

ADMINISTRATIVE PROCEEDING
File Nos. 3-14872, 3-15116

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
June 10, 2013

In the Matter of

BDO CHINA DAHUA CPA CO., LTD.,	:	
ERNST & YOUNG HUA MING LLP,	:	
KPMG HUAZHEN (SPECIAL GENERAL	:	ORDER ON JOINT MOTION
PARTNERSHIP),	:	TO AMEND HEARING AND
DELOITTE TOUCHE TOHMATSU CERTIFIED	:	PREHEARING SCHEDULES
PUBLIC ACCOUNTANTS LTD., and	:	
PRICEWATERHOUSECOOPERS ZHONG	:	
TIAN CPAs LIMITED	:	

The Securities and Exchange Commission (Commission) instituted these proceedings on May 9, 2012, and December 3, 2012, pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice. The two proceedings were consolidated on December 20, 2012, pursuant to Rule 201(a) of the Commission's Rules of Practice. The Orders Instituting Proceedings allege that Respondents willfully refused to provide the Commission with audit work papers and other documents relating to their audit or interim review work for certain clients, in violation of Section 106 of the Sarbanes-Oxley Act of 2002 and the Securities Exchange Act of 1934. The hearing is scheduled to begin on July 8, 2013, in Washington, D.C.

Following a telephonic prehearing conference on May 29, 2013, I issued an Order setting forth a prehearing schedule and directing the parties to file a motion if they objected to the prehearing schedule or otherwise sought to amend it. On June 7, 2013, the parties submitted a Joint Motion to Amend Hearing and Prehearing Schedules (Joint Motion), proposing certain extensions to the prehearing schedule and representing that the parties need these extensions to allow them sufficient time to retain experts, prepare and exchange expert disclosures and witness lists, and to facilitate Respondents' efforts to file a single, consolidated exhibit list. Joint Motion, pp. 3-5. The parties also seek to modify the schedule to allow for rebuttal expert disclosures and to set aside the week of July 29 through August 2, 2013, for expert testimony. Id., pp. 4-5.

The Joint Motion states that the parties are in agreement with respect to the aforementioned modifications, but that the Division of Enforcement (Division) disagrees with Respondents' proposal to allow the parties the option, for any percipient witness,¹ to submit

¹ The May 29, 2013, Order Following Second Prehearing Conference stated that expert disclosures should be compliant with Federal Rule of Civil Procedure 26, such that they can be

direct testimony in writing in lieu of live testimony, as long as the written testimony is provided forty-eight hours in advance of the scheduled testimony. *Id.*, p. 5. Respondents assert that providing the option of written direct testimony will promote clarity of the record and a more efficient hearing, given the potential challenges that could result from translating live witness testimony from Chinese witnesses into English. *Id.*, pp. 5-6. The Division disagrees with this approach and instead believes that the direct testimony of all percipient witnesses must be live testimony. *Id.*, p. 6.

The Commission's Rules of Practice state a strong preference for live testimony with limited exceptions. Rules 233 and 235 of the Commission's Rules of Practice contemplate the admission of testimony in writing (deposition or prior sworn statement) where the witness is unavailable due to death, age, sickness, infirmity, imprisonment, disability, where the party has been unable to procure the attendance of the witness by subpoena, or where the witness is absent from the United States, unless it appears that the absence was procured by the party offering the written testimony. 17 C.F.R. §§ 201.233, .235 (governing depositions upon oral examination and prior sworn statements of witnesses, respectively). "Due regard" shall be given to the "presumption that witnesses will testify orally in an open hearing," and while consideration shall be given "to the convenience of the parties in avoiding unnecessary expense" if they have "stipulated to accept a prior sworn statement in lieu of live testimony," in this case, allowing written direct testimony is unlikely to save the parties unnecessary expense because the witnesses will still have to appear at the hearing for cross-examination. 17 C.F.R. § 201.235(a)(5). Nor have the parties stipulated to accept prior sworn statements for non-expert witnesses. While allowing written direct testimony may make direct examination of witnesses more efficient, any efficiency gained does not outweigh the Commission's strong preference for live testimony. *Id.*; see also 17 C.F.R. § 201.325 ("A witness at a hearing for the purpose of taking evidence shall testify under oath or affirmation."). Moreover, the parties have not made a showing that any of their proposed witnesses would fall into any of the limited exceptions to live testimony delineated above.

It is ORDERED that Respondents' request for the option to submit direct testimony in writing in lieu of live testimony for percipient witnesses is DENIED.

It is FURTHER ORDERED, for good cause shown, that the Joint Motion is GRANTED to the extent of the modifications agreed to by the parties. The prehearing schedule is modified as follows:

June 14, 2013:

The parties shall exchange and file witness lists, including a brief summary of the expected testimony of each witness. On this date, the parties need not list witnesses (nor provide summaries of their expected testimony) they will later disclose as expert or summary witnesses as set forth below.

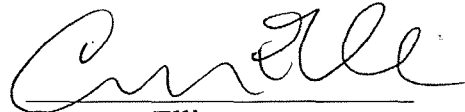
used as a substitute for direct testimony. The parties represent that they have agreed that, with respect to expert witnesses, the sponsoring party will have the opportunity to "warm the seat" for the witness by conducting direct examination for no more than twenty minutes. Joint Motion, p. 5 n.2.

- The parties each reserve their right to seek or oppose leave to name additional witnesses.
- June 17, 2013: The parties shall exchange disclosures of their Chinese law experts on issues that the parties will present in their case-in-chief.
- June 19, 2013: The parties shall exchange and file exhibit lists and exchange pre-marked exhibits. Respondents will file a consolidated exhibit list and set of pre-marked exhibits. The parties will exchange and file lists of any additional experts and/or summary witnesses on remedies or other topics (other than Chinese law), and a brief summary of their expected testimony, subject to the right to provide subsequently the identity of any experts on solely rebuttal issues as set forth below.
- June 24, 2013: The parties shall exchange and file prehearing briefs.
- June 26, 2013: The parties shall exchange and file (i) objections to witnesses and exhibits, and (ii) motions in limine, if any.
- July 1, 2013: The parties shall exchange rebuttal disclosures of their Chinese law experts. The parties shall also exchange disclosures of expert and/or summary witnesses identified on June 19, 2013. The parties also shall exchange and file stipulations, if any, and a final telephonic prehearing conference will be held at 10:30 a.m. EDT.
- July 8-12, 2013: The hearing will begin at 9:30 a.m. EDT at the Commission's headquarters, Hearing Room 2, 100 F Street, N.E., Washington, D.C. 20549, and will continue through July 12, 2013. During this week, the Division will present its case-in-chief. Even if all the time is not used by the Division, Respondents will not begin their case until July 22.
- July 19, 2013: The parties shall exchange rebuttal disclosures of experts and/or summary witnesses on remedies or other topics (other than Chinese law).
- July 22-26, 2013: The hearing will recommence. The period from July 22 to July 26 will be reserved for Respondents' case-in-chief. Even if all the time is not used by

Respondents, expert testimony will not begin until July 29.

July 29 to August 2, 2013: The hearing will continue. The period from July 29 to August 2 will be reserved for expert testimony.

The parties will be allowed to conduct direct examination of their expert witnesses for no more than twenty minutes, in addition to submitting expert reports in compliance with Federal Rule of Civil Procedure 26.

A handwritten signature in cursive script, appearing to read "C. Elliot", written in black ink.

Cameron Elliot
Administrative Law Judge