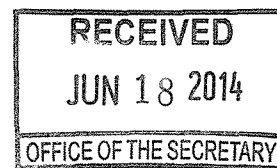


ADMINISTRATIVE PROCEEDING  
FILE NOS. 3-14872, 3-15116

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 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.; and  
PricewaterhouseCoopers Zhong Tian CPAs  
Limited



**REPLY IN SUPPORT OF MOTION OF  
ZHONGGUANCUN LISTED COMPANIES ASSOCIATION  
FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

Dated: June 18, 2014

The Zhongguancun Listed Companies Association (“ZLCA”), through its undersigned counsel, respectfully submits this Reply in Support of its motion to file an amicus *curiae* brief pursuant to Rule 210(d) of the Commission’s Rules of Practice, or, in the alternative, for leave to file a statement of its views pursuant to Rule 210(e) in the above-captioned matter. ZLCA has properly filed a motion for leave for amicus participation and complied with the Rule 210(d). Nothing in the opposition filed by the Commission’s Division of Enforcement (“Division”) leads to a different conclusion. To the contrary, denying ZLCA the ability to express views to the U.S. Securities and Exchange Commission (“Commission”) is contrary to public policy and deprives the Commission of an important perspective that has not been presented, which has consequences to the U.S. markets. Beyond the flawed reading and misapplication of the Rules of Practice, the Division’s Opposition rests on their position that ZLCA’s views will not assist the process. Critically, the Division fails to make the required articulation of the harm that would merit the Division’s extraordinary measure. In fact, there is no harm at all to allowing the proposed amicus, which would provide the Commission additional context and information to consider in judging the impact of the ALJ sanction to the American markets. While ZLCA does not support the interests of a specific party in this matter, it offers a perspective that is not offered by any of the parties involved – the perspective of the Chinese issuers and their shareholders.

## ARGUMENT

### **I. The Division Misstates the Applicable Rules of Practice.**

The Division is simply wrong that the Rules of Practice do not “allow” the ZLCA to participate as an amicus in this case. To reach that erroneous conclusion, the Division ignores ZLCA’s motion – filed pursuant to Rules 210(d) and(e) – and pretends that the motion was filed under Rule 210(a). The Division states that “ZLCA’s request for leave to file an amicus brief

addressing issues raised by the Initial Decision is a request “to become a party or a non-party participant on a limited basis.” It is not. ZLCA’s motion was plainly filed pursuant to Rule 210(d), which provides for “Amicus Participation.” The Petition very clearly states, “Pursuant to Rule 210(d) of the Commission’s Rules of Practice, 17 C.F.R. § 201.210(d), the Zhongguancun Listed Companies Association (“ZLCA”), through its undersigned counsel, respectfully submits this motion for leave to file an amicus curiae brief, or, in the alternative, for leave to file its amicus brief as a statement of its views pursuant to Rule 210(e), 17 C.F.R. § 201.210(e)...” (emphasis added).

To be clear, no part of the Petition relies on Rules 210(a)-(c). Yet, in an attempt to exclude ZLCA’s views, the Division is actually quoting Rule 210(c), which separately sets forth the procedures for “Leave to Participate on a Limited Basis.”<sup>1</sup> Indeed, Rule 210 is captioned as “Parties, Limited Participants and Amici Curiae,” clearly indicating that “limited participants” and “amici curiae” are different, and so treated under the rules. There is nothing in Rule 210(d) that would disallow the ZLCA from participating as an amicus in this case. Indeed, the rule contemplates precisely this type of participation.

## **II. ZLCA Has Complied With Rule 210(d) for Amicus Participation.**

Rule 210(d)(2) states the procedure for amicus participation and provides that a motion for leave “shall identify the interest of the movant and shall state the reasons why a brief of an amicus curiae is desirable.” The Division attempts to inflate the requirements under Rule 210(d) by stating what may “generally” be required by courts without reliance on the Commission’s record of allowing interested persons to express their view.

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<sup>1</sup> Similarly, the Division’s reliance on *Exmocare, Inc.*, Admin. Proc. File No. 3-15455, 2013 SEC LEXIS 2962, at \*3 (Sept. 27, 2013) (Murray, Chief ALJ) is inapposite. In *Exmocare, Inc.*, the Administrative Law Judge denied an Application for Leave to File the Amicus Brief “on Behalf of [Respondents]” because the applicant sought to be “a party or a non-party participant.” ZLCA does not seek to be a party or a limited party participant under Rule 210(a); rather, ZLCA submitted a petition under Rule 210(d) and, alternatively, under rule 210(e).

Rule 210(d), "Amicus Participation" provides at paragraph (1) that "An amicus brief may be filed only if: (i) a motion for leave to file the brief has been granted; (ii) the brief is accompanied by written consent of all parties; (iii) the brief is filed at the request of the Commission or the hearing officer; or (iv) the brief is presented by the United States or an officer or agency thereof, or by a State, Territory or Commonwealth." That ZLCA did not seek permission of the Division is inapposite. The means provided under Rule 210(d) are in the alternative. As explained in the Petition, relying on Rule 210(d)(1)(i), ZLCA does not support the interests of a specific party in this matter; rather, it offers the unique perspective - as neither the Division nor the audit firms involved speak from the perspective of issuers and their shareholders.<sup>2</sup>

As explained in the Petition, the Commission's decision would have a significant impact on the ZLCA, its members, and on the United States investors of many Chinese companies. Yet, the parties to the Commission's review of the Initial Decision do not adequately present the views of those issuers, like ZLCA members, and the investors in those companies. Attempts to expend resources to silence the views of many persons that will be affected is simply inexplicable and should not be allowed.

ZLCA seeks to provide from a perspective otherwise absent in these proceedings: ZLCA, founded autonomously by a number of listed companies in Zhongguancun (known as China's version of Silicon Valley), is a community officially registered with the Bureau of Civil Affairs of Beijing and approved by the Administrative Committee of Zhongguancun Science Park. The association was officially established on August 16th, 2012, and now has more than 200 members. Among other things, ZLCA mainly focuses in assisting government in delivering

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<sup>2</sup> The Petition contains clear statements that identify ZLCA as well as its interest and authority. The Division's attempts to rely on the Federal Rules of Civil Procedure requirements for an "amicus brief" to require more in a petition to file an amicus brief must not be allowed.

and implementing policies, providing professional policy consultation for its members, representing members in providing advices and suggestions to government, organizing discussions and exchanges for members on important topics, promoting recourse sharing, cooperation and win-win between members, and leading members to visit in groups and do overseas road show.

It is the valuable informed perspectives of associations like ZLCA that Rule 210(d) and Rule 210(e) contemplate; no party should be allowed to selectively prohibit the submission of these valuable insights.

ZLCA has petitioned to offer a highly knowledgeable view, informed by first-person experience of its members, that provides insights to inform these proceedings. Moreover, ZLCA offers these important views without support for any party to these proceedings. The Division's purported authority *KPMG Peat Marwick LLP*, Exchange Act Rel. 44050, 2001 WL 223378, 74 SEC Docket 1351 (Mar. 8, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002), is inapplicable. In *KPMG Peat Marwick LLP*, the Commission ruled in the context of a reconsideration motion and decided that an amicus brief was not necessary in that context. Moreover, the Commission highlighted the interest by the American Institute of Certified Public Accountants ("AICPA") to submit an amicus brief "together with a statement of its position supporting Peat Marwick." 2001 WL 223378 at \*7 n. 18. That is not the case here; ZLCA is not supporting the position of any of the parties. Moreover, the decision goes on to note that, "The AICPA tenders argument, which, for the most part, merely reiterates that of Peat Marwick and does not call on the expertise of the AICPA." *Id.* (emphasis added). The Division's reference to expert testimony that *refers to* possible consequences does not come close to the unique perspective offered by ZLCA. ZLCA has explicitly petitioned to submit a perspective not presented by the parties – specifically, the

highly knowledgeable views of issuers from Zhongguancun companies and its investors. This important perspective is an area of expertise of ZLCA.

**III. Denying ZLCA to Offer its Views is Contrary to Public Policy.**

**A. ZLCA's Perspective is Not Adequately Represented by the Parties.**

The Division's opposition to the simple expression of these important, and otherwise unexpressed views, confirms its inability to recognize a valid perspective by those that will inevitably be impacted by the outcome and its inability or unwillingness to present those important considerations to the Commission.

ZLCA focuses on providing policy insights for governments and relevant departments informed by its members, issuers from China's version of Silicon Valley. While parties before the Commission may refer to those interests, ZLCA and its members speak in the first person.

**B. ZLCA Does Not Support The Interests Of A Specific Party In This Matter.**

ZLCA has sought to file an amicus brief in order to offer its views on important securities law issues that directly impact its members and the investors in its members firms (which include United States persons). Including an independent view from the perspective of issuers and their investors – parties that may be referred to as “collateral” by the Division but who otherwise lack a voice – should instead be welcome. In seeking to maintain this objectivity, ZLCA transparently filed its Petition under Rule 210(d)(1)(i) – it did not speak to or collaborate with any party to the instant action.

**C. The Division Fails to Articulate the Harm of Permitting the Submission.**

The Division has used its resources to take the unusual and extraordinary step of opposing the submission of views by persons that will be affected by the outcome of this matter. Yet, the Division fails to articulate or even mention any conceivable harm from permitting ZLCA and its members to so inform the Commission on these important views. We cannot conceive of the harm they fear.

Instead, ignoring the value of the unique perspective offered by ZLCA, the Division dismisses the perspective as one that “will not assist the process.” If the Division is concerned that the views of those caught in the middle may influence the Commission’s decision, then it is more important to allow those views to be heard. The outcome of these important proceedings and the sanctions imposed should be informed by, among others, the views and perspectives of those Chinese companies and their Chinese and American investors that will be affected by the decision.

### CONCLUSION

For the foregoing reasons, the ZLCA respectfully requests that the Commission grant its motion for leave to file an amicus *curiae* brief, or, in the alternative, for leave to file its amicus brief as a statement of its views.

Dated: June 18, 2014

Respectfully submitted,



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