

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 68432 / December 13, 2012**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3428 / December 13, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15129**

**In the Matter of**

**DELOITTE & TOUCHE (SOUTH AFRICA),**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii) of the Commission's Rules of Practice against Deloitte & Touche (South Africa) ("Respondent," "DT-SA," or the "Firm").

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over the Firm and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

This matter arises from an independence-impairing business relationship between DT-SA – acting through its wholly-owned consulting affiliate, Deloitte Consulting (Pty) Ltd. (“DC-SA”) – and Director (defined below). In April 2006, DC-SA entered into a consulting contract with Director. At that time, the relationship was not a prohibited business relationship; Director did not serve on the board of directors of, or otherwise in a decision-making capacity for, any DT-SA audit client. When, in 2007, Director joined the board of Company A, an SEC-registrant audit client of DT-SA – and notwithstanding Director's neither serving on Company A's audit committee nor interacting with DT-SA's audit team – Director's relationship with DC-SA thereby became a prohibited business relationship under Commission Rule 2-01 of Regulation S-X.<sup>2</sup> DT-SA did not have adequate controls in place to identify, and otherwise did not identify, the creation of the prohibited relationship. While the prohibited relationship was in place, DT-SA issued audit reports with respect to Company A, and DC-SA also renewed the contract with the Director. DC-SA did not identify the prohibited relationship until August 2008, whereupon DT-SA initiated a review of the matter that ultimately resulted in the termination of the relationship in October 2008 (but effective September 30, 2008).

As a result, DT-SA engaged in improper professional conduct, violated Rule 2-02(b) of Regulation S-X and caused its audit client Company A to file periodic reports with the Commission that failed to include independently audited financial statements as required by Exchange Act Section 13(a), Exchange Act Rule 13a-1, and Regulation S-X.

#### **Respondent**

1. DT-SA, a member firm of Deloitte Touche Tohmatsu Limited, is a registered public accounting firm headquartered in Johannesburg, South Africa. At all relevant times and continuing to the present, DT-SA has provided audit and other professional services to a variety of companies, including Company A, whose securities are registered with the Commission and trade in U.S. markets. DT-SA wholly owns DC-SA, which provides consulting services to various companies in South Africa.

#### **Relevant Issuer**

2. At all relevant times, Company A's ordinary shares were registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its American

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> This Order makes no finding with respect to Company A's reported financial statements for any fiscal year in which the matter discussed herein occurred.

Depository Shares were listed on the New York Stock Exchange. DT-SA served as Company A's auditor throughout the relevant period and continues to serve in that role.

### **The Director**

3. Director was an independent consultant hired by DC-SA to assist its work in the energy industry. Director joined the Board of Directors of Company A on September 1, 2007, and Director remains in that position to this day.

### **Facts**

#### **A. The Relationship Between DT-SA And Director**

4. DC-SA hired Director in April 2006 as an independent contractor with expertise in the energy industry. At that time, DC-SA performed a conflict and background check on Director. Director was not then on the board of directors of, and did not otherwise serve in a decision-making capacity for, any DT-SA audit client; thus, the check did not identify any conflict of interest or independence concern related to the Firm's relationship with Director. DC-SA renewed or extended Director's contract several times, but it did not conduct any further conflicts checks or inquire about Director's business relationships after Director's initial retention.

5. On September 1, 2007, Director was appointed to the Board of Directors of Company A, a Commission-registered audit client of DT-SA. DT-SA did not have adequate controls in place to identify, and otherwise did not identify, the creation of the prohibited relationship on a timely basis. DC-SA subsequently renewed Director's contract with the Firm, but, not having conducted any new conflicts checks, and in the absence of any identification of the relationship as potentially problematic by DC-SA personnel, did not recognize that Director's simultaneous work for DC-SA and service as a director of Company A would impair DT-SA's auditor independence with respect to Company A.

6. Director openly referred to Director's role on Company A's board in several communications with various DC-SA personnel, and several internal DC-SA communications among the consulting personnel also included references to Director's professional experience, including Director's service on Company A's Board of Directors. DC-SA's personnel, however, did not recognize their significance despite having been trained that the Firm's having a direct business relationship with an audit client director was inconsistent with auditor independence standards. Consequently, they did not recognize that Director's appointment to Company A's Board created an independence concern and thus did not consult with the audit team or with the Firm's independence personnel. As a result, and because they did not learn of it through inquiry, the Firm's controls, or otherwise, the members of the DT-SA audit team assigned to work on Company A's audits were not aware of Director's business relationship with DC-SA prior to the identification of the issue as described below.

## **B. Identification of Prohibited Relationship**

7. On August 11, 2008, as a part of its ongoing independence education efforts, DT-SA's director of independence sent an e-mail to personnel at DT-SA and DC-SA notifying them of recently announced Commission enforcement actions in a case finding a direct business relationship between an auditor and an audit client director, and reminding them about business relationship requirements. In response to that e-mail, a DC-SA consultant identified the relationship with Director as raising a potential independence concern.

8. DT-SA initiated a review of the matter. As a result of its review of the relationship with Director, DT-SA terminated the relationship in October 2008 (but effective September 30, 2008).

9. DT-SA subsequently informed Company A's audit committee of the business relationship with Director.

### **Legal Analysis**

#### **A. Independence Principles Governing the Relationship between DT-SA and Director**

10. The basic elements of an auditor independence violation in the business-relationship context are (1) an independence-impairing relationship; (2) existing during all or part of the period covered by the audit, or the period of the audit work, or both; followed by (3) issuance of an audit report asserting the auditor's independence from the client. *See* Rule 2-01(c)(3) of Regulation S-X.<sup>3</sup> Business relationships with persons associated with the audit client in a decision-making capacity, such as audit client directors, officers and substantial stockholders are embraced by this prohibition. *See* Rule 2-01(c)(3). Section 6.02.02.e of the Commission's Codification of Financial Reporting Policies ("Codification") (available at 7 Fed. Sec. L. Rep. (CCH) ¶ 73,272) provides, among other things, that:

In addition to the relationships specifically prohibited by Rule 2-01, joint business ventures, limited partnership agreements, investments in supplier or customer companies, leasing interests (except for immaterial landlord-tenant relationships) and sales by the accountant of items other than professional services are examples of other connections which are also included within this classification.

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<sup>3</sup> Rule 2-01(c)(3) provides:

An accountant is not independent if, at any point during the audit and professional engagement period, the accounting firm or any covered person in the firm has any direct or material indirect business relationship with an audit client, or with persons associated with the audit client in a decision-making capacity, such as an audit client's officers, directors, or substantial stockholders. The relationships described in this paragraph do not include a relationship in which the accounting firm or covered person in the firm provides professional services to an audit client or is a consumer in the ordinary course of business.

11. DT-SA's direct business relationship with Director falls within Reg. S-X's prohibition. Director served as an audit-client director while simultaneously serving as a paid consultant to DT-SA. Although Rule 2-01(c)(3) provides an exception for business relationships involving a consumer in the ordinary course of business, that exception has no application here where neither party was acting in the capacity of a consumer; a cooperative service arrangement like that presented here does not qualify for this exception.

**B. Violation of Rule 2-02(b) of Regulation S-X and of Issuer Reporting Provisions**

12. Because DT-SA's business relationship with Director impaired DT-SA's independence, it both constituted and caused certain statutory and regulatory violations. Each time DT-SA signed an audit report for Company A where either the period covered by the audit or the period of the audit work (or both) overlapped with DT-SA's business relationship with Director, DT-SA directly violated Rule 2-02(b) of Regulation S-X. *See* Rule 2-02(b) (requiring accountant's report to "state whether the audit was made in accordance with generally accepted auditing standards"). The DT-SA year-end audit reports for Company A's fiscal years ending in September 2007 and September 2008 each incorrectly stated that they were performed in accordance with the independence standards of GAAS reflected in Rule 2-02(b). Thus, DT-SA's failure to comply with Rule 2-02(b) of Regulation S-X caused its audit client Company A to file annual reports with the Commission that failed to include independently audited financial statements as required by Exchange Act Section 13(a) and Exchange Act Rule 13a-1. DT-SA is responsible for causing Company A's reporting violations with respect to annual reports filed in January 2008 and 2009, for the aforementioned fiscal years, because DT-SA should have known that the Firm's business relationship with Director would cause Company A to lack independence for the corresponding audits.

**C. Improper Professional Conduct**

13. DT-SA's failure to comply with Rule 2-01 of Regulation S-X described above also constitutes improper professional conduct under Exchange Act Section 4C and Rule 102(e)(1)(ii) of the Commission's Rules of Practice, which provides, in pertinent part, that the Commission may "censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it...to any person who is found...to have engaged in...improper professional conduct."

14. DT-SA's conduct constituted improper professional conduct on account of DC-SA's failure (a) at the point when Director joined the board of directors of Company A, to identify the independence-impairing relationship; (b) at the points at which Director's contract with DC-SA was renewed or extended, to perform any updated independence review or conflicts check; and (c) at the points at which various DC-SA personnel, who knew of Director's consulting relationship with the Firm, received communications explicitly identifying Director as a member of Company A's Board, to recognize that the Firm's continued employment of Director while Director

simultaneously served on Company A's Board interfered with DT-SA's obligation to maintain its independence as Company A's auditor.

#### **DT-SA's Remedial Efforts**

In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

#### **IV.**

Based on the foregoing, the Commission finds that Respondent DT-SA (a) violated Rule 2-02(b) of Regulation S-X; (b) caused Company A to violate Exchange Act Section 13(a) and Exchange Act Rule 13a-1; and (c) engaged in improper professional conduct pursuant to Exchange Act Section 4C and Rule 102(e) of the Commission's Rules of Practice.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that Respondent DT-SA is hereby censured.

IT IS FURTHER ORDERED that Respondent DT-SA shall, within ten (10) days of the entry of this Order, pay disgorgement of \$200,000 and prejudgment interest of \$47,043.66 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to Commission Rule of Practice 600. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the Commission website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying DT-SA as a Respondent in these proceedings, and the file number of these proceedings. A copy of the cover letter and check or money order, or documentation of whatever other form of payment is used, must be simultaneously sent to Brian M. Privor, Senior

Counsel, Division of Enforcement, Securities and Exchange Commission, 100 F St.,  
N.E., Washington, DC 20549-5546.

IT IS FURTHER ORDERED, effectively immediately, that Respondent DT-SA shall cease and desist from committing or causing any violations and any future violations of Rule 2-02(b) of Regulation S-X, and from causing any violations and any future violations of Exchange Act Section 13(a) and Rule 13a-1 thereunder.

By the Commission.

Elizabeth M. Murphy  
Secretary