

May 15, 2009

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
rule-comments@sec.gov

*Re: File No. PCAOB-2008-06: Public Company Accounting Oversight Board (“PCAOB”);
Notice of Filing of Proposed Amendment to Board Rules Relating to Inspections*

This letter is submitted on behalf of Deloitte Touche Tohmatsu (“DTT”) and member firms of Deloitte Touche Tohmatsu. We are pleased to respond to the request for comments from the Securities and Exchange Commission (“SEC”) on the Public Company Accounting Oversight Board’s Notice of Filing of Proposed Amendment to Board Rules Relating to Inspections, File No. PCAOB-2008-06, 74 Fed. Reg. 18753 (Apr. 24, 2009) (the “Proposed Rule”). We are committed to the highest standards of quality, and supportive of an effective and efficient inspection process. To this end, we strongly support the PCAOB’s efforts to establish cooperative relationships with non-U.S. oversight authorities. We believe that these efforts will be instrumental in conducting non-U.S. inspections and in achieving a system whereby one country’s oversight authority relies on the results of an inspection performed by the home country oversight authority to satisfy its own inspection requirements.

The Proposed Rule would extend to 2009 the timeframe within which PCAOB inspections otherwise required to be conducted in 2008 (the “2008 inspections”) are to be performed. The Proposed Rule was adopted by the PCAOB, without prior notice or comment, on December 4, 2008. See PCAOB, Rule Amendments Concerning The Timing Of Certain Inspections Of Non-U.S. Firms, And Other Issues Relating To Inspections Of Non-U.S. Firms, PCAOB Rel. No. 2008-007, PCAOB Rulemaking Docket No. 027 (Dec. 4, 2008) (the “Release”). In the same Release, the PCAOB issued for comment a proposed rule to delay the 2009 inspections of non-U.S. firms for up to three years, and solicited comment on other potential actions related to inspections of non-U.S. firms. We submitted a comment letter responding to the Release on February 2, 2009 (the “February Letter”). Although the Proposed Rule was transmitted to the SEC for approval in December 2008, the February Letter included comments on the Proposed Rule.

We continue to believe, as discussed in our February Letter, that an extension to conduct the 2008 inspections, which is designed to facilitate cooperation with non-U.S. authorities and alleviate conflicts posed both by laws and by sovereignty concerns, would be beneficial, but that setting a 2009 deadline for such an extension may not provide sufficient time for doing so. In this letter, we summarize our previously expressed views and discuss how events subsequent to the February Letter underscore the concerns regarding the sufficiency of a one-year deferral. We urge the SEC to work with the PCAOB to develop a rule that would allow the PCAOB sufficient flexibility to complete the steps needed to conduct the 2008 inspections with the understanding that an extension beyond 2009

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may be needed, and to either approve the Proposed Rule with this understanding, or return the Proposed Rule to the PCAOB for revisions consistent with this understanding.

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The Release makes clear that “it is in the interests of the public and investors for the Board to develop efficient and effective cooperative arrangements with its non-U.S. counterparts” for purposes of conducting inspections. Release, at 6. As such, the PCAOB recognizes in the Release, “[t]here is long-term value in accepting a limited delay in inspections to continue working toward cooperative arrangements where it appears reasonably possible to reach them.” *Id.* at 9. We agree that an extension of time for the PCAOB to complete its inspections of non-U.S. firms is beneficial to give the PCAOB additional flexibility to form cooperative working arrangements with non-U.S. oversight authorities. We are concerned, however, that a limited one-year extension of the deadline for completing the 2008 inspections is not in itself a sufficient response to the complexities that are involved in achieving such arrangements.

By negotiating cooperative arrangements before commencing an inspection, the PCAOB is best positioned to achieve the inspection process objectives of “protecting investors, improving audit quality, ensuring effective and efficient oversight of audit firms, and helping to preserve the public trust in the auditing profession.” February Letter, at 2-3. Cooperative working arrangements would appear critical to the PCAOB’s ability to conduct inspections in certain non-U.S. jurisdictions and to avoid subjecting non-U.S. firms to the competing demands of home country law and PCAOB requirements.

The PCAOB correctly acknowledges that achieving cooperative arrangements can be complex, and that the “need . . . to try to resolve potential conflicts of law, or to evaluate a non-U.S. system” involves “effort that can be substantial.” Release, at 6. Indeed, these arrangements would appear to involve a significant number of moving parts, with time needed to review the non-U.S. oversight authority’s regulatory framework, negotiate cooperative arrangements with the non-U.S. oversight authority, and coordinate the inspection process with the non-U.S. oversight authority. *See* February Letter, at 6-7. Negotiating the cooperative arrangements also would appear to require consideration of questions of sovereignty as well as conflicts of law, both of which may restrict the ability of non-U.S. firms to provide the PCAOB with the information the PCAOB requires to conduct its inspection.

Despite the need for cooperative arrangements, and the difficulties that are involved in negotiating them, the PCAOB’s Proposed Rule 4003(f) would allow the PCAOB only one additional year (of which only seven months remain) to achieve cooperative arrangements with the countries in which the PCAOB seeks to conduct the 2008 inspections, and then to conduct those inspections. This problem is compounded by the PCAOB’s statement in its Release that it “does not intend . . . to make any further adjustments to the[se] inspection frequency requirements.” Release, at 9. We are concerned that this limited window of time will prove too inflexible for the PCAOB to form cooperative arrangements and conduct inspections. *See* February Letter, at 12-15.

The PCAOB’s 2009 non-U.S. inspection list, published to its website on March 31, 2009, lists twenty-seven countries (potentially including multiple firms in certain of these countries) where inspections should occur this year. This list includes China, Finland, France, Germany, Netherlands, Philippines, Portugal, Sweden, and Switzerland—9 countries in which the PCAOB has not yet conducted any inspections and for which new cooperative arrangements have to be completed, even

though there may be significant conflicts of laws (including confidentiality and data privacy laws), as well as sovereignty issues, in some of these jurisdictions.

It also is not clear to what extent progress has been made in engaging the jurisdictions noted above and in developing cooperative arrangements with them. Recent developments also have highlighted the challenges to successfully forging cooperative relationships. For instance, in applying Article 47 of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, the European Commission must make an adequacy decision for European Union (“EU”) member states to be in a position to agree to cooperative arrangements with third countries, including the United States.¹ Without an adequacy decision, the provisions of Article 47 may be interpreted to prohibit the transfer of working papers to the PCAOB, creating serious questions about the ability of non-U.S. firms to cooperate with PCAOB inspections. Significantly, it was recently announced that the European Commission is not currently moving forward with an adequacy decision under Article 47.

Although a draft adequacy decision, issued by European Commission staff on January 26, 2009 for discussion, proposed to find that the SEC and the PCAOB are “adequate” for purposes of Article 47,² discussions about this draft adequacy decision were recently suspended. As EU Commissioner for the Internal Market and Services Charlie McCreevy stated on February 19:

Before taking a decision on audit working papers, I think that we need more time to ensure that the United States, in particular, is ready to cooperate with us fully, based upon mutual trust and mutual assistance. Only then can we, in the EU, move forward together on this issue with one approach for all our main trading partners. I should stress that it is still my aim to move forward on this issue.³

Although we understand it is the intent that cooperative arrangements be achieved, these need to be concluded in the near term in order for inspections to be conducted in 2009.

In sum, although we support the decision to extend the period for completing the 2008 inspections, we are concerned that Rule 4003(f) does not provide adequate time to establish the cooperative arrangements needed for the inspections to be conducted. We thus reiterate our recommendation from the February Letter that a more flexible approach to scheduling inspections—an approach that takes into account the status of negotiations on cooperative arrangements—is preferable to a one-year hard deadline.⁴ We urge the SEC and the PCAOB to consider the comments provided on

¹ Article 47 specifies that audit working papers cannot be transferred to the “competent authorities of a third country” unless certain conditions are met. These conditions include, among other things, that “the competent authorities of the third country concerned meet requirements which have been declared adequate in accordance with paragraph 3.” Paragraph 3, in turn, states that the European Commission shall, in cooperation with the European Union Member States, make an adequacy determination, and implies that an adequacy decision could depend largely on whether a third country is willing and able (a) to keep the audit working papers of registered audit firms located in the EU strictly confidential, and (b) to transfer the audit working papers of audit firms and auditors for which it is the home competent authority to EU member states for appropriate purposes.

² http://ec.europa.eu/internal_market/auditing/docs/relation/deci_art47_en.pdf.

³ <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/79&format=HTML&aged=0&language=EN&guiLanguage=en>.

⁴ In the February Letter, we suggested that one potential flexible approach to scheduling inspections would be to prioritize inspections based on the extent to which inspections are currently conducted by the non-U.S. oversight

the Release and the Proposed Rule, and encourage the development of a rule that allows additional flexibility for completing the 2008 inspections, with the understanding that an extension beyond 2009 may be needed.

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We thank the SEC for the opportunity to comment on the Proposed Rule. If there are any questions about the content of these comments, please contact Jens Simonsen at (212) 492-3689.

Very truly yours,

/s/ Deloitte Touche Tohmatsu

cc: PCAOB Office of the Secretary

authority in a particular country, and the strength, independence, and transparency of that authority, as well as the progress that has already been achieved toward forming cooperative arrangements with that country. *See* February Letter, at 8-9.