

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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

In the Matter of	:	
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	:	
BDO China Dahua CPA Co., Ltd.;	:	
Ernst & Young Hua Ming LLP;	:	
KPMG Huazhen (Special General	:	
Partnership);	:	The Honorable Cameron Elliot,
Deloitte Touche Tohmatsu Certified Public	:	Administrative Law Judge
Accountants Ltd.; and	:	
PricewaterhouseCoopers Zhong Tian	:	
CPAs Limited,	:	
	:	
Respondents.	:	
	:	

**DIVISION OF ENFORCEMENT’S NOTICE OF PRODUCTION AND
MOTION FOR ORDER CLARIFYING DIVISION’S POST-HEARING
PRODUCTION OBLIGATION**

In light of the instructions of the Administrative Law Judge during the hearing in this matter, the Division of Enforcement (“Division”) of the Securities and Exchange Commission (“SEC” or “Commission”) hereby provides notice that the Division is producing to Respondents copies of additional correspondence between the SEC’s Office of International Affairs (“OIA”) and the China Securities Regulatory Commission (“CSRC”). The Division believes that none of this correspondence could be considered “material exculpatory evidence” in these proceedings, 17 C.F.R. § 201.230(b)(2). The correspondence (the “Other-Investigation Correspondence”) (attached to this filing as Exhibit 1)¹ is unrelated to any of the investigations involving

¹ The Division has designated the correspondence as “Confidential-Subject to Protective Order-File Under Seal” under the Stipulated Protective Order dated May 8, 2013. Accordingly, the Division is filing Exhibit 1 under seal consistent with the provisions of the Protective Order.

Respondents' issuer-clients ("Clients") that are at issue here, and is also unrelated any SEC request for assistance to the CSRC that involves audit workpapers. However, given the slightly ambiguous nature of the ALJ's instructions to the Division during the hearing, concerning the production of subsequent SEC-CSRC correspondence, and in an abundance of caution, the Division is now providing these documents.

In addition, to obviate the need for future, similar filings of documents pertaining to unrelated investigations, the Division seeks an order from the ALJ that clarifies the Division's post-hearing production obligations on a going-forward basis. Specifically, the Division requests that the ALJ clarify that the Division is required to produce to Respondents and to make available to the ALJ only the following: correspondence between the SEC's OIA and the CSRC that indicates that the CSRC is producing, has produced, or intends to produce documents sought by any of the Section 106 requests for DTTC Client A, Dahua Client A, or Clients B, D, C, D, E, F, G, H, or I, that are at issue in these proceedings (the "Requests").

The ALJ's Instructions During the Hearing

At two points during the hearing, the ALJ advised the Division to notify him and the Respondents about additional productions of documents from the CSRC.

First, during the hearing session on July 29, 2013, Respondents' counsel raised the prospect of additional reports from the Division as follows:

[A]s Your Honor observed at the close of the first week of the hearing, this is an evolving situation. Right now, the Deloitte Client A documents and the Deloitte Client G documents, as far as we know, are at the CSRC and there has been testimony to that effect. There has been no other Division of Enforcement or SEC request for any of the other respondents documents.

So we would also request that the Division provide a report as to if and when they get such documents and also similar correspondence to which Your Honor said that you would issue a subpoena. They did provide it with respect to Longtop, but if there is anything else, either as to Client A or Client G.

And we would also request that that continue beyond the actual close of the hearing because that may be important information to include in or supplement the record, as appropriate.

Tr. 2319:24 – 2320:17 (Mr. Warden). In response to this request and subsequent discussion with counsel for Respondents and the Division, the ALJ declined to order the Division to make subsequent reports to the ALJ about the Longtop investigation, as that matter was already under the supervision of the U.S. District Court. Tr. 2319:1-11 (ALJ Elliot). The additional following discussion and instruction then ensued:

MR. WARDEN: Yes. And then that goes to the only other two requests that the SEC has made of the CSRC and those are for the Deloitte client work papers and the Deloitte Client G work papers.

JUDGE ELLIOT: Well, as far as that goes, then I will -- let me put it this way. If there is any change in the status of that, then I would like the parties -- and this is going to be the Division really -- to tell me about it. In other words, if the CSRC sends a notification similar to what we talked about the first week of the hearing where they announced, yeah, we're going to produce this and it's going to come in UPS, can you send us a UPS label because we don't want to pay for it or something like that, then let me know. You should file something.

The Division should file something to indicate whatever change in status occurs. And obviously some changes in status are going to be more important than others, but this is, of course, relevant to the Respondents' defense and so you should treat this -- let me put it this way. Treat this as Brady material.

MR. MENDEL: Good, Your Honor.

MR. WARDEN: Thank you, Your Honor.

Tr. 2319:20-2320:17.

The ALJ next addressed the issue of subsequent reporting by the Division at the conclusion of the hearing (on July 31, 2013), when Respondents' counsel again raised the issue:

MR. SULLIVAN:² The only thing that we were just a little concerned about is the ongoing Brady aspect that Your Honor mentioned

² Although the transcript attributes this statement to Neil Sullivan, counsel for KPMG Huazhen, this may have been a transcription error. Miles Ruthberg, counsel for DTTC, may have been the speaker.

the other day, if there are developments over the coming weeks, that, of course, it would be helpful, and I hope -- expected that they would be timely reported to us and to Your Honor, so we can all take those into account.

JUDGE ELLIOT: Well, I think that my previous observations about this, that I consider whatever production is coming from China to be something pertinent, something that's certainly relevant, it's relevant to the question of the Respondents' 106(f) arguments and on that basis -- and also, I think it would probably be material.

I mean, it would depend, I suppose, on what exactly happens, but I think you should err on the side of disclosure if there is any change at all in -- any movement at all from China on production. So, for example, if -- again, I'll use the same example I did the other day.

If you get a letter from the CSRC that says, okay, we're ready to ship you Client B's documents, send us a UPS label or something, then you should disclose that. And I think it would be in the nature of Brady material.

Now, for the Respondents, I mean, if you want any other form of relief like something in writing or if you want to file a motion or if you want me to issue an order that says the Division shall provide a status report on such-and-such a date or something like that, I mean, I'll entertain that, but I think that I've done all that is really necessary under the circumstances.

MR. RUTHBERG: Your Honor, speaking for myself -- others may have a different view -- we're content with what Your Honor has ordered and that should take care of it.

JUDGE ELLIOT: All right. Very well.

Tr. 2693:10 – 2694:10.

The Division's Present Production of the Other-Investigation Correspondence

Based on the foregoing, the Division understands that the ALJ intended to instruct the Division to provide to Respondents and the ALJ, on an ongoing basis, correspondence from the CSRC indicating that it was producing documents sought by the Requests. Respondents' counsel specifically referenced documents concerning DTTC Clients A and G and "similar correspondence to which Your Honor said that you would issue a subpoena." Tr. 2314:1-2, 8-10 (Mr. Warden);

see also id. Tr. 2319:20-23. In response, the ALJ instructed the Division to “file something to indicate whatever change in status occurs.” Tr. 2320:11-12 (ALJ Elliot).

However, the ALJ’s second instruction on July 31, 2013 was slightly ambiguous, because the ALJ stated, “I consider whatever production is coming from China to be something pertinent,” and “I think you should err on the side of disclosure if there is any change at all in – any movement at all from China on production.” Tr. 2693:11-13, 18-21 (ALJ Elliot). The ALJ did *not* state that post-hearing correspondence concerning other investigations would be considered “Brady material,” nor does the Division believe that such documents could be considered “Brady.” Nevertheless, because “whatever production from China” arguably could be construed to encompass documents that are unrelated to the Requests or even to audit workpapers, in an abundance of caution the Division is now making available the Other-Investigation Correspondence. As noted, these documents are unrelated to the Requests and to these proceedings.

Request for Clarification

The Division requests that the ALJ issue an order clarifying its guidance as to the documents that the ALJ expects the Division to provide to Respondents and to the ALJ on an ongoing basis. Consistent with the ALJ’s colloquy with counsel during the July 29, 2013 hearing session, the Division asks that this production obligation be expressly limited to correspondence between the SEC’s OIA and the CSRC that indicates that the CSRC is producing, has produced, or intends to produce documents sought by any of the Requests. At least three reasons support this request.

First, the Division’s proposed limitation follows the reasoning of the ALJ’s prior decision denying Respondents Request for Subpoena without prejudice. *See* Order (Jun. 5, 2013).

Respondents had sought issuance of a pre-hearing subpoena directed to the Commission, seeking, among other documents, broad categories of communications between the SEC and the CSRC that would have encompassed even communications about investigations unrelated to those involving the Clients, and that did not pertain to requests to audit workpapers. The ALJ agreed with the Division that Respondents' Request for Subpoena was "vastly overbroad" and denied the Request for Subpoena. However, the ALJ specifically carved out a limited request for "communications ... regarding audit workpapers associated with the Clients" as eligible for renewal without prejudice. Thereafter, Respondents and the Division negotiated an additional production of documents that was limited to correspondence related to audit workpapers of Respondents. Similarly here, the Division should not be subject to an overbroad production requirement that encompasses correspondence with the CSRC about matters unrelated to the production of audit workpapers.

Second, new correspondence concerning other, unrelated CSRC production efforts (if any) cannot be "material exculpatory evidence" in these proceedings. *See* 17 C.F.R. § 201.230(b)(2). Assuming, *arguendo*, the CSRC's willingness to produce audit workpapers at this late stage could be relevant to remedies in these proceedings, the Other-Investigation Correspondence does not involve audit workpapers sought by the Requests, and, therefore, cannot establish that the CSRC is a viable gateway for the production of audit workpapers from China.³

Third, an ongoing requirement that applies to CSRC correspondence concerning investigations unrelated to the Requests would be unduly burdensome. The Division would have to work with OIA to monitor and segregate such correspondence, confer with the various investigative teams with an interest in such correspondence, and perform appropriate (and possibly

³ The Other-Investigation Correspondence that the Division is now producing, contemporaneous with this filing, does not involve any SEC request for audit workpapers. The correspondence concerns a request for certain offering and marketing materials, as described in paragraph 7 of the second declaration of Alberto Arevalo, OIA's Chief of International Cooperation, in the *Longtop* matter. *See* Second Declaration of Alberto Arevalo ¶7 (4/29/13) (ENF 327) (describing Investigation Number 16).

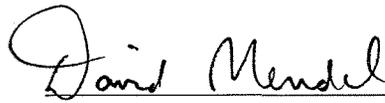
extensive) redactions to protect confidential and other non-public information concerning ongoing investigations in which Respondents may have no involvement whatsoever. Such an expenditure of resources would be unjustified.

Conclusion

For the foregoing reasons, the ALJ should issue an order clarifying that the Division's post-hearing production obligation is expressly limited to correspondence between the SEC's OIA and the CSRC that indicates that the CSRC is producing, has produced, or intends to produce documents sought by any of the Requests.

Dated: September 9, 2013

Respectfully submitted,



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