VEDDERPRICE®

January 29, 2009

Accounting Law Bulletin

Parmalat Suit Against Deloitte Allowed to Move Forward

On January 27, 2009, the U.S. District Court for the Southern District of New York denied the motions of Deloitte Touche Tohmatsu and Deloitte & Touche LLP for summary judgment dismissing the complaints of shareholders against them in the protracted *Parmalat* litigation. In dismissing the motions, the Court has raised the possibility that the two entities could be held vicariously liable for the actions of Deloitte & Touche SpA, the Italian firm that audited Parmalat prior to its collapse in 2003.

Deloitte Touche Tomatsu (DTT) is a Swiss verein that serves as the professional services organization for its member firms throughout the world. The member firms are individual entities organized under the laws of their respective home jurisdictions. The Southern District specifically rejected the defendants' argument that the Supreme Court's recent decision in *Stoneridge* extended to theories of vicarious liability based on principal-agency relationships. The Court found that plaintiffs had recited sufficient facts that could lead to a conclusion that DTT controlled its members and, accordingly, DTT was a principal responsible for the actions of its agents, namely the members of DTT. While the Court held that there were sufficient issues of fact raised to preclude a dismissal of the complaint, the Court did not reach a conclusion as to whether the member firms were indeed agents of DTT. This issue was left to be determined by the trial court. Similarly, the Court also concluded that the plaintiffs had introduced sufficient facts as to whether DTT was a controlling person of its members, so the Court could not dismiss claims against DTT under Section 20(a) of the Securities Exchange Act of 1934.

Deloitte & Touche LLP (DT-US) filed separate motions to dismiss the complaints against it. The plaintiffs argued that DT-US controlled DTT because many of the DT-US partners occupied key positions in DTT, including the chief executive officer, chief financial officer and the director of independence issues. The Court held that the overlapping officer positions were informative but not dispositive in establishing control. Another fact raised by the plaintiffs was that DT-US provided a substantial portion of the funding of DTT through contributions, loans and guarantees of financing. Here, the Court found that significant funding is a factor indicating control, but is not sufficient to establish control. Finally, the Court also found a reasonable inference of control of DTT by DT-US from examples of the influence that DT-US had over decisions made by the DTT board of directors. Given the totality of the facts raised by the plaintiffs, the Court concluded that there is a genuine issue of material fact as to whether DT-US controlled DTT. The Court also extended the analysis in refusing to dismiss claims against the chief executive officer of DT-US and DTT.

The full impact of this decision for auditing firms who participate in networks or other alliances is not yet clear since a trial must still be held on the shareholder claims. This ruling leaves open the possibility of vicarious liability of an accounting firm membership organization for actions of its members. Whether such liability will actually be imposed in *Parmalat* will depend on findings by the judge or jury at trial.

For questions or comments, please contact our Accounting Law Group: Steven R. Berger (212-407-7714, *sberger@vedderprice.com*); John H. Eickemeyer, (212-407-7760, *jeickemeyer@vedderprice.com*); or Dan L. Goldwasser (212-407-7710, *dgoldwasser@vedderprice.com*).

VEDDERPRICE®

222 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
312-609-7500 FAX: 312-609-5005

1633 BROADWAY, 47th FLOOR
NEW YORK, NEW YORK 10019
212-407-7700 FAX: 212-407-7799

875 15th STREET NW, SUITE 725
WASHINGTON, D.C. 20005
202-312-3320 FAX: 202-312-3322

www.vedderprice.com

Accountants Professional Services Group

The Accountants Professional Services Group at Vedder Price advises accountants in managing their domestic and international business and in complying with the rapidly changing laws and regulations governing professional competence, independence, integrity and structure, including:

- defense of professional liability claims, including audit deficiencies, improper application of accounting principles, failure to detect management fraud, embezzlements, securities law violations and tax advice
- implementation of measures for reducing professional liability exposure and addressing professional liability insurance issues
- representation of accountants in disciplinary and enforcement proceedings brought by the SEC, PCAOB, state licensing authorities and professional accounting associations
- organization and structuring of accounting firms and the acquisition of accounting practices
- compliance with Sarbanes-Oxley and other securities laws requirements, PCAOB rules and regulations, state laws and regulations and professional codes of ethics

Group Members

Daniel J. Barlin	212-407-7709
Steven R. Berger	212-407-7714
William J. Bettman	312-609-7776
Charles S. Caranicas	212-407-7712
John H. Eickemeyer	212-407-7760
Dan L. Goldwasser	212-407-7710
Daniel Green	212-407-7735
Kevin J. Kuhn	312-609-7652
Jonathan A. Wexler	212-407-7732

If you have any questions regarding material in this issue of the ACCOUNTING LAW BULLETIN or suggestions for a specific topic you would like addressed in a future issue, please contact Dan L. Goldwasser at 212-407-7710 or at dgoldwasser@vedderprice.com, John H. Eickemeyer at 212-407-7760 or at jeickemeyer@vedderprice.com, or Steven R. Berger at 212-407-7714 or at sberger@vedderprice.com.

About Vedder Price

Vedder Price P.C. is a national, business-oriented law firm with over 260 attorneys in Chicago, New York and Washington, D.C. The attorneys in the firm's Accountants Professional Services Group focus on the sophisticated advice necessary for accountants and accounting firms to preserve, develop and enhance their accounting practices.

ACCOUNTING LAW BULLETIN is a periodic publication of Vedder Price P.C. and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your lawyer concerning your specific situation and any legal questions you may have. For purposes of the New York State Bar Rules, this bulletin may be considered ATTORNEY ADVERTISING. Prior results do not guarantee a similar outcome.