

## **Exclusive interview: Looking for the hope of cooperation through obstacles**

Not disclosing the ownership structure of Chinese companies under the consideration of state information security may cause the lack of investors' confidence in Chinese company corporate governance. China can and should make a difference in the global capital market, and should use the same game rules as other countries, namely financial report transparency.

——Exclusive interview with PCAOB president, James Doty

In the end of 2013, the PCAOB intends to propose a suggested bill the third time, requesting the accounting firms to disclose the cooperative partners involving in the audit activities to help investors better understand the work of accounting firms and the quality of audit reports.

Before, PCAOB has proposed twice, but both of them were set aside, from which we could see the difficulty of audit regulation. What's interesting, as the proposal was released in October 2011, the founder of Muddy Waters Research, Carson Block, wrote to PCAOB and commented that in China, even the most respected auditor seemed to reduce his bottom line. Even in the Big 4 accounting firms some auditors conspired with clients and cheated investors. Block praised PCAOB's suggestions and said that they may make this bad competition come to the end.

The Sarbanes-Oxley Act requires that all the accounting firms of US-listed companies must register with PCAOB and be under the inspection of PCAOB. As part of Dodd-Frank Wall Street Reform and Consumer Protection Act, the US Congress authorizes PCAOB negotiate with overseas audit regulation organizations about the mutual regulation agreement and information exchange. China and US have already negotiated for many years, but in 2011, there was a boom in Chinese companies listed in Wall Street, after which US financial institutions began to sell short Chinese stocks. Thus it caused widespread concern how China and US cooperate to solve this financial scandals.

According to the related American laws, all the companies listed in the US should hand in their audited financial reports, and their auditors should provide working papers as required. This increases the difficulty of cross-border regulation in theory since it allows that the power of US regulators extends to other countries in the world. Compared with other countries, China appears to be particularly difficult. On the one hand, China is quite sensitive to the sovereignty problem in the cross-border audit regulation; on the other hand, Chinese companies listed in the US have suffered a lot of financial scandals.

Since James Doty became the chairman of PCAOB, he has always been trying to awaken the public to re-understand auditing. Auditing is not unimportant; instead, it is key to investments. On October 29, 2013, he received an exclusive interview from <Finance> and couldn't hide his frustration and puzzlement when talking about the China-US regulation cooperation.

About the worst situation that may happen, Doty says that, "We don't want to come to this situation, but unfortunately there's not much time left." Doty hopes that during the chance that the new round of Chinese government reform carries on, this situation of deadlock can come to an

end.

#### Lack of audit regulation

Not disclosing the ownership structure of Chinese companies under the consideration of state information security may cause the lack of investors' confidence in Chinese company corporate governance. And this is the core of scandals.

<Finance> (referred as "F"): Since PCAOB was founded in 2002, we can see that many Chinese companies entered the US capital markets. For US companies and investors, do these Chinese companies bring more opportunities or more risk?

James Doty (referred as "D"): Unfortunately, more than 50 auditors of these Chinese companies resigned. These companies can't receive audited reports after that and thus no longer meet the requirements of listing and have to quit the capital market. These rules also suit the issuers from US, Germany or UK.

F: Why do these scandals happen? It's impossible that these Chinese companies choose to list in the US because it is much easier to cheat here.

D: Why do scandals happen? Why do some companies embezzle corporate funds? Why does financial misinformation happen? Why do controlling shareholders of Chinese companies think they can dispose corporate assets and equities at will just as they treat their own assets and equities, as the media reports show?

The only way that Chinese companies can avoid these events is to improve the government regulation mechanism and make the entire world see a transparent accounting system. This is always where the problem is. Not disclosing the ownership structure of Chinese companies under the consideration of state information security may cause a lack of investors' confidence in Chinese company corporate governance. And this is the core of scandals.

If you are a mature American organizational investor that can do market investigations and obtain in-depth information, you can judge whether a Chinese company is good or bad yourself. Or you are an American investor that regards yourself as having the same in-depth information as insiders, you may be confident to invest. Otherwise, a non-insider who can only stand outside and obtain information from newspapers can't make sure of the authenticity of financial reports and have no basis to invest since these audit work can't be inspected by the PCAOB.

F: The Chinese stocks once had a quite high return. Do they think they have to do something under the pressure of profit and growth?

D: I don't think there's any excuse for financial frauds. Chinese companies try to perform better in the market on operating and profits than they actually do and that's fraud. It will lead the investors to expect higher returns by introducing performance to attract investments. This problem can't be solved by PCAOB, SEC or the money of investors, but should be solved by the Chinese

companies themselves. They should stop misrepresenting aiming at attracting more capital, or coming up with performance expectations that can't be reached.

Of course, not all the Chinese companies act like that. But since there are no PCAOB inspections, investors have no confidence in the financial numbers that lack transparency.

Now some Americans have the impression that in Chinese markets phenomena such as not following the law correctly and not enforcing the law strictly exist, and arbitragers will abuse their information to make stock price fluctuations and sell or buy stocks in secondary markets. Although this impression may be unfair, it is quite representative. This is also the reason why there are 50 auditors resigning and Chinese companies delisting.

F: Did the same situation happen in the US history? How did the problem solved?

D: Yes, it happened in 1850s to 1860s, when there were similar frauds in the railway speculative era.

F: That's quite a long time ago.

D: When a country is transforming to market-oriented economy, it is not surprising that there are stumbles. Some businessmen may make serious mistakes when selling their stocks. But it is not the right direction to stop the cross-border audit inspections on companies since it will make the investors lose confidence and bring more suspicions.

F: Can we rethink whether there are loopholes in legal systems?

D: If people don't want that their financial report systems have transparency, this problem will always exist, and people tend to point the figure at other places. There are many reasons that can explain why frauds happen but are not detected. But there are also many reasons that show regulating the auditing is not only a legal requirement, but also a best way to help auditors raise their audit quality and thus better detect frauds. Auditing regulation is an indirect work, and its effect is also indirect. But there's no reason to say there's no need to regulate. In the legal system, there may be other loopholes, but this should not be the reason that we refuse audit regulation.

F: Some voice from China says that the selling short wave against Chinese stocks is acquiescent or even inspired by US government. How do you think of this?

D: There's no doubt that the US government don't have the conspiracy to push out Chinese issuers, which I have repeated many times to Chinese senior officials and twice just in the S&ED. The US laws are quite clear and is fair to all the companies from all over the world. They should obey the

listing rules formulated by the stock exchanges and provide financial and audit information, just like American companies. Their auditors must register with the PCAOB and be under the inspections of PCAOB.

We don't mind the effects these regulations have on the American companies. It's not related to whether Chinese companies provide commodities or service, neither is it related to whether Made-in-China is much cheaper and more popular than Made-in-US. It's only about whether they obey the federal securities laws.

F: Why is it difficult to convince Chinese regulators?

D: I don't know. If we can't achieve the cross-border inspection, that's not because US regulators don't do well, it's because that we need the help from Chinese government. New York Times mentioned that the coming third plenary session of the communist party of China (18) designs a roadmap for reform and give the timetable. Chinese government has always been unwilling to provide audit work papers of Chinese stocks for PCAOB and other regulators. Now it's time to make use of this new reform to end this deadlock.

Why China?

China is one of the countries whose companies financial reports listed in US can't be inspected. As long as China continues to do this with the reason of state sovereignty, state secret, or protecting commercial secrets, it will be on this list.

F: We understand that in US financial markets there are sell-short mechanism. Do their short-selling organizations get the hints from SEC in certain conditions?

D: The short sellers make decisions themselves and make the comments they want. The US government usually read that from newspaper, just like you and me. These articles may urge regulators to investigate further. Regulators collect information from many different ways, and not only about China.

F: Let's talk about the role of short sellers. Short sellers can earn money though destructive activities, which is disconcerting. And short selling against companies may injure good ones, which may even be illegal.

D: When short sellers do this, company managers complain that it's a conspiracy, or it's wrong. In US we also hear these complaints.

But in the market that information can't be freely obtained, the possibility that short sellers are right is higher since they will do investigations and have inside information. When you limit information, things will be worse.

The US has spent 200 years to transform from cowboy markets in 19<sup>th</sup> century to the state now. China may feel to have 200 years to wait, but the speed of economic change is increasing. If China hopes to make a difference in the global capital market, and it should, it should join in and use the same rules as other countries, namely financial reports transparency.

PCAOB can do audit inspections in other Asian countries and districts, including Philippines, Indonesia, Japan, Korean and etc. We can even cooperate with Switzerland to solve privacy and confidential problems. We should do inspections in Beijing the same.

CSRC and MOF are quite talented. They have sufficient information, and have sharp observations on globalization. We believe in the cross-border regulation, we can have common significant interests in some aspects. I think the divergence to reach an agreement is not that big.

F: In 154 Chinese companies listed in the US, 64 have stock prices far less than their initial prices in the past year, which discouraged a lot of Chinese companies. How can PCAOB help rebuild the passion of Chinese companies listing in US?

D: One step that China can make is to permit PCAOB inspections. Good companies want to list in the US. If we can inspection their auditing, our inspectors can enter into China to see what we need to see, it will be quite positive for their confidences of listing in the US, and will also have a positive effect on investors.

On the website of PCAOB we list the companies that we can't inspect. And many Chinese companies are on the list. China is the country that we can't inspect. As long as China continues to do this with the reason of state sovereignty, state secret, or protecting commercial secrets, it will be on this list.

US companies also have commercial secrets, but we can inspect their auditing. Companies from UK or Switzerland all have commercial secrets, but we can inspect their auditing. What is the difference about China that can stop inspections in the name of commercial secrets?

F: It is just what we puzzle. How to delimit between commercial secrets and information disclosure for US companies? How to handle the limits for transparency?

D: First of all, audit inspection is not auditing. PCAOB do inspections to judge whether auditors make and carry on audit plans that accord with US auditing standards. Only in this way can

auditors obtain sufficient evidence to accept the statements from companies and that's what auditing inspections do.

Auditors and auditing inspections will not disclose the commercial secrets of companies. Auditing inspections will check whether auditors sufficiently audit the factors showing financial conditions on the financial reports: revenue, evaluation, book value, reserves and expenses. In the US, Europe or Asia, even every company has commercial secrets. But it needs to accept auditing as well as our auditing inspections no matter where it is. These companies don't suffer a commercial secret leak because of the inspections.

Why do Chinese companies refuse to accept inspections due to being afraid of commercial secret leak?

But China never responds to this question. We have enough meetings with CSRC and MOF, and we understand how China-US joint inspections should carry on, and I believe we can find the solutions.

F: Since China and US have different audit regulation system and procedures as well as big cultural difference, how can we narrow the differences between the two?

D: There are cultural differences between countries, and we know that differences also exist in auditing. But fraud is not a cultural difference. Stealing investors' money is not a cultural difference. Sometimes the cultural difference may even become the shield that companies do not accord with the rules and carry on good corporate governance. For example, sometimes individuals regard their company assets as their own, and use cultural difference as excuse, saying it's a personal right. But in western, this kind of opinion in corporate governance has been abandoned for more than 200 years.

Infinite space for cooperation, limited waiting time

If we can't get the permission to do inspections in China, one day Chinese accounting firms will not register with the PCAOB and they can't issue audit opinions for any companies listed in the US. This is the worst condition.

F: Since March 2011, it seems to become a trend that the Wall Street hedge funds sell short Chinese stocks. Have PCAOB's attitude against Chinese stocks changed?

D: The duty of PCAOB is not to save certain Chinese listed companies and their auditors which have suffered financial frauds. Improving companies is not our job. Our job is to trying to

cooperate with CSRC and MOF and increase the confidence of the market by using cross-border audit inspections.

Now we have reached an agreement with China on obtaining audit work papers and have received some work papers related to investigations. But these cases involved in the fraud remain inconclusive. Please allow me to politely point that even they are just scandals, they deserve the attention of Chinese government. According to past cases, auditors' resigning may indicate the occurrence of scandals. Of course, the past cases don't represent that Chinese companies will be the same.

F: In the cross-border aspect, how is the negotiation condition between US and China government? Who is the first to mention that? How is the communications?

D: China and US has been negotiating about this question as long as 9 years. PCAOB has a history of 10 years, and we do international inspections since 2005. According to the Sarbanes-Oxley Act, any accounting firms that want to disclosure the issuers' financial reports must register with the PCAOB. Since 2005 till now, there are more than 50 accounting firms from China mainland and 50 HK accounting firms that register with the PCAOB.

These registered accounting firms choose to come here and disclose the financial reports of issuers. When we demand to take inspections, they don't provide audit work paper to us. But as long as the accounting firms register with the PCAOB, we have the rights to obtain their audit work papers. This is what the law requires, and we can't change.

F: PCAOB has already reached agreements with 16 countries, how is the progress with China?

D: We take inspections in Europe, and have agreements with most of European countries. Out of the Europe, although some countries do not have an agreement with us, we obtain the governments' permission to take inspections. The countries we can inspect range from South Africa to France and Singapore, as well as other countries and districts in Southeast Asia such as Japan, Korean, Taiwan, Mongolia and India.

Is China the most difficult country to reach an agreement? The questions about privacy and commercial secrets that China raised have also been raised by Switzerland. But we finally make an agreement for Swiss accounting firms, companies and investors.

In the MOU we signed with China, Chinese regulators have declared that they agree to help us obtain the audit papers of accounting firms that register with the PCAOB. Now we have already received a set of files, and we'll have more later on. Now we have made some progress in regulation enforcement. But if we can't obtain the permission from Chinese regulators to carry on inspections, one day Chinese accounting firms will not register with the PCAOB, and they can't

issue audit opinions for any US listed companies. This is the worst condition, which we don't want to step into. Unfortunately there's not much time left.

F: PCAOB has a common agreement template. Does the agreement with China base on this template?

D: The agreement draft that we discuss with China is the same as other countries'. We don't have special demands for China, and we only want to achieve China's permission to go to the accounting firms to check the audit papers in Beijing, or the city of Chinese issuers, or the city that they reserve audit paper, or demand the accounting firms to take the audit papers to any designated place they want. This is just as the US sends people to China to investigate iron and steel plants involved in American bridge projects.

At the same time, China will enjoy the same treatment. If CSRC wants to send people to US to inspect US firms operating in China, or check the audit work papers of US companies listed in China, we'll actively help them.

F: Could you please explain how SEC, PCAOB, CSRC and MOF cooperate to supervise the auditing of listed firms?

D: The staffs of PCAOB International Affairs Department, Inspection Department, and Enforcement Department have already meet with Chinese peers in Beijing. CSRC and MOF have sent the delegation to the US, and we also sent the delegation to China. Both of the two sides have a good relationship. We communicate regularly, exchange agreement draft, and raise the timetable. Our discussion is quite open.

In fact, both China and US know how to make effective connections and communications, and this is not the problem. Chinese accounting firms, CSRC, and MOF tell us there's still difficulty carrying on joint inspections. But the difficulty is caused by the Chinese laws. I hope the new round of reform can remove these obstacles.

F: How do feel about CSRC and MOF? Do they show enough flexibility?

D: I feel that these two ministries are quite flexible and they both hope to move forwards cross-border inspections. They understand that there are only benefits and no harm for China. Auditing is still a new function in China and is in the stage of developing and molding. We hope the auditing of China can reach the level of US or UK in skills and experience.

F: What kind of effects does Dodd-Frank Wall Street Reform and Consumer Protection Act have on China-US cooperation?



D: The effects are in two sides. On the one hand, PCAOB is authorized by the Congress and supervises the auditing of dealers. Now we are carrying on an experimental project about the auditing of dealers. This is not a key problem for China-US relationship. On the other hand, it permits PCAOB share regulation information with those regulators that signed confidential agreements. This makes it possible for us to provide what we know about auditing of Chinese listed companies and auditors to Chinese regulators and thus it is good for these regulators. When we work with other countries in the world, this act is quite beneficial for us.

F: What is your expectation for Chinese regulators? What is the future challenge of regulation cooperation?

D: We are going to reach an agreement with China. If that can be done in 4 or 5 months, we can start regulating Chinese audit work papers, which will attract much attention.

The challenge is whether China will permit this or not. Now it quite approaches consensus for both sides and we are negotiating in terms of the texts. As long as CSRC and MOF know that this is not against the laws, this agreement should be signed.

F: Europe also has its audit principles. But we haven't heard of many question between US and Europe. Is that because the threshold of US is too high?

D: No. We also do a lot of work promoting cross-border inspections in Europe. EU members should first build their own auditing principles, and this is after 2002 as the result of Enron scandal. The same event not only influences the US but also the Europe. Some of the bankrupt companies issue stocks all over the world.

F: How to determine the nature of stumbles in China-US regulation cooperation? Is it a legal problem or an ideological problem? Or a problem brought by globalization?

D: It's a globalization phenomenon. All the markets of different countries interact. China can't depend on only using its own rules. It is not only US that wants to regulate the auditing. All the important economic entities hope to inspect the auditing and get involved. The process of globalization will bring reforms and extensive powers that you can't ignore.

In US, since auditing is more and more recognized for protecting investors and ensuring financial numbers, US laws rule that auditors should register and do under inspections. It is not what we want that managers make up numbers and auditors just accept, pretending they audit. And this is also why we have PCAOB and UK build the UK Financial Reporting Council. This kind of joint inspection mechanism is not against the global trend.

F: After the financial crisis, do countries all over the world work together more close?

D: The US economy is suffering unprecedented globalization. In the 1980s it was not as easy as it is now to issue stocks. From then on, SEC and related European organizations began to reform to promote the cross-border capital flow. The cross-border capital flow develops quite fast in the recent 20 years in an unbelievable speed and this is the reason why the financial crisis brought such a big influence on European banks and European credit problems brought such a big influence on global economy. And problem today is how we should face this problem? And what it means for our operational model?

## 专访：在磕绊中寻找合作的希望

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——专访美国上市公司会计监管委员会主席詹姆斯·多蒂

在 2013 年底，美国公众公司会计监管委员会（PCAOB）拟第三次提出建议法案——要求会计师事务所列出参与审计活动的合作伙伴的名单，以让投资者更好地了解会计师事务所的工作以及审计报告的质量。

此前，PCAOB 两次提议均因抵触而搁浅，审计监管之难由此可见一斑。有趣的是，2011 年 10 月的建议刚刚公布，浑水创始人卡森·布洛克就致信 PCAOB，对这一建议置评说，在中国，即使是最受人尊敬的审计人员似乎也在争相降低底线，德勤、安永、毕马威、普华永道这“四大”会计师事务所中，也不乏与客户合谋欺诈投资者的。布洛克赞扬 PCAOB 的举措，称它会最终结束这种逐底竞争。

美国萨班斯法案要求在美上市公司的会计师事务所，必须在 PCAOB 注册并接受其检查。作为《多德—弗兰克华尔街改革和消费者保护法案》监管架框的一部分，美国国会授权 PCAOB 同美国以外的海外审计监管机构，就相互监管协议及信息秘密交换协议进行磋商。中美此前已经沟通多年，只是到了 2011 年，中国公司掀起了登陆华尔街的上市热潮，随后美国金融机构又掀起了做空中国概念股的潮流后，中美如何合作解决这一财务丑闻才引发广泛关注。

按照美国的相关法律，所有在美上市公司都必须提交经审计的财务报告，审计机构也必须按照要求提供工作文件，这在理论上增加了跨境监管的难度——因为它允许美国国内的审

查权力延伸到全球其他国家。与其他国家相比，中国显得尤其棘手，一方面，中国对跨境审计监管中的“主权”问题很敏感；与此同时，中国在美上市公司又被爆出大量的造假丑闻。

**詹姆斯·多蒂 (James Doty) 自出任 PCAOB 主席以来，一直努力唤醒大众对审计环节的重新认识——审计不是无关紧要，它对投资非常重要。2013 年 10 月 29 日，在他办公室接受《财经》记者专访时，谈及中美监管合作，几乎无法掩饰自己的无奈与不解。**

对于可能出现的最坏情况，多蒂说，“我们不想走到这一步，遗憾的是我们所剩的时间已经不多。”多蒂希望，新一轮中国政府改革方案实行的时机，可以结束这种僵持状况。

审计监管的缺失

出于国家信息安全的考虑，或者不对外公开中国企业股权结构，这些都导致投资者对中国企业的治理情况缺乏信心，这是企业丑闻的核心所在

**《财经》：自 2002 年 PCAOB 成立之后，我们看到很多中国企业进入美国资本市场，对美国公司和投资者来说，它们带来了更多的机会还是风险？**

**詹姆斯·多蒂：令人遗憾的是，这些中国企业中已有超过 50 个审计师辞职。审计师辞职后，这些企业若无法取得审计批准报告，它们就不再符合上市资格，不能再进入资本市场。这些规则同样适用于美国、德国或英国的证券发行人。**

**《财经》：为什么会出这么多丑闻呢？这些中国企业决定来美国上市，绝不会是因为这里欺诈比较容易。**

**詹姆斯·多蒂：为什么会有丑闻？为什么会有企业资金挪用？为什么会有财务误报？为什么中国公司的控股股东会像媒体报道的那样，认定自己可以随意处置公司资产和权益，就像对待自己的资产和权益一样？**

中国企业避免这类事件发生的唯一途径就是完善政府监管机制，并有能让全世界看到的、透明的会计体系，这一直是问题的症结所在。出于国家信息安全的考虑，或者不对外公开中国企业股权结构，这些都导致投资者对中国企业的治理情况缺乏信心，这是企业丑闻的核心所在。

如果你是一个成熟的美国机构投资者，能进行市场调查、获取深度消息，你自己就可以判断投资一家中国企业是好是坏；或者你是一个自认为有和内幕人士相同消息深度的美国投资者，你可能有把握去投资；否则，对一个只能站在局外、只能从报纸上得到信息的非内幕人士，无法确认财务报表的真实性，投资就没有依据，因为这些审计无法被 PCAOB 监管。

**《财经》：中国概念股曾一度获利很高，是否利润和增长这两个目标的压力使他们认为必须要做些什么？**

**詹姆斯·多蒂：我认为不能找任何借口搞财务欺诈。中国企业试图在市场上表现得比它们的实际运营和盈利要强，这就意味着欺诈。通过向投资者介绍的业绩来吸引投资，这会导致投资者期待更高的回报。这个问题不是靠 PCAOB、SEC 或者投资者的资金来解决，而是靠中国企业解决自身的问题，它们必须停止为了吸引资本而进行虚假陈述，或提出无法实现的业绩预期。**

当然，不是所有中国企业都这样。但由于没有 PCAOB 监管，投资者对缺少透明度的财报数字就没有信心。

一些美国人现在对中国市场的印象是有法不依，执法不严，投机者会滥用消息制造股价波动，在二级市场抛售或买进股票。对中国的这种看法也许有失公允，但它有代表性，这也是为什么有 50 位审计人员辞职，也是为什么会有中国企业退市。

**《财经》：在美国历史上有类似的情况出现过吗？如何化解的？**

**詹姆斯·多蒂**：有过，在 19 世纪 50 年代至 60 年代，美国的铁路投机时代出现过类似的财务欺诈风潮。

《财经》：那是很久之前的事了。

**詹姆斯·多蒂**：当一个国家向市场经济转型的过程中，一路上有磕磕碰碰并不令人惊讶，一些商人在推销他们公司股票的方法上可能会犯很严重的错误。但阻止对跨国交易的企业进行跨国审计监察，这无法树立投资者的信心，只会带来更多的猜疑，这不是正确的方向。

《财经》：我们能否反思一下法律体系上是否有漏洞和不够完善之处？

**詹姆斯·多蒂**：如果人们不想让他们的财务汇报体系有透明度和清晰度的话，这个问题就会一直存在，人们就倾向于把矛头指向别处。有很多原因能解释为何欺诈行为发生了而欺诈者却没有被发现。但同样有很多理由可以说明，对审计进行监管，不仅仅是法律上的要求，同时也是让审计人员提高审计质量，进而更好地发现欺诈行为的最佳途径之一。审计监管是间接的工作，其效果同样是间接的，但没理由说不需要监管。在法律体系中，可能存在其他漏洞，但这并不能成为不用开展审计监管的理由。

《财经》：部分来自中国的声音认为，2011 年针对中国概念股的做空潮是美国政府默许甚至授意的，你怎么看？

**詹姆斯·多蒂**：美国的政府机构没有排挤中国证券发行人的阴谋，这毋庸置疑。这一点我对中国高层人士多次重复过，在中美战略经济对话上就陈述过两次。美国法律很清晰，对全球所有想来美国上市的企业一视同仁，它们和美国公司一样，须遵守证券交易所制定的上市规则，提供财务审计信息，其审计机构必须在 PCAOB 注册并接受监管。

我们不关心这种规定对美国企业造成的影响，这也与中国企业提供的是商品还是服务无关，也无关中国制造比美国制造更廉价或更畅销，而是它们是否遵守美国联邦证券法律。

《财经》：为什么难以说服中国方面呢？

**詹姆斯·多蒂**：我不知道，如果我们不能达成跨国监管，那不是美国监管机构没做好，而是我们需要中国政府的协助。《纽约时报》提到即将召开的中共十八届三中全会，为改革制定了“路线图”，还给出了“时间表”。中国政府一直不愿意向 PCAOB 和其他监管机构提供中国概念股审计报告的审计底稿，现在可以利用新一轮改革这个理想的时机，来结束这种僵持状况。

为什么是中国

中国是我们无法检查核实其在美上市企业财报的国家之一，只要中国继续以“国家主权”或是“国家机密”“保护商业机密”为理由，就会一直在这个名单上

《财经》：我理解美国金融市场有做空机制，在某种情况下，做空机构是否能得到 SEC 的任何暗示？

**詹姆斯·多蒂**：做空者自行判断选什么样的公司，做他们想发出的评论。和你我一样，美国政府通常是在报纸上读到这些。这些文章可能会促使监管者进一步调查。监管者要从很多途径收集信息，而且不光针对中国。

《财经》：我们谈一下做空者的角色，做空者可以通过破坏性的活动获益，这让人不安。而对企业的做空会发生“误伤”，甚至不排除有非法的现象。

**詹姆斯·多蒂**：每当空头这么做时，企业管理层都会抱怨说，这是个阴谋，或者，这是错的。美国也常听到这种抱怨。

但在信息无法自由获得的市场，做空者正确的可能性就更高，因为他们会进行调查，有时有内幕信息，当你限制信息时，问题只会变得更糟糕。

美国花了 200 年才从 19 世纪的“牛仔市场”（cowboy markets）转变到现在的状态，中国也许感觉还有 200 年可以等，但经济变化在加快，如果中国希望在全球金融市场有所作为——中国可以也应该有所作为，就应该加入进来，与其他国家使用同样的游戏规则，即财务报告透明化。

PCAOB 在亚洲其他国家和地区进行审计检查，包括菲律宾、印尼、日本，韩国等。我们甚至可以与瑞士合作解决隐私和机密问题，我们同样应该能在北京进行审计检查。

中国证监会和财政部很有智慧，他们信息充分，对全球化有敏锐深刻的观察。我相信两国在跨境监管方面、在有些地方总是有共同的重大利益的。我想双方对达成一致意见的分歧并不太大。

**《财经》**：在美上市的 154 家中国公司中，有 64 家过去一年内的交易远远低于发行价，这让中国企业气馁，PCAOB 如何能帮助重建中国企业在美上市的热情？

**詹姆斯·多蒂**：中国可以走的一步是允许 PCAOB 进行检查。优良企业想要在美国上市，如果我们能检查它们的审计，我们的检查员能进入中国看到需要看的，这对它们在美国上市的信心会有正面效果，对投资者也有正面影响。

在 PCAOB 网站上，列着我们无法监管审计的企业名单，很多中国企业榜上有名。中国是我们无法检查核实其在美上市企业财报的国家之一，只要中国继续以“国家主权”或是“国家机密”“保护商业机密”为理由，中国就会一直在这个名单上。

美国企业也有商业机密，但我们可以检查它们的审计。英国、瑞士公司等都有商业机密，我们可以监察它们的审计。中国究竟有什么不同，可以用商业机密的名义来阻止审计监察者的监管？

**《财经》**：这正是我们的疑惑，美国公司商业机密与信息公开之间的红线如何划定？透明度的限度究竟该怎么把握？

**詹姆斯·多蒂**：首先，审计检查不是审计。PCAOB 进行审计检查，是为了判断审计师是否制定、并合理实施了符合美国审计标准的审计方案，这样审计师才有充分的根据来接受企业管理层对其财务报告的陈述。这才是审计检查要做的事情。

审计师及审计检查并不会披露企业的商业机密。审计检查会彻底检查审计师是否充分审计了公司财务报表上体现财务状况的因素：收入、估值、账面价值、储备和费用支出。在美国、欧洲或亚洲，几乎每家公司都有商业机密，但无论它们在世界的哪个角落都要接受审计，同时接受我们的审计检查，这些企业并没有因为审计检查而中止生意或泄露商业机密。

为什么中国的企业会因为害怕泄露商业机密而拒绝接受审计呢？

但中方从未就这一问题作出回应。我们与中国证监会和财政部有足够多的会晤，我们了解美中联合审计检查应如何开展，我相信能找到解决的方法。

**《财经》**：鉴于中美之间有不同的审计监管体系和程序，以及巨大的文化差异，怎样缩窄二者间的差异呢？

**詹姆斯·多蒂**：国与国之间存在着文化差异，我们也知道在审计上同样存在差异。但欺诈不是文化差异，偷窃投资者的资金不是文化差异。有时文化差异甚至成为企业不遵守法律法规和良好的公司管理的挡箭牌。比如，有时个人把公司财产视为己有，有时会用文化差异当借口，说这是个人权利或自视的权利，但在西方，这种公司治理的观点已在法律上被抛弃了超过 200 年。

无限的合作空间，

有限的等待时间

如果我们不能获得中方批准而进行检查，终会有一天，中国会计师事务所不能在 PCAOB 注册，这些事务所也不能对任何在美国上市交易的公司出具审计意见报告，这是最坏的情况

《财经》：2011 年 3 月以来，华尔街对冲基金做空中国概念股似乎成为一种潮流，PCAOB 对中国概念股的态度有无变化？

詹姆斯·多蒂：PCAOB 的任务不是补救某些陷入管理不善、会计欺诈丑闻的中国上市企业及其审计师。促进企业的发展不是我们的工作。我们的工作尝试与中国证监会、财政部合作，采用跨境审计检查的方式提升市场信心。

现在我们与中方就获取工作底稿已达成协议，收到了部分与执行法案例相关的审计工作底稿，但这些涉嫌欺诈的案例尚未有定论。请容我礼貌地指出，即便这些只是丑闻，也足以引起中国政府的重视。根据以往案例，审计师辞职可能预告丑闻会发生。当然，过去的案例并不能代表中国企业会重蹈覆辙。

《财经》：在跨境监管领域，美国政府与中国方面的沟通情况如何？谁最初提起的？联络沟通的情况如何？

詹姆斯·多蒂：美中双方就这一问题已沟通长达九年之久。PCAOB 一共十年的历史中，我们从 2005 年开始开展国际会计检查。根据萨班斯法案，任何会计师事务所想披露发行人或在美国交易的证券的财务报表，必须向委员会申请注册。从 2005 年起至今，已有 50 多家来自中国大陆的会计师事务所和 50 家香港公司在 PCAPB 注册。

这些注册的会计师事务所选择来到这里，披露在美国市场发行证券的发行人的财务报告，但当我们要求进行检查的时候，这些事务所并没有向我们提供工作底稿。而一旦向 PCAOB 注册，我们就有权获得他们的审计工作底稿。这是法律规定的，我们无法改变。

《财经》：PCAOB 已经与 16 个国家达成了合作协议，与中国的合作进展如何？

詹姆斯·多蒂：我们在欧洲开展审计检查，欧洲绝大多数国家都有合作协议声明，没有协议声明的越来越少。欧洲之外，有的国家虽然和我们没有协议声明，但我们获得了政府的批准也能进行审计检查。我们检查的国家从南非到法国到新加坡，还有刚才提到的东南亚其他国家和地区，如日本、韩国、台湾、蒙古和印度。

中国是最难达成合作协议的国家吗？中方提出的隐私和商业机密问题，瑞士也提过，但为了瑞士会计师事务所、公司以及投资者的利益，我们最终达成了协议。

在我们与中方签订的《执法合作谅解备忘录》中，中方已表态同意帮助我们获得在 PCAOB 注册的中国会计师事务所的审计工作底稿。我们现在已经收到一套文件，接下来还会有更多的。目前我们就执法问题上已取得了一些进展。但如果我们不能获得中方批准而进行检查，终会有一天，中国会计师事务所不能在 PCAOB 注册，这些事务所也不能对任何在美国上市交易的公司出具审计意见报告，这是最坏的情况，但我们不想走到这一步，遗憾的是我们所剩的时间已经不多。

《财经》：PCAOB 有一个常用的协议模板，跟中方签订的协议也是在此模板上建立的吗？

詹姆斯·多蒂：我们与中方讨论时用的协议草案与其他国家的没有差别。我们对中国并没有特殊要求，只想获得中方的授权，能够到北京，或者中国发行人所在的城市或其存放工作底稿的城市，能够到会计师事务所去查看工作底稿，或要求会计师事务所将工作底稿带到

任何他们指定的地点给我们。这就像美方派人到中国考察一些参与美国桥梁项目的钢铁厂一样，没有什么新鲜之处。

同样，中方也将享受同等待遇。如果中国证监会想派人到美国检查在中国开展业务的美国公司、或者检查在中国发行股票的美国企业的工作底稿，我们将积极协助中方。

**《财经》：**可以解释一下 SEC、PCAOB、中国证监会以及财政部如何协作，共同监督上市公司的会计审查吗？

**詹姆斯·多蒂：**PCAOB 的国际事务部、检查部、执法部的员工，已在北京与中国同行进行会晤。中国证监会和财政部派出了访美代表团，我们也派出了访华代表团，双方关系十分融洽。我们定期交流、交换协议草案、提出时间表，可以说我们的讨论是开放性的。

事实上，美中双方都知道如何进行有效的联系和沟通，这并不是问题所在。中国会计师事务所、中国证监会和财政部告诉我们开展联合会计检查仍有障碍，而障碍是由中国法律造成的。希望新一轮改革可以创造路径来去除这些障碍。

**《财经》：**你对财政部和证监会印象如何，它们是否展现出了足够的灵活性？

**詹姆斯·多蒂：**我感觉这两个部委都很灵活，它们都希望能推进跨境监管。它们都明白，这对中国来说只有好处没有坏处。审计在中国仍是非常新的职能，正处于发展、成型阶段，我们希望中国的审计工作在技能和经验上能够达到美国或者英国的水平。

**《财经》：**多德-弗兰克华尔街改革法案对中美合作有何影响？

**詹姆斯·多蒂：**影响有两方面。一方面，PCAOB 由美国国会授权，对证券经纪交易商的审计进行监督，目前正在从事一项关于证券经纪交易商审计监管的试验性项目。这并非非中间的大问题；另一方面，它允许 PCAOB 同那些已与美国签订保密协议的外国监管机构分享监管信息。这使我们向中国监管机构提供我们了解到的中国上市公司的审计，以及这些审计公司的有用信息成为可能，从而有利于这些监管机构。当我们同全球其他国家打交道的时候，这个法案对我们来说确实是有利的。

**《财经》：**你对中国监管者的期待是什么？监管合作未来的挑战何在？

**詹姆斯·多蒂：**我们同中方即将达成一项合作协议声明。若该协议声明能用四五个个月达成的话，那我们就能开始对中国审计的工作底稿开展监管，这将引起广泛的关注。

挑战在于，中方是否会允许这样做。目前双方离达成一致意见已非常接近，正在就协议文本进行磋商。只要中国证监会和财政部知道这不违反管理当局颁布的法律，这项协议就应该会被签署执行。

**《财经》：**欧洲同样有其自身的审计原则，但我们没听到过中欧之间有很多问题。是不是美国的门槛太高了？

**詹姆斯·多蒂：**不是。我们为在欧洲推行跨境监管也做了很多工作。欧盟成员国首先得建立其自身的审计规则，这些都是 2002 年以后的事情，也是安然丑闻事件的结果。同样的事件，不仅影响美国，也影响了欧洲。倒闭的这些公司中，有的公司股票全球发行。

**《财经》：**如何定性中美在监管合作方面出现的磕绊？说到底，这是一个法律问题还是意识形态问题？或者是全球化带来的问题？

**詹姆斯·多蒂：**这是个全球化现象，各国市场相互交叉，中国不能指望仅仅依据自己的规则运作。想对审计进行监管的并非只有美国，所有主要的经济体都希望能对审计进行监管，他们希望能参与其中。全球化的进程会带来让人无法忽视的变革和外部延展力。

在美国，由于审计在保护投资者以及确认财务汇报数据方面受到越来越广泛的认可，美国的法律要求审计公司注册登记并接受监管。公司管理层编撰数据，审计只是简单地接受这些数据，与此同时却假装在审核，这不是我们想要的体制。这也正是为何美国成立了美国上市公司会计监管委员会，英国在近来欧盟的改革中成立了英国财务报告理事会的原因。这种联合监管机制并非逆流而上，违背全球趋势。

**《财经》：金融危机后，世界各国间相互监管联系更紧密了吗？**

**詹姆斯·多蒂：**美国经济正在经历前所未有的全球化。在 20 世纪 80 年代以前发行股票进行融资不像现在这么容易。从那时起，美国证券监督管理委员会与欧洲各国相关机构开始进行变革，以促进资本的跨境流动。资本跨境流动在最近 20 多年发展迅猛，资本流动以令人难以置信的速度加速发展，这是美国的次贷危机对欧洲的银行带来如此大影响的原因，也正是欧洲的信贷问题对全球经济产生这么大影响的原因。今天的问题是，我们应该如何面对这一问题？对我们的商业经营方式，这又意味着什么？

**【作者：《财经》记者 金焱 发自华盛顿】**