

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

BDO China Dahua CPA Co., Ltd.;

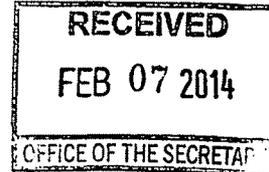
Ernst & Young Hua.Ming LLP;

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 FOR ORDER PERMITTING
REVIEW OF INITIAL DECISION**

Respondents Ernst & Young Hua Ming LLP ("EYHM"), KPMG Huazhen (Special General Partnership) ("KPMG Huazhen"), Deloitte Touche Tohmatsu CPA Ltd. ("DTTC"), and PricewaterhouseCoopers Zhong Tian CPAs Limited Company ("PwC Shanghai") (collectively, the "Moving Respondents") respectfully submit this motion seeking an order permitting the Moving Respondents and their relevant personnel to review the unredacted version of the Initial Decision entered in this proceeding on January 22, 2014 ("Initial Decision"). As described below, permitting access to these persons is critical to the Moving Respondents' ability to participate fully in their defense, and consistent with the access previously ordered by the Court for reviewing confidential information.

The Stipulated Protective Order that was entered in these proceedings on May 9, 2013 and amended on July 29, 2013 (“Protective Order”) describes the categories of persons who are “authorized to review documents that have been designated” as confidential in this case. *See* Protective Order at 3. As described in ¶2(b)(ii)-(iii) of the Protective Order,¹ those persons include: “[o]ther counsel for Respondents in these proceedings . . . and their partners, principals, employees and/or agents assisting such counsel in connection with these proceedings, including any appeals from such proceedings” and “[p]artners, principals, and/or employees of Respondents, the Global Networks, or other Global Network member firms: (1) who perform management functions for any Respondent and/or Global Network, or (2) with whom Respondents’ Counsel consult in connection with these proceedings, including any appeals from such proceedings.” Paragraph 2(b)(vii) of the Protective Order allows for review by any “[o]ther persons by written consent of the SEC or upon order of the Hearing Officer or a court and on such conditions as may be agreed or ordered,” and paragraph 4(f) of the Protective Order Amendment allows for the review of confidential materials by any “[o]ther persons by written consent of the producing Respondent or upon order of the Hearing Officer or a court and on such conditions as may be agreed or ordered.”

In the Initial Decision, the Court ordered that the unredacted version of that decision may be reviewed by a number of individuals described in the Protective Order and by any “[o]ther persons upon order of the hearing officer or a court, and on such conditions as may be agreed or ordered.” Initial Decision at 111. However, the order omitted the persons described in ¶ 2(b)(ii)-(iii) of the Protective Order and ¶4(e) of the Protective Order Amendment, meaning that the Moving Respondents themselves and their relevant personnel are not permitted to review the unredacted version of the Initial Decision. *Id.*

¹ As used herein, citations to the Protective Order refer to the document that was entered in these proceedings on May 9, 2013. The amendment to the Protective Order that was entered in these proceedings on July 29, 2013 is referred to as the Protective Order Amendment.

The Moving Respondents request that the Court enter an order permitting each of the individuals described in paragraph 2(b)(ii)-(iii) of the Protective Order to review the unredacted version of the Initial Decision, in its entirety. Access to the redacted information, which includes significant portions of the Court's rationale for finding liability and for imposing sanctions, as well as a substantial amount of the factual bases for those findings, is crucial to the Moving Respondents' ability to understand the Initial Decision and to determine, with their counsel, how best to proceed. *See Doe v. District of Columbia*, 697 F.2d 1115, 1118-21 (D.C. Cir. 1983) (finding error in trial court's issuance of protective order that restricted communication between defendants and their counsel as to certain information where such restriction "certainly impaired [defendants'] ability to prepare their case"); *see also Kapps v. Wing*, 404 F.3d 105, 123-24 (2d Cir. 2005) ("[i]n order to be constitutionally adequate, notice of [an agency's decision] must provide [the affected parties] with enough information to understand the reasons for the agency's action. This requirement, like the right to a fair hearing, is a basic requirement of procedural due process . . . [the affected parties] cannot know *whether* to a challenge to an agency's action is warranted, much less formulate an effective challenge, if they are not provided with sufficient information to understand the basis for the agency's action"); *accord* Rule of Practice 360(b) (requiring that an initial decision include "findings and conclusions, and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record and the appropriate order, sanction, relief or denial thereof").

The Moving Respondents recognize that ¶4(e) of the Protective Order Amendment limits access of each Respondent's personnel to only its "own commercially sensitive, proprietary information." But because of each Moving Respondent's overarching need to review the entirety of the Initial Decision in the course of consultation with counsel and to assist in its own defense, each of the Moving Respondents is willing to permit the others to review those sections of the unredacted Initial Decision that include proprietary information regarding its own

financial and competitive status.² And because the remainder of the information that has been redacted from the Initial Decision relates to testimony that was given publicly, the Moving Respondents believe that they should each be given access to the entirety of the unredacted Initial Decision.

Accordingly, the Moving Respondents request that the Court enter an order holding that, consistent with the Protective Order, the following individuals should be permitted to review the entirety of the unredacted Initial Decision:

- Other counsel for the Moving Respondents in these proceedings and counsel for Ernst & Young Global Limited, KPMG International Cooperative, Deloitte Touche Tohmatsu Limited, or PricewaterhouseCoopers International Limited (collectively, the “Global Networks”) and their partners, principals, employees and/or agents assisting such counsel in connection with these proceedings, including any appeals from such proceedings;
- Partners, principals and/or employees of the Moving Respondents, the Global Networks, or other Global Network member firms: (1) who perform management functions for any Moving Respondent and/or Global Network, or (2) with whom any Moving Respondents’ counsel consult in connection with these proceedings, including any appeals from such proceedings.

Accord Protective Order ¶ 2(b)(ii)-(iii); *Doe*, 697 F.2d at 1119-20 (emphasizing “the value we place on the right of every litigant to participate in the process whereby justice is done—to understand and become involved in the proceeding, not to be compelled passively to await its outcome”).

² The Moving Respondents do not seek to unseal or otherwise affect the confidential status of any underlying exhibit, transcript, or document related to this proceeding, apart from the Initial Decision itself. The Moving Respondents continue to believe that the materials that are currently under seal that contain proprietary information regarding Respondents’ financial and competitive status should remain so. This motion is intended to apply to the Initial Decision only, as the Moving Respondents understand that the redacted portions of the Initial Decision are sufficiently summary such that the Initial Decision can and should be shared among all parties to this proceeding, including each of the Respondents, without any “attorney’s eyes only” limitation.

The Moving Respondents have discussed this issue with counsel for the Division of Enforcement (“the Division”), who informed them that the Division “does not object to allowing the individuals identified in Paragraphs 2(b)(ii) and 2(b)(iii) of the Protective Order entered on May 9, 2013, as modified on July 29, 2013, to have access to the entire Initial Decision, with the understanding that those individuals will treat the entire Initial Decision as ‘CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER-FILE UNDER SEAL’ under the Protective Orders and will not further disseminate the entire Initial Decision, or disclose its contents, to any person or entity other than those persons to whom Judge Elliot provides authorization on page 111 of his decision.” The Moving Respondents have confirmed to the Division their agreement on behalf of the individuals seeking this relief to adhere to the restrictions on dissemination of the Initial Decision set forth in the Protective Orders.

Dated this 6th day of February, 2014

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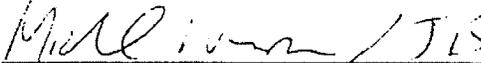
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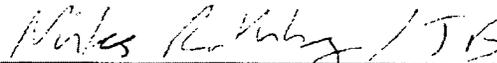
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