

ORDER INSTITUTING DISCIPLINARY)
PROCEEDINGS, MAKING FINDINGS,)
AND IMPOSING SANCTIONS) PCAOB Release No. 105-2016-003
)
In the Matter of Derek WAN Tak Shing,) January 12, 2016
)
Respondent.)
)

By this Order, the Public Company Accounting Oversight Board ("Board" or "PCAOB") is censuring Derek WAN Tak Shing ("Respondent") and barring him from being an associated person of a registered public accounting firm.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 requiring his testimony.

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

¹ Respondent may file a petition for Board consent to associate with a registered public accounting firm after three (3) years from the date of this Order.

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.

ORDER

III.

On the basis of Respondent's Offer in this matter, the Board finds³ that:

A. Respondent

1. Derek WAN Tak Shing, age 50, is a resident of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") and a Member of the Hong Kong Institute of Certified Public Accountants ("HKICPA") (License No. P04844). At all relevant times, Respondent was a partner with the registered public accounting firm of PKF, a partnership headquartered in Hong Kong ("PKF [Hong Kong]" or "the Firm"), and an associated person of a registered public accounting firm as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).

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 an associated person of 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

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 Respondent to provide testimony as part of a Board investigation.

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).

ORDER

Background

4. PKF [Hong Kong] 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 the Firm'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, on January 10, 2014, the Board's Division of Enforcement and Investigations ("Division") issued an Accounting Board Demand ("ABD"), which required Respondent to appear for testimony.

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 April 2015 that Respondent would not comply with the ABD for testimony.

8. Respondent, through counsel, declared that he would not appear for 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 proceed without first obtaining the approval of the CSRC or the MOF. Respondent stated that this position was based on his understanding of MOF pronouncements.⁸

⁶ PKF [Hong Kong] 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.

⁸ During the investigation, Respondent cited as the basis for this 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*

ORDER

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 his 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 he 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 the Firm's audits of Issuer A were performed in accordance with PCAOB rules and standards, and whether violations occurred which justified sanctions.

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), Derek WAN Tak Shing is hereby censured;

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.

ORDER

- B. Pursuant to Section 105(b)(3)(A)(i) of the Act and PCAOB Rule 5300(b)(1), Derek WAN Tak Shing is barred from being an associated person of a registered public accounting firm, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i);¹² and
- C. After three (3) years from the date of this Order, Derek WAN Tak Shing may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

January 12, 2016

¹² As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Respondent. Section 105(c)(7)(B) of the Act provides that “[i]t shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker, or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.”