

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-14872

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In the Matter of )  
Deloitte Touche Tohmatsu CPA Ltd., )  
Respondent. )

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**ANSWER OF RESPONDENT DELOITTE TOUCHE TOHMATSU CPA LTD. TO  
ORDER INSTITUTING DISCIPLINARY PROCEEDINGS**

*Respondent Deloitte Touche Tohmatsu Certified Public Accountants Ltd. ("DTTC") submits this Answer in response to the Second Corrected Order Instituting Disciplinary Proceedings sent by the U.S. Securities and Exchange Commission ("SEC" or "the Commission") on May 14, 2012 (the "OIP"). DTTC denies all allegations of the OIP except as otherwise indicated below:*

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative proceedings be, and hereby are, instituted pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice against Deloitte Touche Tohmatsu Certified Public Accountants Ltd. ("Respondent" or "D&T Shanghai").

*Answer to Section I: DTTC admits that the Commission has instituted proceedings against DTTC pursuant to Rule 102(e)(1)(iii), but denies the remainder of Section I.*

**II.**

The Division of Enforcement alleges that:

## **A. RESPONDENT**

1. **Deloitte Touche Tohmatsu Certified Public Accountants Ltd.**, is a public accounting firm, registered with the Public Company Accounting Oversight Board, and located in Shanghai, the People's Republic of China ("PRC"). D&T Shanghai is a Chinese member firm of Deloitte Touche Tohmatsu Limited, a United Kingdom private company ("Global Firm"). Within the PRC, D&T Shanghai is regulated by the Ministry of Finance and the Chinese Securities Regulatory Commission.

*Answer to paragraph 1: DTTC admits: that DTTC is a public accounting firm, registered with the Public Company Accounting Oversight Board (United States) ("PCAOB"); that it is headquartered in Shanghai; that Deloitte Touche Tohmatsu Limited ("DTTL") is a United Kingdom private company, limited by guarantee; that DTTC is affiliated with the DTTL network; and that DTTC is regulated by the Ministry of Finance and the Chinese Securities Regulatory Commission ("CSRC") in the mainland of the People's Republic of China ("PRC"). DTTC denies the remaining allegations of paragraph 1. DTTC objects to referring to DTTL as the "Global Firm," and accordingly will not use that term in this Answer.*

## **B. FACTS**

### **Summary**

2. This action stems from D&T Shanghai's willful failure, in response to a Commission request, to provide audit work papers despite its legal obligations, as a registered accounting firm, to do so.

*Answer to paragraph 2: DTTC denies the allegations of paragraph 2.*

### **Commission Staff's Efforts to Obtain Audit Work Papers**

3. Beginning in April 2010, Commission staff has made extensive efforts to obtain D&T Shanghai's audit work papers connected to the firm's independent audit work for an issuer-client ("Client A") in relation to a Commission investigation into potential accounting fraud.

*Answer to paragraph 3: Paragraph 3 contains no allegations directed to DTTC and therefore no response is required. To the extent a further response is deemed required, DTTC lacks sufficient information to admit or deny the allegations of paragraph 3.*

4. On April 9, 2010, staff served Deloitte LLP, the U.S. member firm of the Global Firm with a subpoena requesting audit work papers relating to the Global Firm's audit of Client A's financial statements for the period January 1, 2008 through April 9, 2010.

*Answer to paragraph 4: Paragraph 4 contains no allegations directed to DTTC and therefore no response is required. To the extent a further response is deemed required, DTTC admits: that Deloitte LLP is the U.S. member firm of the DTTL network and that, on information and belief, Commission Staff sent a subpoena dated April 9, 2010 to Deloitte LLP. DTTC denies that DTTL audited Client A.*

5. Between April 13, 2010 and May 18, 2010, the staff had several communications with U.S. based counsels for both Deloitte LLP and the Global Firm.

*Answer to paragraph 5: Paragraph 5 contains no allegations directed to DTTC and therefore no response is required. To the extent a further response is deemed required, DTTC lacks sufficient information to admit or deny the allegations of paragraph 5.*

6. Counsel for Deloitte LLP initially informed the staff that Deloitte LLP did not perform any audit work for Client A, that all audit work was conducted by Respondent, and that Deloitte LLP did not have possession, custody, or control of the documents called for by the subpoena.

*Answer to paragraph 6: Paragraph 6 contains no allegations directed to DTTC and therefore no response is required. To the extent a further response is deemed required, on information and belief, DTTC admits, on information and belief, that counsel for Deloitte LLP initially informed Commission Staff that Deloitte LLP did not perform any audit work*

*for Client A and that all audit work was conducted by DTTC. DTTC lacks sufficient information to admit or deny the remaining allegations of paragraph 6.*

7. Counsel for Deloitte LLP subsequently informed the staff that Deloitte LLP performed some review work of Client A's periodic reports and produced certain documents relating to this review to the staff.

*Answer to paragraph 7: Paragraph 7 contains no allegations directed to DTTC and therefore no response is required. To the extent a further response is deemed required, DTTC lacks sufficient information to admit or deny the allegations of paragraph 7.*

8. Counsel for the Global Firm informed the staff that the request for audit work papers, as contained in the staff's April 9<sup>th</sup> subpoena, had been communicated to Respondent, but that Respondent would not produce the relevant audit work papers because of Respondent's interpretation that it was prevented from doing so by PRC law.

*Answer to paragraph 8: Paragraph 8 contains no allegations directed to DTTC and therefore no response is required. To the extent a further response is deemed required, DTTC denies that the April 9, 2010 subpoena to Deloitte LLP called for the production of documents in the possession, custody, or control of DTTC. On information and belief, DTTC admits that counsel for DTTL informed Commission Staff that PRC law prohibited DTTC from producing audit workpapers directly to the SEC without the consent of the relevant PRC government authorities. DTTC also states that, on July 6, 2010, the CSRC, "[o]n behalf of a foreign regulator," requested that DTTC produce to the CSRC the 2008 and 2009 audit workpapers for Client A. DTTC further states that DTTC produced the requested documents to the CSRC on July 23, 2010.*

9. Commencing in June 2010, Commission staff sought to obtain the relevant audit work papers through international sharing mechanisms, however, these efforts have been unsuccessful.

*Answer to paragraph 9: Paragraph 9 contains no allegations directed to DTTC and therefore no response is required. To the extent a further response is deemed required, on information and belief, DTTC admits the CSRC, on behalf of the SEC, requested that DTTC produce the 2008 and 2009 audit workpapers for Client A to the CSRC. DTTC further states that it produced the requested documents to the CSRC with the expectation that the documents would be provided to the SEC. DTTC lacks sufficient information to admit or deny the remaining allegations of paragraph 9.*

#### **Commission Staff's Sarbanes-Oxley Section 106 Request**

10. On March 11, 2011, in conjunction with the staff's efforts to obtain the relevant audit work papers through D&T Shanghai's local regulator, pursuant to Section 106 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), as amended by Section 929J of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission staff served D&T Shanghai, through its designated U.S. agent, with a request for "All audit work papers and all other documents related to any audit work or interim reviews performed for [Client A] for the fiscal year ending December 31, 2009."

*Answer to paragraph 10: DTTC admits: that on March 11, 2011, Commission Staff sent a letter addressed to DTTC requesting that DTTC produce: "All audit work papers and all other documents related to any audit work or interim reviews performed for [Client A] for the fiscal year ending December 31, 2009" (the "March 11 Request"); that the March 11 Request stated that the request was pursuant to Section 106 of the Sarbanes-Oxley Act and Section 929J of the Dodd-Frank Wall Street Reform and Consumer Protection Act; that the March 11 letter attached a Form 1662; and that the March 11 letter was mailed to "Deloitte LLP as designated agent." DTTC lacks sufficient information to admit or deny any remaining allegations of paragraph 10.*

11. On April 29, 2011, Respondent informed the staff that it would not produce the documents as requested in the Staff's March 11, 2011 Sarbanes-Oxley Section 106 request, because Respondent interpreted PRC law as preventing Respondent from doing so.

*Answer to paragraph 11: DTTC denies the allegations of paragraph 11 and states that it is prohibited by PRC law and by the PRC government from producing the documents described in the March 11 Request directly to the SEC.*

12. As of the date of this filing, Commission staff does not have the audit work papers and other relevant documents sought in the Sarbanes-Oxley Section 106 request.

*Answer to paragraph 12: Paragraph 12 contains no allegations directed to DTTC and therefore no response is required. To the extent a further response is deemed required, DTTC lacks sufficient information to admit or deny the allegations of paragraph 12.*

### **C. VIOLATIONS**

13. Section 106(b) of Sarbanes-Oxley directs a foreign public accounting firm that “issues an audit report, performs audit work or interim review” to “produce the audit work papers of the foreign public accounting firm and all other documents of the firm related to such audit work” to the Commission upon request.

*Answer to paragraph 13: Paragraph 13 states a legal conclusion to which no response is required. To the extent a further response is deemed required, DTTC admits that paragraph 13 accurately quotes a selected portion of Section 106(b) of the Sarbanes-Oxley Act but respectfully refers the Administrative Law Judge to Section 106 for its full contents.*

14. A willful refusal to comply, in whole or in part, with a request by the Commission under Section 106 is a violation of Sarbanes-Oxley. *See* Section 106(e).

*Answer to paragraph 14: Paragraph 14 states a legal conclusion to which no response is required. To the extent a further response is deemed required, DTTC respectfully refers the Administrative Law Judge to Section 106 for its full contents.*

15. A violation of Sarbanes-Oxley constitutes a violation of the Securities Exchange Act of 1934 (“Exchange Act”). *See* Sarbanes-Oxley Section 3.

*Answer to paragraph 15: Paragraph 15 states a legal conclusion to which no response is required. To the extent a further response is deemed required, DTTC respectfully refers the Administrative Law Judge to Section 3 for its full contents.*

16. D&T Shanghai has willfully refused to provide the Commission with its audit work papers and all other documents relating to D&T Shanghai's audit work for Client A.

*Answer to paragraph 16: DTTC denies the allegations of paragraph 16.*

17. As such, D&T Shanghai has willfully violated Sarbanes-Oxley and the Exchange Act.

*Answer to paragraph 17: DTTC denies the allegations of paragraph 17.*

18. As a result of the conduct described above, it is appropriate that this proceeding be brought pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice to determine whether D&T Shanghai should be censured or denied the privilege of appearance and practice before the Commission for having willfully violated Section 106 of Sarbanes-Oxley.

*Answer to paragraph 18: DTTC denies the allegations of paragraph 18.*

### **III.**

In view of the allegations made by the Division of Enforcement, the Commission deems it appropriate that public administrative proceedings be instituted to determine:

**A.** Whether the allegations set forth above are true and, in connection therewith, to afford D&T Shanghai an opportunity to establish any defenses to such allegations; and

**B.** What, if any, remedial action is appropriate and in the public interest against D&T Shanghai pursuant to Rule 102(e)(1)(iii) of Commission's Rules of Practice.

*Answer to Section III: Section III requires no response. To the extent a response is deemed required, DTTC denies all allegations in Section III, including that administrative proceedings are appropriate. DTTC further alleges that the enforceability of a Section 106 request may be determined only by a federal court, that the SEC has not sought a judicial determination of the enforceability of any Section 106 request to DTTC, and that no federal court has deemed enforceable the March 11 Request, in whole or in part, to DTTC regarding Client A.*

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that D&T Shanghai shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If D&T Shanghai fails to file the directed answer, or fails to appear at a hearing after being duly notified, D&T Shanghai may be deemed in default and the proceedings may be determined against D&T Shanghai upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon D&T Shanghai through its designated agent.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

*Answer to Section IV: Section IV requires no response. To the extent a response is deemed necessary, DTTC denies all allegations in Section IV.*

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**AFFIRMATIVE DEFENSES**

*DTTC asserts the following separate, affirmative defenses to the OIP. In so doing, DTTC does not assume the burden of production or proof with respect to any fact or proposition necessary to that affirmative defense where the burden of production and/or proof is properly imposed on the Division.*



1. *Under the plain language of Section 106, there is no subject matter and/or personal jurisdiction over DTTC with respect to this proceeding and thus this matter cannot be adjudicated in this forum.*
2. *The OIP was not properly served on DTTC.*
3. *The OIP fails to state a claim upon which relief may be granted.*
4. *This proceeding is not warranted by the facts and, in any event, is unsupported by substantial evidence.*
5. *This proceeding violates DTTC's constitutional rights, including DTTC's rights to due process and equal protection.*
6. *This proceeding is an improper use of the 102(e) process because DTTC is being singled out for selective prosecution.*
7. *This proceeding constitutes arbitrary and capricious agency action, including under the Administrative Procedures Act.*
8. *This proceeding is unlawful, improper, and unwarranted because there has been no judicial determination regarding the enforceability of the Commission Staff's March 11 Request.*
9. *This proceeding violates DTTC's due process rights to the extent that it does not allow the opportunity for appropriate pre-hearing discovery or to compel the appearance or testimony of witnesses in DTTC's defense at the hearing of this matter.*
10. *Sanctions against DTTC would be inappropriate based on the conduct alleged in the OIP and contrary to the public interest.*

11. *Sanctions against DTTC would be inappropriate based on the conduct alleged in the OIP because DTTC produced the requested documents to the CSRC consistent with Section 106(f)'s provision for alternate means of production. 15 U.S.C. § 7216(f).*

12. *The SEC lacks the authority to request documents—other than audit workpapers—that existed prior to the enactment of the Dodd-Frank Act on July 21, 2010.*

13. *This proceeding is improper because the Division's allegations are inconsistent with the SEC's publicly-stated approach and long-standing policy and practice to resolve issues of access to audit workpapers and other such documents located in foreign jurisdictions through diplomatic negotiations.*

14. *This proceeding is improper because the Division's allegations are inconsistent with the cooperative framework for obtaining documents from foreign jurisdictions as set forth in the Multilateral Memorandum of Understanding of the International Organization of Securities Commissions, to which both the SEC and CSRC are members.*

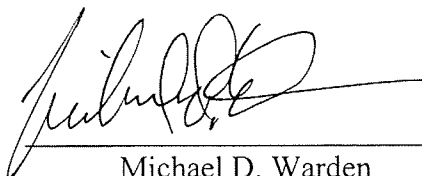
15. *The SEC may not sanction DTTC based on PRC legal impediments because (1) DTTC consented in its registration with the Public Company Accounting Oversight Board only to produce documents to the extent permitted by PRC and any other applicable laws; and (2) DTTC consented in its designation of an agent under SOX Section 106 only to the extent permitted by applicable law of the PRC.*

16. *Sanctions against DTTC would be inappropriate based on the conduct alleged in the OIP because any sanctions here would be inconsistent with principles of international comity.*

17. *Any alleged failure by the SEC to obtain the requested documents is the result of the failure of the SEC to negotiate acceptable international agreements with the CSRC, not any refusal, willful or otherwise, to produce documents by DTTC.*

\* \* \* \* \*

Dated: June 4, 2012



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