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Jonathan G. Katz
Office of the Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549-0609

Re: File No. PCAOB-2004-05

PCAOB Auditing Standard No. 3, *Audit Documentation*, and an amendment to AU sec. 543 of the interim auditing standards

Dear Mr. Katz:

Deloitte & Touche LLP is pleased to respond to the request for comments from the Securities and Exchange Commission (the “SEC” or the “Commission”) regarding the filing by the Public Company Accounting Oversight Board (the “PCAOB” or the “Board”) of its Auditing Standard No. 3, *Audit Documentation*, and its amendment to interim auditing standards, PCAOB Rulemaking Docket Matter No. 012 (the “Standard”). This letter is submitted on behalf of Deloitte & Touche LLP, the non-U.S. member firms of Deloitte Touche Tohmatsu, and Deloitte Touche Tohmatsu.

We recognize the efforts of the PCAOB in analyzing and addressing the numerous comments that were received in the initial comment process. While we believe that the modifications made to the Standard by the Board as a result of that comment process, and specifically Appendix A, *Background and Basis for Conclusions*, did clarify the meaning of certain aspects of the Standard, some implementation questions and issues still exist. In order to ensure successful implementation of these new requirements, appropriate interpretive guidance will need to be provided to auditors, and we are pleased to see that mechanisms are emerging through the PCAOB to develop further interpretation of all standards. However, we continue to be concerned about the issues discussed below.

I. “Access To” and “Location of” Audit Documentation

While we believe the requirements in paragraphs 18 and 19 (including that the work performed by other auditors be accessible by the office issuing the report, and requiring that other auditors

send specific items of audit documentation to the office issuing the report) are more workable than those in the proposed standard, there still are issues with other countries' laws and regulations that will likely prevent full compliance with the requirements of the Standard.

International Issues - Overview

As stated in our January 20, 2004 letter to the PCAOB commenting on the proposed standard, granting access to working papers within, and/or delivering working papers out of, a particular country is illegal in some jurisdictions, could subject foreign firms (and possibly even U.S. firms) to criminal penalties, including fines and imprisonment, is strictly regulated in other countries, and may well place the auditor in the untenable position of choosing between (i) knowingly failing to assemble audit working papers that would be required to meet standards as to audit documentation and (ii) calling upon others to violate the laws of their home country.

The principal legal impediments in non-U.S. jurisdictions that inhibit access to audit documentation involve issues relating to (i) data privacy laws; (ii) professional obligations under non-U.S. laws and professional standards, particularly relating to confidentiality; and (iii) laws specific to a particular client's business.

Data Privacy

For example, with respect to data privacy, processing of personal data in member countries of the European Union is often governed by national laws implementing European Directive 95/46/EC of October 24, 1995. These national laws impose certain prohibitions on the person processing personal data. Processing includes the collection, retrieval, distribution and transfer to other countries of personal data. Accordingly, several European Union member countries, such as the United Kingdom, France and Germany, restrict the transfer of personal data to jurisdictions, including the United States, that are not considered to provide an equivalent level of data protection. Personal data can be any information relating to an identified or identifiable natural person. Personal data to be found in audit documentation include, among other things, details about the engagement team, details about the client team, information about client personnel, signature blocks and names in agreements, salary information traceable to persons, identity card numbers, confirmation lists with third party names, and registration numbers. Similar restrictions on the transfer of personal data can be found in numerous jurisdictions outside the European Union, including Hong Kong, Israel, Japan and Switzerland.¹

Some of the audit documentation required by paragraph 19 to be sent to the office issuing the auditors' report may contain personal data (for example, the engagement completion document, including attachments, may contain personal data about client personnel and customers) and, therefore, it would be illegal in some countries for auditors to send such information outside of their jurisdiction. For example, pursuant to the general mandate of the data protection laws of both Germany and the United Kingdom that personal data be processed fairly and lawfully, it is

¹ See Letter from Linklaters to the Public Company Accounting Oversight Board, dated January 20, 2004, commenting on the PCAOB's Proposed Auditing Standard on Audit Documentation, at A4 (specifying relevant foreign statutes).

illegal to disclose personal data or transfer it outside of Germany or the United Kingdom except in specified circumstances, such as where the “data subject” consents. Yet, consents will not always serve to overcome the conflicts posed by data privacy laws. In addition to the logistical problems associated with obtaining consents, it is not always clear, for example, that consents obtained in advance of the matter to which the consent pertains will be enforceable under the laws of most jurisdictions within the European Union.²

Confidentiality

In addition, duties of confidentiality under both non-U.S. laws and professional standards in many countries restrict the ability of non-U.S. firms to provide the U.S. firm access to audit documentation. For example, the French Commercial Code provides that auditors shall be bound by professional secrecy for all acts, events and information of which they may become aware in the course of their duties, and that auditors may not divulge or communicate any confidential information to any person or entity, subject to certain narrow exceptions which do not include forwarding audit workpapers to a principal auditor in another jurisdiction. While client waivers can be obtained in some countries to address these impediments, in other countries the restrictions are absolute and client waivers would not serve to eliminate the impediment. In France, for example, although an audit client’s prior consent to the disclosure of information may prevent civil liability to the audit client, it would not release the auditor from criminal or disciplinary sanctions.

International Issues - Recommendation

We recommend that the SEC encourage the PCAOB to directly address the issue of how an auditor should demonstrate his or her best efforts to comply with the intent of the requirements in paragraphs 18 and 19 when it would be illegal to do so by complying with the express provisions of such paragraphs.

II. Presentation of Oral Evidence

In proposing Auditing Standard No. 3, the PCAOB requested comment relating to the use of oral explanation, in the absence of sufficient other documentation, to show that audit procedures had been performed, evidence obtained and appropriate conclusions reached. To the PCAOB’s credit, they made changes in this area in writing their final standard. However, as adopted by the PCAOB, paragraph 9 of the Standard could be read to mean that the PCAOB and its staff may be led to ignore oral explanation that may be integral to their understanding of the audit work performed, and such oral evidence may be the best information available, if the oral explanation relates to a matter for which there is no written evidence.

Increased comprehensiveness in audit documentation is understandably part of the PCAOB's regulatory goals. However, the PCAOB and its staff will be able to reach appropriate regulatory

² *Id.* at 6-7 (discussing issues associated with securing consents that meet the criteria in European Directive 95/46/EC).

judgments only when they have access to the best information available to understand the scope of the audit work performed and the audit evidence obtained. If the best information available is in fact oral evidence, the ability to access this information should not be foreclosed simply because the oral evidence does not tie neatly to any written evidence in the audit documentation. We therefore recommend that paragraph 9 of the Standard be modified to clarify that oral evidence can be used to explain both other written evidence and, where appropriate, matters for which there is not any written evidence. If such a modification is not made, we urge that the SEC make clear in its release that the Board should apply paragraph 9 in the broadest way to permit oral explanation when it makes sense to do so. Alternatively, we urge the SEC to work with the PCAOB to develop implementation guidance that achieves the same objective.

We appreciate the opportunity to comment, and would be pleased to discuss these issues with you further. If you have any questions or would like to discuss these issues further, please contact Robert J. Kueppers at (203) 761-3579 or John A. Fogarty at (203) 761-3227.

Very truly yours,

/s/ Deloitte & Touche LLP

cc: Chairman William H. Donaldson
Commissioner Cynthia A. Glassman
Commissioner Harvey J. Goldschmid
Commissioner Paul S. Atkins
Commissioner Roel C. Campos

William J. McDonough, Chairman of the PCAOB
Kayla J. Gillan, Member
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