
ORDER INSTITUTING DISCIPLINARY)
PROCEEDINGS, MAKING FINDINGS,)
AND IMPOSING SANCTIONS) PCAOB Release No. 105-2016-001
)
In the Matter of PKF [Hong Kong],) January 12, 2016
)
Respondent.)
)

By this Order, the Public Company Accounting Oversight Board ("Board" or "PCAOB") is censuring the registered public accounting firm PKF, a partnership headquartered in the Hong Kong Special Administrative Region of the People's Republic of China (captioned as "PKF [Hong Kong]") (hereinafter, "Respondent" or "the Firm") and revoking the Firm's registration.¹ The Board is imposing these sanctions on the basis of its findings concerning Respondent's noncooperation with a Board investigation, by failing to comply with an Accounting Board Demand ("ABD") requiring the testimony of an associated person on behalf of the Firm.

I.

The Board deems it necessary and appropriate, for the protection of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports, that disciplinary proceedings be, and hereby are, instituted pursuant to Section 105(c) of the Sarbanes-Oxley Act of 2002 ("Act") and PCAOB Rule 5200(a)(3) against the Respondent.

II.

In anticipation of the institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondent has submitted an Offer of Settlement ("Offer") that the Board has determined to accept. Solely for purposes of these proceedings and any other proceedings brought by or on behalf of the Board, or to which the Board is a party, and without admitting or denying the findings herein, except as to the Board's jurisdiction over Respondent and the subject matter of these proceedings, which is admitted,

¹ The Firm may reapply for registration after three (3) years from the date of this Order.

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Respondent consents to the entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order") as set forth below.²

III.

On the basis of Respondent's Offer in this matter, the Board finds that³

A. Respondent

1. Respondent is, and at all relevant times was, a partnership headquartered in the Hong Kong Special Administrative Region of the People's Republic of China, and is a member of the PKF International network. The Firm is a Member of the Hong Kong Institute of Certified Public Accountants ("HKICPA") (License No. 0044). The Firm is registered with the Board pursuant to Section 102 of the Act and PCAOB rules. At all relevant times, the Firm was the external auditor for the issuer identified below.

B. Respondent Failed to Cooperate with a PCAOB Investigation.

2. Pursuant to Section 105(b) of the Act and PCAOB Rules, the Board conducts investigations into acts or practices of registered public accounting firms and their associated persons that may violate any provision of the Act, the Rules of the Board, the provisions of securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the U.S. Securities and Exchange Commission ("Commission") issued under the Act, or professional standards. Section 105(b)(3)(A) of the Act authorizes the Board to sanction a registered public accounting firm for refusing to testify in connection with a Board investigation. Board rules include procedures for implementing that authority.⁴ Noncooperation with a Board investigation includes failing to comply with an accounting board demand.⁵

² The findings herein are made pursuant to the Respondent's Offer, and are not binding on any other person or entity in this or any other proceeding.

³ The sanctions that the Board is imposing on Respondent in this Order are imposed pursuant to Section 105(b)(3) of the Act, 15 U.S.C. § 7215(b)(3), and PCAOB Rule 5300(b).

⁴ See PCAOB Rules 5110 and 5200(a)(3).

⁵ See PCAOB Rule 5110(a)(1).



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3. As described below, Respondent failed to cooperate with the Board's investigation by failing to comply with an Accounting Board Demand, issued to Respondent pursuant to PCAOB Rule 5102(b), requiring an associated person of the Firm to provide testimony on behalf of the Firm.

Background

4. Respondent audited the financial statements of a People's Republic of China ("PRC")-based issuer ("Issuer A"). At all relevant times, Issuer A was an issuer, as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

5. On January 9, 2014, the Board issued an Order of Formal Investigation regarding Respondent's audits and reviews of the financial statements of Issuer A.⁶

Respondent's Failure to Appear and Testify

6. Pursuant to the Board's Order of Formal Investigation, in early April 2015, the Board's Division of Enforcement and Investigations ("Division") issued an Accounting Board Demand ("ABD") requiring Respondent to make a representative of the Firm available for testimony on certain topics outlined in the ABD, including topics related to the Firm's audits of Issuer A.

7. After an attempt to accommodate Respondent with respect to the dates and location of testimony, including an accommodation to have the testimony take place in Hong Kong, Respondent, through counsel, informed the Division in late April 2015 that the Firm would not comply with the ABD for testimony relating specifically to the Firm's audits of Issuer A.

8. Respondent declared that it would not provide an associated person of the Firm to provide the required testimony about the audits of Issuer A asserting that: (1) the Division was required to make a request for assistance under the May 2013 Memorandum of Understanding ("MOU") on Enforcement Cooperation between the Board, the China Securities Regulatory Commission ("CSRC") and the PRC Ministry of Finance ("MOF") in order to obtain the testimony⁷ and (2) the testimony could not

⁶ Respondent had resigned as Issuer A's auditor more than a year prior to the Board's Order of Formal Investigation.

⁷ Respondent also raised with the MOF, the applicability of the MOU to the Division's request for testimony.

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proceed without first obtaining the approval of the CSRC or the MOF. Respondent stated that its position was based on its understanding of MOF pronouncements.⁸

9. Respondent's reliance on the MOU was not a valid justification for refusing to provide testimony in a Board investigation. The MOU "sets forth the [parties'] intent with regard to mutual assistance and the exchange of information for the purpose of enforcing and securing compliance with the respective Laws and [r]egulations of [the parties'] jurisdictions...."⁹ At the same time, the MOU states that it is "not intended to create legally binding obligations or ... supersede domestic laws" of the parties. By its unequivocal terms the MOU affords Respondent no legal rights.¹⁰ What the MOU contemplates is that the parties to the agreement will use the mechanisms provided in the MOU in appropriate circumstances.¹¹

10. The Division's personnel informed Respondent that its asserted grounds for refusing to testify were not valid, including through a letter from the Division pursuant to PCAOB Rule 5109(d) notifying Respondent of the Division's intention to recommend a disciplinary proceeding in the event of a continued refusal to testify. Respondent continued to assert that a representative was unable to testify for the reasons stated above. Respondent's failure to provide the required testimony impeded the Board's ability to determine if Respondent's audits were performed in accordance with PCAOB rules and standards, and whether violations occurred which justified sanctions.

⁸ During the investigation, Respondent cited as the basis for its position the following two MOF pronouncements: *Provisional Rules Regarding Foreign Accounting Firm to Conduct Audit Work Temporarily in China* (Caihui [2011] No. 4) and the *Notice Regarding the Delegation of Issues Related to the Combined Policies of Approval of Foreign Accounting Firms to Conduct Audit Work Temporarily in China* (Caihui [2013] No. 25) (specifically paragraph 8)

⁹ See MOU at 1.

¹⁰ Id.

¹¹ In this case, the Chinese authorities were aware that the PCAOB did not seek testimony from Respondent through the MOU.

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IV.

In view of the foregoing, and to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports, the Board determines it appropriate to impose the sanctions agreed to in Respondent's Offer. Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 105(b)(3)(A)(iii) of the Act and PCAOB Rule 5300(b)(1), PKF is hereby censured;
- B. Pursuant to Section 105(b)(3)(A)(ii) of the Act and PCAOB Rule 5300(b)(1), the registration of PKF is revoked; and
- C. After three (3) years from the date of this Order, PKF may reapply for registration by filing an application pursuant to PCAOB Rule 2101.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

January 12, 2016