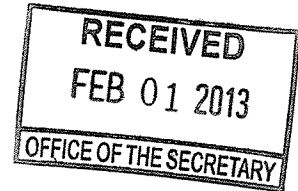


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15116

In the Matter of

BDO China Dahua CPA Co., Ltd.;
Ernst & Young Hua Ming LLP;
KPMG Huazhen (Special General Partnership);
Deloitte Touche Thomatsu Certified
Public Accountants Ltd.;
PricewaterhouseCoopers Thong Tian
CPAs Limited

Respondents

**RESPONDENT BDO CHINA DAHUA CPA CO., LTD'S MOTION FOR SUMMARY
DISPOSITION ON THRESHOLD ISSUES AND MEMORANDUM IN SUPPORT**

Pursuant to the Hearing Officer's January 9, 2013 Order Following Prehearing Conference, Respondent BDO China Dahua CPA Co., Ltd. ("BDO Dahua") hereby respectfully moves for summary disposition and dismissal of the Securities and Exchange Commission's Order Instituting Proceedings ("OIP") Pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice.¹

¹ This motion relates only to the threshold issues discussed during the January 9, 2013, hearing in this matter. In the event that this motion is denied, BDO reserves the right to make a further motion based on the affirmative defenses contained in its answer to the OIP.

I.
PRELIMINARY STATEMENT

BDO Dahua is caught between the competing interests and regulations of the United States and China. As a Chinese accounting firm, BDO Dahua is prohibited by Chinese law from producing its audit workpapers directly to the Securities and Exchange Commission (“Commission”). Chinese law requires instead that, upon a proper request from a foreign authority, BDO Dahua must notify Chinese regulators of the request and those Chinese government authorities alone will determine whether the documents can and will be produced in accordance with Chinese law.

The Commission, aware of these legal restrictions, sent BDO Dahua a request for audit workpapers pursuant to Section 106 of the Sarbanes-Oxley Act of 2002 (“SOX 106”) after first seeking the documents through a voluntary request. Although BDO Dahua promptly sought permission (for both the voluntary and SOX 106 requests) from the appropriate Chinese authorities to provide the documents to the Commission staff, those authorities would not provide permission. BDO Dahua advised the Commission staff of its inability to disobey Chinese law and that it could not, therefore, provide the documents. In an end-run around the statutory requirements requiring judicial enforcement of Section 106 requests, the SEC decided to initiate this proceeding seeking sanctions for BDO Dahua’s claimed “willful refusal” to provide the documents.² The Commission’s position is apparently that, rather than working out a bilateral approach with the China Securities Regulatory Commission (“CSRC”) and other Chinese

² The OIP’s allegations that BDO Dahua “willfully refused” to provide the documents sought by the Commission staff in its SOX 106 request and, therefore, violated the Exchange Act of 1934 is baseless. BDO Dahua has made every effort to provide the requested documents while complying with PRC law. As summarized in this memorandum, BDO China more than once attempted to persuade the Chinese regulators to allow it to respond to the Commission staff’s information request. Such conduct is the antithesis of “willful refusal.” In the event that this motion is denied, BDO China will address this and other deficiencies of the OIP.

authorities, it may seek sanctions in an administrative proceeding against BDO Dahua without a federal court first determining whether a SOX 106 request is enforceable when compliance would require the recipient to violate its home country laws.

These fundamental inequities need not be resolved at this time, however, because the Commission's administrative proceedings suffer from two fatal procedural flaws that require dismissal of the OIP.

First, and most fundamentally, the Commission has failed to serve the OIP on BDO Dahua. The Commission's attempt to serve BDO Dahua by delivering a copy of the OIP to BDO USA LLP ("BDO USA") – which is not authorized either by law or appointment to act as an agent for BDO Dahua under these circumstances – is ineffective under the Commission's rules for service of an OIP.

Second, and similarly fatal to the Commission's administrative proceedings, SOX 106 grants jurisdiction only to "the courts of the United States" to enforce Commission requests for a foreign accounting firm's audit workpapers. The Commission has made no effort to enforce its SOX 106 request for documents in a U.S. district court as required by federal law and may not evade a determination of enforceability of the SOX 106 request through a proceeding for sanctions.

As a result of these fundamental procedural flaws, the Commission's OIP should be dismissed.

II. **BACKGROUND**

A. BDO Dahua

BDO Dahua is one of the largest accounting firms in China. It employs approximately 2,680 people, including 870 accountants, in 16 offices throughout China. BDO Dahua provides a

range of services to its clients, including audit and tax services. It is a separate legal entity associated with other BDO “Member Firms” through common membership in BDO International Limited, a U.K. company limited by guarantee. BDO Dahua is licensed to perform work in China by China’s Ministry of Finance (“MOF”) and the CSRC, among other Chinese regulatory entities.³ Since September 2005, BDO Dahua has been registered with the Public Company Accounting Oversight Board (“PCAOB”) because certain of its audit clients are “issuers” as that term is defined by PCAOB Rule 1001(i)(ii).

Pursuant to SOX Section 106(d), BDO Dahua has designated BDO USA as its limited agent in the United States, authorized only to accept service of (1) any request for documents under SOX 106, or (2) other papers in any action brought in federal court to enforce a SOX 106 request. 15 U.S.C. § 7216(f).

BDO Dahua audited Client A’s financial statements for the years ended December 31, 2010 and December 31, 2011. It has also performed interim reviews of Client A’s quarterly financial statements beginning with the period ended September 30, 2010.

B. The Staff Requests for Client A Workpapers and BDO Dahua’s Efforts to Cooperate

On May 19, 2011, in connection with an ongoing investigation of Client A, the SEC Enforcement Division Staff (“Staff”) sent a request for the voluntary production of certain audit workpapers to BDO Dahua through BDO USA. The documents and audit workpapers relating to Client A were prepared in China and are stored in China. The Staff requested that BDO Dahua produce documents directly to the Commission.

³ The CSRC is the primary regulator of the Chinese securities market. It has jurisdiction over companies listed in China and those incorporated in China and listed overseas. The MOF is the primary regulator of Chinese accounting firms.

Upon receipt of the document request, in compliance with Chinese law, BDO Dahua contacted the CSRC and then the MOF to request permission to provide the Staff with the documents it sought.⁴ BDO Dahua was told that it could not provide the information to the Staff. BDO Dahua promptly advised the Staff of the MOF and CSRC position and requested that the Staff work with the MOF to obtain the requested documents.

On October 10, 2011, BDO Dahua (together with the other respondents in this proceeding, which were facing the same issue) was directed to attend a meeting with the Chief Accountant and other representatives of the CSRC. In that meeting, the CSRC asked BDO Dahua (and the other firms) to provide it with information about the work it had done for U.S. issuers and to advise the CSRC whether BDO Dahua had provided any audit workpapers or other client information to overseas regulators. Among other things, the CSRC advised BDO Dahua (and the other firms) that it must comply with Chinese laws governing the disclosure of sensitive information. The CSRC also advised that the proper way to respond to requests such as those from the Staff was to refer the request to Chinese regulators and for the foreign regulator to work with Chinese authorities to gain access to the workpapers. The CSRC representatives stated that those who provided workpapers to overseas regulators without the consent of the CSRC and MOF would face punishment for violating Chinese law.

On February 1, 2012, pursuant to SOX 106 and Section 929J of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Staff formally sought production of BDO Dahua's workpapers related to its audit work and interim reviews performed for Client A for the fiscal year ending December 31, 2010. The SOX 106 request was accompanied by the SEC's

⁴ Chinese laws impose strict controls on the disclosure of sensitive materials both domestically in China and abroad. Sanctions for violations of these laws can be severe, including suspension of the offending accounting firm from the accounting profession, dissolution of the firm, and/or imprisonment of any partners who cooperated in the violation.

Form 1662, "Supplemental Information Pursuant to a Commission Subpoena." In the section entitled "Effect of Not Supplying Information," Form 1662 states:

If you fail to comply with the subpoena, the Commission may seek a court order requiring you to do so. If such an order is obtained and you thereafter fail to supply the information, you may be subject to civil and/or criminal sanctions for contempt of court.

(emphasis added). Following receipt of the SOX 106 request, BDO Dahua again sought permission from Chinese regulators to provide the workpapers to the Staff. Again, BDO Dahua was denied permission to provide the information.

In its April 2, 2012, response to the Staff, BDO Dahua reiterated that it wanted to provide the information but could not send it directly to the Staff because "such production will violate Chinese law and expose BDO [Dahua] to serious civil and criminal liability." BDO Dahua advised the Staff that it had sought approval from the CSRC and the MOF, and each agency had declined to approve production of the documents to the SEC. BDO Dahua asked that the SEC not require it to produce documents in violation of Chinese laws which could lead to the imprisonment of those involved in the production.

In May 2012, BDO Dahua again asked the CSRC and MOF to approve production of the documents to the Staff. As of the date of this filing, the CSRC and MOF have not granted approval for the production of BDO Dahua's audit workpapers and related documents.

C. The OIP

On December 3, 2012, the SEC initiated these administrative proceedings pursuant to Rule 102(e) of the Commission's Rules of Practice against BDO Dahua and the other Respondent accounting firms, seeking sanctions based on an alleged willful refusal to produce audit workpapers related to Client A in response to the Staff's demands under SOX 106. The

SEC has not sought to enforce the SOX 106 audit workpaper request in federal court and does not seek to enforce the request in the OIP.

The Staff sent a copy of the OIP to BDO USA by certified mail attached to a cover letter addressed to BDO Dahua c/o BDO USA. BDO USA is the U.S. member firm in the network of BDO International Limited, a U.K. company limited by guarantee. BDO Dahua has not designated BDO USA (or anyone else) as its agent for service of a Commission OIP. The Staff has not made any efforts to serve the OIP on BDO Dahua in China.

On January 7, 2013, BDO Dahua answered the OIP asserting lack of subject matter and personal jurisdiction and insufficient service of process among other affirmative defenses.

III. ARGUMENT

A. The OIP Has Not Been Properly Served

BDO Dahua adopts and incorporates by reference the arguments set forth in each of the motions, supporting memoranda, exhibits and supporting declarations of Deloitte Touche Tohmatsu CPA LLP (“DTTC”) and each of the other Respondents.

B. The OIP Should Be Dismissed Because It Is Premised on SOX 106 Requests that Have Not Been Enforced by a U.S. District Court

BDO Dahua adopts and incorporates by reference the arguments set forth in each of the motions, supporting memoranda, exhibits and supporting declarations of DTTC and each of the other Respondents.

IV. CONCLUSION

As a result of the procedural flaws in this case – namely the Commission’s failure to serve the OIP on BDO Dahua and the Commission’s failure to enforce its SOX 106 request in

federal district court – the Commission’s OIP should be dismissed for insufficient service of process and lack of subject matter and personal jurisdiction.

Dated: February 1, 2013

Respectfully submitted,

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