



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	:	
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BDO CHINA DAHUA CPA CO., LTD.,	:	The Honorable Cameron Elliot,
ERNST & YOUNG HUA MING LLP,	:	Hearing Officer
KPMG HUAZHEN (SPECIAL GENERAL	:	
PARTNERSHIP),	:	
DELOITTE TOUCHE TOHMATSU CERTIFIED	:	
PUBLIC ACCOUNTANTS LTD., and	:	
PRICWATERHOUSECOOPERS ZHONG	:	
TIAN CPAs LIMITED	:	
_____	:	

**OPPOSITION OF THE OFFICE OF INTERNATIONAL AFFAIRS  
TO RESPONDENTS' REQUEST FOR ISSUANCE OF A SUBPOENA**

The Securities and Exchange Commission's Office of International Affairs ("OIA"), through the Office of the General Counsel ("OGC") of the Securities and Exchange Commission, respectfully opposes Respondents' request ("Subpoena Request") for issuance of the subpoena attached to their May 24, 2013 request as Exhibit 1 (the "Proposed Subpoena"). (The Proposed Subpoena is directed to the SEC's "Custodian of Records.") As the document requests appear to seek documents that would likely be held by OIA, OGC is responding on behalf of that office, reserving the right, as noted below, to file objections from OIA and from other divisions and/or offices if a subpoena issues. The Proposed Subpoena, broadly summarized, seeks documents related to the SEC's communications with the China Securities Regulatory Commission ("CSRC") and the Chinese government about various issues, with a particular focus on how the

SEC has sought assistance in connection with ongoing investigations of possible violations of the federal securities laws.

The Division of Enforcement has filed an opposition to the Subpoena Request that addresses, among other things, the lack of relevance of the documents sought. We agree with the Division that no subpoena should issue and that complying with the subpoena as proposed is likely to impose an undue burden on OIA and other offices. We file this separate opposition to highlight the need to protect communications between governments.

SEC officials must be able to engage in open communications with officials of other governments to discuss law enforcement investigations that affect more than one country and to discuss processes by which information can be shared. These deliberations are statutorily protected and should be non-discoverable if the SEC is to be able to rely on foreign regulators to gather information the SEC needs for its investigations.

Existing law makes clear the need to protect interactions among governments. Section 24(f) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. 78x(f)] specifically provides that “[t]he Commission shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by ... any foreign securities authority.” Section 24(f)(1).<sup>1</sup> Similarly, “[t]he Commission shall not be compelled to disclose privileged information obtained from any foreign securities authority ... if the authority has in good faith determined and represented to the Commission that the information is privileged.” Section 24(f)(2). Because the communications at issue concern ongoing investigations and deliberations about broader policy issues, they are likely protected by

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<sup>1</sup> See also Section 24(d) of the Exchange Act [15 U.S.C. 78x(d)], which provides that “the Commission shall not be compelled to disclose records obtained from a foreign securities authority if (1) the foreign securities authority has in good faith determined and represented to the commission that public disclosure of such records would violate the laws applicable to that foreign securities authority, and (2) the Commission obtains such records pursuant to . . . (B) a memorandum of understanding.”

the deliberative process and law enforcement privileges and by the attorney work product doctrine. In addition, much of the information would be shared pursuant to the International Organization of Securities Commissions (“IOSCO”) Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (“MMOU”). Paragraph 11(a) of that MMOU specifically provides, “Each Authority will keep confidential requests made under this Memorandum of Understanding, the contents of such requests, and any matters arising under this Memorandum of Understanding, including consultations between or among the Authorities, and unsolicited assistance.”

The objections we have presented here to the Subpoena Request are necessarily preliminary. As no subpoena has been issued, we focus here on why none should be issued, basing our arguments in part on initial, necessarily approximate assessments of the nature and scope of potentially responsive materials.

But if a subpoena is issued in the future, we reserve the right to raise additional, more-specific objections, including through filing of an application to quash or modify any subpoena under Commission Rule of Practice 232(e)(1). Rule of Practice 232(e)(1) provides that “[a]ny person to whom a subpoena is directed ... may, prior to the time specified therein for compliance, but in no event more than 15 days after the date of service of such subpoena, request that the subpoena be quashed or modified.” Rule of Practice 232(e)(2) provides that the hearing officer must quash or modify a subpoena if compliance with it “would be unreasonable, oppressive or unduly burdensome.”

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**CONCLUSION**


For the reasons set forth above, the Respondents' request for the issuance of the Proposed Subpoena should be denied.

Dated: May 28, 2013

Respectfully submitted,

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