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 Accountants Ltd.; PricewaterhouseCoopers Zhong Tian CPAs Limited, Respondents.	The Honorable Cameron Elliot, Administrative Law Judge

RESPONDENT PWC SHANGHAI'S MOTION FOR SUMMARY DISPOSITION AS TO CERTAIN THRESHOLD ISSUES AND MEMORANDUM IN SUPPORT

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Pursuant to Rule 250 of the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") Rules of Practice, 17 C.F.R. § 201.250(a)-(b), Respondent PricewaterhouseCoopers Zhong Tian CPAs Limited Company ("PwC Shanghai") respectfully moves for summary disposition as to certain threshold issues and dismissal of the December 3, 2012 Order Instituting Administrative Proceedings Pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice (the "OIP").

PRELIMINARY STATEMENT

The OIP asserts that PwC Shanghai's failure to produce to the SEC work papers and other materials relating to Clients H and I constitutes a violation of the securities laws actionable under Rule 102(e). The securities law violation allegedly underlying this Rule 102(e) proceeding is a purported "willful refusal" under Section 106(e) of the Sarbanes-Oxley Act, 15 U.S.C. § 7216(e), to produce audit work papers and related documents with respect to Clients H and I. PwC Shanghai fundamentally and strongly rejects the allegation that its failure to produce the materials requested by the SEC, which is the result of express directives from the Chinese government not to do so in accordance with Chinese law, constitutes a "willful refusal" under Section 106. According to its own representations, the SEC itself has asked the Chinese authorities to permit the Chinese audit firms to produce these types of materials in response to SEC requests, but has not as of yet obtained such permission. In these circumstances, it is thus doubly troubling that the SEC alleges that PwC Shanghai and the other Respondents' failure to produce such materials directly to the SEC constitutes a "willful refusal" warranting sanctions. To the extent the substantive merits are reached, PwC Shanghai will demonstrate as a matter of law and fact that the SEC's "willful refusal" allegation is baseless.

Now, however, is not the time to consider that issue. Indeed, that ultimate issue need not be reached at all because there is no dispute that PwC Shanghai has never even prepared or furnished any audit reports with respect to Clients H or I. That ends the matter as to PwC Shanghai because doing so is the express trigger for the applicability of Section 106. The SEC ignores the applicability trigger of Section 106(a) as it relates to PwC Shanghai, attempting instead to rely on Section 106(b). But, without satisfying the Section 106(a) predicate of preparing or furnishing an audit report for Clients H or I, the obligations allegedly imposed by Section 106(b) as it relates to Clients H and I are not triggered. The text and structure of Section 106 demonstrate that the specific requirements of Section 106(b) may not be imposed unless and until the requirements of Section 106(a) have been satisfied. The result is also compelled by the policy goal underlying Section 106: to ensure that U.S. investors can rely on publicly filed audit reports. Where, as here, there is no preparation or furnishing of an audit report, a foreign public accounting firm cannot be forced to produce, much less be sanctioned for an inability to produce, audit work papers. Uniquely for PwC Shanghai among all of the Respondents, this issue is fully dispositive of the OIP because with respect to the only two clients at issue for PwC Shanghai (Clients H and I), PwC Shanghai has never prepared or furnished an audit report.

Beyond that, even were Section 106(b) triggered as to PwC Shanghai, the OIP should also be dismissed as to PwC Shanghai for the same two independent reasons it should be dismissed in its entirety as to all of the other Respondents—namely, because (1) PwC Shanghai was not properly served with the OIP, and (2) the necessary predicate that the underlying Section 106 requests are enforceable must first be determined in federal court.

BACKGROUND

A. PwC Shanghai

PwC Shanghai is a professional firm located in the People's Republic of China (the "PRC") that provides assurance and advisory services. PwC Shanghai is licensed to perform work in China by China's Ministry of Finance (the "MOF") and the China Securities Regulatory Commission (the "CSRC"), among other PRC regulatory entities. Since 2004, PwC Shanghai has been registered with the Public Company Accounting Oversight Board (the "PCAOB") because certain of its audit clients are "issuers"—meaning they are required to file reports with the Commission or have filed registration statements for public offerings.[1] In the one-year period from April 2010 to March 2011, fewer than 30 audit reports issued by PwC Shanghai were for issuers.

B. The Client H and Client I Engagements

Client H owns and operates a commercial vehicle leasing business in China and, except for certain administrative functions, it does not have any operations outside of China. On April 13, 2010, Client H engaged PwC Shanghai to audit the company's financial statements for the fiscal year ending December 31, 2010. On September 16, 2011, PwC Shanghai was terminated as Client H's auditors. In a filing with the Commission, Client H disclosed that PwC Shanghai had advised Client H's audit committee that an independent investigation was warranted and that further investigation could impact the fairness or reliability of Client H's financial statements.[2] PwC Shanghai never prepared, issued, or furnished any audit report for Client H.

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[1] See PCAOB Rule 1001(i)(ii) ("The term 'issuer' means an issuer (as defined in Section 3 of the Exchange Act), the securities of which are registered under Section 12 of the Act, or that is required to file reports under Section 15(d) of the Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933, and that it has not withdrawn.").

[2] Counsel for PwC Shanghai is happy to provide the Hearing Officer with references to the relevant public filing on a confidential basis in order to maintain the confidentiality of the identity of Client H.

Client I is a manufacturer of automotive electric parts, suspension products, and engine components in China and operates in China through PRC subsidiaries. On December 6, 2010, Client I engaged PwC Shanghai to audit the company's financial statements for the fiscal year ending December 31, 2010. On December 6, 2011, PwC Shanghai resigned as Client I's auditors. In a filing with the Commission, Client I disclosed that PwC Shanghai had informed Client I that issues raised by an investigation had not been fully addressed to PwC Shanghai's satisfaction. PwC Shanghai never prepared, issued, or furnished any audit report for Client I.

All of PwC Shanghai's audit work for Client H and Client I was performed in China and all of the audit work papers and other audit-related materials relating to these engagements are located in China.

C. The Staff's Requests for Client H and Client I Audit-Related Information and PwC Shanghai's Consistent Efforts to Cooperate with the Staff's Requests

In or about June 2011, the Staff of the SEC's Division of Enforcement (the "Staff") requested PwC Shanghai's voluntary cooperation in connection with the Staff's investigation of Client H. PwC Shanghai and its outside counsel participated in a call with the Staff on June 28, 2011 in which counsel explained that PwC Shanghai was committed to cooperating and to answering the Staff's questions as best it could, consistent with Chinese secrecy, privacy, and confidentiality laws.

PwC Shanghai did not hear from the Staff again regarding Client H until September 27, 2011, when the Staff asked to speak with PwC Shanghai about the facts surrounding its termination as Client H's auditors. On October 3, 2011, PwC Shanghai described for the Staff the process that led to PwC Shanghai's dismissal as Client H's auditors.

In or about July 2011, the Staff requested PwC Shanghai's voluntary cooperation in connection with the Staff's investigation of Client I. PwC Shanghai and its outside counsel

participated in a series of calls with the Staff in July and August 2011 in an effort to assist the Staff and to cooperate by answering the Staff's questions.

On September 23, 2011, the Staff sent PwC Shanghai a letter that requested that PwC Shanghai provide, among other things, an "explanation and chronology of the verification" by PwC Shanghai "during its fiscal year 2010 audit of [Client I]" of Client I's cash balances, customers, accounts receivable, and sales, as well as "all relevant supporting documentation." PwC Shanghai undertook extensive work in extracting information in the four areas in which the Staff had expressed interest, and members of the engagement team devoted significant time to creating the detailed chronologies the Staff requested.

During the course of preparing these materials, on October 10, 2011, PwC Shanghai, along with the other Respondents to this proceeding, was directed to attend a meeting with senior officials from the CSRC and MOF. At the meeting, the senior officials from the CSRC and MOF told representatives from the audit firms that they were very concerned about the possibility of any audit firm providing any work papers or client-related information emanating out of work performed in mainland China directly to any foreign regulator. The officials made clear that the audit firms must not do so and that the only appropriate way under PRC law to respond to a request of a foreign regulator for such work papers and related materials was to refer the request to the CSRC and for the foreign regulator to work directly with the CSRC. The officials from the CSRC made clear that any deviation from this admonition would be a violation of Chinese law and an inappropriate circumvention of Chinese sovereignty, and would subject the violating firm to consequences under Chinese law.

PwC Shanghai had a separate private meeting on October 17, 2011 with senior officials of the CSRC to discuss the Staff's Client I letter. PwC Shanghai sought clarification as to

whether the chronologies that it had prepared in response to the Staff's request could be provided, as they themselves were prepared from information contained in the audit work papers. The message from the October 10, 2011 meeting—that the only appropriate way for a foreign regulator to obtain audit work papers and related documents was through the CSRC and not from the audit firms directly—was reiterated. PwC Shanghai provided the CSRC with the detailed chronologies it had prepared, together with all relevant underlying work papers, and asked the CSRC to provide, in writing, its direction and guidance relating to the Staff's letter.

On October 26, 2011, the CSRC issued a letter to audit firms in China. The letter repeated the CSRC's earlier admonitions that foreign regulators seeking audit work papers or client information emanating out of work performed in China should consult with the Chinese regulatory authorities, and that audit firms providing audit work papers or client information to foreign parties in violation of Chinese law would be subject to legal liability.

On November 3, 2011, PwC Shanghai received a response from the CSRC concerning the Staff's September 23, 2011 request for Client I materials. The CSRC reaffirmed its oral directives and its October 26, 2011 letter to PwC Shanghai and other audit firms.

PwC Shanghai received an additional letter from the Staff on November 15, 2011, requesting that PwC Shanghai provide three additional categories of documents relating to its audit of Client I. PwC Shanghai expended considerable effort collecting and collating the additional materials requested by the Staff, which comprise a considerable volume. In accordance with the directives of the CSRC, PwC Shanghai notified the CSRC of the Staff's additional request and asked for the CSRC's guidance. PwC Shanghai's notification letter to the CSRC also provided an index of the materials collected and collated in response to the Staff's

request. PwC Shanghai thus again stood ready, upon guidance from the CSRC, to deliver to the CSRC—or to whomever the CSRC directed—the documents requested by the Staff.

In a letter dated February 8, 2012, the Staff requested PwC Shanghai to produce "pursuant to Section 106" "all audit work papers and all other documents related to any audit work or interim reviews performed" for Client H for the fiscal year ending December 31, 2010 (the "Client H 106 Request"). The Client H 106 Request referenced SEC Form 1662, "Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena," which indicated that sanctions for non-compliance with the Request would not be imposed unless and until a federal court deemed the Request valid and enforceable. In a letter dated February 16, 2012, the Staff made a similar request "pursuant to Section 106" for documents related to Client I, which also included an SEC Form 1662 (the "Client I 106 Request").

Consistent with PRC law, after receiving the Client H and Client I 106 Requests, PwC Shanghai, along with several of the other Respondents to this proceeding, who received similar Section 106 requests, requested and participated in meetings with the MOF and the CSRC on February 24, 2012. At those meetings, the Chinese firms reported their receipt of the Section 106 requests and provided copies. During the meetings, the MOF and the CSRC reiterated that the audit firms were prohibited from providing work papers directly to the SEC, and that the SEC must work through the CSRC in order to obtain such materials.

D. The OIP

On December 3, 2012, the Commission issued the OIP against PwC Shanghai and four other Respondents. The OIP is brought pursuant to Rule 102(e) and seeks unspecified sanctions against PwC Shanghai and the other Respondents. The OIP does not seek to enforce the Staff's Section 106 requests to PwC Shanghai or the other Respondents. The OIP alleges that PwC

Shanghai "willfully refused" to provide the Client H and Client I documents to the Commission, and "[a]s such, [PwC Shanghai] ha[s] willfully violated Section 106 of Sarbanes-Oxley and therefore also the Exchange Act." OIP ¶¶ 29-31.

The OIP was sent via certified U.S. mail to "PricewaterhouseCoopers LLP c/o CT Corporation System." PricewaterhouseCoopers LLP is the U.S. member firm in the network of PricewaterhouseCoopers International Limited, a U.K. private company limited by guarantee. PwC Shanghai has not designated the U.S. member firm—or anyone else—as its agent in the United States for purposes of a Commission OIP under Rule 102(e). Nor has the Division served the OIP on PwC Shanghai in China in accordance with applicable Chinese law.

Subject to reserving all rights to contest service and to assert any and all applicable defenses, PwC Shanghai answered the OIP on January 7, 2013. Consistent with the schedule set at the January 9, 2013 prehearing conference, PwC Shanghai now moves for summary disposition as to certain threshold issues and dismissal of the OIP.

ARGUMENT

I. SECTION 106 DOES NOT APPLY IN THIS INSTANCE AND THEREFORE CANNOT FORM THE BASIS OF THE OIP

The OIP is based on the faulty premise that Section 106 of the Sarbanes-Oxley Act ("SOX"), 15 U.S.C. § 7216, applies to PwC Shanghai in this instance. It does not and therefore cannot form the basis of any administrative proceedings against PwC Shanghai.

A. The Requirements of Section 106(a) Have Not Been Satisfied

The OIP makes no mention whatsoever of Section 106(a), which sets forth the threshold requirements for applicability of the remainder of Section 106. Section 106(a) provides, in relevant part, that "[a]ny foreign public accounting firm that *prepares or furnishes an audit report* with respect to any issuer . . . shall be subject to this Act and the rules of the Board and

the Commission issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the laws of the United States" (emphasis supplied).[3] As explained above, PwC Shanghai did not prepare or furnish any audit report with respect to Client H or Client I. To the contrary, PwC Shanghai was terminated as Client H's auditors after advising Client H's audit committee that its audit scope needed to be expanded and that an independent investigation was warranted, and PwC Shanghai resigned as Client I's auditors because it did not believe that Client I had fully addressed issues raised by an investigation of the company. Accordingly, Section 106 does not apply to PwC Shanghai with respect to Client H or Client I.[4]

B. The Text and Structure of Section 106 Make Clear That Where Section 106(a) Is Not Satisfied, the Burdens of Section 106(b) May Not Be Imposed

The OIP presupposes that Section 106(b) applies to all of the Respondents for all of the clients listed in the OIP. Section 106(b) obliges certain foreign public accounting firms in certain circumstances to produce audit work papers to the SEC or the PCAOB. However, the

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[3] Section 2(a)(7) of SOX defines an "issuer" to mean "an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn." 15 U.S.C. § 7201(7) (2012); see also *supra* note 1.

[4] The fact that PwC Shanghai has prepared and furnished audit reports for other issuers does not render PwC Shanghai's work for Client H and Client I subject to SOX and to the rules of the SEC and the PCAOB. Any argument that Section 106(a) means that all of SOX, including the responsibilities of Section 106(b), is triggered as to *all* audit clients for all time as soon as a foreign firm prepares or furnishes an audit report as to *any* issuer is untenable. Such a reading would imply that foreign firms are subject to the work paper production requirements of Section 106(b) if they have issued an audit report with respect to *any* issuer at *any* time, whether or not the work papers being sought relate in any way to the report that was issued. On this theory, a registered foreign accounting firm that prepared a single audit report as to a single issuer once, decades ago, and has since audited only private foreign clients could be required to produce audit work papers relating to those clients, even where they have no connection to the United States. In effect, foreign public accounting firms could be required to disclose to the SEC a wealth of sensitive business information about entities that lack any U.S. nexus. Such a reading of the statute makes no sense and must therefore "be avoided." Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 575 (1982); see also Morrison v. Nat'l Australia Bank Ltd., 130 S. Ct. 2869, 2877-78 (2010) (endorsing the strong presumption against extraterritorial application of the securities laws in the absence of an express congressional directive clearly calling for extraterritorial reach).

text and structure of Section 106 demonstrate that these requirements may not be imposed unless and until the general requirements of Section 106(a) are satisfied. See Brown v. Gardner, 513 U.S. 115, 118 (1994) ("The meaning of statutory language, plain or not, depends on context."). Indeed, Section 106(a)'s gatekeeping function is announced in its title: "Applicability to certain foreign firms." See, e.g., Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc., 554 U.S. 33, 47 (2008) ("[S]tatutory titles and section headings are tools available for the resolution of a doubt about the meaning of a statute." (internal quotation marks omitted)). And it is confirmed by the organization of Section 106 itself, which moves from the general statement of applicability found in subsection (a) to the enumeration of specific obligations found in subsection (b). Where, as here, the general requirements of Section 106(a) are not satisfied, the specific requirements of the remainder of Section 106 may not be imposed.

Section 106's "placement and purpose in the statutory scheme" also confirm that satisfying Section 106(a) is a prerequisite to application of Section 106(b). Bailey v. United States, 516 U.S. 137, 145 (1995). Section 106 falls within the portion of SOX that created and empowered the PCAOB. As SOX makes clear, the PCAOB's oversight authority is triggered by the preparation of an *audit report*—not by the mere performance of audit work. See, e.g., Section 101(a) (noting that the purpose of the PCAOB is to "protect the interests of investors and further the public interest in the preparation of informative, accurate and independent *audit reports*" (emphasis supplied)); Section 101(c)(1) (tasking the PCAOB with "register[ing] public accounting firms that prepare *audit reports* for issuers" (emphasis supplied)); Section 101(c)(6) (tasking the PCAOB with enforcing compliance with "the securities laws relating to the preparation and issuance of *audit reports* and the obligations and liabilities of accountants with respect thereto" (emphasis supplied)); Section 102(a) (requiring the registration of any public

accounting firm that "prepare[s] or issue[s] or . . . participate[s] in the preparation or issuance of, any *audit report* with respect to any issuer" (emphasis supplied)); Section 105(b)(1) (authorizing the PCAOB to investigate, *inter alia*, any acts or practices that may violate the provisions of the securities laws "relating to the preparation and issuance of *audit reports* and the obligations and liabilities of accountants with respect thereto" (emphasis supplied)). The legislative history of SOX also demonstrates that Congress intended for it to apply to "accounting firms organized under the laws of countries other than the United States that issue *audit reports* for public companies subject to the U.S. securities laws." S. Rep. No. 107-205, at 11 (2002) (emphasis supplied). Because PwC Shanghai did not prepare or furnish an audit report with respect to Client H or Client I, Section 106(b) is inapplicable.

Untethering the obligations of Section 106(b) from Section 106(a)'s gatekeeping function would impose burdens on foreign public accounting firms without any jurisdictional predicate. See Griffin, 458 U.S. at 575 ("[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available."). For example, if satisfying Section 106(a) were not a prerequisite to imposition of Section 106(b), then a foreign public accounting firm could be required to produce audit work papers to the SEC and the PCAOB even where that firm is not registered with the PCAOB, the audit client has no connection to the United States, and the audit did not take place under U.S. GAAS. A reading of Section 106 that would permit such a reach is unsupportable. Id. at 576; see also Morrison, 130 S. Ct. at 2877-78 (the presumption against construing statutes to apply extraterritorially is strong and well recognized).

Consistent with what counsel for the Division of Enforcement (the "Division") indicated at the January 9 prehearing conference, we suspect the Division will argue that the Dodd-Frank

amendments to Section 106 expanded the SEC's ability to obtain work papers whenever audit work is conducted, regardless of whether that work results in the issuance of an audit report. That argument is misplaced. The Dodd-Frank amendments did nothing to change Section 106(a), and the applicability trigger post Dodd-Frank remains the same as it was before—namely, the preparation or furnishing of an audit report, which the Division agrees PwC Shanghai did not do for Client H or Client I. Before the amendments, if the applicability trigger of Section 106(a) were satisfied, Section 106(b) could be employed if the foreign public accounting firm issued an opinion or performed substantial work relied on by another firm that issued an audit opinion. Now Section 106(b) may also be invoked if the foreign firm performs audit work or interim review work—provided, however, that the "prepares or furnishes" applicability trigger of Section 106(a) is satisfied. As set forth above and below, that applicability trigger is consistent with the purposes of SOX and was *not* changed. Indeed, the legislative history of the Dodd-Frank amendments is actually consistent with the purposes we articulate and the SEC's own comments, as well as the other provisions of SOX cited above, which remain in full force and effect post Dodd-Frank. At most, the Division is left with an argument that the changes to Section 106(b) made by Dodd-Frank must mean that Section 106 was expanded. As far as it goes, that may well be the case, but if Congress intended to alter the applicability trigger of Section 106 to obviate the need for preparing or furnishing an audit report, it would have amended Section 106(a) to eliminate that requirement. It did not.

C. The Policy Underlying Section 106(b) Does Not Support Its Application Where Section 106(a) Is Not Satisfied

The purpose of Section 106(b)—as articulated time and time again by the SEC and the PCAOB—is to protect the ability of U.S. investors to rely on audit reports. In addition to being

contrary to the text and structure of Section 106, imposing the requirements of Section 106(b) where no such report has been issued in no way serves that policy goal.

In the press release announcing this very proceeding, the Director of the Division stated that the reason the SEC needs "access to work papers of foreign accounting firms" is to "protect investors from the dangers of accounting fraud," and the co-head of the SEC's Cross Border Working Group stated that "U.S. investors should be able to rely on the quality of audited financial statements." Press Release, SEC Charges China Affiliates of Big Four Accounting Firms with Violating U.S. Securities Laws in Refusing to Produce Documents (Dec. 3, 2012), available at http://www.sec.gov/news/press/2012/2012-249.htm. Since PwC Shanghai did not prepare or furnish any audit report with respect to Client H or Client I, investors cannot have relied on any such audit report. Thus, no purported "danger" to investors could possibly be cured by applying Section 106(b) to PwC Shanghai.

Similarly, in the earlier-instituted proceeding against Deloitte Touche Tohmatsu Certified Public Accountants Ltd. ("DTTC"), which has been consolidated with this proceeding,[5] the Division explained that the "core problem" it is seeking to remedy is "the fact that, as long as the SEC is unable to access DTTC's workpapers, investors are left potentially unprotected by the non-transparent audits that DTTC is performing on U.S. issuers." Div. Mem. of Law in Opp. to DTTC Mot. to Dismiss OIP at 7; see also id. at 2 ("[T]he Division is seeking to remedy the Respondent's willful violation of the Sarbanes-Oxley Act and protect U.S. investors who are left in the dark by DTTC's ongoing refusal to provide the SEC with any documentation in support of its audits."). The Division has further described the "remedial purpose and scope of [the] Rule 102(e)" proceeding against DTTC as follows:

[5] See Consolidation Order (Dec. 20, 2012).

> In describing a prior version of Rule 102(e), the Second Circuit acknowledged that it "represents an attempt by the SEC essentially to protect the integrity of its own processes. If incompetent or unethical accountants should be permitted to certify financial statements, the reliability of the disclosure process would be impaired." Touche Ross & Co. v. SEC, 609 F.2d 570, 581 (2d Cir. 1979). The rule empowers the Commission to ensure that the professionals "upon whom the Commission relies heavily in the performance of its statutory duties," id. at 582, are diligent and competent and follow the securities laws.

SEC Mem. Opposing Mot. to Extend Stay at 18-19, SEC v. Deloitte Touche Tohmatsu CPA Ltd., No. 11 Misc. 512 (D.D.C. filed Jan. 24, 2013). Again, since PwC Shanghai did not issue any audit reports or certify any financial statements for Client H or Client I, it defies logic to suggest that investors could be left "unprotected" or that the reliability of the disclosure process could be "impaired" by PwC Shanghai's inability to produce documents related to Client H and Client I to the SEC.

Numerous other recent statements of the SEC and the PCAOB likewise confirm that the purpose of Section 106(b) requests is to ensure the reliability of audit reports:

- "[F]oreign auditors in China and elsewhere have voluntarily registered with the PCAOB and have chosen to perform audit work for U.S.-listed issuers, knowing full well that U.S. investors would be relying on their *audit reports* and other work product." Speech by SEC Commissioner Luis Aguilar, Capital Formation from the Investor's Perspective (Dec. 3, 2012), available at http://www.sec.gov/news/speech/2012/spch120312laa.htm#_ednref19 (emphasis supplied).

- "Where the PCAOB is not able to conduct inspections, investors in U.S.-traded companies who rely on the *audit reports* of firms' [sic] in those countries are deprived of the potential benefits of PCAOB inspections of those firms." Speech by PCAOB Board Member Lewis H. Ferguson, Investor Protection through Audit Oversight (Sept. 21, 2012), available at http://pcaobus.org/News/Speech/Pages/09212012_FergusonCalState.aspx (emphasis supplied).

- "The lack of cooperation means that investors in U.S.-traded companies who rely on those firms' *audit reports* are deprived of the benefits of PCAOB inspections of the companies' auditors." Speech by PCAOB Board Member Jeanette M. Franzel, Keynote Address - PCAOB: Protecting Investors and the Public Interest (Sept. 13, 2012), available at http://pcaobus.org/News/Speech/Pages/09132012_FranzelALICLEConference.aspx (emphasis supplied).

- "American investors have the right to expect that foreign auditors that sign *audit opinions*, or that perform material audit services on which the signing auditor relies, meet PCAOB standards for independence, objectivity, quality control, and ethics." Speech by SEC Commissioner Luis Aguilar, Statement at Open Meeting to Approve PCAOB Budget (Jan. 11, 2012), available at http://www.sec.gov/news/speech/2012/spch011112laa.htm (emphasis supplied).

- "The question is, whether it is consistent with the goals of U.S. securities law and the protection of investors to allow firms that are beyond effective oversight to sign *audit reports* for U.S. public companies, or perform material services on which the signing audit firm relies." Id. (emphasis supplied).

- "Enhanced transparency into the composition of cross-border audits should help investors gain a better understanding of how an audit was conducted and make more informed decisions about how to use the *audit report*." Speech by PCAOB Chairman James R. Doty, Statement on Proposed Amendments to Improve Transparency Through Disclosure of Engagement Partner and Certain Other Participants in Audits (Oct. 11, 2011), available at http://pcaobus.org/News/Speech/Pages/10112011_DotyStatement.aspx (emphasis supplied).

Where, as here, no audit report has been issued and the requirements of Section 106(a) have thus not been satisfied, neither the text of Section 106 nor the policy underlying Section 106(b) support imposing the requirements of Section 106(b) on PwC Shanghai.

II. THE OIP MUST BE DISMISSED BECAUSE IT HAS NOT BEEN PROPERLY SERVED

PwC Shanghai adopts and incorporates by reference the arguments set forth in DTTC's and the other Respondents' motions for summary disposition and dismissal of the OIP.

III. THE OIP MUST BE DISMISSED BECAUSE IT IS PREMISED ON SECTION 106 REQUESTS THAT HAVE NOT BEEN ENFORCED IN FEDERAL COURT

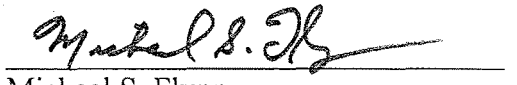
PwC Shanghai adopts and incorporates by reference the arguments set forth in DTTC's and the other Respondents' motions for summary disposition and dismissal of the OIP.

CONCLUSION

Based on the foregoing, the Hearing Officer should dismiss the OIP.

Dated: New York, New York
February 1, 2013

Respectfully submitted,



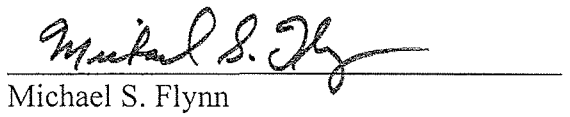
Michael S. Flynn
Gina Caruso
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
(212) 450-4000

Attorneys for PricewaterhouseCoopers Zhong Tian CPAs Limited Company

CERTIFICATE OF COMPLIANCE

I certify that Respondent PricewaterhouseCoopers Zhong Tian CPAs Limited Company's Motion for Summary Disposition and Memorandum in Support (the "Motion") complies with the type-volume limitations of SEC Rule of Practice 154(c) because it contains 5,129 words (as determined by the Microsoft Word 2010 word-processing system used to prepare the Motion), excluding those parts of the Motion exempted by Rule 154(c).

Dated: February 1, 2013



Michael S. Flynn
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017

Counsel for Respondent PricewaterhouseCoopers Zhong Tian CPAs Limited Company