October 21, 2005

Office of the Chief Accountant
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Deloitte & Touche LLP, a United Kingdom limited liability partnership/Prophet

Ladies and Gentlemen:

We hereby request that the Staff of the Office of the Chief Accountant (the "Staff") of the Securities and Exchange Commission (the "Commission" or "SEC") advise that, based upon and subject to the matters referred to herein, it will not recommend that the Commission take enforcement action against Deloitte Touche Tohmatsu, a Swiss Verein ("DTT"), or any of its member firms or its or their respective subsidiaries or any other firms conducting audit activities for SEC registrants under the name "Deloitte Touche Tohmatsu," "Deloitte & Touche," "Tohmatsu" and other combinations or derivations thereof or otherwise as part of the DTT network of firms or "accounting firm"[1] (each such firm, a "DTT Entity," and collectively, for the purposes of this letter only, "DTT Entities")[2], asserting that any DTT Entity is not "independent" based upon the attribution to such DTT Entity of the activities of SunGard Data Systems Inc. ("SunGard"), or any of SunGard's subsidiaries or affiliates, including SunGard Sherwood Systems Group Ltd. ("Sherwood"; Sherwood is referred to herein individually and jointly with SunGard and SunGard's other subsidiaries and affiliates as "SunGard"), which is acquiring from Deloitte & Touche LLP, a United Kingdom limited liability partnership and the United Kingdom member firm of DTT ("Deloitte & Touche-UK"; Deloitte & Touche LLP is referred to herein individually and jointly with its subsidiaries as "Deloitte & Touche-UK"), the Prophet software system and various other rights and assets (hereinafter collectively referred to as the "Prophet Assets").

SunGard is a substantial consulting and software firm in the United States that was a publicly listed company until recently. On August 11, 2005, SunGard announced

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1 As such term is defined pursuant to Rule 2-01(f)(2) of Regulation S-X, 17 C.F.R. § 210.2-01(f)(2)(2002).

2 The term DTT Entity includes any other entity that would be subject to the Commission's independence rules as defined in Rule 2-01(f)(2) of Regulation S-X.

the completion of the acquisition of SunGard by a consortium of private equity investment firms.[3]

On October 11, 2005, Deloitte & Touche-UK and SunGard executed an Asset Sale Agreement (the "Separation Agreement") relating to the completion of a transaction under which Deloitte & Touche-UK will sell to SunGard for cash, to be paid in full at closing, the Prophet Assets. Completion of the sale and the related activities contemplated by the Separation Agreement is subject to various conditions including the receipt of a satisfactory letter from the Staff that responds to this letter.

The aforementioned sale and the related activities and other agreements contemplated by the Separation Agreement, together with the Conditions to No-Action Confirmation listed below, are referred to collectively as the "Transaction".

We believe that the terms of this separation transaction, including the conditions proposed herein, serve as a basis for the Staff to grant the relief requested.

Legal Analysis

The federal securities laws require that financial statements filed with the Commission by public companies, investment companies, broker-dealers, public utilities, investment advisers and others be certified (audited) by independent registered public accounting firms.[4] The Commission has adopted Rule 2-01 of Regulation S-X[5] regarding independence of accountants. The general standard set forth in Rule 2-01(b) provides that:

> The Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement.

Rule 2-01(b) further provides that:

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[3] As noted in that announcement, the acquiring consortium includes Silver Lake Partners, Bain Capital, The Blackstone Group, Goldman Sachs Capital Partners, Kohlberg Kravis Roberts & Co. L.P., Providence Equity Partners and Texas Pacific Group.

[4] *See*, *e.g.*, 15 U.S.C. §§77aa (25) and (26), 78l, 78q, 78m, 79e(b), 79j, 79n, 80a-8, 80a-29, and 80b-3(c)(1).

[5] 17 C.F.R. §210.2-01 (2002). Under Rule 2-01(f)(1), the term "accountant" includes "any accounting firm with which the certified public accountant or public accountant is affiliated." *Id*. §210.2.01(f)(1).

> In determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission.

The preliminary note to Rule 2-01 states that, in considering the standard set forth in Rule 2-01(b), the Commission looks to, among other criteria, whether the relationship or the provision of the service "creates a mutual or conflicting interest between the accountant and the audit client."[6] Rule 2-01(c) applies the standards set forth in Rule 2-01(b) to particular circumstances that are considered to impair an accountant's independence.[7] For example, Rule 2-01(c)(1) provides that an accountant will not be considered independent if "the accountant has a direct financial interest or a material indirect financial interest in the accountant's audit client . . .". In addition, Rule 2-01(c)(3) provides that:

> 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 the audit client's officers, directors or substantial stockholders.

For purposes of Rule 2-01, "accounting firm" means "an organization . . . that is engaged in the practice of public accounting . . . and all of that organization's departments, divisions, parents, subsidiaries, and *associated entities*, including those located outside of the United States."[8] Although not expressly defined by rule, the Commission has stated that it intends the phrase "associated entity" to:

> reflect our staff's current practice of addressing these questions in light of all relevant facts and circumstances, looking to the factors identified in our staff's previous guidance on this subject. While the rules we adopt do not provide accounting firms with the certainty of our proposed rule, we are convinced that a more flexible approach is warranted as the types and nature of accounting firms' business arrangements continue to develop.[9]

As part of this guidance, the Commission also cited numerous prior no-action letters that had been issued to address the separation of consulting businesses from accounting firms.[10] In the prior no-action letters, the Staff has examined whether the firms are associated entities by considering such factors as whether 1) the accounting firm has any

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6 *Id*. §210.2-01 (para. 2 of Preliminary Note).

7 *See* 17 C.F.R. §210.2-01(c).

8 17 C.F.R. §210.2-01(f)(2) (emphasis added).

9 Financial Reporting Release No. 56, *Revision of the Commission's Auditor Independence Requirements* (Nov. 21, 2000), at 65, 65 FR 76008 (Dec. 5, 2000), at 76059 (footnote omitted).

10 *Id*. at n. 491 (citing various no-action letters).

ownership interest in the consulting firm; 2) there are restrictions on the use of the accounting firm's name by the consulting firm; 3) the firms' corporate governance structures are separate; 4) there is any revenue sharing between the firms; 5) there are any joint marketing agreements between the firms; and 6) there will be any on-going shared services between the firms.

On July 30, 2002, the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act" or the "Act") was enacted. Title II of the Sarbanes-Oxley Act, entitled "Auditor Independence," required the Commission to adopt, by January 26, 2003, final rules under which certain non-audit services are prohibited, conflict of interest standards are strengthened, auditor partner rotation and second partner review requirements are strengthened and the relationship between the independent auditor and the audit committee is clarified and enhanced. However, Congress left the guidance relating to the definitions of "accounting firm" and "associated entity" untouched. In its final rulemaking to incorporate title II of the Sarbanes-Oxley Act into the SEC's rules and regulations, the SEC also did not amend or modify its definitions of "accounting firm" or "associated entity."[11] Consequently, Rule 2-01 continues to direct firms to refer to the Staff's practice of addressing these questions in light of all relevant facts and circumstances, looking to the factors identified in the Staff's previous guidance on this subject.

The Commission's interpretations of Rule 2-01 are also collected in Section 600 of the *Codification of Financial Reporting Policies* (the "Codification"), entitled "*Matters Relating to Independent Accountants.*"[12] Section 602.02.e of the Codification addresses business relationships, such as joint ventures, limited partnership agreements and investments, that may impair an auditor's independence. That section provides, in part, that:

> Direct and material indirect business relationships . . . with a client . . . will adversely affect the accountant's independence with respect to that client. Such a mutuality or identity of interests with the client would cause the accountant to lose the appearance of objectivity and impartiality in the performance of his audit because the advancement of his interest would, to some extent, be dependent upon the client.

The DTT Entities seek the assurance of the Staff that, following the Transaction, as more fully described below, SunGard would not be considered an associated entity of any DTT Entity, such that, to the extent that SunGard, or any officer, director, employee or other affiliated person of SunGard, licenses any Prophet Assets or provides services to, enters into any other business relationships with, or invests in or accepts investment from,

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[11] *See* Financial Reporting Release No. 68, *Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence* (Jan. 28, 2003), 68 Fed. Reg. 6006 (Feb. 5, 2003).

[12] *Codification of Financial Reporting Policies, Section 600-Matters Relating to Independent Accountants*, reprinted in Fed. Sec. L. Rep. (CCH) ¶73,251, et seq.

an audit client of a DTT Entity, the independence of the DTT Entities will not be deemed impaired pursuant to Rule 2-01 or rules that are promulgated thereunder or any other provisions of the Commission's independence rules.

DTT believes that, under the conditions detailed in this letter, SunGard would not be considered an associated entity of any DTT Entity under the terms and conditions governing this Transaction and that no DTT Entity would have a "mutuality of interest" or a "direct or material indirect business relationship" with, or a "direct financial interest or material indirect financial interest" in, any of its audit clients as a result of the activities of SunGard and its officers, directors, employees and other affiliated persons (which activities include, without limitation, licensing Prophet Assets or providing services to, entering into any other business relationships with and making or receiving investments in or from third parties). This conclusion is based on the representations and conditions detailed in this letter, which, among other things: 1) prohibit any equity interest in SunGard by Deloitte & Touche-UK (or any other DTT Entity) resulting from the Transaction; 2) impose limitations on the use of the DTT Entities' names by SunGard; 3) require a strict separation of the corporate governance, management, and financial structures and interests between any of the DTT Entities and SunGard; 4) prohibit any revenue or profit sharing or any joint marketing relating to the Transaction between Deloitte & Touche-UK (or any other DTT Entity) and SunGard; and 5) limit any services between Deloitte & Touche-UK and SunGard relating to the Prophet Assets to those that are transitional in nature.

Factual Background

The Separation Agreement executed by Deloitte & Touche-UK and SunGard provides for a sale of the Prophet Assets by Deloitte & Touche-UK to SunGard for cash, to be paid in full at closing. As a result of the various terms of the Separation Agreement, no DTT Entity, including, without limitation, Deloitte & Touche-UK, will hold any equity interest in the Prophet Assets. In addition, neither SunGard nor any officer, director, employee or other affiliated person of SunGard will hold any equity interest in any DTT Entity, including, without limitation, Deloitte & Touche-UK.

Other key terms of the Transaction are:

1. Upon the completion of the Transaction, there will be no continuing corporate governance, management or direct or indirect financial ties between any DTT Entity and SunGard (other than payments contemplated by the Separation Agreement and under a license agreement between Deloitte & Touche-UK and SunGard for the use, license and sublicense of the Prophet Assets, supplementary agreements between other DTT Entities and SunGard relating to each such DTT

Entity's use and license of the Prophet Assets[13] and transition services arrangements described below).

2. The Separation Agreement and the license and supplementary agreements include a non-compete provision (the "Non-Compete"), which generally prohibits Deloitte & Touche-UK and the DTT Entities that enter into supplementary agreements from developing or licensing or having any interest in an entity that develops or licenses any actuarial projection system that directly competes with the Prophet Assets for a period of three years.

3. Certain DTT Entities will enter into transition services agreements with SunGard under which they will provide specified helpdesk support and certain limited transitional services to SunGard for a limited period of time, not to exceed one year.

A copy of the draft Separation Agreement and certain ancillary documents was provided under separate cover and subject to a confidential treatment request.

Conditions to No-Action Confirmation

DTT requests that, subject to compliance with the following conditions, the Staff not recommend enforcement action to the Commission based upon the attribution to any of the DTT Entities of the activities of SunGard after the completion of the Transaction:

1. As a result of the Transaction, neither Deloitte & Touche-UK, nor any Deloitte & Touche-UK partner, nor any other DTT Entity or any partner or principal thereof, has or will receive any equity interest in SunGard and neither SunGard nor any officer, director, employee or other affiliated person of SunGard will receive or retain any equity interest in Deloitte & Touche-UK or any other DTT Entity.

2. SunGard will not be entitled to use the "Deloitte" name or any variant thereof, including in its marketing of the Prophet Assets. Each DTT Entity will be entitled to use the name Prophet only to state that any libraries owned by that DTT Entity operate on the Prophet system. Neither Deloitte & Touche-UK (nor any other DTT Entity) nor SunGard will be authorized to represent that they are the same firm or that either is controlled, managed or governed by or affiliated with the other party.

3. Deloitte & Touche-UK and SunGard have maintained and will continue to maintain separate corporate governance, management, and financial

[13] Individual DTT Entities will enter into supplementary license agreements with SunGard that will have almost identical provisions to those included in the license agreement between Deloitte & Touche-UK and SunGard and relate to the use and license of the Prophet Assets.

structures and interests, including: separate boards of directors (including no contractual or other right of Deloitte & Touche-UK (or any other DTT Entity) to representation on the board of directors or governing body of SunGard), executives, employees, capital, credit lines or facilities, governing documents, operating policies, financial operations and financial and accounting policies. Neither Deloitte & Touche-UK (nor any other DTT Entity) nor SunGard will be entitled to exert any financial or other influence over the other party's corporate governance, management, financial structures or interests (except that Deloitte & Touche-UK and any other DTT Entity that enters into a supplementary agreement with SunGard will have limited protective rights with respect to the provision by SunGard of any of the Prophet Assets to leading actuarial consultancies).

4. Neither Deloitte & Touche-UK nor any other DTT Entity (other than pursuant to the terms of the Separation Agreement, a transition services agreement, the license agreement or a supplementary agreement, as applicable) will be entitled to accrue, pay to or receive from SunGard any royalty, interest, dividend or other payment relating to the Transaction, whether or not tied to the performance of SunGard. Accordingly, a DTT Entity, including Deloitte & Touche-UK, and SunGard will not share profits or revenues from consulting or any other engagements or agreements related to the Transaction. After the completion of the Transaction and prior to the date that the DTT Entities cease to provide certain helpdesk support and transitional services to SunGard (as described in paragraph 7 below), SunGard will not be entitled to enter into any prime/subcontractor relationship with any DTT Entity (including Deloitte & Touche-UK) to provide professional services to the same client, except that any existing prime/subcontractor relationships may be completed in accordance with their existing terms provided that such relationships do not include any prohibited services and the terms of such relationships, do not extend beyond 18 months following the issuance of the SEC's no-action letter and except that SunGard and one or more DTT Entities may provide to the same client the professional services that are described in the Separation Agreement.

5. A DTT Entity, including Deloitte & Touche-UK, and SunGard may, but are under no obligation to, refer clients to one another. A DTT Entity, including Deloitte & Touche-UK, will not be authorized to designate SunGard as a preferred provider of services. Any marketing by a DTT Entity of the library modules that such DTT Entity has retained will make clear that such DTT Entity and SunGard are independent entities and that prospective clients will need to negotiate separate agreements with each entity. Referral fees or other compensation will not be paid to each other

nor will either such entity pay any such fees or compensation to any subsidiary, affiliate, employee or agent of the other as a result of the Transaction, and the Transaction will not entitle SunGard to enter into any co- or joint-marketing, advertising or similar agreements or arrangements with a DTT Entity that are inconsistent with this paragraph 5 or paragraph 2 or 4 or that do not clearly state that such DTT Entity and SunGard are separate firms.

6. Subject to the Non-Compete provision referred to in paragraph 9 below and to the provision referred to in the last sentence of paragraph 4 above, a DTT Entity, including Deloitte & Touche-UK, may continue to provide services to clients of SunGard under separate engagements with such clients, and SunGard may continue to provide services to clients of any of the DTT Entities under separate engagements between SunGard and such clients.

7. Certain DTT Entities and SunGard will enter into separate transition services agreements for specified helpdesk support and limited transitional services for a limited period of time not to exceed one year. During this period, any helpdesk support and transitional services will be provided by such DTT Entity at the request of SunGard.

8. Deloitte & Touche-UK will consent to any necessary reviews by the Staff or an appropriate independent party designated by the Commission or the Staff (such as the Public Company Accounting Oversight Board) to ascertain compliance with the conditions herein provided.

9. Deloitte & Touche-UK, each DTT Entity that enters into a supplementary agreement with SunGard, and SunGard will be bound by the Non-Compete provisions contained in the applicable agreements that will extend for three years from the completion of the Transaction. Notwithstanding the previous sentence, Deloitte & Touche-UK and such DTT Entities may, after the expiration of the Non-Compete provision, provide services otherwise restricted under the Non-Compete provision, including providing such services to audit clients that file reports with the SEC to the extent permitted by the SEC's independence requirements and professional standards at such time.

10. SunGard will have no obligations to Deloitte & Touche-UK or any other DTT Entity in connection with any retirement benefits to continuing or former partners, principals or employees of such DTT Entity. No DTT Entity, including Deloitte & Touche-UK, has or will have any obligations to SunGard in connection with any retirement benefits to continuing or former partners, principals or employees of any DTT Entity.

11. In accordance with the terms set forth in this letter, on the date that the DTT Entities that enter into transition services agreements with SunGard no longer provide helpdesk support or transitional services to SunGard pursuant to such transition services agreements, Deloitte & Touche-UK, such DTT Entities, and SunGard will be free to contract and enter into business relationships with one another as would any other independent entities.

Certain Confirmations

In connection with its request herein, each of DTT and SunGard, insofar as each item relates to it, confirms to the Staff that:

1. After the effective date of the Transaction, the DTT Entities will continue to be subject to the independence requirements of the securities laws and the SEC's independence rules and interpretations issued thereunder to the same extent as they were so subject prior to the closing date of the Transaction.

2. Deloitte & Touche-UK agrees to the above conditions and DTT communicated the above conditions to the applicable DTT Entities. DTT has furnished a copy of this letter (and will forward any no-action letter on this subject) to SunGard. SunGard will expressly acknowledge that it has been furnished a copy of this letter. DTT further represents to the Staff that it is not aware of any provisions of the agreements described herein, or any agreement or instrument referred to therein, that is inconsistent with this request.

3. DTT will furnish the Staff with a copy of the final Separation Agreement (including without limitation the schedules thereto) and copies of final forms of the ancillary documents provided in connection with this letter and hereby represents to the Staff that the final executed versions of the Separation Agreement (including without limitation the schedules thereto) and those ancillary documents do not differ in any respect material to the matters referred to in this letter from the versions so furnished.

Confirmation Requested

Based upon the representations contained herein and in the materials provided herewith, and subject to compliance with the foregoing conditions, we hereby request that the Staff advise that the Office of the Chief Accountant will not assert or recommend enforcement action that asserts that any DTT Entity's independence has been impaired to the extent that SunGard or any of its officers, directors, employees or other affiliated persons licenses any of the Prophet Assets or provides any services to, enters into other business relationships with, or invests in or accepts investments from, any audit clients of any of the DTT Entities. We fully understand that, if the Staff takes a no-action position, that position will be based on the representations and undertakings set forth in this letter and continued compliance with the material terms of the Separation Agreement, including all contracts referred to therein. We further understand that failure to comply with any of these conditions would invalidate the relief granted by the Staff in response to this request as of the date the Staff's relief was communicated to DTT.

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Certain matters described above have not yet been publicly announced. Accordingly, pursuant to 17 C.F.R. §200.81(b), we hereby request confidential treatment of the contents of our communications with the Staff with respect to all issues relating to this letter (the "Confidential Material") until a date 120 days after release of your response to us, or such earlier date as the Staff is advised by us that all of the information contained in the Confidential Material has been made pubic. However, when the Staff determines to grant the no-action relief requested herein, we understand and agree that the letter itself and the text of your response to the letter may be made public immediately. In addition to this request for confidential treatment, we will request, under separate cover, confidential treatment for the Separation Agreement and the other material furnished to you in connection with the letter pursuant to the provisions of 17 C.F.R. §200.83.

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If for any reason you do not concur with the views expressed in this letter, we respectfully request an opportunity to discuss this matter with the Staff prior to any written response to our letter. If you have any questions or need any additional information concerning the foregoing, please do not hesitate to call Scott Bayless of Deloitte & Touche LLP, a Delaware limited liability partnership and an affiliate of the United States member firm of DTT, at 202-879-5315, or Linda Griggs of Morgan Lewis at 202-739-5245, who have been requested to facilitate answering any questions you may have.

Sincerely,

Deloitte Touche Tohmatsu

By: Charles A. Horstmann

copy to: W. Scott Bayless – Deloitte & Touche LLP, a Delaware limited liability partnership
Linda L. Griggs – Morgan, Lewis & Bockius LLP