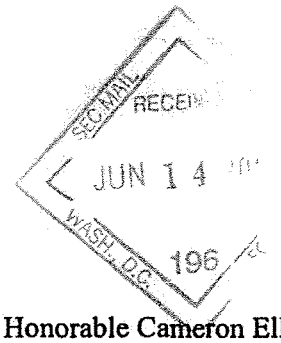
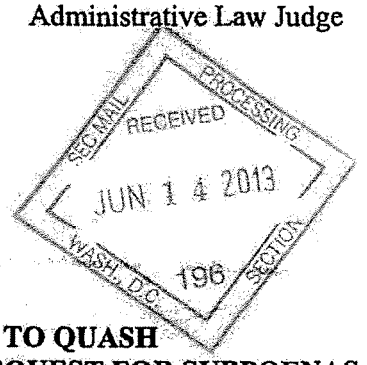
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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





RESPONDENTS' MOTION TO QUASH
THE DIVISION OF ENFORCEMENT'S REQUEST FOR SUBPOENAS

Pursuant to the Hearing Officer's June 11, 2013 Order, Dahua CPA Co., Ltd., Ernst & Young Hua Ming LLP, KPMG Huazhen (Special General Partnership), Deloitte Touche Tohmatsu Certified Public Accountants Ltd., and PricewaterhouseCoopers Zhong Tian CPAs Limited Company (collectively, "Respondents") respectfully submit this motion to quash the request (the "Request") of the Division of Enforcement (the "Division") of the U.S. Securities Exchange Commission (the "SEC") for issuance of the subpoenas attached to the Request as Exhibits 1-5 (the "Proposed Subpoenas"). For the reasons set forth below, the Hearing Officer should deny the Request and not issue the Proposed Subpoenas.[1]

[1] On June 12, 2013, Respondents met and conferred with the Division in an effort to reach agreement on a narrower set of document requests. The parties were unable to reach a mutually acceptable resolution.

INTRODUCTION

The timing of the Division's Proposed Subpoenas is inexplicable and extremely prejudicial to Respondents as they prepare for the upcoming hearing. If the Proposed Subpoenas were to be issued in their current form, Respondents would be unable to comply until well after the hearing concluded under the current schedule.

The premise of the Division's Proposed Subpoenas is that Respondents only recently have indicated that the "willful refusal" standard is not met unless the Division demonstrates Respondents' bad faith. That is not the case. The Division has been on notice of Respondents' belief that good faith is central to any assessment of "willful refusal" since Respondents responded more than a year ago to the Wells Notices issued by the Division. The restrictions imposed by Chinese law, as well as directives of Chinese regulators, have been before the Division since well before the Wells Notices were even issued. The relevance of both good faith and of Chinese legal restrictions was clearly and repeatedly articulated in each of Respondents' Answers in this proceeding. None of these issues is new. Yet the Division did not even mention the possibility of subpoenas, let alone ones of this breadth, until after the hearing schedule was set. The time and resources that would be required to respond to the Division's requests would divert Respondents as they prepare for a hearing on an extremely compressed schedule. As the Division surely knows, it would be effectively impossible for Respondents to both comply with the Proposed Subpoenas and the deadlines set by the Hearing Officer.

Moreover, the Proposed Subpoenas are—on their face—unreasonable, oppressive, excessive in scope, and unduly burdensome. See 17 C.F.R. § 201.232. Not only are many of the documents sought by the Division wholly irrelevant to any disputed issue, the Proposed Subpoenas also would require Respondents to locate, review, and produce documents (many of

which may be written in a foreign language) located overseas and in the possession of an indefinite number of employees. The breadth of the Proposed Subpoenas is particularly egregious given the history of these proceedings. They seek communications that are in no way related to the Clients at issue in this proceeding, as well as documents "reflecting" the targeted communications. The search for and review of such materials, which would implicate attorney-client and work product privileges, as well as potentially scores of custodians and offices, would have been an enormous undertaking in any event, but now on the eve of the hearing, would be impossible to undertake consistent with the current schedule. The Proposed Subpoenas also ignore both the Division's own positions in opposing the subpoena unsuccessfully sought by Respondents and the Hearing Officer's conclusions regarding that subpoena.

ARGUMENT

A. There Is Nothing New About the Issue of Good Faith

In an apparent effort to disguise the inexplicable and prejudicial timing of the Request, the Division intimates that it has only just been presented with Respondents' positions on the relevance of good faith, referring to the May 29, 2013 prehearing conference, to motions for summary disposition submitted on April 30, 2013, and to Respondents' recent request for a subpoena. (Request at 1-2.) To be sure, Respondents did articulate the relevance of good faith in each of those submissions. But Respondents have been consistently explaining the salience of their good faith since their earliest interactions with the Division, and the Division's suggestion that only now does it have any sense of how Respondents "appear to be framing the issue" (id. at 2) is wholly inconsistent with reality.

Instead, Respondents have been telling the Division that good faith was a central issue for more than a year. In February 2012, the SEC served Respondents with requests for audit workpapers and other documents pursuant to Section 106 of the Sarbanes-Oxley Act (the

"Section 106 Requests").[2] Although Respondents each made various efforts to provide the information sought by the SEC, they also reiterated their inability to produce certain documents directly to the SEC due to Chinese legal impediments and notified the SEC of relevant communications with Chinese regulators. Where written communications existed, Respondents provided them to the SEC as part of their efforts to cooperate to the fullest extent permitted by Chinese law. Respondents were extremely clear that they believed that the SEC should view their efforts to cooperate within the context of Chinese impediments.

Sometime thereafter, Respondents received Wells Notices from the Division, indicating the Division's intention to recommend enforcement actions based on Respondents' "willful refusal" to fully comply with the Section 106 Requests. In the confidential submissions they made in response, Respondents explained that they viewed their good faith as incompatible with any finding of "willful refusal" under Section 106(e) and as relevant to the enforceability of the Section 106 Requests under principles of international comity.

In their Answers, filed on January 7, 2013, Respondents again emphasized their understanding of the relevance of good faith and the impossibility of a finding of "willful refusal" based on their actual conduct. (See, e.g., PricewaterhouseCoopers Zhong Tian CPAs Limited Company Answer at 2, 3, 17.) Thus, the Division has long been on notice of the relevance of this issue.[3]

Although the Request belatedly acknowledges the relevance of Respondents' good faith, the Division also asserts that Respondents' good faith defense is "fatally undercut" by "the fact

[2] The SEC also served Respondent Deloitte Touche Tohmatsu Certified Public Accountants Ltd. ("DTTC") with a similar Section 106 request in March 2011.

[3] The timing of the Division's Fifth (and with respect to Dahua CPA Co., Ltd., Sixth) request in the Proposed Subpoenas is equally inexplicable. The Division asserts that this information "may bear on the appropriateness of the remedy" it proposes. (Request at 6.) The Division has been on notice that remedies might be at issue for more than a year—since at least the May 2012 issuance of the OIP in the DTTC proceeding.

that all Respondents were put on explicit notice when they registered with the Public Company Accounting Oversight Board ('PCAOB') . . . that they would be required to comply with information requests from U.S. regulators regardless of asserted constraints imposed by Chinese law." (Request at 2.) The Division is incorrect. In registering with the PCAOB, Respondents were clear about the possibility that—like all other auditing firms in China and in many other countries as well—they might face domestic legal impediments to the production of workpapers to U.S. regulators. Respondents' registrations were nonetheless accepted by the PCAOB and they were allowed without objection, as registrants in good standing, to perform audit work for U.S. issuers, including the Clients at issue here. Both the PCAOB and the SEC expressed their intent to work on a government-to-government basis to resolve the issues faced by Respondents. And, to this day, the SEC continues to allow Chinese-based issuers to list their securities on U.S. markets, despite knowledge of potential impediments to production faced by their auditors.

B. The Timing of the Proposed Subpoenas Is Inexplicable and Prejudicial

As set forth above, the Division has been well aware that Respondents viewed good faith as central to their defenses for over a year. Yet only now, with the hearing a month away and the exchange of exhibits much sooner, has the Division made any efforts to seek documents that it asserts are relevant to this issue.[4] The documents previously sought by Respondents' own, unsuccessful subpoena request, by contrast, targeted perceived gaps in a production made by the Division just nine days earlier. (See Respondents' Request for the Issuance of a Subpoena Directed at the SEC, filed May 24, 2013, at 3-5.) And although Respondents' request was made before any hearing date was scheduled, in an opposition filed on May 28, 2013, the Division

[4] The Division also appears to suggest that certain documents that Respondents previously provided to the SEC indicate that the Division may not have the "full[] record" of Respondents' communications with Chinese regulators. (Request at 3-4.) Those documents have also been in the Division's possession for more than a year; again, there is no justification for the timing of the Division's Request.

argued that, if granted, the subpoena would "threaten to undermine prompt resolution of these proceedings." (Division of Enforcement's Opposition to Respondents' Request for Issuance of a Subpoena Directed at the SEC ("Div. Opp.") at 8-9.) The Division did not indicate any intention to seek discovery from Respondents during the prehearing conference the following day, at which the Hearing Officer scheduled a July 15, 2013 hearing date (subsequently advanced to July 8). In light of the breadth of the Division's Request—described in greater detail below—and the fast-approaching hearing date, issuance of the Proposed Subpoenas would fundamentally prejudice Respondents and delay the "prompt resolution of these proceedings." Given the absence of any recent event whatsoever that explains the timing of the Division's request and the Division's previous silence regarding any interest in discovery, the Request is plainly unreasonable, oppressive, and unduly burdensome.

C. The Subpoenas Are, on Their Face, Overbroad and Unduly Burdensome

Almost as remarkable as the extent to which the Request ignores the timeline of these proceedings and the Division's own knowledge of Respondents' good faith defense is the inconsistency between the content of the Request and both the Division's own positions and the findings of the Hearing Officer. For example, in opposing Respondents' proposed subpoena, the Division objected to producing documents "reflecting" communications (such as notes or briefing papers) between the SEC and the CSRC, arguing that it would be "unduly burdensome to collect these documents and prepare them for production." (Div. Opp. at 7.) The Division also argued that Respondents' request implicated "voluminous internal, non-public documents from scores of SEC custodians," many of which might be subject to privilege or other protections. (Id. at 8.)

Yet Requests 1 and 2 of the Division's Proposed Subpoenas both seek documents "reflecting" communications (in addition to documents constituting such communications).

Collecting such documents—as the Division itself argued successfully—would impose a significant burden. Indeed, the Proposed Subpoenas would require Respondents to locate, review, and produce documents (many of which may be written in a foreign language) located overseas and in the possession of many possible employees. Many of the documents sought are likely privileged, and documenting that would also be extremely time consuming. Given that the Division is not producing such communications—even where they are otherwise entirely relevant—it would be unfair to make Respondents undergo that process.

In denying Respondents' subpoena request, the Hearing Officer concluded that Respondents' subpoena was "excessive in scope" for several reasons, including the possibility that it might reach "communications pertaining to audit workpapers generated by auditors other than Respondents." (Order Denying Subpoena Request Without Prejudice, issued June 5, 2013, at 2.) Yet the Division's Requests 1, 3, and 4 all would reach documents that do not relate in any way to the Clients whose workpapers are at issue in these proceedings. Given that the Division was not required to produce similar documents, it would be unfair to impose a disproportionate burden on Respondents.

The Division also asserted that Respondents' proposed subpoena was "[v]astly [o]verbroad" insofar as it sought communications involving entities of the Chinese and U.S. Governments other than the SEC and CSRC, including the PCAOB. (Div. Opp. at 6.) Yet Requests 1 and 2 of the Division's Proposed Subpoenas nevertheless target "request[s] from the . . . PCAOB" as well as the SEC. The Division should not be permitted to seek documents that it was unwilling to produce itself. Each of the specific Requests is flawed for additional reasons, with the exception of Request 1, for which Respondents are willing to produce certain documents, as set forth below.

Request 1: Communications with the Chinese Government

With respect to Request 1, Respondents are willing to produce communications between them and the Chinese government regarding how to address U.S. requests for audit workpapers associated with the Clients at issue in this proceeding. Respondents believe that they have already provided these communications to the SEC. To the extent they have not, Respondents will, through the exchange of exhibits or otherwise, voluntarily provide such communications. For the reasons discussed above, Respondents also oppose this Request to the extent that it seeks documents "reflecting" such communications, as opposed to actually constituting them.

Request 2: Communications with Clients

Request 2 seeks communications between Respondents and the Clients at issue regarding requests from the SEC or PCAOB for audit workpapers. Respondents' communications with those Clients are not relevant to any disputed issue. In support of this Request, the Division suggests that Respondents may have "simply adopted" the position that Chinese law bars direct production to the SEC "in seeking relief from the specific Section 106 requests at issue." (Request at 4.) The facts are wholly at odds with the Division's suggestion: Respondents have consistently explained this limitation, beginning with their registrations with the PCAOB in 2004.

Request 3: New Engagements

Request 3 calls for Respondents to produce "documents sufficient to show all PRC-based U.S. issuers for which [they are] currently engaged to perform principal auditor, substantial role, or referred work, including all engagement letters." According to the Division, such documents "will demonstrate that Respondents continue to take on audit engagements that trigger production obligations under Section 106(b), thus confirming Respondents' pattern of willful

violation of those obligations." (Request at 5.) But any such documents are entirely irrelevant to the issue to be determined in this proceeding: whether Respondents' failure to produce all of the documents sought by the Section 106 Requests constituted a "willful refusal." And, until the SEC or PCAOB say otherwise, there is no reason for Respondents to cease all work for PRC-based issuers based on potential issues related to future requests for production. Indeed, the PCAOB recently entered into an agreement with Chinese regulators regarding such productions.

Request 3 is also overly burdensome, particularly insofar as it would require Respondents to produce either a comprehensive list of names or actual engagement letters. Additionally, much of the information sought by Request 3 is already available to the Division through Respondents' PCAOB Form 2 annual reports, which were filed at the end of June 2012 for the April 1, 2011 through March 31, 2012 reporting period, and which will be filed at the end of this month for the equivalent period in 2012-2013. Documents that the majority of Respondents have produced to the PCAOB—and that counsel for the Division has confirmed that it received from the PCAOB—further supplement this information. The Division has failed to articulate any reason why it needs information beyond that which is already available to it or will be by the end of the month, albeit on a slightly different reporting basis than the Division's arbitrary cut-off date of June 7, 2013. Compliance with Request 3 would thus unduly burden Respondents without providing any reasonable benefit to this proceeding. In any event, Respondents are more than willing to stipulate that they have, without any objection from the SEC or the PCAOB, continued to take on engagements involving U.S. issuers. See 17 C.F.R. § 201.232(b) (explaining that parties' willingness to stipulate to relevant facts is an issue that should be considered in determining whether to issue a subpoena).

Request 4: Communications with Principal Auditors

Request 4, which targets communications related to "substantial role and referred work," does not even relate to the type of work that the majority of Respondents performed for the Clients—let alone actual work performed for the Clients—and any such documents are thus of extremely limited relevance. Given that the Division was not required to produce documents related to workpapers involving clients other than those at issue here, it would be particularly unfair to impose a disproportionate burden on Respondents. Additionally, to the extent that the Division is interested in work that occurred "during the period April 1, 2011 through March 31, 2012," the final clause of Request 4 is not appropriately limited and appears to cover communications that took place outside that period. (See "Definitions and Instructions" ¶ 21.)

Request 5: Audit Fee and Hour Information

Like the other requests, Request 5 is overly burdensome and seeks completely irrelevant information, such as the "number of hours billed" by Respondents for all services over an entirely arbitrary multiyear period. The Division has failed to explain how this information could be relevant to any assessment of remedies, should that prove necessary. As the Division knows well, neither monetary sanctions nor disgorgement is available in this proceeding, and details regarding Respondents' fees and hours are not reasonably related to the question of whether Respondents should be barred from appearing or practicing before the Commission. (See Request at 5.)

More fundamentally, the Division continues to refuse to articulate the remedies it seeks in this case. Even during the most recent meet and confer, counsel for the Division expressed the Division's unwillingness to elaborate on its views regarding remedies. The Division should have made that determination before initiating these proceedings. Now, less than a month before the

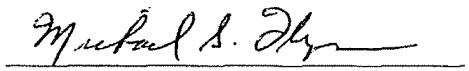
hearing, Respondents are still left guessing as to what remedy the Division would propose if it were to establish liability. That is fundamentally unfair. The Division's efforts to pursue discovery at this late stage—whether aimed to help the Division figure out what remedy it should seek or to obtain information in support of a remedy the Division continues to conceal—is likewise fundamentally unfair and prejudicial.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Hearing Officer deny the Division's Request and not issue the Proposed Subpoena.

Dated: June 14, 2013

Respectfully submitted,



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