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July 18, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Notice of Filing of Proposed Rules on Annual and Special Reporting by Registered Public Accounting Firms, File Number PCAOB 2008-04

Dear Ms. Murphy:

This letter is submitted on behalf of Deloitte & Touche LLP, non-U.S. member firms of Deloitte Touche Tohmatsu, and Deloitte Touche Tohmatsu. We are pleased to respond to the request for comments by the Securities and Exchange Commission ("SEC" or the "Commission") on the proposed rules of the Public Company Accounting Oversight Board ("PCAOB" or the "Board") as set forth in the Notice of Filing of Proposed Rules on Annual and Special Reporting by Registered Public Accounting Firms (the "proposed rules"). *See* Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Annual and Special Reporting by Registered Public Accounting Firms, 74 Fed. Reg. 29092 (June 18, 2009).

On May 23, 2006, the Board issued proposed rules on periodic reporting by PCAOB-registered firms and solicited comment on those proposed rules. *See* Proposed Rules on Periodic Reporting by Registered Public Accounting Firms, PCAOB Release No. 2006-004 (May 23, 2006). We submitted a comment letter in response to the Board's proposal on July 24, 2006. We acknowledge that the Board made positive changes and constructive clarifications in response to comments received, although the rules adopted by the Board on June 10, 2008 did not address certain issues and concerns we raised and that we continue to believe are important. *See* Rules on Periodic Reporting by Registered Public Accounting Firms, PCAOB Release No. 2008-004 (June 10, 2008).

In considering the proposed rules, we recognize that periodic reporting by registered public accounting firms, as contemplated by the Sarbanes-Oxley Act of 2002, is important to the public markets, the accounting profession, and the Board, and we support the Board's efforts to create a rational, efficient, and effective periodic reporting system. We appreciate the Board's stated intent to accomplish its periodic reporting objectives—to keep records current, to facilitate analysis and planning related to the Board's inspection responsibilities, and to track

circumstances that may warrant inspection or investigation—without imposing any unnecessary burdens.[1] The proposed rules, however, do not achieve this important balance in certain significant respects, and will lead to the reporting of certain information to the Board that is of little value while imposing burdensome reporting requirements on registered public accounting firms.

This letter is intended to highlight aspects of the proposal that present practical issues in complying with the periodic reporting requirements and that do not achieve the important balance noted above. We suggest means by which these proposed rules may be revised, while still maintaining the underlying objectives of the rules, and also identify requirements in the proposed rules that would benefit from further clarification. Such revisions and clarifications would increase the efficiency and effectiveness of the Board's collection and analysis of relevant information, as well as reduce the burdens of compliance on registered public accounting firms.

COMMENTS ON PROPOSED RULES AND FORMS

I. The "Catch-Up" Reporting Provisions Are Unduly Burdensome.

The Board's proposal requires already-registered firms to file a "bring current" special report on Form 3 to the extent that certain events have occurred since the Form 1 initial registration information cut-off date.[2] Rule 2203 requires a registered public accounting firm to file a Form 3 to "catch-up" on certain information from the time of registration through the effective date of Rule 2203.

The substantial catch-up reporting proposed will be difficult and time-consuming for registered firms with little, if any, corresponding benefit to the Board or the public. We appreciate that the Board has limited, to an extent, the information required for catch-up reporting from its original proposal. Yet, the catch-up reporting required by the current proposal remains unduly burdensome. The Board suggests that "[t]he reportable events described on Form 3 are not events that routinely occur, and the Board anticipates that most firms will go through most years without having any of the reportable events occur."[3] The burden to a firm of identifying whether or not events have occurred during the catch-up period that require reporting and collecting the applicable information, however, will be substantial. To do so, appropriate processes will need to be developed and implemented, and extensive surveying of firm personnel will be required. The burden is particularly acute because registered firms in some cases

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[1] *See* 74 Fed. Reg. at 29103.

[2] *See* General Instruction 4 to Form 3, 74 Fed. Reg. at 29097.

[3] PCAOB Release No. 2008-004 at 17.

(including the large U.S. registered firms) will have to collect and review information covering a period of more than six years.[4]

In light of these burdens, it would be appropriate to require instead that firms provide relevant information on the registered firm's first Form 2 annual report, and then provide special reporting on Form 3 as required thereafter. At a minimum, catch-up reporting should be limited to providing relevant information only for the period following the registered firm's most recent Board inspection that has been completed. (For non-U.S. firms that have not yet been subject to inspection, the catch-up reporting requirement should be limited to events occurring within the six months preceding the effective date of the rules.) This approach is a reasonable accommodation given the significant passage of time between the Form 1 filing deadline—almost six years ago for large U.S. firms and five years ago for many non-U.S. firms—and the Board's adoption of the periodic reporting rules.

If catch-up reporting is to be required, the time proposed for the period in which firms are supposed to complete such reports is unreasonable. In the proposed rules, the Board has extended the time period for providing a catch-up report to 30 days after the effective date of the final rule. The final rule is to be effective 60 days after it is published in the Federal Register. This means that a registered firm will have to file a catch-up report, in some cases with information covering more than six years, only 90 days after the final rule is published in the Federal Register. The limited time provided is extremely challenging for registered firms to both identify and investigate events that may have triggered such a reporting obligation and to complete a Form 3, and, as such, may result in inadvertent omission of information.

We are also concerned that the timeframe for catch-up reporting does not give adequate consideration to unique issues that non-U.S. registered firms may have in complying with the new rules. For example, some non-U.S. firms may face the additional difficulty of seeking legal opinions regarding legal impediments to the provision of information under these catch-up reporting requirements and determining whether the filing of a Form 3 conflicts with their obligations under non-U.S. law.

Registered firms recognize that providing accurate information to the Board is important. Collecting and analyzing information covering a period of more than six years may reasonably require a longer period in some instances than is currently provided in the proposal. Establishing a deadline that provides more time for catch-up reporting would be appropriate given the difficulties described above. At a minimum, however, adding a provision that permits a firm to

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[4] In addition, certain of the information sought by the catch-up reporting is duplicative of information that has already been made available to the Board through its inspections of registered firms. For example, the proposed catch-up reporting rules require that registered firms provide information regarding a firm's involvement in certain legal proceedings. *See* General Instruction 4 to Form 3, 74 Fed. Reg. at 29097; Item 2.4 to Form 3, 74 Fed. Reg. at 29098. Yet, information regarding legal proceedings involving registered firms has typically been made available to the Board during inspections.

make a request for an extension to file its catch-up report, which we hope would be granted in the event that the firm is making good faith efforts to comply with the catch-up reporting requirements, would be an alternative accommodation to address some of the practical difficulties that will inevitably be encountered in attempting to comply with the currently proposed catch-up reporting deadlines. Allowing proper time to gather such information will help to ensure the completeness and accuracy of a registered firm's reporting.

II. The Approach In The Proposed Rules With Respect To Assertions Of Conflicts With Non-U.S. Laws Raises Issues.

Proposed Rule 2207 provides that a non-U.S. firm must upon the Board's request provide to the Board information that had been withheld in accordance with non-U.S. law. Although the Board suggests that it will apply this rule only as a last resort, where applied it could be of significant concern with respect to non-U.S. firms.

We recognize the difficulty that the Board faces when it is unable to obtain access to certain information. Yet, the dilemma facing non-U.S. firms is significant in this situation, too: they have two options, neither of which is desirable. The first option is to decline to provide the information and risk violating the Board's rules. The second option is to provide the information and risk sanctions for violating their home country's laws, thereby subjecting the firm to home country discipline, which could include revocation of the firm's or an individual auditor's license. Placing non-U.S. firms in the untenable position of having to choose between either violating the Board's rules or violating the law of its home country is not appropriate.[5]

This rule should be revised so that compliance by non-U.S. firms to the fullest extent permitted by their home country laws and regulations will not result in their being subject to discipline.

III. Reporting Items That Depend On The Firm's "Awareness" Require Clarification Or Revision.

Several proposed items on Form 2 and Form 3 are premised on a firm's "awareness" of certain information and such "awareness" triggers the firm's reporting obligation. However, the use of the term "awareness" as a trigger for reporting obligations is impractical and may lead to inadvertent non-compliance by registered firms. The short reporting period after a firm is deemed to be "aware" of certain information for then filing a Form 3 also presents difficulties for complying with the reporting obligations.

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[5] In addition to legal impediments that relate to disclosure of information to the Board, there may be impediments with respect to the registered firm's ability to even gather that information for purposes of populating Form 3. *See* Proposed Rule 2207(c)(1), 74 Fed. Reg. at 29093.

Items 2.4-2.11 and 4.1-4.3 of Form 3 require a registered firm to file a Form 3 report whenever it becomes aware of the involvement of the firm or certain individuals in certain legal proceedings. Although the Board made some modifications to these items from its original proposal, the guidance provided as to when a firm is deemed to become aware of the involvement in the relevant legal proceedings is impracticable. The Board simply provides that awareness attributed to any "partner, shareholder, principal, owner, or member of the Firm" will constitute awareness sufficient to trigger reporting. Under this approach, for example, although a firm may not receive service or other formal notice of a legal proceeding against it within the allotted time period for the special reporting rules, under the proposed items a firm may be deemed to be "aware" of a legal proceeding based on a partner receiving a single telephone call from a government investigator or seeing a story on the evening news. Another related issue is that it is unclear whether a firm would be required to report a legal proceeding where a complaint has been filed, but not yet served, and thus has no legal effect. Ascertaining the registered firm's obligation to report in these situations is likely to present significant difficulties.[6]

When the legal proceeding involves an individual, and not the firm as a whole, the circumstances under which a firm becomes "aware" of the existence of the proceeding may make complying with reporting requirements even more difficult. This results because it is possible that the firm will not receive notification of a legal proceeding against an individual. To relieve this burden, both as to reporting for the registered firm and with respect to individuals, the proposed rule should provide that reporting would not be required until a partner or principal of a firm has received notification that service of process of a legal proceeding has been received.

The approach for determining "awareness" is also problematic with respect to the timing of filing a Form 3. Rule 2203 requires a registered public accounting firm to report a Form 3 event no later than 30 days after the occurrence of the triggering event.[7] Although this is an increase from the 14 days originally proposed by the Board, the proposed events that trigger Form 3 reporting—for example, the initiation of legal proceedings against the firm—are not the type of events for which firms plan and additional time may be necessary for firms to comply with the Form 3 requirements. Thirty days may not be enough time for a firm to become "aware" of the existence of a reportable event and of sufficient information about that event to comply with the Form 3 reporting requirements, especially if "awareness" is attributed not only to firm management but also to any partner or principal of the firm. This problem is particularly significant for non-U.S. firms that must not only recognize the occurrence of the event and assess its reportabilty, but also may need to address other issues relating to legal impediments in

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[6] We anticipate that registered firms will establish internal procedures to become aware of matters that may trigger a reporting obligation and to facilitate the process to complete the reporting. We encourage the PCAOB to consider issuing guidance providing that a registered firm will not be considered out of compliance with a reporting obligation if there is an inadvertent failure to follow internal procedures that are designed in good faith to effectuate reporting.

[7] *See also* General Instruction 3 to Form 3, 74 Fed. Reg. at 29097.

completing a Form 3. *See* above at Section I. A deadline of 60 days would provide a more practicable timeframe within which firms are required to file Form 3 reports.[8]

IV. The Obligation To File A Form 3 For Withdrawn Audit Reports And Consents Should Be Deleted.

Although the Board removed from its initial proposal the reporting requirement for the unauthorized use of a firm's name, the Board maintained the Form 3 reporting requirement for a registered firm to file a report when the firm has withdrawn an audit report or withdrawn its consent to use its name and the issuer has failed to comply with the Commission's requirement under Item 4.02 of Form 8-K.[9] Although the Board noted that "[a] withdrawn audit report is a risk indicator concerning the auditor's conduct preceding the withdrawal," and that "[t]he Board has a regulatory interest in being aware of that information and possibly following up on that information for reasons directly related to its oversight of auditors,"[10] this matter is and should remain a public reporting consideration for issuers, not registered firms.

Item 4.02(b) of Form 8-K requires a registrant to report "[i]f the registrant is advised by, or receives notice from, its independent accountant that disclosure should be made or action should be taken to prevent future reliance on a previously issued audit report or completed interim review related to previously issued financial statements." Determining whether an issuer has failed to comply with a Form 8-K reporting requirement may not always be straight-forward, and can present practical complications. Further, when a registrant has filed a Form 8-K based on receipt of advice from the auditor that an audit report should no longer be relied upon, Item 4.02(c) of Form 8-K requires the registrant to provide the auditor with a copy of the disclosure included in the Form 8-K, and the auditor is to provide a letter addressed to the Commission stating whether or not the auditor agrees with the registrant's statements made in the Form 8-K. The registrant is also required to file this letter from the auditor as an amendment to its initial

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[8] The fact that certain items on Form 3 are triggered by a firm's "awareness" and others are triggered by the occurrence of the event also has the potential for confusion. For example, a firm's reporting obligation with respect to certain relationships is triggered by the occurrence of the relationship, although it is not always clear that a firm will be aware of the applicable facts relating to the relationship, and thus of the necessity of reporting it, on the day the relationship is entered into. Form 3 thus should be clarified so that a registered firm will be deemed to have timely fulfilled a reporting obligation by reporting any matter that triggers reporting within the prescribed period after becoming "aware."

[9] *See* Form 3, Items 2.1 and 3.1, 74 Fed. Reg. at 29099, 29100. In addition to the concerns expressed above regarding this requirement, it is not clear in what circumstances a firm may withdraw a consent, and yet not withdraw an audit report. It is therefore unclear when a registered firm would be expected to file a Form 3 solely with respect to a consent.

[10] 74 Fed. Reg. at 29107.

Form 8-K. This process further underscores that a robust system already exists for disclosure related to situations where the auditor has withdrawn its audit report.

Moreover, where the issuer has acted improperly by failing to communicate the withdrawal of a registered firm's audit report or consent to use the registered firm's name, as a matter of historical practice, the registered firm communicates directly with the Commission regarding such a situation. In these circumstances, the Form 3 reporting requirement would duplicate the registered firm's communication to the Commission, and add unnecessary complexity to an existing process for sharing information.

Another practical issue that arises in this context is that the definition of "issuer" under PCAOB Rule 1001 is broader than the category of issuers required to file under the Exchange Act. At a minimum, the Board should clarify that a registered firm does not need to file a Form 3 for the withdrawal of an audit report for an issuer, as defined by Rule 1001, that is not subject to the Form 8-K requirements of the Exchange Act.

For the reasons described above, this reporting requirement should be removed from the final rule.

V. Several Additional Items Are Overbroad And Require Revision.

Although the Board narrowed certain provisions from its original proposal, several proposed items remain overbroad or have the presumably unintended effect of sweeping information into the reporting obligation that would be of little value to the Board. These overbroad items—specifically Rule 2205 regarding amendments, certain items relating to reporting of certain relationships on Form 2 and Form 3, and certain items relating to reporting of legal proceedings on Form 3—should be clarified or revised to ensure that the information provided to the Board represents information that is relevant to the Board's responsibilities.

First, the Board should further define the circumstances that require a registered firm to file an amendment to Form 2 or Form 3. Rule 2205 provides that amendments to a filed report shall be filed to "correct information that was incorrect at the time the report was filed or to provide information that was omitted from the report and was required to be provided at the time the report was filed." This rule, however, does not set an appropriate threshold for when amendment is required, and, for example, may even be read to require amendment of a form when a de minimis error with respect to reporting of fee information is identified. To reduce the burden of amendment on registered firms, and to ensure that the Board receives only meaningful amendment forms, the rule should be revised to require that a firm submit an amendment only when the incorrectly reported or omitted information would constitute a qualitatively or quantitatively material change to the form based on a good faith assessment by the registered firm.

Second, Item 7.3 of Form 2 and Items 2.14 and 5.3 of Form 3 require a registered firm to report when it has entered into a contractual or other relationship with a sanctioned individual or entity to "receive consulting or other professional services." These items run the risk of sweeping non-relevant relationships with service providers into the reporting obligation, because those "consulting or other professional services" may not be "related to the Firm's audit practice

or related to services the Firm provides to issuer audit clients." The Board explained that this scope is appropriate because it is "intended to gather information about new relationships with persons or entities that are effectively restricted from providing audit services," but the relevance of such information to the Board is minimal unless the service provider is actually directly involved in the performance of audits.[11] Therefore, this item should be further limited to arrangements to provide professional services directly involved in the performance of audits of issuers by the registered firm.

Third, Item 2.7 of Form 3 requires the reporting of certain proceedings arising out of the registered firm's course of conduct in providing "professional services" for the client. This item is overbroad and may require the firm to provide information to the Board that is not relevant to the Board's duties. For example, this item might require a registered firm to report a civil action commenced by the Equal Employment Opportunity Commission alleging discriminatory conduct in relation to how an individual was treated in connection with work while on an engagement to provide consulting services to a client. Such reporting would bear no relevance to the Board's responsibilities. This item should be revised so that it is consistent with other items that require reporting relating to conduct in the course of providing "audit services or other accounting services to an issuer."

Fourth, a registered firm's response under Items 2.12-2.14 and 5.1-5.3 of Form 3 and Items 7.1-7.3 of Form 2 requesting information regarding certain relationships with individuals and entities will often depend on the fullness of the information provided to it by those individuals or entities. As a result, if a firm is provided information by an individual relating to a reportable matter that turns out to be incomplete or inaccurate, the items as drafted could give rise to registered firms being disciplined under the Board's rules. In circumstances where the ability to report accurately is beyond a firm's control, there should be some allowance for reporting made by the firm in good faith. Accordingly, these items should be revised to make clear that a registered firm's obligation to determine involvement in certain legal proceedings by individuals or entities is based on its good faith efforts.

Fifth, Item 4.1 of Form 3 also poses specific problems with respect to its scope. Subsection (d) of this item requires that a registered firm provide the name of every defendant in the identified legal proceeding who is a partner, shareholder, principal, owner, member, or audit manager of the firm (or was at the firm when the firm received notice of the proceeding or at the time of the alleged conduct) and who provided at least ten hours of audit services for any issuer. This item may require a firm to report information relevant to individuals who are no longer associated with the firm, which, as a result, may be difficult to obtain. Accordingly, the reporting obligation associated with this item should be limited to individuals who are currently associated with the firm in one of the identified capacities at the time the firm received notice of the proceeding.

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[11] 74 Fed. Reg. at 21908.

We appreciate the opportunity to comment on these proposed rules. The issues presented here are complex and may warrant further discussion. We would welcome the opportunity to further discuss these issues with the Commission. If you have any questions or would like to discuss these issues further, please contact Robert Kueppers at 212-492-4241.

Very truly yours,

/s/ Deloitte & Touche LLP

cc: Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission
Kathleen L. Casey, Commissioner
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