SEC Charges Deloitte & Touche in Shanghai with Violating U.S. Securities Laws in Refusal to Produce Documents

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Washington, D.C., May 9, 2012 — The Securities and Exchange Commission today announced an enforcement action against Shanghai-based Deloitte Touche Tohmatsu CPA Ltd. for its refusal to provide the agency with audit work papers related to a China-based company under investigation for potential accounting fraud against U.S. investors.

Additional Materials

➤ Order Instituting Proceedings

According to the SEC’s order instituting administrative proceedings against D&T Shanghai, the agency has been making extensive efforts for more than two years to obtain documents related to the firm’s work for the company, which issues U.S. securities registered with the SEC. The firm is charged with violating the Sarbanes-Oxley Act, which requires foreign public accounting firms to provide audit work papers concerning U.S. issuers to the SEC upon request. D&T Shanghai has nonetheless failed to provide the documents, citing Chinese law as the reason for its refusal.

“As a voluntarily registered U.S. public accounting firm, D&T Shanghai cannot benefit from the financial and reputational rewards that come with auditing U.S. issuers without also meeting its U.S. legal obligations,” said Robert Khuzami, Director of the SEC’s Division of Enforcement. “Foreign firms auditing U.S. issuers should not be permitted to shield themselves from regulatory scrutiny to the detriment of U.S. investors.”

Scott Friestad, Associate Director of the SEC’s Division of Enforcement, added, “Without access to work papers of foreign public accounting firms, our investigators are unable to test the quality of the underlying audits and fulfill our responsibilities to investors.”

In a separate matter last year, the SEC filed a subpoena enforcement action against D&T Shanghai in federal court after the firm failed to produce documents in response to a subpoena related to an SEC investigation into possible fraud by one of its longtime clients, Longtop Financial Technologies Limited. The SEC later filed charges against Longtop for alleged reporting failures.

According to the SEC’s order in this latest enforcement action, D&T
Shanghai is a public accounting firm registered with the Public Company Accounting Oversight Board (PCAOB). In April 2010, SEC staff began seeking D&T Shanghai’s audit work papers related to its independent audit work for the client involved in an SEC investigation. The SEC served Deloitte LLP, the U.S. member firm, with a subpoena requesting various related documents. Counsel for Deloitte LLP informed the staff that the U.S. firm did not perform any audit work for the client and therefore did not possess the documents related to the subpoena.

According to the SEC’s order, in the SEC staff’s continuing quest for the audit work papers in D&T Shanghai’s possession, they were later informed by counsel for Deloitte’s global firm that the agency’s request for audit work papers had been specifically communicated to D&T Shanghai. Subsequently, the staff served D&T Shanghai with a request through Deloitte LLP for the audit work papers pursuant to Section 106 of the Sarbanes-Oxley Act. D&T Shanghai would not produce the relevant audit work papers because of its interpretation that it is prevented from doing so by Chinese law. SEC staff also has sought to obtain the relevant audit work papers through international sharing mechanisms, yet these efforts have been unsuccessful.

This is the first time the Commission has brought an enforcement action against a foreign audit firm for failing to comply with a Section 106 request.

In the SEC’s order, the Enforcement Division alleges that D&T Shanghai willfully violated the Sarbanes-Oxley Act and the Securities Exchange Act of 1934 by failing to provide the SEC with the audit work papers. The administrative proceeding will be assigned to an Administrative Law Judge at the agency. The judge would determine the appropriate remedial sanctions if the judge finds in favor of the SEC staff.

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