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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)
)
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.)
)
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The Honorable Cameron Elliot,
Administrative Law Judge

RESPONDENT PWC SHANGHAI'S PREHEARING BRIEF

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Respondent PricewaterhouseCoopers Zhong Tian CPAs Limited Company (“PwC Shanghai”) respectfully submits this Prehearing Brief¹ pursuant to Rule 222 of the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) Rules of Practice, 17 C.F.R. §201.222, and the Court’s June 10, 2013 Order on Joint Motion to Amend Hearing and Prehearing Schedules.² PwC Shanghai adopts and incorporates by reference the prehearing brief submitted by Respondent Deloitte Touche Tohmatsu Certified Public Accountants Ltd. (“DTTC”) and the remedies portion of the brief submitted by Respondent KPMG Huazhen (Special General Partnership) (“KPMG Huazhen”).

INTRODUCTION

The Commission instituted this proceeding against PwC Shanghai pursuant to Rule 102(e)(1)(iii) of the Commission’s Rules of Practice, 17 C.F.R. § 201.102(e)(1)(iii), based on PwC Shanghai’s failure to produce audit work papers in response to requests from the Commission’s Division of Enforcement (the “Division”) under Section 106(e) of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”), 15 U.S.C. § 7216(e). According to the Division, that failure is sanctionable as a “willful refusal” under Section 106, even though PwC Shanghai understood, based on multiple meetings with and communications from Chinese regulators, that production directly to the SEC was forbidden under Chinese law and would expose PwC Shanghai and its personnel to liability in China, where PwC Shanghai is based.

¹ PwC Shanghai is filing both a public, redacted version of this brief and a complete, confidential version because the brief contains references to a document that the Division has designated as “Confidential – Subject to Protective Order – File Under Seal” pursuant to the Stipulated Protective Order dated May 8, 2013.

² PwC Shanghai reserves all rights with respect to whether this action was properly served on PwC Shanghai, as well as whether Section 106 is applicable to PwC Shanghai’s work for Clients H and I, for whom it never prepared, furnished, or issued an audit report. Likewise, PwC Shanghai reserves all rights with respect to whether an enforceability ruling by a federal court under Section 106 is a necessary condition for the institution of this action.

DTTC's brief demonstrates from both a legal and factual perspective why the Division cannot satisfy the "willful refusal" standard as to PwC Shanghai or any of the Respondents. As they relate to PwC Shanghai, the materials requested under Section 106 are in-progress work papers with respect to the never-concluded audits of two companies that operate primarily in China, "Client H" and "Client I." Each of PwC Shanghai's engagements ended before PwC Shanghai was ever able to complete its audits or prepare or issue a single audit report as to either client. There is no plausible claim that PwC Shanghai may have done anything to mislead investors of Client H or I or assist others in doing so. Indeed, PwC Shanghai was terminated by Client H after advocating for a more expansive internal investigation, including as to whether parties affiliated with Client H engaged in manipulative stock trading to help the Company obtain financing. PwC Shanghai voluntarily alerted the SEC to its call for an expanded investigation and brought to the attention of the SEC its concerns as to the Company's plan to address this and other issues. The SEC consistently expressed appreciation regarding PwC Shanghai's cooperation and ultimately brought an action against numerous parties affiliated with Client H for violation of the securities laws. Similarly, PwC Shanghai resigned as Client I's auditor based on a concern that additional remedial and investigative actions might not be timely undertaken by the Company so as to allow PwC Shanghai to conduct an audit properly. PwC Shanghai voluntarily brought this information to the attention of the SEC, as well.

Throughout its interactions with the SEC, PwC Shanghai has attempted to cooperate with the Division's requests for information regarding Clients H and I without contravening Chinese law and what it understood to be the clear directives of the Chinese authorities. PwC Shanghai arranged telephone calls between the Division and the PwC Shanghai engagement partners for Clients H and I so that the engagement partners could describe the type of audit work they

normally perform in the areas of interest to the Division without providing client-specific information that would violate Chinese law. Beyond that, and at considerable effort and expense, PwC Shanghai segregated the materials requested by the Division, created (at the Division's behest) English-language chronologies of its audit work, and translated those chronologies into Chinese for potential review by Chinese regulators in anticipation of any production to the Division, as required by Chinese law and the express directives of the SEC's Chinese counterpart, the China Securities Regulatory Commission (the "CSRC"). With each new demand for documents, PwC Shanghai diligently readied the subject materials for production in order to be prepared to comply promptly with the Division's request if authorized to do so by the Chinese regulatory authorities.

PwC Shanghai has, moreover, been completely transparent from the outset about its understanding of the limitations imposed on it by Chinese law. From the time of its initial registration in 2004 with the Public Company Accounting Oversight Board (the "PCAOB"), which operates under the aegis of the SEC, and in the annual reports that it has since filed with the PCAOB, PwC Shanghai has identified Chinese law as a possible obstacle to its production of audit-related materials. PwC Shanghai also has procured and produced legal opinions through Chinese counsel at Linklaters and has arranged telephone calls between the Division and Linklaters so that the Division could better understand the Chinese legal issues preventing direct production to the SEC.

In any event, this action should be resolved in favor of PwC Shanghai on the ground that PwC Shanghai's inability under Chinese law to legally produce the work papers at issue directly to the SEC does not constitute a "willful refusal" under Section 106. PwC Shanghai is unable, not unwilling, to accede to the Commission's requests. Furthermore, there is no sanction of a

remedial nature that can be imposed on PwC Shanghai, and any liability finding and sanction would harm the public interest.

RELEVANT ADDITIONAL FACTS RELATED TO PwC SHANGHAI

In addition to the facts outlined in the DTTC brief and the remedies section of the KPMG Huazhen brief, the documentary evidence and the testimony at the hearing will establish the following facts relevant to the claims against PwC Shanghai.

A. PwC Shanghai

PwC Shanghai is a professional firm located in the People's Republic of China ("PRC") that provides assurance and advisory services to a predominantly Chinese clientele. PwC Shanghai's headquarters are located in Shanghai. PwC Shanghai PCAOB Form 2 (06/29/12) (RX³ 368), Item 1.2. The firm has nine other offices spread throughout mainland China. *Id.*, Item 5.1. In all, PwC Shanghai employs more than 8,000 personnel, including more than 7,000 accountants. *Id.*, Item 6.1. The firm has no offices or personnel in the United States.

As a PRC-based firm, PwC Shanghai is subject to regulation and oversight by China's Ministry of Finance (the "MOF") and the CSRC, among other Chinese regulatory authorities. PwC Shanghai PCAOB Form 1 (04/26/04) (RX 365), Items 1.7, 1.7.2. Since 2004, PwC Shanghai also has been registered with the PCAOB because certain of its clients are U.S. "issuers" – meaning that they are required to file reports with the Commission or have filed registration statements for public offerings. The alleged duty imposed on PwC Shanghai by U.S. law to produce work papers as to Clients H and I directly to the SEC would require PwC Shanghai to disobey the directives of Chinese authorities under Chinese law and puts the firm in an impossible position.

³ "RX" refers to Respondents' Consolidated Exhibit List, corrected version filed on June 21, 2013.

B. PwC Shanghai's Good Faith Efforts to Comply with Its Dueling Obligations Under U.S. and Chinese Law

Since registering with the PCAOB in 2004, PwC Shanghai has been straightforward about the impediments created by Chinese law to its ability to produce audit work papers to U.S. regulators upon demand. The PCAOB application for registration completed by PwC Shanghai included a "Consent to Cooperate with the Board and Statement of Acceptance of Registration Condition" that, if signed, purported to obligate PwC Shanghai to, among other things, "cooperate in and comply with any request for testimony or the production of documents made by the Public Company Accounting Oversight Board in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002." RX 365, Item 8.1. PwC Shanghai did not sign the consent. Id. Instead it explained:

We have obtained an opinion letter from Linklaters regarding legal impediments on our ability to provide the consents required under Item 8 of the Form 1. This opinion letter indicates that, although there are applicable laws that prevent our firm from providing the full cooperation required by Item 8.1 of Form 1, it may be possible for our firm, in certain instances, to cooperate with the PCAOB without violating any such applicable laws. Accordingly, we have been unable to provide the Item 8.1 consents in their current form in Form 1 but hereby agree to take reasonable steps to cooperate in and comply with any request for testimony or the production of documents made by the PCAOB to the fullest extent permitted by applicable laws.

Id., Ex. 99.2 at 2.2. In each of its subsequent annual reports filed with the PCAOB, PwC Shanghai reiterated its inability to provide its consent on the ground that it could not do so "without violating non-U.S. law." RX 368, Item 9.1; PwC Shanghai PCAOB Form 2 (06/28/11) (RX 367), Item 9.1; PwC Shanghai PCAOB Form 2 (06/30/10) (RX 366), Item 9.1.⁴ The

⁴ In the consent form that PwC Shanghai submitted pursuant to the Dodd-Frank amendments to Section 106 of Sarbanes-Oxley, 15 U.S.C. § 7216, the firm again emphasized that it could consent to produce only "to the extent permitted by applicable law of the People's Republic of China." PwC Shanghai Form of Firm Consent in Accordance with Section 106(b) (03/01/11) (RX 369).

PCAOB, acting under the SEC's auspices, accepted PwC Shanghai's registration and thus permitted PwC Shanghai to perform audit work for U.S. issuers.

1. The Client H and Client I Engagements

Two such U.S. issuers for whom PwC Shanghai was engaged are Clients H and I. Client H is a corporation that owns and operates a commercial vehicle leasing business in China and, "except for certain administrative functions, do[es] not have any operations outside of China." Client H Form 20-F, at 21 (11/30/11) (RX 380). Client H regularly transacts business with subsidiaries and joint ventures of state-owned enterprises. On April 13, 2010, Client H engaged PwC Shanghai to audit its financial statements for the fiscal year ending December 31, 2010. Client H Form 6-K, at 2 (04/27/10) (RX 370). At that time, Client H's shares were listed on the NASDAQ Stock Market ("NASDAQ"), rendering it a foreign private issuer and requiring it to file certain reports (including Form 20-F) with the Commission. On September 16, 2011, PwC Shanghai was terminated as Client H's auditor after raising concerns about certain issues including related party transactions and the disclosure of transactions in the Company's stock by affiliates that, in PwC Shanghai's opinion, warranted in-depth investigation. Client H Form 6-K, at 2 (09/27/11) (RX 377). PwC Shanghai voluntarily explained its concerns and the circumstances regarding its termination to the Division. E-mail from M. Jacques to M. Flynn (09/28/11) (RX 378). In its Annual Report on Form 20-F for the fiscal year ended December 31, 2010, Client H reported:

During the course of the audit of the financial statements for the year ended December 31, 2010, PwC advised the Audit Committee that its audit scope needed to be expanded (and was not expanded due to PwC's dismissal) and an independent investigation was warranted (such investigation was not conducted) in relation to information in [certain] areas . . . , which information, if further investigated and concluded in a manner adverse to the Company, might impact the fairness or reliability of the Company's financial statements, or cause PwC to be unwilling to complete its audit of the Company's financial statements.

RX 380.

Client I is “a leading manufacturer of automotive electric parts, suspension products and engine components in China” and operates in China through PRC subsidiaries. Client I Form 10-K, Part I, Item 1 (03/04/10) (RX 386). Client I has two manufacturing facilities, both located in China, and its customers include subsidiaries and joint ventures of state-owned enterprises. The Company’s shares were listed on NASDAQ. Id. On December 6, 2010, the Company engaged PwC Shanghai to audit its financial statements for the fiscal year ending December 31, 2010. Client I Form 8-K, at 2 (12/06/10) (RX 387). On December 6, 2011, PwC Shanghai resigned as Client I’s auditor due to Client I’s delisting from NASDAQ and PwC Shanghai’s concern about its ability to complete its audit in light of the Company’s approach toward addressing certain issues raised by NASDAQ and the Company’s internal audit committee. Client I Form 8-K, at 2 (12/14/11) (RX 407). In a letter to the Company dated December 10, 2011, PwC Shanghai explained that it was resigning because, “in its judgment, it would not be able to issue an opinion unless the concerns raised by NASDAQ were addressed and all necessary audit work was carried out.” Letter from PwC Shanghai to L. Goldman (12/10/11) (RX 405). Client I echoed PwC Shanghai’s explanation in a Form 8-K filed on December 14, 2011:

On September 29, 2011, the audit committee (the “Audit Committee”) of the Company’s board of directors (the “Board”) met and issued findings and remediation recommendations in connection with an investigation that it had conducted into certain transactions and accounting matters (the “Investigation”), as previously disclosed in a Current Report on Form 8-K filed on October 5, 2011. . . . [W]hile PwC indicated in its letter of December 10, 2011 that it recognizes that the Company has taken certain remedial steps and is continuing to consider additional steps, PwC has informed the Company of its view that the issues raised by the Investigation have not been fully addressed by Company management as of December 6, 2011, and in order for PwC to complete its audit,

it would, in the exercise of its professional judgment, have to satisfy itself that such issues have been fully addressed.

RX 407, at 2. PwC Shanghai contemporaneously informed the Division of its resignation, sent its resignation letters to the Division, and discussed with the Division the nature of its concerns regarding Client I. E-mail from M. Flynn to H. Ramrattan and B. Mroski (12/12/11) (RX 403); E-mail from M. Flynn to H. Ramrattan (12/12/11) (RX 404); RX 405. PwC Shanghai never prepared, issued, or furnished any audit report for Client I. RX 407. The SEC entered into a settlement with Client I on or about November 16, 2012. Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 (11/16/12) (RX 415).

All of PwC Shanghai's audit work for Client H and Client I was performed in China, and all of the audit work papers and other audit-related materials relating to these engagements are located in China.

2. The Division's Requests for Client H Audit-Related Information and PwC Shanghai's Consistent Efforts to Cooperate with Those Requests

In or about June 2011, PwC Shanghai learned from Client H's Chief Financial Officer that the Division was interested in speaking with PwC Shanghai concerning what procedures PwC Shanghai had performed to verify Client H's cash balances and revenue recognition practices, what procedures PwC Shanghai generally performs in connection with audit engagements, and whether such procedures were performed in connection with its Client H engagement. See E-mail from J. Kaleba to E. Licker (06/06/11) (RX 371); E-mail from J. Kaleba to E. Licker (06/09/11) (RX 372). PwC Shanghai scheduled a call with the Division for June 28, 2011. See E-mail from M. Flynn to M. Jacques, J. Kaleba, and L. Parker (06/22/11) (RX 373); E-mail from M. Flynn to M. Jacques and J. Kaleba (06/27/11) (RX 375). Participants

in the call on behalf of PwC Shanghai included PwC Shanghai's Client H engagement partner, PwC Shanghai's Risk Management Leader for SEC Matters, and a partner from Linklaters, PwC Shanghai's outside counsel on matters of Chinese secrecy, privacy, and confidentiality laws. See RX 375.

At the outset of the call, the Division indicated that it was requesting PwC Shanghai's voluntary cooperation in connection with its investigation of Client H. PwC Shanghai explained that it was committed to cooperating and to answering the Division's questions as best it could, consistent with Chinese secrecy, privacy, and confidentiality laws, and explained that the Linklaters partner was participating in the call to guard against any disclosure by PwC Shanghai of information that could violate Chinese law. PwC Shanghai then provided the Division with detailed descriptions of the type of audit work that PwC Shanghai would normally perform in connection with the testing of cash, revenue recognition, related-party transactions, a share repurchase program, and borrowings (as informed by the specific facts and circumstances of the particular engagement). The Division concluded the call by indicating that it would send PwC Shanghai a request for information. It did not do so.

PwC Shanghai did not hear from the Division again for three months until September 27, 2011, when the Division asked to speak with the firm about the facts surrounding its termination as Client H's auditor. See RX 378. During a subsequent conversation with PwC Shanghai on September 28, 2011, the Division indicated that it felt it had received cooperation from the firm and was aware of Chinese law impediments, although it did not necessarily agree with PwC Shanghai's views of those impediments. On October 3, 2011, PwC Shanghai's Client H engagement partner and its Risk Management Leader for SEC Matters described for the Division the process that led to PwC Shanghai's dismissal as Client H's auditor, including the nature of its

disagreements with the Company regarding the need for an expanded investigation. See E-mail from M. Flynn to M. Jacques (10/03/11) (RX 379).

On November 28, 2011, PwC Shanghai received a call from the Division, asking a single follow-up question about whether Client H had provided PwC Shanghai with information concerning certain trading issues. On December 3, 2011, PwC Shanghai promptly responded to that question by explaining to the Division that the Company had transmitted to PwC Shanghai various materials about the trading issues but that PwC Shanghai had been terminated as Client H's auditor before it had the chance to review those materials and, in any event, did not believe the materials to adequately explain the trading issues. The Division expressed its appreciation and indicated it would contact the firm if it had any further questions. It did not do so except for a brief exchange about an unrelated topic on December 9, 2011. E-mail from M. Jacques to M. Flynn (12/09/11) (RX 381).

PwC Shanghai did not hear from the Division again for another two months until it received a letter from the Division, dated February 8, 2012, requesting that PwC Shanghai produce, "pursuant to Section 106," "all audit work papers and all other documents related to any audit work or interim reviews performed" for Client H for the fiscal year ending December 31, 2010 (the "Client H 106 Request"). Letter from J. Kaleba to PricewaterhouseCoopers LLP (02/08/12) (RX 382).

3. The Division's Requests for Client I Audit-Related Information and PwC Shanghai's Consistent Efforts to Cooperate with Those Requests

In or about July 2011, the Division contacted PricewaterhouseCoopers LLP (the U.S. member firm of the global PwC network of firms) with a request to speak with the PwC

Shanghai engagement partner for the Client I audit.⁵ That request was then directed to PwC Shanghai, which led to an initial telephone discussion between the Division and PwC Shanghai on July 7, 2011.

During that call, the Division asked to discuss with the PwC Shanghai Client I engagement partner (1) what predecessor and successor auditor discussions were had with Client I's previous auditors as part of PwC Shanghai's client acceptance procedures; (2) audit procedures related to cash and accounts receivables; and (3) when PwC Shanghai expected to sign the audit opinion (which the Division had been informed would not occur prior to completion of an ongoing internal investigation). The PwC Shanghai Risk Management Leader for SEC Matters who had been involved in the discussions with the Division relating to Client H alerted the Division that Chinese legal impediments would limit PwC Shanghai's ability to talk about client-specific audit work but proposed that a generic discussion (like the initial Client H discussion) would be possible. The Division indicated that this approach was acceptable.

PwC Shanghai scheduled a call for July 21, 2011, to discuss the areas of interest the Division had identified. See E-mail from M. Flynn to H. Ramrattan (07/20/11) (RX 388). During that call, the PwC Shanghai engagement partner provided detailed descriptions of the type of audit work that PwC Shanghai would normally perform in the areas of cash confirmations and customer confirmations (as informed by the specific facts and circumstances of the particular engagement), responded to detailed questions posed by the Division, and reacted to hypotheticals the Division posed. The engagement partner also responded to the Division's

⁵ The Division staff that contacted PwC Shanghai in connection with the Client I engagement are from the Commission's Home Office. The Division staff that contacted PwC Shanghai in connection with the Client H engagement are from the Commission's Boston Regional Office.

questions concerning the status of the Company's internal investigation and PwC Shanghai's efforts to communicate with the Company's prior auditors.

At the end of that discussion, the Division indicated that it might have specific questions about the extent to which Chinese law prohibits disclosure of the Client I-specific information sought by the Division and that it was interested in better understanding that law. PwC Shanghai advised the Division that, in another matter involving a company with Chinese operations, PwC Shanghai and its outside counsel at Linklaters had engaged in a dialogue with the Division about Chinese legal impediments. PwC Shanghai referred the Division to a legal letter from Linklaters that PwC Shanghai had provided to the Division in the other matter (which described the contours of the Chinese legal impediments) and offered to arrange a telephone call with the Division and counsel at Linklaters so that the Division could pose its specific questions about Chinese law, and hear the responses, directly.

PwC Shanghai and the Division next spoke on July 27, 2011. By that time, the Division had looked into the other matter and had reviewed the Linklaters legal letter. The Division indicated that it had a number of general questions about the applicability of Chinese law, and additional questions as to the application of that law to the Client I engagement. A telephone call to address the Division's questions was scheduled for August 11, 2011. See E-mail from M. Flynn to H. Ramrattan, B. Mroski, and S. Kaiser (08/10/11) (RX 390).

The Division began that telephone call by indicating its intention to start a dialogue about Chinese legal impediments. The Division acknowledged that, to date, it had not sent PwC Shanghai a formal request, but indicated that one might be sent. During the discussion, counsel from Linklaters outlined the core sources of Chinese secrecy, privacy, and confidentiality laws implicated by a request from a foreign regulator, such as the SEC. Although the topic of the call

had been understood to be Chinese legal impediments, the Division also asked a number of questions about PwC Shanghai's IT systems, the structure of Client I's ownership (even though no engagement team member had been asked to join the call), PwC Shanghai's practices relating to voluntary disclosure, and its internal policies relating to state secrets. The General Counsel of PwC Shanghai and the PwC Shanghai Risk Management Leader for SEC Matters responded to every one of the Division's questions. Additionally, counsel from Linklaters answered the Division's questions relating to Chinese legal impediments.

At the end of that call, the Division indicated that it had several questions arising out of the discussion that it would request PwC Shanghai to answer. PwC Shanghai asked that the Division send the request by e-mail, which the Division indicated it would quickly do. PwC Shanghai also told the Division that, given PwC Shanghai's obligation to provide any request for information from a foreign regulator to the CSRC prior to producing the information – which obligation had been one of the subjects of the discussion with counsel from Linklaters and had been described in the Linklaters legal letter – it might be more efficient for the Division to make its request directly to the CSRC. PwC Shanghai indicated that it was willing to facilitate that request as best it could.

The next communication PwC Shanghai received from the Division was a letter dated September 23, 2011. That letter requested that PwC Shanghai provide an "explanation and chronology of the verification" by PwC Shanghai "during its fiscal year 2010 audit of [Client I] of (1) [Client I's] recorded cash balances at year end 2008, 2009, and 2010, particularly in China; (2) [Client I's] customers during [the] period 2008-2010; (3) [Client I's] accounts receivable at year end 2008, 2009, and 2010; and (4) [Client I's] sales to customers during 2008-

2010, including sales invoices and VAT invoices.” Letter from H. Ramrattan to M. Flynn (09/23/11) (RX 391).

The Division’s letter further requested that the explanation include “a chronology of the communications with the company and company counsel, the audit steps taken concerning the verifications, the actions taken by the auditor and the company concerning the verifications, the dates and locations where the activities and communications occurred, the identification of the persons involved [in] the activities and communications related to the verifications (including the name and title of the individuals and the names of the entities involved, including PwC [Shanghai] and company personnel, customers, couriers, bank and bank personnel)” and “all relevant supporting documentation.” Id. These requests went beyond any information that the Division had previously sought (requesting not only the production of documents, but also the preparation of detailed chronologies) and were different than the requests that the Division suggested it would send to PwC Shanghai at the end of the August 11, 2011 telephone call.

Finally, the Division’s letter requested that PwC Shanghai provide “information sufficient to explain how PwC [Shanghai] has stored any withheld information, from the date of receipt, in accordance with relevant Chinese laws,” and a copy of its “written document receipt, retention and storage policies for documents considered to be covered by Chinese state, commercial, national archive and other secrecy or confidentiality laws.” Id.

PwC Shanghai undertook extensive work in extracting information in the four areas in which the Division had expressed interest – cash, accounts receivable, customers, and sales. Members of the engagement team devoted significant time to creating in English the detailed chronologies the Division requested. See Letter from M. Flynn to H. Ramrattan (11/02/11) (RX 396).

During the course of preparing these materials, on October 10, 2011, PwC Shanghai, along with the other Chinese member firms of the Big 4 plus 2, was directed to attend a meeting with senior officials from the CSRC and MOF. This was not a meeting specific to Client I, nor was it a meeting that PwC Shanghai requested. At the meeting, the senior officials from the CSRC and MOF addressed the possibility of any audit firm providing any work papers or client-related information emanating out of work performed in mainland China directly to any foreign regulator. The officials made clear that the audit firms must not do so and that the only appropriate way under PRC law to respond to a request of a foreign regulator for such work papers and related materials was to refer the request to the CSRC and for the foreign regulator to work directly with the CSRC. The officials from the CSRC made clear that any deviation from this admonition would be a violation of Chinese law and would subject the violating firm to consequences under Chinese law.

Further to these direct admonitions, and as it had intended in any event, PwC Shanghai sought a separate meeting with senior officials of the CSRC to discuss the Division's Client I letter. That meeting was held on October 17, 2011. At the meeting, PwC Shanghai provided the CSRC with a translated version of the Division's letter and sought clarification as to whether the chronologies that it had prepared in response to the Division's request could be provided, as they themselves were prepared from information contained in the audit work papers. The message from the October 10, 2011 meeting – that the only appropriate way for a foreign regulator to obtain audit work papers and related documents (including documents such as chronologies based on information from, and a review of, work papers) was through the CSRC and not from the audit firms directly – was reiterated. PwC Shanghai provided the CSRC with Chinese translations of the detailed chronologies it had prepared relating to cash, accounts receivable,

customers, and sales, together with all relevant underlying work papers, as well as a more general chronology of its engagement by Client I.

On October 26, 2011, the CSRC issued a letter to audit firms in China. Letter from the CSRC to Relevant CPA Firms (10/26/11) (RX 20). That letter was consistent with the directives the CSRC and MOF had conveyed to all of the firms during the October 10, 2011 meeting and had reiterated to PwC Shanghai in the separate October 17, 2011 meeting with respect to materials related to Client I.

As explained to the Division in response to its September 23, 2011 letter, to the extent the CSRC authorized production or to the extent the Division made its request to the CSRC, PwC Shanghai had taken steps to make sure that the materials sought could be provided to the SEC promptly in accordance with any arrangements reached by the CSRC and the SEC. RX 396. PwC Shanghai also had informed the CSRC that the Division had requested information regarding certain internal policies of PwC Shanghai regarding its document retention policies and compliance with Chinese state, commercial, national archive, and other secrecy or confidentiality laws. Id. Such policies do not contain client information; nor are they prepared based on information from audit work papers. No objection was raised to PwC Shanghai's production of such information, and on November 2, 2011, PwC Shanghai produced such materials to the Division. Id.

The Division's September 23, 2011 letter also requested that, "to the extent that PwC [Shanghai] asserts that the disclosure of information responsive to the above requests violates state secrecy laws or other Chinese law, we ask that [PwC Shanghai] identify in writing . . . how the Chinese laws apply to the Commission's requests," and provide a "detailed explanation" of PwC Shanghai's reasons for not providing the requested information. RX 391. In response,

PwC Shanghai provided the Division with an addendum prepared by Linklaters in which Linklaters described the Chinese laws that have been invoked by the CSRC as the basis for its directives to PwC Shanghai and Chinese audit firms more broadly. RX 396; Letter from Linklaters to H. Ramrattan (11/02/11) (RX 397). The addendum also analyzed the effect of applicable PRC laws and regulations, taking into consideration the directives of the CSRC on October 10, 2011 and October 17, 2011, and in its October 26, 2011 letter addressing the production of the audit work papers collected by PwC Shanghai in response to the Division's request, as well as the chronologies prepared pursuant to the Division's request. RX 397.

On November 3, 2011, PwC Shanghai received a response from the CSRC concerning the Division's September 23, 2011 request for Client I materials. Letter from the CSRC to PwC Shanghai (11/03/11) (RX 398). This letter confirmed the directives PwC Shanghai received on October 10, 2011, October 17, 2011, and October 26, 2011.

On November 15, 2011, PwC Shanghai received an additional letter from the Division, requesting that PwC Shanghai provide the following documents relating to its audit of Client I: (1) all client acceptance and planning documents; (2) all work papers related to revenue, restated items, and related party testing; and (3) all communications related to the internal investigation of Client I by its Audit Committee. Letter from H. Ramrattan to M. Flynn (11/15/11) (RX 399). PwC Shanghai expended considerable effort collecting and collating the three categories of materials requested by the Division, which comprise a considerable volume. Letter from M. Flynn to H. Ramrattan (12/02/12) (RX 402). PwC Shanghai also provided the Division with a copy and English translation of the CSRC's response to the Division's September 23, 2011 request, as well as a supplemental Linklaters addendum addressing the effect of applicable PRC laws and regulations on the production of the documents collected by PwC Shanghai in response

to the Division's November 15, 2011 request. Id.; RX 398; Letter from Linklaters to the SEC (12/01/11) (RX 401).

In accordance with the directives of the CSRC, PwC Shanghai notified the CSRC of the Division's additional request and asked for the CSRC's guidance. Letter from PwC Shanghai to the CSRC (12/01/11) (RX 400). PwC Shanghai's notification letter to the CSRC also provided an index of the materials collected and collated in response to the Division's request. Id. PwC Shanghai thus again stood ready, upon guidance from the CSRC, to deliver to the CSRC the documents requested in the Division's November 15, 2011 letter.

PwC Shanghai resigned as Client I's auditor on December 6, 2011. The firm promptly notified the Division of its resignation, forwarded to the Division its resignation letters, and discussed with the Division the nature of its concerns about Client I, for which the Division expressed its appreciation. RX 403; RX 404; RX 405; E-mail from H. Ramrattan to M. Flynn (12/13/11) (RX 406).

PwC Shanghai did not hear from the Division again until, in a letter dated February 16, 2012, the Division requested PwC Shanghai to produce "pursuant to Section 106" "all audit work papers and all other documents related to any audit work performed" for Client I for the year ended December 31, 2010 (the "Client I 106 Request"). Letter from S. Kaiser to PricewaterhouseCoopers LLP (02/16/12) (RX 408).

4. Response to the 106 Requests and Institution of Proceedings

After receiving the Client H and Client I 106 Requests, PwC Shanghai, along with several of the other Respondents to this proceeding who received similar 106 requests, sought and participated in meetings with the CSRC and MOF on February 24, 2012. At those meetings,

the Chinese firms reported their receipt of the 106 requests and provided copies.⁶ During the meetings, the CSRC and MOF reiterated the directive from the October 10, 2011 meeting and set forth in the October 26, 2011 letter that the audit firms were prohibited from providing work papers directly to the SEC, and that the SEC must work with the CSRC in order to obtain such materials. PwC Shanghai responded to the 106 Requests on April 12, 2012. Letters from M. Flynn to J. Kaleba (04/12/12) (RX 384); Letters from M. Flynn to S. Kaiser (04/12/12) (RX 411).

On April 26, 2012, the Division served PwC Shanghai with letters (the “Wells Notices”) indicating the Division’s intention to recommend that the Commission institute an enforcement action against PwC Shanghai for willfully refusing to produce work papers and other materials relating to PwC Shanghai’s audits of Clients H and I. Letter from J. Kaleba to M. Flynn (04/26/12) (RX 385); Letter from H. Ramrattan to M. Flynn (04/26/12) (RX 412). PwC Shanghai submitted a response to the Wells Notices on May 24, 2012. See E-mail from T. England to M. Flynn, J. Dugan, H. Ramrattan, J. Kaleba, M. Jacques, and S. Kaiser (05/24/12) (RX 413).

On December 3, 2012, the Commission issued its order instituting the instant proceeding (the “OIP”) against PwC Shanghai and the other Respondents. The OIP does not seek to enforce the Division’s 106 requests to PwC Shanghai.

5. Recent Developments

Since the issuance of the OIP, the CSRC reiterated to PwC Shanghai during a February 19, 2013 meeting that PwC Shanghai is forbidden from turning over work papers directly to U.S.

⁶ PwC Shanghai provided a Chinese translation of the Client I 106 Request and subsequently provided a copy of the Client H 106 Request.

regulators, and that U.S. regulators must seek access to such materials through the CSRC. There have been, of late, signs that the relevant diplomatic channels between the United States and China are opening. [REDACTED]

[REDACTED]

[REDACTED] While it makes perfect sense, of course, to dismiss this proceeding in favor of a government-to-government resolution, [REDACTED]

[REDACTED]

Incredibly, [REDACTED], there is no evidence of which PwC Shanghai is aware that the SEC ever has asked the CSRC or other Chinese authorities for assistance in obtaining the audit-related files of PwC Shanghai with respect to Client H or I. For all the reasons expressed herein and in the other Respondents' briefs, levying sanctions against PwC Shanghai is entirely unwarranted, but in this circumstance it would be doubly troubling and unfair.

In addition, on May 7, 2013, the PCAOB and the Chinese authorities announced a new Memorandum of Understanding, which establishes a framework for the exchange of audit materials between the parties in furtherance of their investigative duties, and further provides that the PCAOB can provide such materials to the SEC. Memorandum of Understanding on

Enforcement Cooperation between the PCAOB and the CSRC and the MOF (05/10/13) (RX 274).

ARGUMENT

I. PWC SHANGHAI'S INABILITY TO PRODUCE AUDIT WORK PAPERS TO THE DIVISION DOES NOT CONSTITUTE A "WILLFUL REFUSAL" UNDER SECTION 106

PwC Shanghai's failure to produce work papers for Clients H and I cannot be deemed a "willful refusal" under Section 106. Neither the law nor the facts would support such a finding. "Willful refusal" under Section 106 must mean more than "not inadvertently." Again, PwC Shanghai respectfully refers to and incorporates by reference the DTTC brief.

II. THE SANCTIONS AVAILABLE UNDER RULE 102(e) ARE INAPPROPRIATE AND UNFAIR IN THE INSTANT CONTEXT

If the issue of remedies is reached at all, there can be no doubt that sanctioning PwC Shanghai would be highly inappropriate in this circumstance. It would serve no remedial purpose to sanction PwC Shanghai because the firm ultimately had no realistic choice but to obey the directives of the Chinese regulators. A sanction would not remove the impediments to production under Chinese law. Moreover, the Division already has disclaimed any attempt to obtain those work papers through this proceeding. A sanction also would not serve a broader remedial goal of encouraging other Chinese audit firms to comply with requests from the Division for audit materials since these firms face the same impediments as PwC Shanghai.

Sanctioning PwC Shanghai for obeying the directives of the Chinese authorities could, however, have far-reaching negative consequences for the audit profession and the investing public more broadly. Forcing PwC Shanghai to face disciplinary proceedings in the United States because Chinese law precludes it from producing documents directly to the SEC jeopardizes the ability of U.S. companies with operations in China and Chinese companies that

are traded in the United States to have their financial statements audited, to the detriment of those companies and their shareholders. The result would be the impairment of the capital markets, financial reporting, and important investor safeguards.

As indicated, PwC Shanghai adopts and incorporates by reference the remedies section of KPMG Huazhen's brief. As described therein, given the conflict of laws at issue in this proceeding, most of the traditional factors set forth in Steadman v. SEC, 603 F.2d 1126 (5th Cir. 1979), aff'd, 450 U.S. 91 (1981), are ill-suited to an assessment of the appropriate sanction, if any, to be imposed by the Court. However, those factors that are most germane – scienter and the egregiousness of the conduct at issue – weigh heavily against the imposition of any sanction, as demonstrated in the KPMG Huazhen brief.

Scienter implies a degree of bad faith. See In re Pattison, Exchange Act Release No. 3407, 2012 WL 4320146, at *9 (Sept. 20, 2012) (“[Respondent’s] repeated efforts to conceal improper backdating . . . demonstrate that he acted with a high degree of scienter.”); In re Kornman, Exchange Act Release No. 2840, 2009 WL 367635, at *7 (Feb. 13, 2009) (describing respondent’s conduct as “exhibit[ing] a high degree of scienter” where respondent “made a false statement intentionally, knowing it was false and for the purpose of misleading the Commission” (internal quotation marks, brackets, and ellipses omitted)). Even if the Division were correct (which it is not) that a “willful refusal” under Section 106 means nothing more than a non-inadvertent failure to comply with its requests for information, there is no evidence that PwC Shanghai acted in bad faith. The firm has made considerable efforts to cooperate with the Division to the extent allowed by Chinese law, including by providing the Division with comprehensive descriptions of its audit procedures, creating and translating detailed chronologies, collecting and collating a substantial volume of materials, and producing materials

that do not contain client information. Indeed, at every step of the way, the Division acknowledged PwC Shanghai's cooperation. From the outset, PwC Shanghai has stood ready and willing to respond to the Division's requests as soon as the complex sovereign-to-sovereign issues preventing it from doing so are resolved. The firm's extensive good faith efforts thus are entirely inconsistent with a finding of scienter.

The Division has alluded to the fact that PwC Shanghai, like the other Respondents and numerous other firms around the world, voluntarily registered with the PCAOB to perform certain services for U.S. registrants. That is not evidence of bad faith. To the contrary, PwC Shanghai was transparent in registering that its ability to abide by Section 106 was subject to Chinese law. While the PCAOB took the position that U.S. law obligations nonetheless might still be enforced, it accepted PwC Shanghai's registration and has never suggested its audit work for U.S. registrants constitutes bad faith.

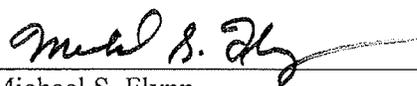
Similarly, the Division can put forward no evidence that PwC Shanghai's conduct was egregious. Besides providing assistance to the Division when permitted by Chinese law, PwC Shanghai acted responsibly in raising the issues that led to its termination as Client H's auditor and its resignation as Client I's auditor, in promptly notifying the Division of those developments, and in discussing with the Division the nature of its concerns. Moreover, PwC Shanghai never issued any audit reports or other public statements concerning those engagements that were relied upon by investors to their detriment. In these circumstances, there is no support for the imposition of a sanction on PwC Shanghai.

CONCLUSION

For the reasons stated above, PwC Shanghai respectfully requests that judgment be entered in its favor and that, in any event, no sanction be imposed.

Dated: June 24, 2013

Respectfully submitted,



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