitte Touche Tohmatsu Ltd, Ernst & Young, KPMG and PricewaterhouseCoopers LLP be barred from providing audits for US-traded companies for six months.

Those affiliates had rejected the US regulator's demand for access to audit documents.

"We regret that the ruling ignored China's efforts to strengthen cooperation with the US on cross-border supervision," said Deng.

The CSRC had shared the audit details of four Chinese companies listed abroad with overseas regulators, in a further move to crack down on illegal activities and protect the interests of investors, the CSRC said in early January.

In May, a memorandum of understanding was signed by the CSRC, China's Ministry of Finance, the audit regulator in the US and the US Public Company Accounting Oversight Board.

Elliot's ruling doesn't take effect immediately, as it must be approved by the SEC. The firms can also appeal, first to the commission itself, then to the US federal courts.

"We hope that the SEC would consider the overall situation of Sino-US cooperation on supervision and make a correct final judgment to deal with the case appropriately," said Deng.

Deng said the CSRC will closely monitor the progress of the ruling and negotiate with the SEC.

If the ruling stands, it could temporarily leave more than 100 Chinese companies that trade on US markets without an auditor.

It may also influence audits of US multinational companies that have large operations in China, because the Chinese affiliates of the "Big Four" often help their US affiliates complete those audits.

Third-board listings

There are now 621 companies on the market run by the National Equities Exchange and Quotations Co Ltd, as 266 new enterprises listed on Friday.

The so-called "third board" is a national equity exchange that serves "innovative, startups or growing micro-, small and medium-sized enterprises", an exchange statement said.

The newly listed companies are mostly small enterprises involved in advanced manufacturing, information technology, culture and biomedicine.

Deng said these listings won't drain funds from the A-share market.

"The companies on the third board are micro-, small and medium-sized ones and their financing amounts won't be large."

In 2013, 48 companies raised 776 million yuan ($128 million) on the board through share issues.

The State Council, China's cabinet, said in December that any micro-, small or medium-sized enterprise could list on the board.

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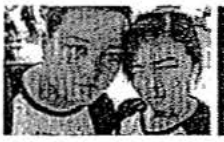

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ENF EX. 374

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 PRICWATERHOUSECOOPERS ZHONG TIAN CPAs LIMITED	:

DECLARATION OF LAURA JOSEPHS

I, Laura Josephs, declare:

1. I am over the age of eighteen years, and I have personal knowledge of the facts set forth in this declaration.

2. I am employed as an Assistant Director in the Division of Enforcement ("Division") of the U.S. Securities and Exchange Commission ("SEC" or "Commission") in Washington, D.C. I have held this position since 2004. In my capacity as an Assistant Director, I supervise and conduct investigations of potential violations of the U.S. securities laws. I have been employed by the Commission since 1990. I am a member in good standing of the bar of the District of Columbia.

ENF EX.
374

3. In my capacity as Assistant Director in the Division, I am familiar with the Division's investigation of possible securities law violations involving Deloitte Touche Tohmatsu Certified Public Accountants Ltd. ("DTTC") Client A in the Commission's Order Instituting Proceedings ("OIP") for this proceeding, because I was assigned to, and supervised, that investigation.

4. On June 7, 2010, the Commission's Office of International Affairs ("OIA"), on behalf of Division staff, sent to the China Securities Regulatory Commission ("CSRC") a letter requesting the CSRC's assistance pursuant to the International Organization of Securities Commissions ("IOSCO") Multilateral Memorandum of Understanding ("MMOU"). The letter requested that the CSRC obtain from DTTC, and transmit to the Commission, DTTC's "work papers relating to [DTTC]'s audit of [DTTC Client A]'s financial statements for 2008 and 2009." *See* Div. Ex. 192 ("MMOU Request").

5. On July 8, 2013, I provided hearing testimony regarding the staff's investigation of DTTC Client A, including the staff's attempts to obtain workpapers from DTTC Client A's auditor, DTTC.

6. I am informed that on or about November 6, 2013, pursuant to the IOSCO MMOU, OIA received from the CSRC documents that CSRC had obtained from DTTC (the "Production"). Division staff subsequently received the Production from OIA.

7. Division staff assigned to the DTTC Client A investigation have substantially reviewed the Production.

8. The Production appears to contain workpapers responsive to the MMOU Request. However, Division staff are unable to determine whether the Division has obtained all

requested documents in response to the MMOU Request, as the Production does not contain:

a. A description of the process by which DTTC searched for or collected the documents provided to the CSRC; or

b. A certification as to the completeness of the productions that DTTC made to the CSRC.

9. As I have testified in this proceeding, from 2011 to 2012 Division staff and the SEC attempted to obtain documents concerning DTTC Client A directly from DTTC. DTTC did not produce documents in response to these efforts, citing Chinese secrecy laws. *See* Div. Exs. 128, 132.

10. Based on testimony from DTTC witnesses during the July 2013 hearing, Division staff understand that certain documents responsive to the MMOU Request concerning DTTC Client A were intentionally withheld – either partially or in their entirety – from the Production because they were designated as state secrets under Chinese law. I am informed, however, that the Production does not indicate whether entire documents were withheld. I am also informed that the Division has not received from the CSRC or DTTC any logs identifying documents (or portions of documents) that were withheld in response to the MMOU Request, or the grounds for any such withholding.

11. On February 25, 2014, I participated on a conference call with U.S. counsel for DTTC, during which the Division summarized the points about the Production set forth above in Paragraphs 8 through 10. In addition, the Division asked for DTTC's cooperation in addressing these issues. In particular, the Division asked DTTC to provide: (1) withholding logs and/or privilege logs; and (2) a certification as to the completeness of

the Production. The Division also asked for DTTC's assistance in providing particular email attachments that appears to have been missing from the Production.

12. Attached hereto as Exhibit 1 is a true and correct copy of portions of a letter dated February 27, 2014, that I sent to DTTC's counsel regarding our February 25, 2014 conference call.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 2/27, 2014 in Washington, DC.

Laura Josephs

EXHIBIT 1
TO DECLARATION OF
LAURA JOSEPHS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
100 F Street, N.E.
Washington, DC 20549-5971

DIVISION OF
ENFORCEMENT

Laura B. Josephs
Assistant Director
Telephone: (202) 551-4968
Email: Josephsl@sec.gov

February 27, 2014

BY E-MAIL AND FIRST-CLASS MAIL

Michael D. Warden
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

Re: *In the Matter of DTTC Client A*, HO-11379

Dear Mr. Warden:

[redacted]

[redacted]

[Redacted]

Thank you for your assistance. Please let me know if you have any questions.

Sincerely yours,

Laura B. Josephs
Assistant Director
Division of Enforcement

Cc: Brian Kowalski

ENF EX. 375

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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

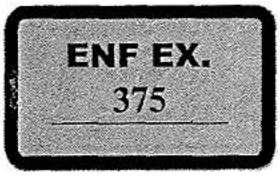
In the Matter of	:
BDO CHINA DAHUA CPA CO., LTD., ERNST & YOUNG HUA MING LLP, KPMG HUAZHEN (SPECIAL GENERAL PARTNERSHIP), DELOITTE TOUCHE TOHMATSU CERTIFIED PUBLIC ACOUNTANTS LTD., and PRICWATERHOUSECOOPERS ZHONG TIAN CPAs LIMITED	:

DECLARATION OF RHODA CHANG

I, Rhoda Chang, declare:

1. I am over the age of eighteen years, and I have personal knowledge of the facts set forth in this declaration.

2. I am employed as a Staff Accountant in the Division of Enforcement ("Division") of the U.S. Securities and Exchange Commission ("SEC" or "Commission") in the Los Angeles Regional Office ("LARO"). I have held this position since 2003. In my capacity as a Staff Accountant, I investigate potential violations of the U.S. securities laws. I have been employed by the Commission since 2003. I am a certified public accountant and have been licensed with the State of California since 1991.



3. In my capacity as a Staff Accountant in the Division, I am familiar with the Division's investigation of possible securities law violations involving Client G in the Commission's Order Instituting Proceedings ("OIP") for this proceeding, because I was assigned to, and assisted in, that investigation.

4. On June 30, 2011, the Commission's Office of International Affairs ("OIA"), on behalf of Division staff, sent to the China Securities Regulatory Commission ("CSRC") a letter requesting the CSRC's assistance pursuant to the International Organization of Securities Commissions ("IOSCO") Multilateral Memorandum of Understanding ("MMOU"). The letter requested that the CSRC obtain from Deloitte Touche Tohmatsu Certified Public Accountants Ltd. ("DTTC"), and transmit to the Commission, "workpapers and communications, including emails, relating to [DTTC]'s audit of [Client G]'s financial statements for 2010." *See* Div. Ex. 211 ("MMOU Request").

5. On July 10, 2013, I provided hearing testimony regarding the staff's investigation of Client G, including the staff's attempts to obtain workpapers from DTTC.

6. I am informed that on or about October 31, 2013, pursuant to the IOSCO MMOU, OIA received from the CSRC documents that CSRC had obtained from DTTC (the "Production"). Division staff subsequently received the Production from OIA.

7. Division staff assigned to the Client G investigation have substantially reviewed the Production.

8. The Production appears to contain workpapers responsive to the MMOU Request. However, the Production may not contain all of the communications sought by the MMOU Request. The MMOU Request asked for assistance in obtaining, among other documents, "communications, including emails, relating to [DTTC]'s audit" of Client G.

The Production does not contain any documents that consist solely of emails among DTTC personnel ("internal-only emails").

9. The Production does not contain a single index summarizing the contents of the entire Production or a transmittal letter. The Production does contain indices that appear to have been located at the front of various audit binders or files.

10. Aside from the issues described above in Paragraphs 8 and 9, Division staff are unable to determine whether the Division has obtained all requested documents in response to the MMOU Request, as the Production does not contain:

    a. A description of the process by which DTTC searched for or collected the documents provided to the CSRC; or

    b. A certification as to the completeness of the productions that DTTC made to the CSRC.

11. As I have testified in this proceeding, from 2010 to 2012, Division staff and the SEC attempted to obtain documents concerning Client G directly from DTTC. DTTC did not produce any documents in response to these efforts, citing Chinese secrecy laws, among other purported obstacles. *See* Div. Exs. 94, 97.

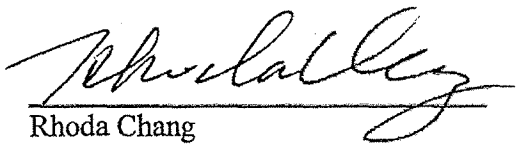
12. Division staff do not know whether any documents responsive to the MMOU Request concerning Client G were intentionally withheld from the Production because they were designated as state secrets under Chinese law, or pursuant to a claim of privilege under U.S. law. The Production does not indicate whether any such withholding occurred. In addition, the Division has not received from the CSRC or DTTC any logs identifying documents that were withheld in response to the MMOU Request, or the grounds for any such withholding.

13. On February 25, 2014, I participated on a conference call with U.S. counsel for DTTC, during which the Division summarized the points about the Production set forth above in Paragraphs 8 through 12. The Division asked for DTTC's cooperation in addressing these concerns. In particular, the Division asked DTTC to provide: (1) any indices for the Production that DTTC already had provided the CSRC, or, alternatively, one or more other indices summarizing the entire Production; (2) all of DTTC's communications relating to its audit of Client G, including specifically internal-only emails, that were not included in the Production; (3) withholding logs and/or privilege logs; and (4) a certification as to the completeness of the Production.

14. Attached hereto as Exhibit 1 is a true and correct copy of a letter dated February 27, 2014, that I sent to DTTC's counsel regarding our February 25, 2014 conference call.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 27, 2014 in Los Angeles, California.



Rhoda Chang

EXHIBIT 1
TO DECLARATION OF
RHODA CHANG

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
LOS ANGELES REGIONAL OFFICE
11TH FLOOR
5670 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90036-3648

DIRECT DIAL: (323) 965-2616
FAX NUMBER: (323) 965-3812

February 27, 2014

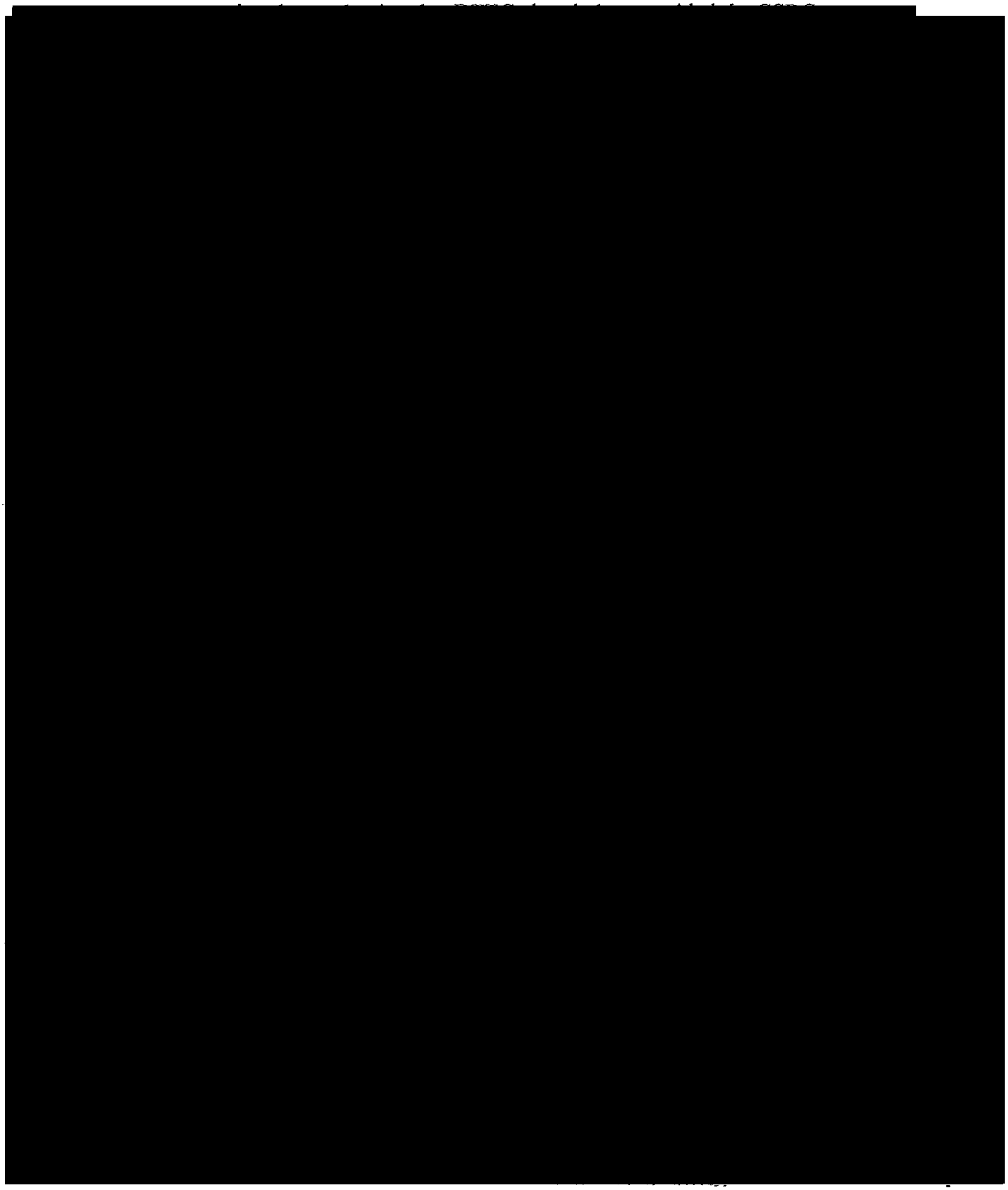
BY E-MAIL AND FIRST-CLASS MAIL

Michael D. Warden
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

Re: *In the Matter of DTTC Client G*, LA-3903

Dear Mr. Warden:

[redacted]



Thank you for your assistance. Please let me know if you have any questions.

Sincerely yours,

Rhoda Chang
Staff Accountant
Division of Enforcement

Cc: Brian Kowalski