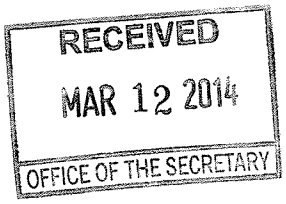
ADMINISTRATIVE PROCEEDING
FILE NOS. 3-14872, 3-15116

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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 Accountants Ltd.;
PricewaterhouseCoopers Zhong Tian CPAs Limited

Respondents.



RESPONDENTS' REPLY IN SUPPORT OF MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE PURSUANT TO COMMISSION RULE OF PRACTICE 452

Date: March 11, 2014

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The Division acknowledges that the China Securities Regulatory Commission ("CSRC") has delivered to the SEC and PCAOB no fewer than three sets of workpapers at issue in this proceeding.[1] ENF Opp. at 2. These productions represent the entirety of the workpapers pertaining to Respondent DTTC, and all of the workpapers that the SEC requested from the CSRC prior to the start of the hearing below. Respondents also understand that the CSRC recently delivered EYHM's Client B workpapers to the CSRC. And all of the remaining documents [redacted] are currently in the CSRC's possession and likely to be produced in the near term.[2]

This evidence cements the CSRC as an "alternate means" of production and discharges Respondents' production obligations pursuant to Section 106(f). And it confirms the unenforceability of the Section 106 requests at issue, vindicates Respondents' good-faith understanding that U.S. and Chinese regulators would reconcile their conflicting directives through a sovereign-to-sovereign solution, and completely undermines the Initial Decision's proposed remedy. Because Respondents' proposed evidence (the "Supplemental Evidence") informs the issues before the Commission, it should be admitted under Commission Rule of Practice 452. Indeed, *unless* the evidence is admitted, the record will not reflect the true state of affairs and Respondents will be denied the right to have their arguments fairly and adequately evaluated by the Commission. Any review by the Commission would thus proceed under the same fiction (*i.e.*, that the CSRC is not assisting the SEC in obtaining workpapers and that

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[1] Pursuant to the terms of the May 24, 2013 Memorandum of Understanding on Enforcement Cooperation between the PCAOB, the CSRC, and China's Ministry of Finance, the SEC is entitled to access copies of any documents that the CSRC has produced to the PCAOB.

[2] The CSRC is also processing two additional sets of workpapers at issue in this proceeding [redacted].

Respondents have not diligently made productions and facilitated the government-to-government exchange process) that served as the faulty basis of the Initial Decision.

Nothing in the Division's Opposition supports a different conclusion. The Division would have the Commission disregard this critical evidence on two erroneous grounds.[3] *First*, proceeding from the premise that the Initial Decision correctly construed Section 106(e)'s "willful refusal" standard to require nothing more than knowing failure, the Division contends that evidence of Respondents' good faith, of the unenforceability of the requests at issue, and of the availability of a proven alternate means of production is wholly irrelevant to an analysis of liability and remedies. In other words, under the Division's syllogistic reasoning, because it wins under its theory of the case regardless of whether the evidence is considered, the evidence is irrelevant and need not be considered. But that position necessarily requires the Commission—prior to any substantive briefing—to adopt the Initial Decision's reasoning in its entirety, and thereby decide prematurely the very issues at the heart of Respondents' appeal. The Commission need not—and should not—prejudge these issues. *Second*, notwithstanding that the very documents underlying this action are now flowing, the Division argues that because *some* sets of requested workpapers are still undergoing review, *all* evidence of the CSRC's progress is immaterial. That position, too, is obviously flawed: it exhorts the Commission to ignore important developments in the CSRC's production process simply because that process is still ongoing. Even still, the Division's view in no way undercuts the materiality of evidence that the CSRC has *completed* multiple productions to the SEC and PCAOB, one of which led to the dismissal of a subpoena enforcement action against DTTC in federal district court last month.

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[3] The Division does not dispute that Respondents' new evidence satisfies the "timeliness" prong of Rule 452. Nor could it, as the evidence that Respondents seek to offer arose after the hearing, and the ALJ declined to re-open the record based on his view that such "potentially exculpatory" evidence was more properly considered on appeal. Initial Decision at 110.

Indeed, everything in the Division's Opposition points to a process that is underway and working effectively. The Commission should not resolve this important case based on the same fiction that the Initial Decision reflects—*i.e.*, that the documents at issue have not been produced and that the CSRC is not rendering substantial assistance to the SEC. Instead, Respondents urge the Commission to consider the proffered evidence in its review of the Initial Decision.

A. The Division is Asking the Commission to Decide Prematurely the Merits of this Appeal in Order to Resolve Respondents' Threshold Request for Leave to Adduce New Evidence.

As an initial matter, the Division's Opposition asks the Commission, in effect, to summarily and prematurely decide the merits of this appeal without the benefit of substantive briefing and argument.[4] Specifically, the Division latches onto the Initial Decision's erroneous ruling that the *sole* question in this case is simply whether Respondents failed to produce documents directly to the Staff "after receiving notice" that the documents had been requested, "without regard to good faith." Initial Decision at 7; *see* ENF Opp. at 8-12. If so, the Division argues, then Respondents may be sanctioned—regardless of their good faith, regardless of the unenforceability of the SEC's requests, and regardless even of the fact that the SEC could (and did) obtain those same documents through other means. *See, e.g.*, ENF Opp. at 10 (arguing that, "*as the Initial Decision correctly concluded*, 'the motive' for a Respondents' decision not to comply with a Sarbanes-Oxley 106 request 'is irrelevant, so long as the Respondents knew of the request and made a choice not to comply with it" (emphasis added)). On that basis alone (and ignoring the Initial Decision's own characterization of this evidence as "potentially exculpatory"), the Division argues that any evidence bearing on those issues is not material. *Id.* at 2 (suggesting that Respondents' new evidence should be ignored because it "support[s] legal

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[4] Of course, the Division has not *in fact* moved for summary affirmance of the Initial Decision under Commission Rule of Practice 411(e), and the time to do so has now expired.

theories that the Initial Decision and other ALJ rulings . . . rejected").

But the Division puts the cart before the horse. Rule 452 decidedly does *not* ask whether new evidence is material *assuming the initial decision's findings and conclusions as correct.* That interpretation of Rule 452 would only beg the question at the crux of any appeal. Respondents here have asserted in their Petition for Review that the Initial Decision's cramped view of Section 106 disregards the statute's text, upends the careful balance that Congress struck in regulating foreign public accounting firms, and violates vital comity considerations. And the Supplemental Evidence is critical—if not dispositive—under the correct construction of Section 106. In any event, the Commission can resolve the exact legal import of the Supplemental Evidence in the course of Respondents' appeal. For now, it is indisputable that the evidence is at least "material" to the questions presented on appeal, and thus satisfies the standard set forth in Rule 452. *See* Black's Law Dictionary (9th ed. 2009) (defining "material evidence" as "having some logical connection with the consequential facts"); *see also, e.g.*, *United States v. Diaz*, 176 F.3d 52, 106 (2d Cir. 1999) (holding, in the context of a motion for a new trial, that "[n]ewly discovered evidence" is "material" if it is "relevant to the merits of the case"); *Impax Labs, Inc.*, Rel. No. 57864, at 9 n.17 (May 23, 2008) (finding the respondent's "additional evidence in the form of a declaration" to be "material" under Rule 452 because it was "relevant to" a disputed factual issue in the case, and thus granting its admission).[5]

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[5] In a footnote, the Division suggests that the "material" standard under Rule 452 should be "whether there is a 'reasonable probability' that the evidence's disclosure would have resulted in a different outcome." ENF Opp. at 8 n.7 (quoting *optionsXpress*, Rel. No. 34-70698, 2013 WL 5635987 (Oct. 16, 2013) (quoting *Kyles v. Whitley*, 514 U.S. 419, 434 (1995))). But that standard controls the entirely distinct issue of when the government must turn over "favorable but undisclosed evidence" under Rule 230(b)(2) and *Brady v. Maryland*, 373 U.S. 83 (1963). The Division's own authority demonstrates that that standard does *not* apply to Rule 452. *See optionsXpress*, 2013 WL 5635987, at *3 (finding, entirely apart from its later *Brady* analysis of different evidence, that the respondent's evidence was "material for purposes of Rule 452," while resolving to "defer assessment of [the evidence] until [] consideration of the petitions for review"). In any event, the Supplemental

B. The Supplemental Evidence is Material to Whether Respondents Violated Section 106, and the Division Has Not Shown Otherwise.

Properly viewed within the Rule 452 framework, Respondents' Supplemental Evidence is plainly "material" because it bears directly on several core issues in this case. The thrust of the Division's position throughout this proceeding has been its inability to obtain the requested audit workpapers. Now, Respondents wish to offer evidence that those workpapers have been—or will soon be—produced, thus extinguishing the *raison d'être* of this action. This evidence establishes that, in multiple cases, Respondents' obligation to produce workpapers has been satisfied under Section 106(f). Moreover, the evidence is dispositive as to the availability of an "alternate means" of production, and strongly corroborates a number of arguments that Respondents have raised (and that the Division disputed) throughout this proceeding. Such evidence is therefore patently "material" to the question of whether Respondents violated Section 106, and should not be ignored based on the Initial Decision's incorrect construction of that statutory provision.

As Respondents have maintained, the Supplemental Evidence confirms in at least three ways that Respondents did not violate Section 106:

First, the Supplemental Evidence unequivocally demonstrates that the "production obligations" concerning the DTTC Client A, Client G, and EYHM Client C workpapers have been satisfied. Respondents also understand that the CSRC very recently completed its production of the Client B workpapers, thus discharging EYHM's obligations as to those documents as well. Here, the Staff invoked Section 106(f) and pursued "alternate means" by

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Evidence goes to the core of this case, and would be "material" even under the erroneous standard that the Division proffers.

requesting the audit workpapers from the CSRC.[6] That process is complete in these instances, and thus the obligations under Section 106 concerning the requested materials have been satisfied. The remaining workpapers at issue here were either [redacted], or have not been requested at all. And the success of the Section 106(f) alternative further underscores why the Division cannot punish Respondents in connection with its requests for the remaining workpapers when it so recently invoked Section 106(f) (or has deliberately chosen not to do so).

The Division continues to press the view that Section 106(f) "merely gives the SEC *the option* of allowing a foreign firm to satisfy its duties under Section 106 by producing audit workpapers to foreign regulators." ENF Opp. at 9. But that issue is plainly irrelevant in the case of the sets of workpapers that actually have been produced by the CSRC, and which the Division currently has in its possession. The Division *did* pursue alternate means, and productions have been made. In any event, regardless of whether Section 106(f) *requires* the SEC to permit alternate means of production or just offers the "option" of doing so, once the SEC decides to pursue that course, Section 106(f) is triggered. The Division cannot arbitrarily punish firms for not producing workpapers directly when it is simultaneously seeking (and receiving) those workpapers under Section 106(f).

Second, Respondents' Supplemental Evidence decisively establishes the CSRC as a viable gateway for the SEC to obtain documents, rendering the requests unenforceable in the first place. The Division attempts to detract from the significance of recent developments by pointing

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[6] The Division's apparent position—which it asserts for the first time on appeal—that it did not invoke Section 106(f), [redacted], is puzzling. The Division fails to explain why Section 106(f) and the MMOU are mutually exclusive—that is, why the SEC could not rely upon the MMOU *in order to* secure an alternate means of production under Section 106(f). To the contrary, that seems to be exactly the sort of diplomatic arrangement that Section 106(f) contemplates.

out that the CSRC's efforts to respond to certain of the recent requests from the SEC are still in progress. Specifically, the Division contends that the CSRC has not yet completed its productions [redacted].[7] *See* ENF Opp. at 7, 17. But evidence that the CSRC's process is *ongoing* does not diminish the substantial import of clear evidence that the CSRC's process is *working, and already has worked with respect to all the workpapers requested prior to the hearing.*

The undisputed facts surrounding the production of DTTC's Longtop Financial Technologies Ltd. ("Longtop") audit workpapers are particularly illustrative here:

- In response to requests for assistance from the SEC, the CSRC developed—for the first time in its history—a procedure to produce workpapers to foreign regulators, which the State Council of China approved in February 2013.
- Pursuant to these procedures, on April 8, 2013, the CSRC delivered an investigative notice to DTTC seeking the Longtop workpapers and other documents, which DTTC produced to the CSRC on May 7, 2013.
- After applying its newly-devised screening process, the CSRC made a voluminous production of Longtop workpapers and related documents—comprising over 200,000 pages—to the SEC in July 2013. Respondents Ex. 637.
- Shortly thereafter, [redacted].
- In January 2014, the CSRC forwarded to the SEC additional materials regarding Longtop that the CSRC had obtained from DTTC, along with a certification from DTTC as to the completeness of its productions.
- Later that month, "[i]n light of the substantial volume of documents produced" and "the cooperation that the CSRC . . . provided," the SEC agreed to dismiss the Longtop action.

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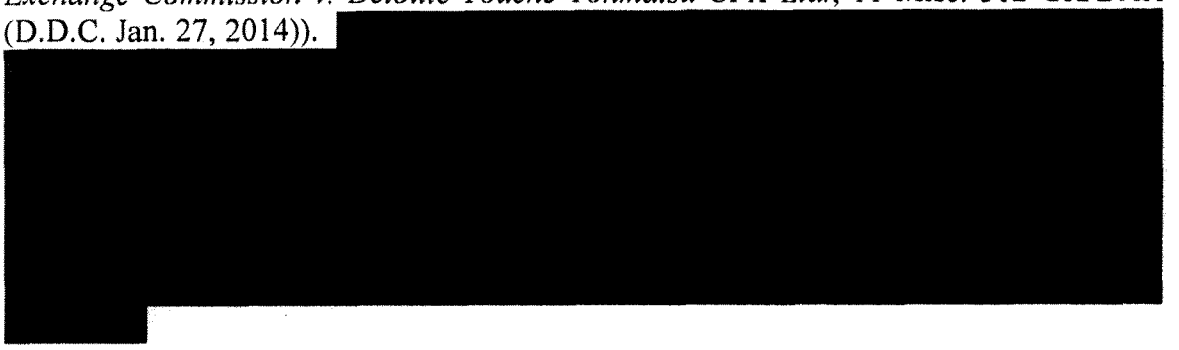
[7] As a factual matter, it appears that the true state of affairs has evolved even since the Division filed its Opposition, as yet another set of workpapers—relating to EYHM's Client B—have now been delivered to the SEC. *See, e.g.*, ENF Opp. at 7 (claiming "[t]he Division has not received any documents for . . . EYHM Client B").

Respondents Ex. 677 (Joint Motion to Dismiss Without Prejudice, *U.S. Securities and Exchange Commission v. Deloitte Touche Tohmatsu CPA Ltd.*, 11 Misc. 512 GK/DAR (D.D.C. Jan. 27, 2014)).



Longtop thus exemplifies the efficacy of the CSRC's new procedures, and has established a blueprint for continued cooperation between U.S. and Chinese regulators. Indeed, the Division recently contacted DTTC regarding DTTC Client A and Client G, and EYHM regarding Client C, to initiate the same sort of process regarding those workpapers that ultimately led to the dismissal of the Longtop action, including the provision of withholding logs and a certification of completeness. It is incongruous that the Division's Opposition points to these remaining steps as a reason to discount the CSRC's recent productions, while having successfully worked through them in Longtop and currently working constructively with Respondents to address them in other cases. Against that backdrop, the Division cannot possibly deny the CSRC's viability as an "alternate means," which renders the Section 106 requests unenforceable.

Third, the Supplemental Evidence powerfully underscores Respondents' good faith, thus precluding a finding of "willful refusal," properly construed. Indeed, the Supplemental Evidence refutes the notion that Respondents acted with "gall" and operated their practices "at risk." Initial Decision at 105. To the contrary, it vindicates Respondents' position that they never "chose" to "flout U.S. law in favor of Chinese law," ENF Post-Hearing Brief at 70, 72, or sought to "make deliberate use of [Chinese] nondisclosure law to evade . . . the strictures of American securities law," *id.* at 73, but instead reasonably expected that they could comply with both legal

regimes through a sovereign-to-sovereign solution. Respondents Post-Hearing Brief at 55-60. The Division does not even contest the impact these productions would have on the good faith analysis, but instead simply hides behind the Initial Decision's erroneous conclusion that good faith is irrelevant under Section 106. ENF Opp. at 10.

C. The Supplemental Evidence is Also Plainly Material to the Remedies Analysis.

In addition, evidence that the documents at issue are now flowing is highly relevant to any analysis of appropriate remedies. Even if Respondents are found to have "willfully refused to comply" with the Section 106 requests in the first instance, the Commission must exercise "reasoned decisionmaking" to impose purely remedial sanctions. *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374-75 (1998); *see also McCurdy v. SEC*, 396 F.3d 1258, 1264 (D.C. Cir. 2005) ("The Commission may impose sanctions for a remedial purpose, but not for punishment."). Specifically, the Commission may impose only those sanctions that are "necessary to protect the investing public and the Commission from the *future* impact on its processes of professional misconduct." *William R. Carter and Charles J. Johnson, Jr.*, Rel. No. 17597, 1981 WL 384414, at *6 (Feb. 28, 1981) (emphasis added). Further, the Commission "*must*" consider and give appropriate weight to relevant "mitigating factors." *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1064-65 (D.C. Cir. 2007) (emphasis added).

Here, the Initial Decision proposes a "total" six-month bar that threatens grave consequences not only for Respondents, but for issuers, their investors, and the global capital markets generally. And it does so simply because Respondents were unable to produce directly the documents that—as Respondents' Supplemental Evidence shows—the SEC is now receiving or has received from the CSRC. Such a severe penalty cannot be deemed "remedial" and reflective of all mitigating circumstances when the very documents in question are now in the

SEC's possession, and the SEC's processes are working just as Congress planned in enacting the "alternate means" provision of Section 106. The Division's claim that the remedial analysis is "in no way changed" by this new evidence therefore rings hollow. ENF Opp. at 13. Indeed, its statement that "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," *id.* at 3, completely ignores that firms in numerous countries around the globe are similarly unable to produce documents directly to the Division, but the Division has never determined that an action to "protect its processes" is necessary in those circumstances. That is because the Staff understands and accepts that even when foreign firms cannot make direct productions, the SEC's "processes" work properly so long as the Staff's cooperative relationship with its foreign counterpart results in production of the documents. In order to ensure a fair determination of any remedies, the record must reflect—and the Commission must consider—the crucial developments of the last six months.

D. The Timing of the CSRC's Productions Does Not Undermine Their Significance.

The Division contends that the CSRC's response—even if ultimately effective in producing the requested documents—has come too late to impact this proceeding. ENF Opp. at 11 ("The Additional Evidence . . . cannot demonstrate alternative means or unenforceability *before* the Commission instituted these proceedings."). Tellingly, the Division offers no legal citation in support of its position that post-OIP productions are irrelevant. In fact, the SEC cannot impose a sanction on DTTC for a "willful refusal" to comply with document requests at a time when the Division is in possession of the very documents at issue. *Cf. Office of Thrift Supervision Dept. of Treasury v. Dobbs*, 391 F.2d 956, 957 (D.C. Ct. App. 1991) ("Once the party has complied with the subpoena and the party issuing the subpoena has obtained the

testimony or documents it is seeking, there is no longer a live controversy between the parties."). A contrary approach would contravene the plain language and purpose of Section 106(f), be completely inconsistent with Congressional intent, and in any event would constitute impermissibly arbitrary and capricious agency action. Indeed, Section 106(f) does *not* impose any deadline by which "foreign counterparts of the Commission or the Board" must respond. Certainly an analysis of the appropriate remedy under Rule 102(e)—designed to ensure prospectively that the Commission's processes are protected—must take into account the actual state of affairs at the time of the decision.

Further, the Division's position is flatly inconsistent with its own prior statements and earlier position when it sought a stay in the DTTC Proceeding—an action that *post-dated* the issuance of the OIP in that matter. According to the Division, it sought the stay "because, at that time, the SEC was attempting to negotiate with . . . the CSRC, to develop a mechanism by which the SEC could obtain audit workpapers and other documents from audit firms based in China." Mot. to Consolidate at 3. The Division explained unequivocally that "[t]hose efforts, if successful, would have affected the appropriate resolution of the DTTC Proceeding." *Id.* Such a position rightfully recognizes that developments occurring after the OIP are highly relevant—and here, dispositive—to this proceeding.

The Division's position is also a tactical effort to diminish the now plainly discredited testimony of Division witness after Division witness that the Division desperately wanted the underlying documents but concluded that it would be fruitless to ask the CSRC for assistance in obtaining them. Not only did the Division conclude otherwise and make post-hearing requests for assistance, but those requests are being processed in all cases.

The requests to the CSRC for workpapers were unprecedented in China and required extensive coordination on the part of Chinese regulators. *See* [redacted] Respondents Ex. 631A, at 1 (*The first time that the CSRC provides working papers of a relevant company to foreign regulators*, China Securities Journal (July 9, 2013)) ("The CSRC official indicated that foreign regulators can make a request to the CSRC through cooperation channel and after the CSRC has produced the audit working papers, there is no reason for the U.S. to sue related Chinese accounting firms."). That the development of the CSRC's inaugural process took time should come as no surprise. The Division cannot credibly disclaim the importance of the CSRC's assistance—nor the materiality of evidence substantiating that assistance—simply because the CSRC's process took time or (as to requests issued less than six months ago) is still ongoing.

E. The Division Cannot Minimize the Importance of Prior Statements By SEC Officials and the ALJ.

Respondents' position that the Supplemental Evidence is "material" is fully consistent with a number of statements by SEC officials, which acknowledge that the production of documents by Chinese regulators would eliminate the basis for this proceeding. On July 10, 2013, for example, while the hearing below was pending, [redacted]

[redacted]. Similarly, after the issuance of the first OIP in this case, [redacted]. Just this year, [redacted].

The Division suggests that these (and similar) statements do not support supplementing the record on the grounds that "[t]he OIA staff did not, and could not, commit the Commission to discontinue these proceedings in the event the documents were produced." ENF Opp. at 14. Instead, the Division asserts, "[t]he decision whether to continue these proceedings resides with the Commission." *Id.* But that is entirely beside the point. Whatever the *equitable estoppel* effect of the Staff's representations, these statements reflect the recognition by high-level SEC officials that production of the requested documents nullifies any need for this action, and is *at least* a "material" piece of information. Apart from being unseemly, the Division's attempt to undercut the authority and expertise of its colleagues in OIA (as well as previous trial counsel for the Division) is certainly no basis for excluding the Supplemental Evidence.

Similarly, throughout the hearing, the ALJ emphasized that any production of documents by the CSRC—including during the pendency of this proceeding—would be "relevant" to

Respondents' defenses, and directed the Division to treat such evidence as "*Brady* material." *See, e.g.*, Tr. 2319-20, 2693-94. The Initial Decision itself described Respondents' Supplemental Evidence as "potentially exculpatory," and rejected its admission on the basis that it was a "better approach" for such evidence to be adduced and analyzed by the full Commission. Initial Decision at 110. The Division suggest this is a mere "hedging statement" by the ALJ. ENF Opp. at 15. But, particularly in context of the ALJ's statements at the hearing, it is quite clear that the Initial Decision recognized the importance of the Supplemental Evidence to the issues under dispute by the parties, even if the ALJ incorrectly adopted the Division's proffered legal standard.[8]

F. Respondents Agree that the Commission Should Also Consider the Division's Additional Evidence Relating to Recent Developments.

Respondents agree that the Commission should also consider the Division's Additional Evidence, as it clearly meets the requirements established by Rule 452. *See* ENF Opp. at 16. With their Motion to Adduce, Respondents have asked the Commission to hear their merits appeal with an understanding of the actual and existing facts. The Division's Additional Evidence further establishes the current state of affairs, and should therefore be admitted.

Notwithstanding the Division's attempt to depict its documents as showing a "tenuous" relationship between U.S. and Chinese regulators, *see id.* at 17, the documents speak for themselves—and demonstrate that there is a process in place that is working. *See, e.g.*, [redacted]

[8] As a *substantive* matter, therefore, the ALJ clearly (and correctly) determined that evidence of the CSRC's further productions is material. It is of no moment that, as a *procedural* matter, the ALJ erroneously declined to receive such evidence because it would be "impractical and unmanageable" to do so. Order Admitting Exhibits and Closing the Hearing Record at 2 (Sept. 18, 2013) (noting that "the hearing record cannot be kept open indefinitely"). The Division's reliance on this latter point is thus misplaced. In fact, contrary to the Division's current stance, the ALJ specifically advised that "[if] additional relevant events have transpired since the close of the hearing, or transpire in the future, then the appropriate remedy is for the parties to petition the Commission to adduce additional evidence if the matter is appealed." *Id.* In conformance with that admonition, Respondents now seek to offer dispositive evidence of post-hearing developments that bears squarely on the issues presented to the Commission on appeal.

[redacted]. Moreover, the Division's focus on purported flaws in recent productions and prognostication as to *future* cooperation is a thinly-veiled attempt to muddle the viability of the CSRC's established procedure. Tellingly, in discussing the documents it seeks to offer, the Division does not address the single dispositive factor under Rule 452—materiality—presumably because it is clearly established. Instead, the Division makes multiple unfounded arguments that it believes demonstrate the pitfalls of the current SEC-CSRC relationship. ENF Opp. at 17-20. But the granularity of the Division's complaints only underscores that enormous strides have been made.

Recent progress in the SEC's engagement with the CSRC has apparently forced the Division to abandon its earlier (and unsupported) position that it would be a "waste of time" to seek further assistance from the CSRC. *See, e.g.*, ENF Post-Hearing Reply, at 36-38 (claiming that the CSRC was not a viable gateway following the production of the Longtop workpapers and the assurance of productions related to DTTC Clients A and G). Now, in place of categorical claims regarding the CSRC's ability to provide documents to the SEC, the Division cites any potential problem it can foresee, no matter how trivial. *See, e.g.*, ENF Opp. at 19 (stressing that the Division (1) does not know how the firms collected the Client A and G documents and (2) currently does not have a log describing the documents that were withheld from those productions). First, the Division challenges the timing of future CSRC productions, claiming that receiving documents six months after a request to a foreign sovereign "is a long time." *Id.* at 17. Yet it offers neither context regarding the timing of requests to other foreign sovereigns nor any explanation as to why the purported six-month time frame is unworkable

here. Second, the Division forecasts that the CSRC's procedure could "create substantial risk" that a firm would misinterpret the scope of an SEC request or instructions from the CSRC. *Id.* at 18. But the Division fails to explain why the CSRC's process in particular would give rise to such a risk. Finally, the Division frets that "the Chinese government could decide to suspend cooperation in the future," *id.* at 20—conjecture so disconnected from the starting point of this process that it hardly warrants a response. Bald speculation aside, the undisputed fact is that the CSRC has produced and is producing all of the documents requested by the SEC to date—including most recently, as Respondents understand, workpapers related to EYHM's Client B.

Ultimately, Respondents agree with the Division that its Additional Evidence should be included in the record as it satisfies the standard set forth in Rule 452. The import of this evidence, however, is a matter for merits consideration.

CONCLUSION

The Division's Opposition attempts to downplay the significance of the "responsive productions" by the CSRC, ENF Opp. at 9, and erroneously suggests that Respondents' Supplemental Evidence would "*at best*" show that "the CSRC is presently providing *some* level of assistance to the SEC, by serving as a conduit for the requested documents," *id.* at 13 (emphasis added). But rhetorical gloss cannot overcome the clear import of the document productions that have now occurred, as evinced even by the very correspondence attached to the Division's Opposition, [redacted]. The evidence that Respondents seek to offer goes to the very essence of this proceeding. In order to ensure a fair and proper resolution of this matter, and because the Rule 452 standard is satisfied, Respondents respectfully submit that their motion should be granted.

Dated: March 11, 2014

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