UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

THE CHAIRMAN

April 27, 2011

The Honorable Patrick T. McHenry
Chairman
Subcommittee on TARP, Financial Services, and
Bailouts of Public and Private Programs
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman McHenry:

Thank you for your letter dated April 11, 2011 concerning the U.S. Securities and Exchange Commission's (SEC) efforts to protect investors from companies based in the People's Republic of China (PRC) that violate U.S. securities laws. Per you request, the agreements the SEC has with our PRC counterparts are attached, and are numbered SEC_IA_OGR_000001 through SEC_IA_OGR_000029.

The SEC has moved aggressively to protect investors from the risks that may be posed by certain foreign-based companies listed on U.S. exchanges. Domestic and foreign companies with securities listed on U.S. exchanges are subject to the registration and reporting requirements of the federal securities laws, regardless of the primary place of business. In addition, domestic and foreign companies that publicly offer securities in the U.S. are subject to the federal securities laws, even if the securities are not listed on an exchange. While the majority of foreign-based issuers are engaged in legitimate business operations, others may take advantage of the remoteness of their operations to engage in fraud.

The number of issuers with their principal place of business in the PRC has undergone a marked increase in recent years, including those PRC-based companies that became domestic issuers[1] through reverse mergers.[2] The SEC's Division of Enforcement has pursued securities violations by PRC-based issuers for a number of years, including investigating and filing its first

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1 The term "domestic issuer" used in this letter includes issuers organized in the U.S. or that do not qualify to report as foreign issuers because of the nature of their U.S. contacts.

2 *Public Company Accounting Oversight Board, Activity Summary and Audit Implications for Reverse Mergers Involving Companies from the China Region: January 1, 2007 through March 31, 2010*, Research Note # 2011-P1 (March 14, 2011) http://pcaobus.org/Research/Documents/Chinese_Reverse_Merger_Research_Note.pdf The PCAOB's research note identified 159 reverse mergers by companies principally based in the PRC between 1/1/07 and 3/31/10.

accounting fraud case against a PRC-based issuer in early 2006.[3] As will be described in more detail below, since then, the SEC has brought a number of cases, including market manipulations;[4] accounting and disclosure violations;[5] actions against auditors and accountants;[6] trading suspensions;[7] and administrative proceedings to revoke companies' registration statements.[8]

Early last summer, the SEC launched a proactive risk-based inquiry into U.S. audit firms that have a significant number of domestic issuer clients with primarily foreign operations, including in the PRC. In connection with the inquiry, the Division of Enforcement contacted several U.S. audit firms requesting information concerning the firms' audit practices and compliance with U.S. auditing standards in connection with foreign-based reverse merger companies, including in the PRC. After Enforcement's inquiries, and since March 2011 alone, more than twenty-four PRC-based companies have filed Forms 8-K disclosing auditor resignations, accounting problems, or both. Many of these Forms 8-K disclose issues regarding

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3 *See Securities and Exchange Commission v. NetEase.com, Inc.* (action against company and two former officers), (Feb. 2006), Lit. Rel. 19578 (http://www.sec.gov/litigation/litreleases/lr19578.htm).

4 *See, e.g., SEC v. China Energy Savings Technology, Inc.* (action against company and multiple defendants) (Dec. 2006), Lit. Rel. 19931 (http://www.sec.gov/news/press/2006/2006-200.htm); *SEC v. Berger, et al.*, Lit Rel. 21833, (Feb. 2011) http://www.sec.gov/litigation/litreleases/2011/lr21833.htm .

5 *See, e.g., SEC. v. China Holdings, Inc. et al.* (action against company and CEO) (Oct. 2009), Lit. Rel. 21272 (http://www.sec.gov/litigation/litreleases/2009/lr21272.htm); *In the Matter of China Yuchai International, Limited*, (action against company) (June 2010), Rel. No. 34-62235 (http://www.sec.gov/litigation/admin/2010/34-62235.pdf).

6 *See, e.g., In the Matter of Moore Stephens Wurth Frazer & Torbet LLP, et al.*, (Dec. 2010), Rel. No. 33-9166 (http://www.sec.gov/litigation/admin/2010/33-9166.pdf).

7 *See, e.g., Heli Electronics Corp.* (http://www.sec.gov/litigation/suspensions/2011/34-64101.pdf) ; *China Changjiang Mining & New Energy Co.* (http://www.sec.gov/litigation/suspensions/2011/34-64164.pdf); and RINO International Corporation (http://www.sec.gov/litigation/suspensions/2011/34-64291.pdf) .

8 *See, e.g., China 9D Construction Group,* Admin. Proc. No. 3-14215 (March 24, 2011) (Single respondent) (Revoked by default) (http://www.sec.gov/litigation/admin/2011/34-63817.pdf), *Carrier1 International S.A., et al.*, Admin. Proc. No. 3-14257 (March 24, 2011) (Respondent – China Expert Technology, Inc.) (Revoked by default) (http://www.sec.gov/litigation/admin/2011/34-63911.pdf), *Score One, Inc., et al.*, Admin. Proc. No. 3-14251 (March 8, 2011) (Respondent – Score One, Inc.) (Revoked by default) (http://www.sec.gov/litigation/admin/2011/34-63889.pdf), *China Digital Media Corporation,* Admin. Proc. No. 3-14250 (February 11, 2011) (Single respondent) (Revoked by consent) (http://www.sec.gov/litigation/admin/2011/34-63888.pdf), *Tabatha V, Inc., et al.*, Admin. Proc. No. 3-14126 (February 10, 2011) (Respondent –Tabatha V, Inc.) (Revoked by default) (http://www.sec.gov/litigation/admin/2011/34-63884.pdf), *Apex Capital Group, Inc., et al.*, Admin. Proc. No. 3-14151 (January 13, 2011) (Respondents – Apex Capital Group, Inc. and Asia Fiber Holdings Ltd.) (Revoked by default) (http://www.sec.gov/litigation/admin/2011/34-63713.pdf), *VIPC Communications, Inc., et al.*, Admin. Proc. No. 3-14127 (January 12, 2011) (Respondent –Vizario, Inc.) (Revoked by default) (http://www.sec.gov/litigation/admin/2011/34-63702.pdf), *Tabatha V, Inc., et al.*, Admin. Proc. No. 3-14126 (December 6, 2010) (Respondent – Tagalder Global Investment, Inc.) (Revoked by default) (http://www.sec.gov/litigation/admin/2010/34-63433.pdf).

cash and accounts receivables concerns and the auditors' difficulties in confirming these amounts.

As a result of information learned in our risk-based review and other on-going investigations, within the last five weeks the SEC moved to protect U.S. investors by suspending trading in at least three PRC-based reverse merger entities: (1) Heli Electronics Corp. (HELI); (2) China Changjiang Mining & New Energy Co (CHJI); and (3) RINO International Corporation (RINO):

- On March 21, 2011, the Commission suspended trading in HELI because questions had arisen regarding the accuracy and completeness of information contained in HELI's public filings concerning, among other things, the company's cash balances and accounts receivable. HELI also failed to disclose that its independent auditor had resigned due to accounting irregularities.

- On April 1, 2011, the Commission suspended trading in CHJI because questions had arisen regarding the accuracy and completeness of information contained in CHJI's public filings concerning, among other things, the company's financial statements for 2009 and 2010. CHJI also failed to disclose that it filed its most recent Form 10-Q without the required review of interim financial statements by an independent public accountant and that the company's independent auditor had resigned, withdrawn its audit opinion issued April 16, 2010 relating to the audit of the company's consolidated financial statements as of December 21, 2009, and informed the company that the financial statements for quarters ended March 31, June 30, and September 30, 2010 could no longer be relied upon.

- On April 11, 2011, the Commission suspended trading in RINO because questions had arisen regarding the accuracy and completeness of information contained in RINO's public filings since, among other things, the company had failed to disclose that the outside law firm and forensic accountants hired by the company's audit committee to investigate allegations of financial fraud at the company had resigned after reporting the results of their investigation to management and the board, and that the chairman and independent directors have also resigned. In addition, questions had arisen regarding the size of RINO's operations and number of employees, the existence of certain material customer contracts, and the existence of two separate and materially different sets of corporate books and accounts.

In addition to trading suspensions, in the last several months alone, the Commission has revoked the securities registration of at least eight PRC-based companies that became domestic issuers through reverse mergers. In each instance, the Commission moved to revoke the securities registration because of a failure to make required periodic filings – filings that should contain information of critical importance to U.S. investors.[9] Importantly, once registration has

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[9] Id.

been revoked, no broker-dealer or national securities exchange can execute a trade in the stock unless the company files to re-register the stock.

In addition to trading suspensions and registration revocations, the Commission filed an enforcement action in December 2010 against U.S. audit firm Moore Stephens Wurth Frazer & Torbet LLP (MSWFT) for improper professional conduct in connection with their audit work for PRC reverse merger company China Energy Savings Technology, Inc.[10] In that case, the Commission censured MSWFT, required the disgorgement of all audit fees plus prejudgment interest, and denied the engagement partner the privilege of appearing or practicing before the Commission as an accountant with a right to apply for reinstatement after two years. The Commission also ordered MSWFT to retain an Independent Consultant to review MSWFT's audit practices and make recommendations reasonably designed to ensure that all audits conducted by MSWFT comply with Commission regulations and with PCAOB standards and rules. MSWFT is barred from accepting any new issuer audit clients with operations in the PRC, Hong Kong, and Taiwan until it has provided the SEC with a certificate of compliance with the Independent Consultant's recommendations.

In April 2009, the U.S. District Court for the Eastern District of New York found liable for fraud all defendants in our previously-filed emergency action against China Energy Savings Technology, Inc., undisclosed control person Chiu Wing Chin, and China Energy's CEO, secretary, and vice president, ordering them to pay more than a $34 million in disgorgement, prejudgment interest and civil penalties, and imposing officer-and-director bars against the individual defendants.[11] The SEC filed its underlying emergency fraud action against China Energy in December 2006, alleging that the defendants engaged in an illegal "pump and dump" and market manipulation of the company's stock, and freezing $3.9 million in assets in the U.S.[12] In September 2009, the SEC also sued the company's U.S.-based stock promoter for his role in the fraud, ultimately obtaining a $2.5 million judgment against him last summer.[13]

In October 2009, the Commission filed civil fraud charges in the U.S. District Court for the District of Columbia against China Holdings, Inc. (CHHL) and Julianna Lu, who is described in CHHL's public filings as the company's "Chief Executive Officer, Principal Financial Officer, Principal Accounting Officer, Treasurer and Chairwoman of the Board of Directors."[14] Our complaint alleges that from April 15, 2008 through April 17, 2009, CHHL and Lu made material misrepresentations in nine public filings, including a Form 8-K and two Forms 8-K/A which fraudulently misrepresented that CHHL dismissed its then-current auditor (who had in fact resigned), and that CHHL and the auditor had no disagreements over matters of accounting principles or practices, financial statement disclosure, or auditing scope or procedures. Our litigation against CHHL and Lu is ongoing.

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[10] *See, e.g., In the Matter of Moore Stephens Wurth Frazer & Torbet LLP, et al.*, (Dec. 2010), Rel. No. 33-9166 (http://www.sec.gov/litigation/admin/2010/33-9166.pdf).

[11] *See* Lit. Rel. 21621 (Aug. 2010) (http://www.sec.gov/litigation/litreleases/2010/lr21621.htm)

[12] *SEC v. China Energy Savings Technology, Inc.* (Dec. 2006), Lit. Rel. 19931 (http://www.sec.gov/news/press/2006/2006-200.htm).

[13] *See* Lit. Rel. 21621 (Aug. 2010) (http://www.sec.gov/litigation/litreleases/2010/lr21621.htm)

[14] *See SEC v. China Holdings, Inc., Julianna Lu* (http://www.sec.gov/litigation/litreleases/2009/lr21272.htm)

In June 2010, the Commission filed an enforcement action against China Yuchai International Ltd. in connection with China Yuchai's violations of books and records and internal controls provisions of the federal securities laws arising out of China Yuchai's material overstatement of net income for the year ended December 31, 2005.[15] The overstatement was caused by an erroneous material adjusting journal entry made at China Yuchai's majority-owned subsidiary, Guangxi Yuchai Machinery Company Limited.

In the China Yuchai matter, the Commission experienced significant difficulty and delay in our attempts to obtain workpapers from foreign auditors. The passage of Section 929J of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which amends Section 106 of the Sarbanes-Oxley Act of 2002 (SOX), clarifies the application of SOX Section 106 to the production of foreign audit documentation by (i) expanding the scope of audit documentation to be produced and (ii) simplifying service of process through the appointment of a U.S. agent. We expect that this provision of the Dodd-Frank Act will enhance the Enforcement staff's ability to obtain evidence needed to swiftly advance their ongoing investigations of domestic issuers based in the PRC, and elsewhere.

In addition to the Division of Enforcement's efforts in this area, the SEC's Division of Corporation Finance works to monitor and enhance compliance with the applicable disclosure and accounting requirements through its filing review process. The staff selectively reviews filings made under the Securities Act of 1933 and the Securities Exchange Act of 1934 and when appropriate, issues comments on a company's filings. It is important to note that the staff does not evaluate the merits of any transaction and the review process is not a guarantee that the disclosure is complete and accurate – responsibility for complete and accurate disclosure lies with the company and others involved in the preparation of a company's filings. The staff is not limited in its ability to ask issuers questions in the comment process. While most issuers respond to the staff's comments, in some instances they do not. Where issuers do not respond, the staff will evaluate whether further inquiry or action is necessary to obtain a response.

Foreign-based issuers that enter the U.S. markets by means of reverse merger, including those from the PRC, are subject to this selective filing review process. As part of this process, the staff may review such an issuer's annual report, a Form 8-K reporting a reverse merger, or a registration statement filed subsequent to a reverse merger. In this regard, the staff's focus has been on overall compliance with the mandated disclosure requirements as well as a specific focus on each issuer's ability to prepare financial statements in accordance with U.S. Generally Accepted Accounting Principles. As appropriate, the staff has questioned issuers conducting all of their operations outside of the U.S. about how they have prepared their financial statements and assessed their internal control over financial reporting (ICFR). This process may result in expanded disclosure in the issuer's filings.

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15 *In the Matter of China Yuchai International, Limited,* (action against company) (June 2010), Rel. No. 34-62235 (http://www.sec.gov/litigation/admin/2010/34-62235.pdf

The SEC's Office of the Chief Accountant is working closely with the Division of Enforcement, the Division of Corporation Finance, and the Public Company Accounting Oversight Board (PCAOB) to identify problematic audit practices and auditor conduct in connection with reverse merger companies registered with the SEC, a significant percentage of which are from the PRC. The Office of the Chief Accountant processes submissions under Section 10A of the Exchange Act relating to auditor discovery of potential illegal acts by issuers, ensuring that the information contained in those submissions is brought to the attention of the relevant personnel within the SEC.

In parallel with our risk-based review efforts, the SEC's Office of Investor Education and Advocacy (OIEA) is drafting an investor alert about certain risks associated with investing in foreign-based domestic issuers formed through reverse mergers. The investor alert will be published soon through www.sec.gov, the SEC's official website; www.Investor.gov, the SEC's website directed at individual investors; and Twitter.

In addition to our own work, the SEC is actively coordinating with other regulators, including the self-regulatory organizations (SROs), PCAOB, and other authorities, to address these concerns. The PCAOB has issued audit practice alerts and research notes concerning PRC-based reverse merger companies.[16] The PCAOB also recently announced a settled disciplinary action against an audit firm and two of its associated persons for, among other things, improper audits of two companies with their principal place of business or operations in the PRC. The firm's registration with the PCAOB was revoked, and the individuals were barred from being associated persons of a registered public accounting firm.[17] Moreover, the SROs recently halted trading in almost a dozen stocks.[18] In addition, NASDAQ is filing with the SEC a proposed rule change to adopt additional listing requirements for a company that has become public through a reverse merger.[19]

As noted in your letter, there are certain difficulties associated with investigations of securities laws violations that touch on foreign jurisdictions. The SEC routinely notifies our regulatory counterparts, including the China Securities Regulatory Commission (CSRC), that obtaining voluntary and direct access to witnesses and information is important to our enforcement investigations. In many jurisdictions, the SEC can directly access witnesses and

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[16] Public Company Accounting Oversight Board, Activity Summary and Audit Implications for Reverse Mergers Involving Companies from the China Region: January 1, 2007 through March 31, 2010, Research Note # 2011-P1 (March 14, 2011) http://pcaobus.org/Research/Documents/Chinese_Reverse_Merger_Research_Note.pdf; PCAOB Staff Audit Practice Alert No. 6, Auditor Considerations Regarding Using the Work of Other Auditors and Engaging Assistants from Outside the Firm, (July 12, 2010) http://pcaobus.org/Standards/QandA/2010-07-12_APA_6.pdf.

[17] *See In re Chisholm, Bierwolf, Nilson & Morrill, LLC, Todd D. Chisholm, CPA, and Troy F. Nilson, CPA*, Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions, PCAOB Rel. 105-2011-003 (Apr. 8, 2011) (revoking permanently the registration of the firm, barring Chisholm permanently, and barring Nilson for at least 5 years).

[18] NASDAQ Current Trading Halts, http://www.nasdaqtrader.com/trader.aspx?id=TradeHalts

[19] *See* http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2011/SR-NASDAQ-2011-056.pdf

information to further its investigations. However, some jurisdictions, such as the PRC, view such direct efforts as a possible violation of sovereignty and/or national interest, which may be expressed informally (as is done by the CSRC) or embodied in law or agreement. In such cases, we generally work with the jurisdiction's home regulator to pursue our enforcement aims, and we continue to press for direct access where foreign law would not prevent it.

Our risk-based review of U.S. audit firms with a significant number of foreign-based domestic issuer clients continues. We have a team of attorneys and accountants from across the agency thinking proactively and working hard to address these issues in a way that does not unduly inhibit capital formation by legitimate PRC and other foreign-based domestic issuers – capital formation that is critically important as we seek to recover from the financial crisis.

Please feel free to call me at (202) 551-2100, or have your staff call Eric J. Spitler, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551-2010 if you have any questions or comments.

Sincerely,

Mary L. Schapiro
Chairman

Attachments