

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 66948 / May 9, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14872**

**In the Matter of**

**Deloitte Touche Tohmatsu  
Certified Public Accountants  
Ltd.,**

**Respondent.**

**SECOND CORRECTED ORDER  
INSTITUTING ADMINISTRATIVE  
PROCEEDINGS PURSUANT TO RULE  
102(e)(1)(iii) OF THE COMMISSION'S  
RULES OF PRACTICE AND NOTICE OF  
HEARING**

**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").

**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.

## **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.

### **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.

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.

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

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.

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.

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.

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.

### **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.”

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.

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.

### **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.

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).

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

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.

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

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.

### **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.

**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.

By the Commission.

Elizabeth M. Murphy  
Secretary