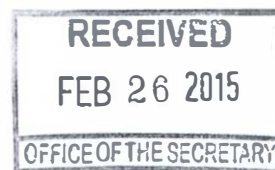


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING

File Nos. 3-14872, 3-15116

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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  
PRICWATERHOUSECOOPERS ZHONG  
TIAN CPAs LIMITED

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**DIVISION OF ENFORCEMENT'S MOTION TO WITHDRAW PETITION FOR  
REVIEW OF THE INITIAL DECISION AS TO DAHUA CPA, LTD.**

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February 26, 2015

The Division of Enforcement (“Division”) of the U.S. Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Rule 154 of the Commission’s Rules of Practice, 17 C.F.R. § 201.154, hereby respectfully submits this Motion to Withdraw Petition for Review of the Initial Decision As To Dahua CPA, Ltd. On January 22, 2014, the Administrative Law Judge issued an initial decision (“Initial Decision”) which, in relevant part, found that respondent Dahua CPA Ltd. (“Dahua”) willfully violated Section 106 of the Sarbanes-Oxley Act of 2002, as amended (“Sarbanes-Oxley”), and censured Dahua. The Division now seeks dismissal of all issues relating specifically to Dahua that have been raised on appeal from the Initial Decision by the Division and/or the Commission (“Dahua-Related Appeal Issues”). In particular, the Commission should dismiss the Division’s Petition for Review of the Initial Decision (“Division Petition”) to the extent it seeks review of the remedies imposed on Dahua. The Commission also should dismiss the review of sanctions, as it relates to Dahua, that the Commission undertook under Commission Rule 411(d). Accordingly, because Dahua did not file a petition for review, the Commission should reinstate and declare final the Initial Decision as to Dahua, and declare effective the order contained in the Initial Decision as to Dahua. The Division does not seek dismissal of any other aspect of the Division Petition, including, in particular, issues relating to remedies imposed on the other respondents in the proceeding. These issues currently should remain stayed under the Commission’s recent settlement with the other respondents.

The Dahua-Related Appeal Issues should be dismissed because, as explained further below, events following the Division Petition have substantially mitigated the Division’s concerns underlying that Petition as it relates to Dahua. In particular, because of the Commission’s recent settlement with the other respondents, it is not currently the case (as it was

at the time of the Division Petition) that the Initial Decision's absence of a practice bar against Dahua will risk undermining the remedies imposed on the other respondents. Furthermore, it appears that Dahua, at present, is performing little or no audit work for U.S. issuers, thereby minimizing the risk of future harm to Commission processes. Finally, if future cooperation regarding Dahua's workpapers becomes necessary, the Division believes that it can seek such cooperation from Dahua and the China Securities Regulatory Commission ("CSRC") following the procedures set forth in the recent settlement. These circumstances further weigh against imposition of an additional remedy against Dahua at the current time.

The Division has consulted with Dahua about this motion, and Dahua has agreed to stipulate to the Division's requested relief. As set forth in the Joint Stipulation of Division of Enforcement And Dahua CPA Ltd For Dismissal of Appeal As To Dahua ("Joint Stipulation"), which the Division is filing contemporaneously with this motion, the Division and Dahua stipulate that the Division Petition, as it relates to Dahua, should be withdrawn; that the Commission review of sanctions, as it relates to Dahua, should be dismissed; and that the Initial Decision, as it relates to Dahua, should be reinstated and declared effective. The Division Petition should not be withdrawn in any other respect.

## **BACKGROUND**

### **A. The OIP and Initial Decision**

The Commission instituted this proceeding (the "Current Proceeding") under Rule 102(e) of the Commission's Rules of Practice against Dahua and the Big Four respondents ("Big Four Respondents" or "Big Four")<sup>1</sup> for willfully violating Section 106 of Sarbanes-Oxley by willfully

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<sup>1</sup> The Big Four Respondents are Deloitte Touche Tohmatsu Certified Public Accountants Ltd., Ernst & Young Hua Ming LLP, KPMG Huazhen (Special General Partnership), and PricewaterhouseCoopers Zhong Tian CPAs Limited Company.

refusing to comply with requests for audit workpapers and related documents. Specifically as to Dahua, the December 3, 2012 Order Instituting Proceeding (“December 2012 OIP”) alleged that Dahua willfully refused to comply with the Commission’s February 1, 2012 request for workpapers and related documents that Dahua created in the course of performing audit work for “Dahua Client A.” The December 2012 OIP and the earlier, May 9, 2012 OIP collectively alleged that the Big Four Respondents willfully refused to comply with nine other Section 106 requests. During the hearing and in post-hearing briefing before the ALJ, the Division urged that a three-part remedy be imposed on Dahua and the Big Four Respondents: (1) a censure; (2) a permanent bar on issuing audit reports filed with the Commission; and (3) a permanent bar on playing a 50% or greater role in the preparation or furnishing of an audit report filed with the Commission.<sup>2</sup>

In his Initial Decision, the ALJ found that all of the respondents had willfully violated Sarbanes-Oxley Section 106. *See* Initial Decision at 2, 97. The Initial Decision censured all of the respondents. *See id.* at 2. However, the Initial Decision imposed a “total six-month practice bar” on the Big Four Respondents without imposing a similar bar on Dahua. *See id.* at 109. Relying on the testimony of Dahua’s sole lay witness, the ALJ found that Dahua “formerly provided services to Chinese companies with securities listed in the U.S., but in response to this proceeding, it exited that market and terminated its relationships with such clients.” *Id.* at 5 (citing Tr. 2051 (Testimony of Ji Feng)); *see also id.* at 9. Based on these findings, the ALJ concluded, “I see no point to barring [Dahua] from a segment of the industry that it has already withdrawn from.” *Id.* at 109.

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<sup>2</sup> For details of the 50% Role Bar, see Division Petition at 4 n.3; *see also* Division Pre-Hearing Brief (6/24/13) at 64-65; Division Post-Hearing Reply (9/20/13) at 47 & n.32.

## **B. Petitions for Review**

On February 12, 2014, the Division filed a petition for review concerning aspects of the Initial Decision, including, among other issues, the ALJ's decision not to impose a practice bar on Dahua while at the same time imposing a practice bar on the Big Four. The Division contended that it was unclear from the hearing record that, in fact, Dahua had ceased providing audit services to all U.S. issuers. *See* Division Petition at 6-8 (discussing ambiguities and inconsistencies in testimony of the Dahua witness and respondents' expert). Thus, it was possible that the factual predicate for the ALJ's decision not to impose a practice bar on Dahua was untrue. And if in fact Dahua was still performing certain audit work for U.S. issuers – such as component audit work relied upon by other public accounting firms in issuing audit reports – the Initial Decision risked creating an anomaly in which Dahua would be permitted to perform the audit work that the Big Four were prohibited from performing, despite the ALJ's finding that Dahua had willfully violated Sarbanes-Oxley. *See id.* at 6-7. The better remedy under these circumstances was prophylactically to deny Dahua the privilege of appearing and practicing before the Commission on equal terms with the Big Four. *See id.* at 8.

Meanwhile, the Big Four Respondents filed a petition for review contesting the Initial Decision's findings that they were liable under Rule 102(e) and the scope of the sanction imposed on them. Dahua did not file any petition for review. On May 9, 2014, the Commission granted both the Division and the Big Four's petitions for review and, pursuant to Rule 411(d), ruled that it would determine what sanctions, if any, are appropriate in this matter. *See* Order Granting Leave To Adduce Additional Evidence And Granting The Petitions For Review, Exchange Act Release No. 72140, at 6. Also on May 9, 2014, the Commission denied the Division's motion to strike the notice of withdrawal that had been filed by Dahua's outside U.S.

counsel, DLA Piper, and allowed Dahua to appear *pro se* during the appeal. *See* Order Denying The Division’s Motion To Strike The Notice Of Withdrawal Of Appearance And Setting A Briefing Schedule, Exchange Act Release No. 72134, at 6-7 (“May 9, 2014 Dahua Order”).

The Commission thereafter extended the briefing schedule for the appeal several times in light of settlement discussions between the Division and the Big Four. The deadline for the Division’s opening brief as to remedies imposed on Dahua was most recently reset to February 26, 2015.

### C. Settlement Order

On February 6, 2015, the Commission issued an order accepting offers of settlement from the Big Four Respondents. *See* Order on the Basis of Offers of Settlement of Certain Respondents Implementing Settlement, Exchange Act Release No. 74217 (“Settlement Order”). In relevant part, the Settlement Order (1) censures the Big Four Respondents; and (2) stays the Current Proceeding as to the Big Four Respondents for a period of four years, subject to the firms’ performance of undertakings in response to future Section 106 requests and the Division’s satisfaction with future productions. *See* Settlement Order at 3-4, 20-21.<sup>3</sup> If the Division is dissatisfied with the productions it receives (or does not receive) in response to multiple future requests, the Commission may terminate the stay, resume the Current Proceeding, and consider, among other issues, whether to deny the Big Four Respondents the privilege of appearing and practicing before the Commission under Rule 102(e). *See id.* at 4, 26-27. The Commission also may impose a practice bar on an individual Big Four Respondent, if warranted, without restarting the Current Proceeding, following certain procedures in the Settlement Order. *See id.* at 3, 24-26 (provisions for “automatic bar” and/or a “summary proceeding”).

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<sup>3</sup> In addition, under the Settlement Order, each of the Big Four Respondents makes factual admissions about its underlying conduct and agrees to pay \$500,000.

Notwithstanding the potential future remedies that may be imposed under the Settlement Order, that order does not impose any immediate practice bar on the Big Four Respondents. If the Commission does not determine to restart the Current Proceeding within the four-year undertaking period, the Current Proceeding as to the Big Four Respondents will be deemed dismissed. Dahua is not a party to the Settlement Order, and the order does not stay the Current Proceeding as to Dahua.

### ARGUMENT

The Commission should dismiss all Dahua-Related Appeal Issues and reinstate the Initial Decision as to Dahua, because the circumstances motivating the Division's petition for review as to Dahua have changed and no longer merit an additional remedy against Dahua in the Current Proceeding.

*First*, the Division Petition, to the extent it addressed Dahua-Related Appeal Issues, sought to foreclose a possible anomalous result in which the Big Four Respondents would be barred from all audit work before the Commission for a period of six months, but Dahua could continue to perform such work (or, if it indeed had already stopped, could seek to resume such work) without competition from the Big Four. To the extent the Commission determined to uphold the complete six-month practice on the Big Four, the Division sought to "foreclose any possible opportunistic change of position by Dahua that would jeopardize Commission processes during the period of the bar." Division Petition at 8. The Settlement Order mitigates the Division's concern in this regard, however, because no Big Four Respondent is immediately subject to a practice bar under the Settlement Order. Rather, a practice bar will be imposed only in the event of one or more production failures (as specified in the Settlement Order) that might occur after the SEC sends additional, future requests to the Big Four Respondents. Under these

changed circumstances, the need for an additional remedy on Dahua to ensure that Commission processes are effectively protected by a practice bar imposed on the Big Four is significantly diminished.

*Second*, the Division currently does not have any information indicating that Dahua has performed audit work for U.S. issuers since the July 2013 hearing. The February 2014 Division Petition noted ambiguity in the hearing record as to whether Dahua, in fact, had completely ceased providing audit services to U.S. issuers. In particular, the Division was concerned that Dahua still might be performing, or intend to perform, audit work for U.S. issuers that Dahua did not consider “Chinese,” such as multinationals with operations in China. *See* Division Petition at 6. Dahua’s most recent annual filings with PCAOB, in 2014, do not show that Dahua has either issued an audit report or “played a substantial role in the preparation or furnishing of an audit report” since the hearing.<sup>4</sup> Accordingly, at least at the present time, the risk of future harm to Commission processes from Dahua’s U.S.-focused audit work is minimal compared to the risks presented by the ongoing, significant audit work performed by the Big Four Respondents.<sup>5</sup>

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<sup>4</sup> Dahua’s most recent PCAOB filing was on October 13, 2014. That filing was an amended annual Form 2 report for the period ending March 31, 2014, showing that Dahua’s only audit report for a U.S. issuer during this period was completed in April 2013, before the hearing. Dahua’s initial Form 2 for the same reporting period (filed in June 2014), indicated that Dahua had not issued any audit report or played a substantial role for any U.S. issuer during that period. *See* Dahua Amended Annual Report (Form 2/A) For Reporting Year 2014 (10/13/2014); Dahua Annual Report (Form 2) for Reporting Year 2014 (6/30/14), available at: <https://rasr.pcaobus.org/Firms/FirmSummaryPublic.aspx?FirmID=017AB41FBAA34179B093D6E6342A4A33>.

To “play a substantial role in the preparation or furnishing of an audit report” means “(1) to perform material services that a public accounting firm uses or relies on in issuing all or part of its audit report, or (2) to perform the majority of the audit procedures with respect to a subsidiary or component of any issuer, broker, or dealer, the assets or revenues of which constitute 20% or more of the consolidated assets or revenues of such issuer, broker, or dealer necessary for the principal auditor to issue an audit report.” PCAOB Rule 1001(p)(ii); *see also id.* Note 1 (defining “material services”).

<sup>5</sup> Given the significant volume of work that the Big Four continue to perform for U.S. issuers, the Settlement Order appropriately requires undertakings for the Big Four and additional, potential remedies that may be imposed on those firms in the future, as discussed above. *See supra*, Background, Section C.



*Third*, the Settlement Order provides a framework for future cooperation which the Division believes can apply to Dahua, even though Dahua is not a party to the Settlement Order. If Dahua resumes audit work for U.S. issuers and the Division seeks the firm's workpapers for future investigations, the Division likely would seek the documents via the China Securities Regulatory Commission ("CSRC") following procedures similar to those in the Settlement Order. *See* Settlement Order, Section III.J.2, at 21-22 (setting forth procedure for parallel document requests to a firm under Section 106 and to the CSRC under international sharing mechanisms). The Division's expectation in this regard is informed, in part, by its receipt of a production of Dahua's audit workpapers for Dahua Client A in May 2014, from the CSRC. This instance of cooperation from Dahua and the CSRC, together with prospects for future cooperation from the CSRC, also weigh against the seeking of an additional remedy for Dahua at the current time.<sup>6</sup> If future requested cooperation with respect to Dahua is not forthcoming, the Commission can consider seeking appropriate relief, including through a new proceeding against Dahua under Rule 102(e), as necessary.

Because the Commission should dismiss the Dahua-Related Appeal Issues and Dahua did not file a petition for review, the Commission also should reinstate the Initial Decision as to Dahua and declare that decision final as to Dahua. As the Commission stated in its May 9, 2014 Dahua Order, "[b]ecause Dahua did not file a petition for review or a cross-petition for review, it is not entitled to challenge any of the findings or conclusions made by the law judge." *See* May

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Dahua, as noted, is not currently represented by U.S. defense counsel and did not participate in the settlement discussions that led to the Settlement Order's provisions for undertakings and additional, future remedies.

<sup>6</sup> The Settlement Order recognizes the SEC's substantial progress in obtaining audit workpapers and related documents from registered firms in China. The Division seeks to build upon this progress by using the Settlement Order's cooperative framework, including the making of requests for assistance to the CSRC, for future Section 106 requests to China-based registered firms, as appropriate. Dismissal of the Dahua-Related Appeal Issues is consistent with this objective.

9, 2014 Dahua Order at 6. Given the Division's requested withdrawal of the Division Petition as to Dahua and the fact that Dahua is foreclosed from challenging the Initial Decision, the appropriate resolution is to reinstate and to declare final the Initial Decision as to Dahua, and to declare effective the order contained in the Initial Decision as to Dahua. Moreover, as noted, Dahua has stipulated to this result. *See Chris Woessner*, Release No. 2164, 2003 WL 22015406 (Aug. 26, 2003) (reinstating and declaring final the ALJ's initial decision, and declaring effective the order contained in the initial decision, after Division and respondents jointly requested that their respective petitions for review be withdrawn and jointly stipulated to reinstatement of the initial decision); *Guy S. Amico*, Release No. 34-62565, 2010 WL 7765363 (Jul. 23, 2010) (granting respondents' motion to withdraw petition for review and dismissing the Commission's own review of sanctions, after parties had completed appeals briefing but before oral argument had been heard, and reinstating the ALJ's initial decision sanctioning respondents).

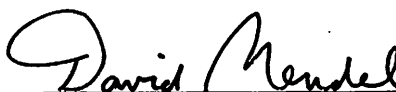
It bears noting that a portion of the Division Petition took exception to the Initial Decision's conclusions and findings that the Big Four Respondents should not be denied for a period longer than six months the privilege of practicing or appearing before the Commission, and that the Commission may not have authority to impose only a partial practice bar (of any duration) on the respondents. *See* Division Petition at 1, 9. The Division does not seek to withdraw this portion of the Division Petition. Rather, this portion of the Division Petition should remain stayed under the Settlement Order. *See* Settlement Order, Section III.I, Paragraph 106(a) ("The stay applies . . . to the Division's petition for review of the Initial Decision's handling of remedies as to the Settling Respondents . . .").

## CONCLUSION

For the foregoing reasons, the Commission should dismiss the Division Petition as it relates to Dahua; should dismiss the Commission's own review of sanctions as it relates to Dahua; should reinstate and declare final the Initial Decision as to Dahua; and should declare effective the order contained in the Initial Decision as to Dahua. The remainder of the Division Petition and the Commission's review of sanctions should remain stayed under the Settlement Order.

Dated: February 26, 2015

Respectfully submitted,



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