

## Chinese Securities Regulator Announces Plans to Produce Documents in Ongoing “Big Four” Accounting Firm SEC Enforcement Action

According to a public statement issued by the China Securities Regulatory Commission (“CSRC”) on July 9, 2013, China’s securities regulator is preparing to hand over the audit documents of a U.S.-listed Chinese company to the U.S. Securities and Exchange Commission (“SEC”) and the Public Company Accounting Oversight Board (“PCAOB”). The announcement comes on the heels of the CSRC’s agreement in May to allow the PCAOB, which regulates the U.S. audit industry, to access work papers and other records of U.S.-listed companies held by the Chinese affiliates of American audit firms.

More than 100 Chinese companies traded on U.S. exchanges, as well as many U.S. companies with substantial Chinese operations, have encountered questions about their accounting and disclosure practices from U.S. regulators in recent years. Starting with an enforcement action against Deloitte’s Chinese affiliate in September 2011, the SEC has sought to obtain audit documents and work papers from those companies’ external auditors, often Chinese affiliates of U.S. accounting firms. But the China-based auditors have refused on the grounds that compliance could violate China’s Law on Guarding State Secrets and result in severe criminal sanctions. On December 3, 2012, the SEC increased the pressure on the Chinese auditors by bringing additional administrative charges against the Chinese affiliates of Deloitte and the remaining “Big Four” accounting firms – Ernst & Young, KPMG, and PricewaterhouseCoopers – plus BDO International, Ltd. Meanwhile, U.S. and Chinese regulators have been negotiating on and off again with the aim of reaching an agreement that would resolve the apparent conflict between U.S. and Chinese law, but without a visible resolution.

Hope of progress in U.S.-Chinese negotiations were rekindled in May when the CSRC and Chinese Ministry of Finance agreed to allow the PCAOB to seek certain work papers and other records held by Chinese affiliates of U.S. audit firms. Although the SEC was not a party to the May agreement, its terms allow the PCAOB to share documents with the SEC as long as it gives Chinese regulators advance notice.

The CSRC’s unilateral announcement that it will now provide documents to the SEC may reflect a sea change in cooperation between U.S. and Chinese securities regulators, but even the SEC appears skeptical. The implications of the announcement are yet unclear. The CSRC’s announcement did not name the company or documents involved. In a July 10, 2013 notice filed by the SEC in the Deloitte enforcement action, the SEC noted that it does not “know when the production will be made, the extent of redactions, if any, whether the production will be complete, or whether there will be potential use restrictions.”

Interestingly, the announcement comes as this year’s Strategic and Economic Dialogue, the annual set of talks between U.S. and Chinese officials, is about to begin in Washington, D.C. [As we have observed previously](#), the heart of the conflict between U.S. and Chinese law is political in nature. Whether the timing of the CSRC’s announcement suggests that improved cooperation between the countries’ financial regulators will be on the agenda at the upcoming talks remains to be seen.

We will continue to monitor developments in this area. For further information, please contact your usual Ropes & Gray attorney.

[Kim B. Nemirow](#)  
[Mimi Yang](#)  
[Geoffrey M. Atkins](#)  
[R. Daniel O'Connor](#)