The SEC filed a complaint against the Chinese offices of Deloitte, PwC, E&Y, and KPMG, because these firms refused to help the SEC with its investigation into several Chinese Concept Companies, and refused to provide the audit papers of the investigated companies.

The involved accounting firms claimed that they are looking forward to the cooperation of Chinese and American regulators. The five accounting firms earned $175.2 million by providing audits to Chinese concept stocks in 2011.

The complaint brought U.S.-listed Chinese concept stocks to an ice point, and made Chinese concept stocks and investors extremely anxious.

On the day when the news came out, the prices of two thirds of Chinese concept stocks fell. According to public data, the market capital of 110 Chinese concept stocks is $998 billion, with a daily volume of $1.2 billions.

By the time of publication, one officer in CSRC confirmed to our journalist that there is no official response to the complaint, and that the related departments are still working on it.

The complaint is obviously an earthquake. Recently, in the canteen of CSRC, people are frequently talking about it during lunch.

‘China and the U.S. are still negotiating on cross-border cooperation despite of the disagreements’, said one CSRC officer.

There are two major regulatory departments involved with Chinese audit firms—the SEC and the PCAOB. The SEC mainly regulates public firms and investigates auditors, while PCAOB is mainly in charge of investigating those audit firms registered with it.

So far, the PCAOB is working with China on cross-border joint regulation, and they have already made some progress. the PCAOB made an observing interview in Beijing in this October, that observed how Chinese regulators controlled the audit quality of audit firms. Last month Chinese regulators visited Washington. Right now the negotiation is still on going, and the PCAOB has made an offer of further cooperation, including observing China’s regulation.

Mr. Lew Ferguson, a member of the PCAOB told our journalist that the visit of the PCAOB to Beijing in this October was very successful, and it is looking forward to pushing the cooperation. On the other hand, the president of the PCAOB, James

Doty, responded to the SEC suits that it is considering conducting other measures to protect investors if the need to exchange materials with China cannot be fulfilled.

Our journalist got to know that it is possible that PCAOB would enforce law with Chinese audit firms registered with PCAOB. 'Enforcement actions of the SEC have to be open, but not for the PCAOB, which does not mean the PCAOB will do nothing', said someone close to U.S. regulatory departments.

Why did the cross-border cooperation between the CSRC and the SEC stall? What are the disagreements on principles and acknowledgements between these two sides that cannot be adjusted?

The untouchable audit papers.

In the statement of charges of the SEC, it said that the five audit firms are serving the nine Chinese concept stocks it was looking into. The SEC said these audit firms willfully refused to provide audit papers and other related materials of these companies, which is against the Clause 106 of the Sarbanes-Oxley Act.

One of the nine clients belongs to BDO, two belong to E&Y Beijing, three belong to KPMG Beijing, one belongs to Deloitte, and two belongs to PwC Shanghai. But SEC did not reveal the names of the companies.

'The SEC can only test the audit quality and protect investors from financial frauds if it could get the audit papers. Audit firms will face hush punishment if they cannot provide audit papers', said Robert Khuzami, director of the SEC's enforcement department.

According to the testimony of Albert Arevalo, assistant director of the SEC's international affairs office, the SEC proposed 21 separate requests for help from the CSRC for 16 different investigations since 2009. It asked for audit papers three times, but has not gotten any audit papers or received 'substantial' assistance.

In this claim, the requirements included the client materials and meeting records claimed by investigated firms, the business materials and bank statements of companies suspected of manipulating the market, materials indicating whether the Chinese clients exist and their business relationship with investigated companies, bank statements of U.S. firms' employees and the bank and tax records of American firms' Chinese subsidiaries.

He said, however, except for the file of a companies suspected of asset transfers, the SEC has not gained any 'meaningful' help from the CSRC. In this case, the SEC got feedback from the CSRC in November of 2012 saying that the CSRC would provide the SEC with a 10-page file on related assets, including six contracts, one abstract, and one business license. CSRC also said that those files cannot be used in legal actions without their permission, and CSRC held no responsibility for the authenticity of them. SEC found these terms unacceptable and decided that it was not meaningful assistance.

In his testimony, Mr. Arevalo stressed the audit papers of three cases, including Longtop, but did not mention the name of other two cases. 'The points of views of the SEC's employees is that the CSRC is unwilling or unable to cooperate with the SEC, because of the failures of communication between the SEC and the CSRC. Especially, the CSRC could not be a useful channel for the SEC to get audit papers'.

He said that the SEC asked Deloitte to provide audit papers in a financial fraud case in June 2010 and referred to the CSRC for help. But between June 2010 and May 2012, the SEC did not get any assistance after 30 different kinds of communication.

Deloitte said in a court file that they were preparing audit materials for the CSRC ever since they were involved with Longtop's financial fraud. Auditors and lawyers of Deloitte Hongkong flew to Shanghai to prepare those files in July 2011.

When the SEC got to know that Deloitte had already given the audit papers to the CSRC in the summer of 2010, the SEC sent an email to the CSRC in April 2011 saying that it knew the latter had got the audit papers. After six weeks, the CSRC admitted that it had the audit papers, however, the CSRC could not give them to the SEC because of Chinese laws.

In April 2012, the CSRC agreed to give some files to the SEC, but with the condition of an agreement letter saying that the SEC could not use the information for any legal actions without the permission of the CSRC. The CSRC also required the SEC to provide official reports on how the SEC would use the related information and inform the CSRC of its investigation results. Besides, the CSRC said that it would only provide 18 boxes of unlabeled audit documents, and keep the right to decide which materials were relevant.

However, the SEC was unwilling to accept the condition, and sent back its modified condition back to the CSRC on April 10th. The SEC was turned down the day following.

Until August 2012, the SEC did not ask the CSRC for any assistance. Arevalo said that the SEC decided any further inquiries will fail given the past failed experiences.

From negotiation to complaint.

There is still a chance that the U.S. and China will cooperate rather than face lawsuits.

The CSRC and the MOF are the Chinese departments regulating Chinese concept stocks and U.S. audit firms. So far, the two countries have not signed any sharing memorandum, but in "The Security Cooperation, Consultation and Technical Assistance Memorandum of Understanding" signed in 2002, and the "China Securities Regulatory Commission and the United States Securities and Exchange Commission Cooperation Clause" signed in 2006, both sides expressed the willingness to cooperate. However, they did not formulate any procedures.

So far, the SEC is looking for the assistance of China mainly based on International Organization of Securities Commissioners, and Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. The SEC believes that the memorandum provides the information sharing framework for international cooperation and security investigation and enforcement.

The clauses in the Memorandum are not legally binding, and cannot override laws. The information and files provided should not break the laws of providing countries. Ethiopis Tafara, director of the SEC's international affairs office, said that to sign them means mutual assistance, and the content discussed in the memorandum are not limited in information or files. To sign the memorandum means that the secrecy laws of a country should not be an obstacle to providing information under the agreement.

The SEC thinks that the agreement includes a requirement to provide audit papers, but the CSRC found a series of excuses, including that it is necessary to sign

another bilateral agreement to provide audit papers. The CSRC does not think the memorandum guarantees that the SEC will get audit papers.

There is disagreement between China and the U.S. on the effects of international security regulation organizations and memorandums. 'IOSCO is not legally binding, and we have to obey Chinese laws, just like the U.S. has to obey American laws and domestic political rules', said a Chinese security regulatory officer.

One person close to the SEC told us that these agreements are just the basic standards of international cooperation, and the real cooperation should go beyond them.

In May 2012, the regulators of these two countries met at the Beijing IOSCO conference. The chairmen of both sides talked about enforcement cooperation and the SEC thought the talk could be constructive. As a result, the SEC applied to the court to stay the Longtop case.

In this July, the chairman of the SEC visited China, and discussed with the chairman of the CSRC on building a cooperative mechanism. Shuqing Guo said the cooperation cannot be achieved unless certain requirements are reached.

So the SEC sent to the CSRC another bilateral cooperation framework suggestion, and applied to the court to suspend the case waiting for possible cooperation. But this suggestion was tangled up with a key issue—the U.S. does not want to only move after the permission of China, so CSRC denied it.

As for the case itself, the CSRC explained to the SEC in August and September that to deal with the SEC's requirement for assistance took some time. And the CSRC will delay the Longtop case and could not respond before the deadline set by the U.S. The CSRC also suggested that the SEC narrow down the investigation to certain persons or transactions.

Things turned bright once in October 2012; the attitude of the CSRC changed and they said to the SEC that they could share audit papers without another bilateral agreement. The CSRC restated this point in an email in November 6th.

By the meantime, the CSRC still required the SEC to agree with the conditions it listed, and would keep delaying if the SEC did not sign the agreement. The CSRC said it had to ask for legal advice from the ministry of justice and other related departments and it was still collecting the materials of Longtop. Besides, internal

examinations would take a long time. The CSRC suggested that the SEC narrow down again and it was planning to present some procedures and introductions for foreign regulators who want to get audit papers.

The CSRC visited Washington on November 26th after it proposed to meet with the SEC. But the SEC said that before the CSRC made clear the standing point to offer assistance, the communication should concentrate on beneficial levels but not on providing papers or signing agreements. In the meeting, the SEC notified the CSRC that it had no choice but to proceed with a lawsuit.

'So far, the SEC considered it had no further content to talk with the CSRC, unless the CSRC provide the related materials, especially audit papers', and A said that there was not much hope in the near future. He stressed that so far, the SEC had no response on the three requested audit papers, just like its other requests.

The U.S. expressed its disappointment with the cross-border regulation in the statement it filed to the court, and it showed its determination by suing.

Difference in regulation thinking.

The cross-border regulation is stalled, mostly because of the regulation thinking difference, 'we need to trust each other if we want further cooperation', said an observer.

Audit firms in the middle of these two regulatory departments are having a very awkward time.

E&Y replied to our journalist on SEC complaint that, 'E&Y support a close relationship between regulatory departments, cooperation, and information sharing. We hope that the U.S. and Chinese security regulators could reach some agreement on E&Y's following all related laws and rules. '

'It is against the Secrecy Law for foreign regulators to have Chinese local audit papers as they wish; this issue is connected with national sovereignty. We have different thinking on regulation, and China cannot allow the U.S. to enter China for investigations whenever they want to ', said an officer of the CSRC. What is mentioned is the rule : 'On the strengthening of foreign securities issuance and listing related to confidentiality and archives management work rules' (the rules), which require that auditors get permission from the Chinese government before they provide any audit papers to foreign parties.

The sixth clause of the rules said that all working papers should remain inside of China. The audit papers mentioned above should not be saved, processed, or transferred in confidential computers if involved with national secrets, homeland security, or major benefits. No one could take or deliver them to foreign countries without the permission of government supervisors.

However, the eighth clause of the rules also confirms that the CSRC is in charge of related cross-border regulation involved with overseas listing, as well as cooperation with other regulators, including on filed investigations, which should rely mainly on Chinese regulators or the results of Chinese regulators.

When talking about some basic principle of cross-border regulation cooperation, one Chinese regulator said that 'cross-border regulation cooperation should be based on equality and mutual benefit. When the U.S. comes to China to investigate companies, they should let China host the investigations and make all conclusions, and the same when China goes to the U.S. The U.S. cannot just come to China as they wish'.

CSRC has never released any cooperation data to the public. Our journalist got to know from someone close to inspection office that, in the past five years, the CSRC has offered assistance to inspections to cross-border investigation. A quarter of the help was given to Securities and Futures Commission of Hong Kong, and it had helped the SEC with some companies.

'It usually take eight months or even one year to investigate a case, because the CSRC has to give out investigation results, which is not the case in the U.S. The SEC could rely on a lawsuit and stop investigating after entering legal procedure. Normally, informal investigation would take three to four months for preparation, and the formal investigation would take four months or longer', said someone in CSRC's legal department.

One law enforcement officer told us that 'The CSRC greatly lack systematic regulation, our officers are working overload all the time'.

One person close to the SEC pressed his understanding to the lack of regulation recourse in China, but he did not take it as sound excuse. He thinks that the regulation resources, especially financial resources are lacking too, 'we are applying to Congress to increase the funding to better protect our investors'.

‘The U.S. is pushing. Shapiro quit, and the new comer Elisse Walter wants to stay stable, so she has to do something’, an observer who has done business in Chinese and American financial markets for decades said that the complaint is one of the measures of this new chairman.

‘The action of the U.S. has entered into a very long legal procedure, which is forced by domestic power. China also has to obey domestic laws and rules, including the Secrecy Law and Accounting Law’, said the above regulator, ‘because many Chinese concept stocks are companies registered out of China while doing business in China, and they do not submit materials to Chinese regulators before they listed; this is the loophole that China itself are not familiar with. All those companies are entities overseas. Lawsuit is a negotiation strategy adopted by the U.S., which will probably end up with nothing definite.’

But this cannot explain why the CSRC cannot provide the SEC with the audit working papers. Even according to the eighth clause of the rules, only those issues involved with national security, file management, or other important issues should be reported to the security department, the National Archives Bureau or other departments.

The CSRC is very inactive in cross-border regulation cooperation, and some CSRC officers said in private that the Chinese concept stocks are the regulation loophole of the SEC. These firms are overseas entities, and before they got listed in the U.S., they never filed with the CSRC, so the CSRC could not regulate them. On the other hand, the international board in China is not in the near future, so the CSRC is not so in eager for the SEC’s assistance.

Some Chinese CSRC officers admit that some frauds of Chinese concept stocks have compromised the national reputation of China, and hope to continue the negotiations for cooperation. ‘The SEC and PCAOB are relatively independent agencies, and the SEC will not affect the talks between the CSRC and the PCAOB. That regulatory cooperation is still going on’, said one CSRC officer.

美国证监会（SEC）于12月3日向德勤、普华永道、安永、毕马威等四大会计师事务所中国分所提起行政诉讼，理由是这些事务所拒绝配合SEC对部分中概股公司的调查，不向SEC提供涉案中国在美概念股公司的审计底稿。

有关会计师事务所纷纷发表声明，称期待中美监管机构达成合作。被诉的五家会计师事务所2011年以来为中概股提供的审计收入为1.752亿美元。

此举使得中国在美概念股板块再次陷入冰点，准备赴美上市的中国概念股公司和投资者心急如焚。

消息发布当天，在美国的中概股三分之二下跌。公开数据显示，110只中概股ADR在美市值9980亿美元，日均交易12亿美元。

截至本刊发稿前，中国证监会新闻处一位工作人员对财新记者确认，对此事目前没有正式的官方回应，相关部门还在研究之中。

这一诉讼无疑为一场地震。近日，在中国证监会的机关食堂里，午餐的工作人员常谈论此案。

“尽管有分歧，但中方和美方还在跨境监管合作的谈判中。”一位中国监管官员称。

涉及中概股和中国会计师事务所的美国监管部门主要有两个，一是SEC，另一个是美国上市公司审计监管委员会（PCAOB）。SEC主要监管上市公司并在需要时对上市公司的审计师进行调查，PCAOB负责监管在该机构注册的会计师事务所。

目前PCAOB正和中国谈判跨境监管，双方取得了一些进展。PCAOB10月在北京进行了观察性访问，观察中方监管机构是如何对会计师事务所进 行质量控制。中国监管机构在上周刚刚访问了华盛顿，目前两国监管部门的谈判仍在进行中，PCAOB向中方提出了下一步合作的建议，包括观察中国的监管活 动。

该机构委员弗格森（Lew Ferguson）告诉财新记者，PCAOB10月到访北京相当成功，期待与中国监管机构进一步推进合作。但另一方面PCAOB主席多迪（James Doty）针对SEC行动发表评论称，若PCAOB和中国监管部门近期内交换调查所需文件的希望不能实现，该机构可能考虑其他办法来保护投资者。

财新记者获知，PCAOB也存在对在该机构注册的某中国会计师事务所展开执法行动的可能：“SEC的执法行动需要公开，但PCAOB的执法行动不必公开，但不说不等于没有。”一位接近美方监管机构的人士告诉财新记者。

中国证监会和美国证监会的跨境监管合作为何会陷入如此僵局？双方理念、认识到底有何不可弥合的分歧？

不能获得的审计底稿

SEC在起诉书中称，目前该机构正在调查九家中概股公司，有五家事务所为九家企业提供过审计服务。SEC称这些会计师事务所“有意”（willfully）拒绝向SEC提供审计底稿和其他相关材料，这违反了萨班斯奥克利法案的106条款。

九家客户中，一家属德豪国际事务所的成员所大华，两家属于安永北京，三家属毕马威北京，一家属德勤，两家属普华永道上海，但SEC并未透露九家中概股公司的名字。

“只有获取这些外国会计师事务所的工作底稿，SEC才能测试审计的质量并保护投资者免受舞弊欺诈风险，无法按照规定提交工作底稿，将使会计师事务所面临严惩。”SEC执行部门主管库萨米（Robert Khuzami）表示。

据SEC国际事务办公室助理主任阿雷法罗（Alberto Arevalo）向法院提供的证词，SEC从 2009年至今就16起调查的不同案件向中国证监会提出过21次协助要求，其中3次要求提供审计工作底稿，但没得到任何工作底稿也未得到任何“有实质意义”的协助。

据他的陈述，这些协助要求涉及的内容包括：被调查公司所声称的客户公司业务资料以及会计资料、涉及市场操纵案的公司及其业务资料和银行记录、公司的中国客户是否存在以及和被调查公司的业务关系、美国公司职员的银行账户信息、美国公司中国子公司的银行和税务记录等。

但他表示除了2012年8月一起涉及公司资产转移的文件外，SEC没有得到过中国证监会提供的任何“有意义的”协助。在这一起案件中，2012 年11月SEC收到中国证监会的反馈信息，称将提供十页涉及资产转移的文件，包括六份交易合同、一份摘要以及一份商业执照，但同时称未经许可不得用于法律 行动中，且表示中国证监会不对文件的真实性负责，SEC表示这不能接受，且未包括大部分其他要求的文件，因此不应视作有意义的协助。

在证词中，阿雷法罗重点强调了涉及包括东南融通在内的三个案件的审计底稿，但并未列出其他两家中概股公司的名字。“由于SEC和中国证监会为提 供有意义的协助所进行的交流不断失败，SEC雇员的观点是中国证监会不愿或不能与SEC合作，以提供SEC调查所需的协助，特别是不能作为提供审计底稿的有效渠道。”

他表示，SEC在2010年6月调查一起中概股公司财务舞弊案，要求德勤提供工作底稿，希望中国证监会给予协助，在2010年6月到2012年5月期间，SEC和中国证监会进行过超过30次各种形式的交流，但没有得到协助。

至于德勤涉及东南融通财务造假一案，德勤在提交法院的文件中称，在案件一开始该事务所为应对SEC可能向中国监管部门要求索取相关文件，就开始

准备文件以提供给中国证监会，2011年7月德勤香港办公室的人员以及香港的律师还飞赴上海准备这些文件。

当SEC得知德勤在2010年夏天就已经将底稿交给中国证监会后，2011年4月SEC向中国证监会发去邮件称自己知道后者已经获得底稿。六周之后，中国证监会承认自己确有底稿，但表示中国法律不允许将其交给SEC。

2012年4月，中国证监会向美方表示同意提供部分所要求的文件信息，但须签署一份同意信，要求SEC在未经中国证监会同意前，不得将所提供的 信息用以任何法律行动或相关行动，并要求SEC提供关于信息如何使用的书面报告，且在调查结束后告知中国证监会调查结果。此外，中国证监会表示将只提供未 注明的18盒审计底稿，且对哪些资料和案件调查有关保持自己的选择权。

但SEC不愿接受中国证监会开出的条件，认为不得将信息用于法律行动的内容和备忘录相悖，于是在4月10日将条件修改后发回给中国证监会，但次日即被拒绝。

直到2012年8月前，SEC都未向中国证监会再要求协助，阿雷法罗称，SEC职员认为鉴于以前的失败经历，相信这次也不会成功。

从谈判到起诉

中美双方走向合作而不是诉讼，并非没有机会。

涉及中概股和美国会计师事务所的中国监管部门为中国证监会、中国财政部。目前两国并未签署过双边证券执法信息分享备忘录，但在1994年签署的 《中美证券合作、磋商及技术援助的谅解备忘录》、以及2006年签署的《中国证券监督管理委员会与美国证券交易委员会合作条款》双方都表达在这一领域的合作意愿，但并未就此制定实施程序。

目前SEC寻求中方配合主要是依据两国签署的基于International Organization of Securities Commissions（IOSCO，国际证监会组织）《关于磋商、合作和信息交流多边谅解备忘录》（Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information ）。SEC认为这一备忘录构成了证券调查与执行方面的国际合作与信息共享框架。

这一备忘录中的条款并无法律约束力，不能凌驾于签署国法律之上，且提供的信息和文件不得违反协助提供国的法律。SEC国际事务办公室主管塔法拉（Ethiopis Tafara）表示签署即代表在法律允许的前提下提供互助，且备忘录列出协助内容包括但不限于提供所需的信息和文件，在该备忘录上签字即代表国内保密法等不应成为提供协议所覆盖信息的障碍。

SEC认为提供审计工作属于协议规定的内容，但中国证监会则提出一系列理由，包括有必要单独另外签署一份双边协议以提供审计底稿，后者认为备忘录并不保证SEC能获得审计底稿。

在对国际证监会组织文件、备忘录的效果方面，中美监管机构存在理解上的分歧。“IOSCO的文件、备忘录是没有法律效力的，我们必须要遵守中国法律体系，正如美方要遵守美国法律体系和国内政治规则一样。”一位中方监管官员说。

一位接近SEC的人士曾向财新记者表示，这些协议只是为国际合作列出了最低标准，合作应不仅限于这些。

2012年5月，两国监管部门负责人在北京IOSCO会议期间达成协议，双方主席将就执法合作进行对话，SEC认为这一对话可能会有建设性，因此向法院申请了将德勤涉及东南融通一案延期。

同年7月，SEC主席夏皮罗访华，和中国证监会主席郭树清讨论了关于建立合作机制的问题。郭树清表示双方合作可能会需要满足部分条件才能实现。

于是，SEC又向中国证监会发出一份关于双边合作框架的建议，并向法院申请暂停该案以等待两国建立合作的可能，但这份建议还是涉及中国关心的签署核心问题，即美方不愿承诺需征得中方的同意才采取法律行动，因此中国证监会予以拒绝。

但针对案件本身，中国证监会在8月和9月与SEC的沟通中给予了解释，表示处理SEC的另一个协作请求需要时间，将延迟处理东南融通一案的文件处理，不能在美方设置的最后期限前转交，并建议SEC考虑缩小调查范围至特定的人或交易上。

2012年10月，事情一度出现转机，中国证监会态度发生了转变，向SEC表示在备忘录下可能与SEC分享审计底稿，而无需再签署双边协议，并在11月6日的一份电子邮件中重申了这一观点。

与此同时，中国证监会仍要求SEC同意中方列出条件，若SEC不签署同意书，将导致中国证监会处理文件的延迟，因为不得不向司法部和其他相关机 构征求法律意见，还表示正在搜集东南融通的文件，但内部审阅需要较长时间，再次建议美方缩小调查范围，并表示计划出台针对外国监管机构索取审计底稿的程序 和指引。

11月26日，中国证监会人员到访华盛顿，行前提议与SEC进行会面，但SEC方面表示在中国证监会明确对提供协助的立场前，双方的交流应集中在互

利监管层面，而非再讨论提供文件或签署协议之类的话题。会上SEC方面知会了中国证监会关于起诉一事，表示自己别无选择。

“到此时，SEC认为在这一问题上已经没有和中国证监会需要进一步谈判的内容，除非中国证监会提供相应文件，特别是审计底稿。”阿雷法罗称在可见的未来希望不大。他强调，到目前为止，SEC提出的三起审计底稿的要求和其他要求一样，没有得到任何文件。

对于中美跨境证券监管，美方在提交法院的法律文件中表达了失望之情，并以起诉行动表达了强硬的态度。

监管思维存异

中美跨境证券监管合作陷入僵局，在于监管思维差异，甚至产生了互斥，“若需进一步合作，需要取得互相信任，求同存异。”一位观察人士表示。

夹在中美监管机构吵架缝隙中的会计师事务所处于尴尬境地。

安永华明会计师事务所就美国证监会提起行政处分诉讼程序的回复财新记者说：“安永华明会计师事务所支持监管机构之间建立紧密的工作关系, 展开协作和相互分享信息。我们希望美国和中国监管机构能就安永符合所有相关法律法规事宜达成一致。”

“外国监管机构随意调取中国境内会计师事务所工作底稿的行为，是违反保密法规定的，这有涉国家主权。而且中美双方的监管思维并不相同，中方不能同意美方进入中国境内去任何地方进行随意调查。”一位中方监管官员称。他所指的是，由中国证监会、国家保密局、国家档案局联合发布并于2009年11月 13日起实施的《关于加强在境外发行证券与上市相关保密和档案管理工作的规定》（下称《规定》），该文件要求会计师事务所在向境外监管机构交送工作底稿时 必须经中方监管机构批准。

《规定》第六条称，在境外发行证券与上市过程中，提供相关证券服务的证券公司、证券服务机构在境内形成的工作底稿等档案，应当存放在境内。前款 所称工作底稿涉及国家秘密、国家安全或者重大利益的，不得在非涉密计算机信息系统中存储、处理和传输；未经有关主管部门批准，也不得将其携带、寄运至境外 或者通过信息技术等任何手段传递给境外机构或者个人。

但《规定》第八条同时确认了中国证监会负责就在境外发行证券与上市保密和档案管理工作涉及的跨境证券监管事宜，与境外证券监管机构和其他相关机构开展交流与合作，比如现场检查，应以中国监管机构为主进行，或依赖中国监管机构的检查结果。

在谈到跨境监管合作的基本原则时，一位中方监管官员说，“跨境监管合作的基础原则是应该平等互利，要平等。美方来我国调查公司，应由我国主

持调 查，美方观察，结果由中方作出。中方去美国调查公司，同样应由美国主持调查，美方观察，结果由美方作出。美国人不能随意来看。”

中国证监会未对外披露跨境监管合作的数据。财新记者从接近稽查总队的人士处获悉，在过去五年中，中国证监会为跨境监管合作提供了调查协助，四分之一是帮助香港证监会调查，也曾帮助美国证监会调查了数家公司。

“中国证监会对一起案件的调查平均需要花费八个月甚至一年或者更长的时间，因为中国证监会必须给出调查结果，而不是像美国证监会那样，可以依靠去法院起 诉，进入司法程序他们就宣布美国证监会调查终结。一般来说，对案件的非正式调查要花费三到四个月的时间，对案件的正式调查将花费四个月乃至更长时间。”一 位中国证券执法人员表示。

一位证券执法人员对财新记者表示。“中国证监会证券执法系统监管资源非常缺乏，稽查人员常年超负荷查案。”

接近美国证监会的一位人士对中方人员抱怨监管资源不足表示理解，但他认为这不是理由，他认为美国证监会的监管资源尤其是监管经费也非常缺乏。“我们在向国会申请增加调查案子的经费，以更好的更及时的保护投资者。”

“美方这是施压。夏皮罗离职，新接手SEC的Elisse Walter想坐实，则需要出台一些措施。”一位在中美金融市场从业数十年的观察人士表示SEC起诉行动是新官上任巩固位置的举措之一。

“美方这次行动，进入了漫长的司法程序，是迫于国内压力。中方同样要遵守国内的法律法规，比如保密法，会计法等。”上述监管官员说，“由于中概股多为境外 注册的公司上市，而其运营的资产是中国境内的，但这些公司去海外上市也不向中国证监会报送材料获得审批，所以中概股是一个中方监管部门也不甚了解的地域， 这些公司都是境外实体，本来就不需要到中方监管机构来报批的。起诉这种行动，这就是美方的谈判手段，最后可能不了了之。”

但这些并不能解释为什么中国证监会不能向SEC提供任何涉案中概股的审计工作底稿。即使根据《规定》第八条称，只有涉及国家秘密、档案管理或其他需要事先经有关部门批准的事项，才要报保密部门、国家档案局、或有关部门的批准后才能提供相关资料。

中国证监会对跨境监管合作不积极，有监管官员私下称：中概股的问题是美国证监会的监管漏洞。这些公司都是境外上市主体，在美国上市之前，并未向 中国证监会递交材料获得审批，不在中国证监会管辖范围内。另一方面，中国国际板还遥遥无期，中国证监会对在美国获得SEC的监管协助，远没有那么迫切。

一些中方监管官员承认某些中概股的造假事件已经有损国家形象，希望能够继续谈合作。“SEC和PCAOB是两个相对独立的机构。不会影响到中国证监会和PCAOB的对话。中美监管合作还在继续。”一位监管官员说。■