

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60108; File No. PCAOB-2008-05)

June 12, 2009

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Succeeding to the Registration Status of a Predecessor Firm

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on August 4, 2008, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rules described in Items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On July 29, 2008, the Board adopted rules and a form related to succeeding to the registration status of a predecessor firm. New PCAOB Rules 2108-2109 and the instructions to a new form, Form 4, are set out below.

SECTION 2. REGISTRATION AND REPORTING

Part 1 – Registration of Public Accounting Firms

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2108. Succeeding to the Registration Status of a Predecessor

(a) In the event that a registered public accounting firm changes its form of organization or changes the jurisdiction under the law of which it is organized, in circumstances that do not involve an acquisition or combination as described in paragraph (b) of this Rule, the entity in its new form shall succeed to the registration

status of the predecessor if the new entity is a public accounting firm and files a Form 4 in accordance with Rule 2109.

(b) In the event that a registered public accounting firm is acquired by an entity that is not a registered public accounting firm, or combines with any other entity or entities to form a new legal entity –

(1) if the acquiring entity or the new entity is a public accounting firm that files a Form 4 in accordance with Rule 2109, and the answer provided to each subpart of Item 3.2.e of that Form 4 is "no," that entity shall succeed to the registration status of the registered firm;

(2) if the acquiring entity or the new entity is a public accounting firm that files a Form 4 in accordance with Rule 2109, and the answer provided to any subpart of Item 3.2.e of that Form 4 is other than "no," that entity shall not succeed to the registration status of the registered firm; provided, however, that if that entity represents on Form 4 that it has filed, or that it intends to file within 45 days of the effective date of the acquisition or combination, an application for registration on Form 1, then –

(i) subject to the qualifications in subparagraphs (ii), (iii), and (iv), that entity shall temporarily succeed to the registration status of the registered firm for a transitional period, but that registration will cease to be effective on the earlier of the date that the entity's application on Form 1 is approved or the date that is 91 days after the effective date of the acquisition or combination as reported on Form 4;

(ii) subject to the qualifications in subparagraphs (iii) and (iv), if the acquisition or combination took effect before the effective date of this rule, that entity shall temporarily succeed to the registration status of the registered firm for a transitional period, but that registration will cease to be effective on the earlier of the date that the entity's application on Form 1 is approved or the date that is 91 days after the effective date of this rule;

(iii) if the Board requests additional information from the entity pursuant to Rule 2106(c) with less than 60 days remaining in the original transitional period, the entity's temporary succession to registration status shall continue to the date that is 60 days after the date of the Board's request; and

(iv) if, after the original transition period has been extended pursuant to subparagraph (iii), the Board makes any further requests for additional information from the entity pursuant to Rule 2106(c), the Board may in its discretion extend the temporary succession to registration status for such finite period as the Board shall specify.

(c) Subject to paragraph (d) of this rule, a public accounting firm that results from events described in paragraphs (a) or (b) of this rule shall not, in the absence of compliance with the provisions of Rule 2109, succeed to the registration status of a predecessor registered public accounting firm.

(d) Notwithstanding paragraph (c) of this rule, if a public accounting firm's failure to comply with the provisions of Rule 2109 is solely a failure concerning the timeliness of the submission, the firm may request leave to file Form 4 out of time by indicating and

supporting that request in accordance with the instructions to the form. The Board will evaluate any such request in light of the relevant facts and circumstances and the public interest and may, in its discretion, grant or deny the request. If the Board grants leave to file the form out of time, the Form 4 shall be deemed filed and the provisions of paragraphs (a) and (b) shall apply as if the Form 4 had been timely filed. A Form 4 that has been submitted out of time may be withdrawn by the firm at any time before the Board has approved or disapproved the request for leave to file out of time.

2109. Procedure for Succeeding to the Registration Status of a Predecessor

(a) A public accounting firm seeking to succeed to the registration status of a predecessor registered public accounting firm pursuant to the provisions of Rule 2108 must do so by filing a Form 4 –

(1) no later than the 14th day after the change or business combination takes effect, if the change or business combination takes effect on or after [insert effective date of this rule]; or

(2) no later than [insert date 14 days after effective date of this rule], if the change or business combination took effect before [insert effective date of this rule].

(b) A public accounting firm filing a Form 4 must do so by filing the Form 4 in accordance with the instructions to that form. Unless directed otherwise by the Board, a public accounting firm filing a Form 4 must file the Form 4 and exhibits thereto electronically with the Board through the Board’s Web-based system.

(c) A Form 4 shall be deemed to be filed on the date that the public accounting firm submits a Form 4 in accordance with Rule 2109(b) that includes the signed certification

required in Part V of Form 4, provided, however, that any report so submitted after the applicable deadline as prescribed in paragraph (a) of this rule, shall not be deemed filed unless and until the Board, pursuant to Rule 2108(d), grants leave to file the Form 4 out of time.

(d) The provisions of Rule 2204 concerning signatures, shall apply to each signature required by Form 4 as if it were a signature to a report on Form 3. Rule 2205 concerning amendments, and Rule 2207 concerning assertions of conflicts with non-U.S. laws, shall apply to any submission on Form 4 as if the submission were a report on Form

FORM 4 – SUCCEEDING TO REGISTRATION STATUS OF PREDECESSOR

GENERAL INSTRUCTIONS

1. Purpose of this Form. Effective [insert effective date of Rule 2109], this Form must be used to submit information, representations, and affirmations to the Board, pursuant to Rule 2109, by a public accounting firm that seeks to succeed to the registration status of a predecessor firm in circumstances described in Rule 2108.
2. Defined Terms. The definitions in the Board's rules apply to this Form. Italicized terms in the instructions to this Form are defined in the Board's rules. In addition, as used in the instructions to this Form, the term "the Firm" means the public accounting firm that is submitting this Form to the Board, and the term "the predecessor firm" means the registered public accounting firm identified in Item 1.1.a of the Form.
3. Submission of this Form. Unless otherwise directed by the Board, the Firm must submit this Form, and all exhibits to this Form, to the Board electronically by

completing the Web-based version of this Form available on the Board's Website.

The Firm must use the predecessor firm's user ID and password to access the system and submit the Form. In the event of a transaction involving the combination of multiple registered public accounting firms, the Firm must access the system using only the user ID and password of the firm specifically identified in Item 1.1.a, and not those of any other registered public accounting firm.

4. When this Form Should be Submitted and When It is Considered Filed. To succeed to the registration status of the predecessor firm pursuant to the provisions of Rule 2108(a) or (b), the Firm must provide the information and representations required by this Form, in accordance with the instructions to this Form, and must file the Form no later than the 14th day after the effective date of the change in form of organization, change in jurisdiction of organization, or business combination. Different timing requirements apply with respect to events that occurred before [insert effective date of Rule 2109]. See Rule 2109(a)(2). Form 4 is considered filed when the Firm has submitted to the Board, through the Board's Web-based reporting system, a Form 4 that includes the signed certification required in Part V of Form 4, provided, however, that any Form 4 so submitted after the applicable filing deadline shall not be deemed filed unless and until the Board, pursuant to Rule 2108(d), grants leave to file the Form 4 out of time.
5. Seeking Leave To File this Form Out of Time. To request leave to file Form 4 out of time, pursuant to the provisions of Rule 2108(d), the Firm must file the request on Form 4 and must attach as Exhibit 99.5 a detailed statement describing

why, despite the passage of time since the event described on the Form 4, the Board should permit the Firm to succeed to the registration status of the predecessor firm. Any Form 4 that has been submitted out of time, and as to which a Board decision on whether to allow the form to be filed is pending, may be withdrawn by accessing the pending submission in the Board's Web-based system and selecting the "Withdraw" option.

6. Completing the Form. The Firm must complete Parts I, II, IV and V of this Form. Part III should be completed to the extent applicable, as described more fully in the instructions to Part II of the Form.
7. Amendments to this Form. Amendments shall not be submitted to update information into a Form 4 that was correct at the time the Form was submitted, but only to correct information that was incorrect at the time the Form was submitted or to provide information that was omitted from the Form and was required to be provided at the time the Form was submitted. When submitting a Form 4 to amend an earlier submitted Form 4, the Firm must supply not only the corrected or supplemental information, but must include in the amended Form 4 all information, affirmations, and certifications that were required to be included in the original Form 4. The Firm may access the originally filed Form 4 through the Board's Web-based system and make the appropriate amendments without needing to re-enter all other information. (Note that, pursuant to Rule 2109(d), the provisions of Rule 2205 concerning amendments apply to any submission on this Form as if the submission were a report on Form 3.)

Note: The Board will designate an amendment to a report on Form 4 as a report on "Form 4/A."

Note: Any change to a Form 4 that was originally submitted out of time, and as to which a Board decision on whether to allow the form to be filed is pending, shall not be treated as an amendment. To make a change to any such pending Form 4 submission, the Firm must access the pending submission in the Board's Web-based system, select the "Withdraw and Replace" option, and submit a new completed Form 4 in place of the previously pending submission. The certification required in Part V of the new submission must be executed specifically for the replacement version of the Form and dated accordingly.

8. Rules Governing this Form. In addition to these instructions, the rules contained in Part 2 of Section 2 of the Board's rules govern this Form. Please read these rules and the instructions carefully before completing this Form.
9. Requests for Confidential Treatment. The Firm may, by marking the Form in accordance with the instructions provided, request confidential treatment of any information submitted in Exhibit 99.3 or Exhibit 99.5 of this Form that has not otherwise been publicly disclosed and that either contains information reasonably identified by the Firm as proprietary information or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. See Rule 2300. If the Firm requests confidential treatment, it must identify the information in Exhibit 99.3 or Exhibit 99.5 that it desires to keep confidential, and include, as Exhibit 99.1 to this Form, an exhibit that complies

with the requirements of Rule 2300(c)(2). The Board will determine whether to grant confidential treatment requests on a case-by-case basis. If the Firm fails to include Exhibit 99.1, or includes an Exhibit 99.1 that fails to comply with Rule 2300(c)(2), the request for confidential treatment may be denied solely on the basis of that failure.

10. Assertions of Conflicts with Non-U.S. Law. If the Firm is a foreign registered public accounting firm, the Firm may, unless otherwise directed by the Board pursuant to Rule 2207(e), decline to provide the affirmation required by Item 4.1 of this Form and any answer required by Item 3.2.e of this Form if doing so would constitute a violation of non-U.S. law by the Firm and the Firm proceeds in accordance with Rule 2207. (Note that, pursuant to Rule 2109(d), the provisions of Rule 2207 apply to any submission on this Form as if the submission were a report on Form 3.) If the firm withholds the affirmation or answer, the Firm must indicate, in accordance with the instructions in the relevant Part of the Form, that it has done so.
11. Language. Information submitted as part of this Form, including any exhibit to this Form, must be in the English language.

PART I – IDENTITY OF THE FIRM AND CONTACT PERSONS

Item 1.1 Names of Firm and Predecessor Registered Public Accounting Firm

- a. State the legal name of the registered public accounting firm to whose registration status the Firm seeks to succeed.

Note: The name provided in Item 1.1.a should be the legal name of the registered public accounting firm as last reported to the Board on Form 1 or Form

3. This is the firm referred to in this Form as "the predecessor firm." In accessing and submitting this Form through the Board's Web-based system, the Firm must use the predecessor firm's user ID and password.

b. State the legal name of the Firm filing this Form.

Note: The name provided in Item 1.1.b will be the name under which the Firm is registered with the Board if this Form is filed in accordance with Rule 2109.

c. If different than the name provided in Item 1.1.b, state the name or names under which the Firm issues or intends to issue audit reports.

Item 1.2 Contact Information of the Firm

a. State the physical address (and, if different, mailing address) of the Firm's headquarters office.

b. State the telephone number and facsimile number of the Firm 's headquarters office.

If available, state the Website address of the Firm.

Item 1.3 Primary Contact and Signatory

State the name, business title, physical business address (and, if different, business mailing address), business telephone number, business facsimile number, and business e-mail address of a partner or authorized officer of the Firm who will serve as the Firm's primary contact with the Board, including for purposes of this Form 4, any annual reports filed on Form 2, and any special reports filed on Form 3.

PART II – GENERAL INFORMATION CONCERNING THE FILING OF THIS FORM

Item 2.1 Reason for Filing this Form

Indicate, by checking the box for either Item a or Item b below, the reason the Firm is

filing this Form. Then proceed to the Parts and Items of this Form indicated parenthetically for the relevant item and provide the information described there. Provide responses only to those Parts and Items of the Form specifically indicated for the event or events that the Firm identifies in this Part II as the reason for filing this Form. (For example, if the Form is being submitted because the Firm has changed its form of organization, check the box for Item 2.1.a, and complete only Item 3.1 and Parts IV and V of the Form. Complete Item 2.2 or Item 2.3 if applicable.)

a. There has been a change in the Firm's form of organization, or the Firm has changed the jurisdiction under the law of which it is organized. (Complete Item 3.1, Part IV, and Part V; complete Item 2.2 or Item 2.3 if applicable.)

b. There has been an acquisition of a registered public accounting firm by an entity that was not a registered public accounting firm at the time of the acquisition, or a registered public accounting firm has combined with another entity or other entities to form a new legal entity. (Complete Item 3.2, Part IV, and Part V; complete Item 2.2 or Item 2.3 if applicable.)

Item 2.2 Request for Leave To File this Form Out of Time

If this Form is not submitted in accordance with Rule 2109(b) on or before the filing deadline set by Rule 2109(a), the Firm may request leave to file this Form 4 out of time by checking the box for this Item, completing this Form 4 as is otherwise required, and providing, as Exhibit 99.5 to this Form, a description of the reason(s) the Form was not timely filed and a statement of the grounds on which the Firm asserts that the Board should grant leave to file the Form out of time.

Note: Requests for leave to file Form 4 out of time are not automatically granted.

See Rule 2108(d).

Item 2.3 Amendments

If this is an amendment to a Form 4 previously filed with the Board –

- a. Indicate, by checking the box corresponding to this item, that this is an amendment;
and
- b. Identify the specific Item numbers of this Form (other than this Item 2.3) as to which the Firm's response has changed from that provided in the most recent Form 4 or amended Form 4 filed by the Firm with respect to the event reported on this Form.

PART III – CHANGES IN THE FIRM

Item 3.1 Changes in Form of Organization or in Relevant Jurisdiction

If this Form 4 is being submitted in connection with a change in the Firm's form of organization or a change in the jurisdiction under the law of which the Firm is organized–

- a. State the Firm's current (i.e., after the change in legal form or jurisdiction) legal form of organization;
- b. Identify the jurisdiction under the law of which the Firm is organized currently (i.e., after the change in legal form or jurisdiction);
- c. State the date that the change took effect;
- d. Affirm that, after the change reported or described in this Item 3.1, the Firm is a public accounting firm under substantially the same ownership as the predecessor firm;

Note: Neither the Act nor Board rules include any provision by which a registered public accounting firm may, in effect, transfer its Board registration to another entity. Rule 2108(a), in conjunction with this Form, allows the

succession of registration status in circumstances in which a registered public accounting firm changes its legal form of organization while remaining under substantially the same ownership. For purposes of this Item, the Firm is considered to be under substantially the same ownership as the predecessor firm if a majority of the persons who held an equity ownership interest in the predecessor also constitute a majority of the persons who hold an equity ownership interest in the Firm.

e. If, in connection with the change described in this Item 3.1, the Firm has obtained, or will practice under, a license or certification number, authorizing it to engage in the business of auditing or accounting, that is different from any such license or certification number previously reported to the Board by the predecessor firm, provide as to each such license –

1. the name of the issuing state, agency, board, or other authority;
2. the number of the license or certification; and
3. the date the license or certification took effect;

f. If, in connection with the change described in this Item 3.1, any license or certification that authorized the predecessor firm to engage in the business of auditing or accounting has ceased to be effective or has become subject to any conditions or contingencies other than conditions or contingencies imposed on all firms engaged in the business of auditing or accounting in the jurisdiction, provide, as to each such license –

1. the name of the issuing state, agency, board, or other authority;
2. the number of the license or certification; and

3. the date that the authorization ceased to be effective or became subject to conditions or contingencies.

Item 3.2 Acquisitions of, or Combinations Involving, A Registered Public Accounting Firm

a. If this Form 4 is being submitted in connection with a transaction concerning which a person who holds an equity ownership interest in the Firm, or is employed by the Firm, can certify the points set out in Item 3.2.b. and Exhibit 99.4, –

1. Provide the name of each entity, other than the predecessor firm, that was involved in the transaction and that was a registered public accounting firm immediately before the transaction, and as to each such entity –

- (i) affirm that the entity has filed with the Board a request for leave to withdraw from registration on Form 1-WD; and

- (ii) state the date that the entity filed Form 1-WD;

2. Provide the name of each entity, including any acquiror, that was involved in the transaction and that was not a registered public accounting firm immediately before the transaction;

3. Provide the date that the transaction took effect; and

4. Provide a brief description of the nature of the transaction.

b. Provide as Exhibit 99.4 to this Form, a statement in the form set out below, signed by a person who, immediately before the transaction, was an officer of, or held an equity ownership interest in, the predecessor firm and who now either holds an equity ownership interest in, or is employed by, the Firm. The statement must be submitted on behalf of the Firm. Exhibit 99.4 must include a signature that appears in typed form in the

electronic submission and a corresponding manual signature retained by the Firm in accordance with Rule 2109(d). The signature must be accompanied by the signer's current title, the signer's title immediately before the event described in Item 3.2.a, the date of signature, and the signer's business mailing address, business telephone number, business facsimile number, and business e-mail address. Other than the insertion of the relevant names, Exhibit 99.4 must be in the exact following words –

On behalf of [name of the Firm], I certify that (1) I was an officer of, or held an equity ownership interest in, [name of predecessor firm] immediately before the transaction described in Item 3.2.a of the Form 4 to which this exhibit is attached; (2) immediately before that transaction [name of predecessor firm] was a registered public accounting firm; (3) as part of that transaction, a majority of the persons who held equity ownership interests in [name of predecessor firm] obtained equity ownership interests in, or became employed by, [name of the Firm]; (4) [name of predecessor firm] intended that [name of the Firm] succeed to the Board registration status of [name of predecessor firm] to the extent permitted by the Board's rules; and (5) [name of predecessor firm] is no longer a public accounting firm.

c. If, in connection with the transaction described in Item 3.2.a, the Firm has obtained, or will practice under, a license or certification number, authorizing it to engage in the business of auditing or accounting, that is different from any such license or certification number previously reported to the Board by the predecessor firm, provide, as to each such license –

1. the name of the issuing state, agency, board or other authority;
2. the number of the license or certification; and

3. the date the license or certification took effect.
- d. If, in connection with the transaction described in Item 3.2.a, any license or certification that authorized the predecessor firm to engage in the business of auditing or accounting has ceased to be effective or has become subject to any conditions or contingencies other than conditions or contingencies imposed on all firms engaged in the business of auditing or accounting in the jurisdiction, provide, as to each such license –
1. the name of the issuing state, agency, board, or other authority;
 2. the number of the license or certification; and
 3. the date that the authorization ceased to be effective or became subject to conditions or contingencies.

e. Provide a "yes" or "no" answer to each of the following questions –

1. Is there identified in Item 3.2.a.2 any entity that, if it were filing an application for registration on Form 1 on the date of the certification in Part V of this Form, would have to provide an affirmative response to Item 5.1.a of Form 1 in order to file a complete and truthful Form 1?

Note: In considering whether an affirmative response would be required to Item 5.1.a of Form 1, the Firm should take into account the guidance provided by question number 33 in Frequently Asked Questions Regarding Registration with the Board, PCAOB Release No. 2003-011A (Nov. 13, 2003).

2. Is there identified in Item 3.2.a.2 any entity that (i) issued an audit report with respect to an issuer on or after October 22, 2003 (or, if the entity is a non-U.S. entity, July 19, 2004), while not registered with the Board, and (ii) has never had an application for registration on Form 1 approved by the Board?

3. Is the Firm operating without holding any license or certification issued by a state, agency, board, or other authority authorizing the Firm to engage in the business of auditing or accounting?

Note: If the Firm answers "yes" to any question in Item 3.2.e or asserts as to any of those questions that non-U.S. law prohibits it from providing an answer, the Firm cannot succeed outright to the registration of the predecessor. If this Form 4 is submitted in accordance with Rule 2109, however, the Firm will temporarily succeed to the registration of the predecessor for a transitional period as described in Rule 2108(b)(2) as long as the Firm makes the representation required in Item 3.2.f below. If the Firm answers "yes" to any question in Item 3.2.e or asserts as to any of those questions that non U.S. law prohibits it from providing an answer but fails to make the representation required in Item 3.2.f, this Form 4 will not be accepted for filing and the Firm will not succeed to the predecessor's registration even on a temporary basis. See Rule 2108(b)(2).

f. If the Firm answered "yes" to any question in Item 3.2.e or asserts as to any of those questions that non-U.S. law prohibits it from providing an answer, affirm, by checking the box corresponding to the appropriate item, that one of the following statements is true –

1. The Firm has filed an application for registration on Form 1 on or after the date provided in Item 3.2.a.3.
2. The Firm intends to file an application for Registration on Form 1 no later than 45 days after the date provided in Item 3.2.a.3.

PART IV – CONTINUING OBLIGATIONS

Item 4.1 Continuing Consent to Cooperate

Affirm that –

- a. The Firm consents to cooperate in and comply with any request for testimony or the production of documents made by the Board in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002;
- b. The Firm has secured from each of its associated persons, and agrees to enforce as a condition of each such person's continued employment by or other association with the Firm, a consent indicating that the associated person consents to cooperate in and comply with any request for testimony or the production of documents made by the Board in furtherance of its authority under the Sarbanes-Oxley Act of 2002, and that the associated person understands and agrees that such consent is a condition of his or her continued employment by or other association with the Firm; and
- c. The Firm understands and agrees that cooperation and compliance, as described in Item 4.1.a., and the securing and enforcing of consents from its associated persons as described in Item 4.1.b., is a condition to the continuing effectiveness of the registration of the Firm with the Board.

Note: The affirmation in Item 4.1.b. shall not be understood to include an affirmation that the Firm has secured such consents from any associated person that is a registered public accounting firm.

Note: The affirmation in Item 4.1.b. shall not be understood to include an affirmation that the Firm has secured such consents from any associated person that is a foreign public accounting firm in circumstances where that associated

person asserts that non-U.S. law prohibits it from providing the consent, so long as the Firm possesses in its files documents relating to the associated person's assertion about non-U.S. law that would be sufficient to satisfy the requirements of subparagraphs (2) through (4) of Rule 2207(c) if that associated person were a registered public accounting firm filing a Form 2 and withholding this affirmation. This exception to the affirmation in Item 4.1.b. does not relieve the Firm of its obligation to enforce cooperation and compliance with Board demands by any such associated person as a condition of continued association with the Firm.

Note: If the Firm is a foreign registered public accounting firm, the affirmations in Item 4.1 that relate to associated persons shall be understood to encompass every accountant who is a proprietor, partner, principal, shareholder, officer, or manager of the Firm and who provided at least ten hours of audit services for any issuer during the reporting period.

Item 4.2 Continuing Responsibility to the Board for Previous Conduct

Affirm that, for purposes of the Board's authority with respect to registered public accounting firms, including but not limited to the authority to require reporting of information and the authority to impose disciplinary sanctions, the Firm either has retained or assumes responsibility for the conduct of any predecessor registered public accounting firm before the change or business combination reported on this Form took effect.

Note: As used in Item 4.2 the term "predecessor registered public accounting firm," means (1) in circumstances not involving a transaction described in Item

3.2, the predecessor firm and (2) in circumstances involving a transaction described in Item 3.2, each registered public accounting firm that was involved in the business combination.

Note: The continuing responsibility in Item 4.2 includes, among other things, responsibility for reporting information on Form 2 and events on Form 3. Thus, for example, if a registered public accounting firm experienced a Form 3 reportable event before the event that is the subject of this Form, the Firm, as successor, has the obligation to report that event on Form 3, and bears responsibility for any failure by any predecessor to have filed a timely Form 3 to report the matter.

Note: The Board's rules do not require that any entity retain or assume responsibility as set forth above. In the absence of an affirmation that it retains or assumes responsibility for such conduct at least for purposes of the Board's authority, however, an entity cannot succeed to the Board registration status of any predecessor entity. See Rule 2108.

PART V – CERTIFICATION OF THE FIRM Item 5.1 Signature of Partner or Authorized Officer

This Form must be signed on behalf of the Firm by an authorized partner or officer of the Firm including, in accordance with Rule 2109(d), both a signature that appears in typed form within the electronic submission and a corresponding manual signature retained by the Firm. The signer must certify that –

- a. the signer is authorized to sign this Form on behalf of the Firm;
- b. the signer has reviewed this Form;

c. based on the signer's knowledge, this Form does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and

d. either –

1. based on the signer's knowledge, the Firm has not failed to include in this Form any information or affirmation that is required by the instructions to this Form, with respect to the event or events being described on this Form, or

2. based on the signer's knowledge –

(A) the Firm is a foreign public accounting firm and has not failed to include in this Form any information or affirmation that is required by the instructions to this Form other than an affirmation required by Item 4.1 and/or an answer to Item 3.2.e.; and

(B) the Firm asserts that it is prohibited by non-U.S. law from providing any such withheld affirmation or response to the Board on this Form and, with respect to each such withheld affirmation or response, the Firm has made the efforts described in PCAOB Rule 2207(b) and has in its files the materials described in PCAOB Rule 2207(c).

The signature must be accompanied by the signer's title, the capacity in which the signer signed the Form, the date of signature, and the signer's business mailing address, business telephone number, business facsimile number, and business e-mail address.

PART VI – EXHIBITS

To the extent applicable under the foregoing instructions, each report must be accompanied by the following exhibits:

Exhibit 99.1 Request for Confidential Treatment

Exhibit 99.3 Materials Required by Rule 2207(c)(2)–(4) – Submit Only as an Exhibit to an Amended Form 4 in Response to a Request Made Pursuant to Rule 2207(d)

Exhibit 99.4 Acknowledgment Concerning Registration Status in Certain Transactions

Exhibit 99.5 Statement in Support of Request for Leave To File Form 4 Out of Time.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose Of, and Statutory Basis for, the Proposed Rules

(a) Purpose

Under Section 102(a) of the Sarbanes-Oxley Act of 2002 and PCAOB Rule 2100, a public accounting firm must be registered with the PCAOB in order to prepare or issue audit reports for public companies or to play a substantial role in the preparation or furnishing of such audit reports. To become registered, a public accounting firm files an application for registration on PCAOB Form 1, which the Board may approve or disapprove. The proposed rules identify the circumstances in which a firm may succeed

to the registration status of a predecessor registered firm, without filing a new Form 1, and provide a mechanism for the firm to do so.

The rules afford the opportunity for continuity of registration in two general categories of circumstances: (1) changes related to a firm's legal form of organization or the jurisdiction in which it is organized, and (2) transactions in which a registered firm is acquired by an unregistered entity or combines with other entities to form a new legal entity. The events to which the rules apply are events for which a firm plans, not unanticipated events to which a firm reacts. The rules are designed to facilitate a firm's ability to factor into its planning, and to predict with certainty, whether and how continuity of registration can be maintained.

The rules provide for a form the firm must file (Form 4), set a deadline for filing the form, and require certain information and representations in the form. If the firm files the form within the required timeframe, provides the required representations, and certifies that all required information is included, then continuity of registration is automatic, without the need for separate Board action. The rules and form also build in safeguards to ensure that the Form 1 process is not circumvented in circumstances where that process is more appropriate than Form 4 succession.

To obtain continuing effectiveness of an existing registration, the firm must acknowledge the continuity of, and commit to honor, certain obligations that accompany the registration status. Those obligations fall into two categories: continuing consent to cooperate with the Board and continuing responsibility to the Board for the conduct of predecessor registered firms.

With respect to circumstances in which a registered firm is acquired by an unregistered entity, or when a registered firm combines with other entities to form a new legal entity, the proposed Form 4 requires, among other things, information that determines whether succession to the predecessor's registration is permanent or temporary. Based on this information, succession may be outright and permanent or may only be temporary for a transition period intended to allow to the firm to seek registration through the Form 1 process.

For succession to registration to take effect automatically upon filing under the rules, Form 4 must be filed within 14 days after the effective date of the change in legal form or other event. The rules make some allowance for late filing. A firm that fails to file Form 4 within the 14-day period may submit a late Form 4 and request that the Board grant leave to file the form out of time. In a late submission, the firm should include as an exhibit to the form a statement in support of its request for leave to file out of time. If the Board grants the request and allows the form to be filed, the firm will succeed to the predecessor's registration.

The proposed rules would take effect 60 days after Securities and Exchange Commission approval.

(b) Statutory Basis

The statutory basis for the proposed rule is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rules provide a registration succession mechanism that firms may elect to use but are not required to use.

C. Board's Statement on Comments on the Proposed Rules Received from Members, Participants or Others

The Board released the proposed rules and form instructions for public comment in Release No. 2006-005 (May 23, 2006). A copy of Release No. 2006-005 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at www.pcaobus.org. The Board received five written comment letters. The Board has clarified and modified certain aspects of the proposed rules and form instructions in response to the comments it received, as discussed below.

Commenters addressed the Form 4 item that requires a Form 4 filer to affirm that it retains or assumes responsibility for the conduct of predecessor registered firms for purposes of the Board's authority. Commenters expressed concern that the affirmation might erode otherwise valid legal defenses in contexts such as criminal or private civil proceedings, and suggested that the Board should make clear that no such result is intended. The Board reiterates what it said in proposing the requirement for comment: The affirmation of continuing responsibility for a predecessor's conduct is not intended to create any new liability, nor is it intended to affect the legal consequences of the transaction with respect to any person or entity other than the Board. As between the firm and the Board, however, the Board views the affirmation as indispensable if a firm wishes to make use of the Form 4 process. In an effort to reduce the possibility of misunderstanding about the intended scope, the Board has made slight changes to the wording of Item 4.2 – such as changing the heading to specify that the item is about continuing responsibility "to the Board," and removing the broad adjective "legal" in

describing the nature of the responsibility being retained or assumed – but the Board is adopting the substance of the requirement essentially as proposed.

One commenter expressed the view that a successor firm should not be precluded from assuming a predecessor firm's registration status just because less than a majority of its predecessor's owners remained with the successor firm. In the Board's view, that suggestion is unworkable for a process intended to provide for automatic succession upon the satisfaction of bright line criteria. Without supplemental information and the intervention of judgment, the Board could not provide for succession in those circumstances without running a risk that more than one "successor" entity might lay claim to the same predecessor's registration.

One commenter suggested that the Board should define "acquisition" in this context, and raised questions concerning whether, to be an "acquisition" for which Form 4 succession is available, the transaction must involve acquisition of the predecessor firm's assets or a substantial portion thereof. For Form 4 succession to be available, the Board does not require that the transaction include anything other than what is described in the Exhibit 99.4 certification: a majority of the equity owners in a predecessor registered firm have become equity owners or employees of an unregistered firm, and the predecessor registered firm ceases to be a public accounting firm. For clarity on this point, the wording of Item 3.2.a. has been revised to refer to an acquisition of "any portion of" a registered public accounting firm, though Form 4 succession following any such acquisition is available only if all of the Exhibit 99.4 criteria are satisfied.

The Exhibit 99.4 certification also includes a statement that the predecessor registered firm intended for the successor firm to succeed to its registration status. One

commenter questioned the appropriateness of allowing a single individual to certify that the predecessor intended such succession, and expressed concern about the Board acting on such a certification by someone who may only have had a marginal role in the predecessor registered firm. As proposed and adopted, however, the required certification would be included in a filing that cannot be made except by the successor firm, which cannot make the filing unless a majority of the predecessor's owners are part of that successor firm. In those circumstances, it is not necessary to more specifically limit which of the predecessor's former owners or officers must execute the required certification.

In the context of a combination of firms, Form 4 succession is available only if the predecessor registered firm ceases to exist as a public accounting firm. One commenter questioned this requirement and suggested that a firm should be able to spin off its issuer audit business, including its registration status, to another firm and still remain a public accounting firm. The Board is not precluding the possibility that a firm can spin off its issuer audit business and still remain a public accounting firm; rather, the Board is identifying this criterion – whether the predecessor continues to exist as a public accounting firm – as relevant to whether registration status can move to the new firm through the Form 4 process or whether that firm can obtain registration status only through the Form 1 process.

If the predecessor registered firm continues to exist as the same legal entity that registered with the Board and continues to be engaged in the practice of public accounting, then the transaction suggested by the commenter would involve an existing public accounting firm – an entity which can legally be registered – conveying its

registration to another public accounting firm, a transaction that the Board views as fundamentally inappropriate. Accordingly, in that circumstance, the firm to which the predecessor's issuer audit practice moved could not use the Form 4 process but would need to apply for registration on Form 1 – which it could do even before the relevant transaction takes effect.

In contrast, if the legal entity that originally registered ceases to exist as a public accounting firm, then it cannot legally be a registered public accounting firm. For that entity's registration status to move with elements of that entity into another entity, through the Form 4 process, does not raise the same concerns about transferability of registration from one existing public accounting firm to another.

One commenter questioned the requirement to file a Form if a firm involved in the transaction would need to answer "yes" on the Form 1 disciplinary history question if filing a Form 1. The commenter suggested that this requirement could be punitive, especially for large registered firms that combine with smaller firms. Item 3.2.e. of Form 4, however, does not pose any significant risk of that sort. If a large registered firm acquires a smaller unregistered firm, the large registered firm would merely be required to report that in its annual report on Form 2, without resort to the Form 4 process. Alternatively, if a large registered firm were involved in a transaction that did lead to a Form 4 filing, the disciplinary histories of that firm and its associated persons would be irrelevant to Item 3.2.e. because the large firm was already registered at the time of the transaction. Item 3.2.e. relates only to disciplinary history information of entities (and their associated persons) that were not already registered at the time of the transaction.

Commenters suggested that the proposed 90-day limit on the temporary transition period (for firms that may not succeed permanently to the predecessor's registration) was too short and too inflexible. They noted that the Board has 45 days to act on an application, and also noted that the Board could ask for additional information, thereby restarting the 45-day clock and potentially pushing a registration decision out beyond the 90-day period. One commenter suggested revising the proposal so that the temporary registration status would continue until the Board makes a final decision on the Form 1. Another suggested revising the proposal to give the Board flexibility to extend the temporary registration status in situations where the Board does not take final action on the Form 1 within the 90 days.

The Board does not believe it would be appropriate to adopt a rule providing for a temporary registration period that continues until the Board acts on the Form 1, since firms could then keep the temporary registration status in place by not filing Form 1 or by delaying a response to a Board request for additional information on the application. The Board, however, sees the value in a measure of flexibility on this point. Accordingly, in Rule 2108(b)(2), the Board has retained the proposed 90 days as the initial transition period but has also added certain qualifications. If the Board formally requests additional information from the firm with less than 60 days remaining in the initial 90-day period, the temporary registration will continue to the date that is 60 days after the date of the Board's request. The effect will be that a firm has 15 days to respond to the Board's request if the firm wants to stay on track to keep its temporary registration until Board action on the Form 1. If the Board makes follow-up requests for information, the Board has the discretion to extend the temporary registration to a later date. Depending on the

circumstances, however, the Board might, in making a follow-up request, conclude that further extension of the temporary registration is unwarranted, and could communicate that to the firm in the second request.

One commenter suggested that the Board should adopt procedures by which a firm that anticipates that a successor will need to file a new Form 1 could review the relevant facts with the Board's staff before the transaction to determine whether the staff sees significant obstacles to approving the successor's application. In the Board's view, however, to the extent it is appropriate for the staff to review information relevant to a prospective Form 1 filing, the staff may already do so without the need for special procedures.

One commenter addressed the requirement that, in the context of more than two firms combining, any registered firm other than the firm whose registration is intended to continue, must, before Form 4 is filed, file a request to withdraw from registration. The commenter expressed concern that there may be a registration gap for the predecessor firm that files the Form 1-WD prior to the transaction if the withdrawal is granted prior to the close of the transaction. The representation concerning the filing of a 1-WD, however, does not apply to the "predecessor firm," but only to other registered firms, if any, that are merging into the filing entity as part of the transaction. In connection with any Form 4 filing, the firm designated as the "predecessor firm" should not seek leave to withdraw from registration. In addition, in transactions involving additional registered firms, the Form 1-WD filings need not occur far in advance of the Form 4 filing. The Form 4 requirements can be satisfied even if the relevant Form 1-WD filings occur immediately before the Form 4 filing.

One commenter noted that changes in licenses and certifications may occur after the filing of a Form 4 and suggested that the Board should expressly state that such changes may be described in an amendment to Form 4. Because a firm succeeds to registration automatically upon the Form 4 being filed, however, the firm immediately becomes subject to the same annual and special reporting requirements as any other registered firm. Accordingly, a license change that occurs after the filing of the Form 4 should be reported on Form 3 in accordance with Rule 2203.

For succession to registration to take effect automatically upon filing under the rules, Form 4 must be filed within 14 days after the effective date of the change in legal form or other event. Commenters expressed a view that 14 days is too short a period, and suggested that it was insufficient time for non-U.S. firms to evaluate the impact of non-U.S. law in a particular case or to obtain consents, waivers, and legal opinions relating to potential legal conflicts. More generally, one commenter noted that 14 days does not allow sufficient time after the event for a firm to assess its reporting obligations and complete the form. Two commenters suggested expanding the 14-day period to a 45-day period.

The Board has considered these comments but has decided to adopt the 14-day deadline. Given the purpose of the filing – avoiding breaks in registration status – the Board believes that the rule should require filing of the form in as short a period as reasonably possible, so that any questions about the entity's registration status are kept to as narrow a period as possible. In addition, the events giving rise to a Form 4 are events for which firms plan, and such planning can encompass prompt filing of the relatively short and simple Form 4.

Even so, the rules make some allowance for late filing. A firm that fails to file Form 4 within the 14-day period may submit a late Form 4 and request that the Board grant leave to file the form out of time. In a late submission, the firm should include as an exhibit to the form a statement in support of its request for leave to file out of time. If the Board grants the request and allows the form to be filed, the firm will succeed to the predecessor's registration (either outright or for the transitional period described above).

One commenter sought clarification of a firm's registration status during a period in which a Form 4 is pending with a request for leave to file out of time, suggesting that it is unclear whether the firm can issue audit reports while the request is pending. As discussed in the proposing release, a firm submitting a late Form 4 should make no assumption about whether the Board will allow it to be filed. Accordingly, during the period that the request is pending with the Board, a firm should not assume that it is a registered public accounting firm and, therefore, should not assume that it may issue audit reports. The rule's provision for late submissions is not principally intended as an accommodation to firms, but is intended to afford the Board the opportunity to allow Form 4 succession, despite a late filing, when doing so would be consistent with the public interest. Eventual favorable Board action on the request would effectively confer registered status on the firm back to the date of the transaction that is the subject of the Form 4 filing (just as with a timely filed Form 4), but unfavorable Board action would mean that the entity filing the Form 4 was never registered.

One commenter suggested that non-U.S. firms might also sometimes face legal obstacles to answering the Item 3.2.e. yes-no questions that determine whether succession is permanent or temporary. The Board has determined to allow non-U.S. firms to

withhold those answers on legal conflict grounds. The consequence of doing so, however, will be the same as if the firm had supplied a "no" answer: the succession afforded by the Form 4 process will only be for a transitional period to allow the firm an opportunity to seek registration through the Form 1 process.

Form 4 limits the categories of information for which a firm can request confidential treatment. Confidential treatment requests that have no genuine basis in law needlessly distract Board resources and delay the availability of information to the public. In the case of Form 4, the basic, nonpersonal, and nonproprietary nature of the required information leads the Board to foreclose confidential treatment requests for almost all of the items in the form.

The Board encouraged commenters to comment on whether the proposal overlooked actual or realistically foreseeable legal requirements to maintain the confidentiality of information. Commenters who addressed the point did so only in vague terms without providing any specific basis for concluding that the proposal overlooked any potentially applicable protection. One commenter stated generally that certain information required by Form 4 may need to be kept confidential under non-U.S. law or by the terms of an agreement between predecessor and successor entities. The commenter did not identify what information in Form 4 might fall into that category and did not provide an example of the type of non-U.S. law that might protect its confidentiality. Moreover, in the absence of relevant law, an agreement between private parties to keep information confidential does not in itself satisfy the confidential treatment criteria described in Rule 2300(b)(1). The commenter also expressed slightly more focused concern about the protection of "information regarding the acquisition," but

did not specify what information, among the very basic acquisition-related information required by Form 4, could be considered confidential or proprietary.

Another commenter raised potential confidentiality concerns about Item 3.2.e.1. As adopted, that Item asks whether the acquisition or combination involves any previously unregistered entity that, if it were filing an application for registration on Form 1, would have to provide an affirmative response to Item 5.1.a, which asks about the existence of certain specified disciplinary histories. The commenter suggested that indicating whether a firm would have to answer "yes" to that question might lead others to draw unfavorable conclusions that could expose the firm to an increased risk of liability claims. Whether that is true, though, is a separate question from whether that "yes" answer is information that is protected from disclosure by applicable law. The commenter did not suggest how that would be the case. Moreover, as a practical matter, any reader of the Form 4 would recognize that a firm's request for confidential treatment of its answer to Item 3.2.e.1. would mean that its answer was "yes."

In weighing these comments, the Board views as relevant the fact that Form 4 is not a required filing. While the Board does not view its optional nature as justification for dispensing with the possibility of confidential treatment, the Board does not believe that the comments on this point warrant any change from what was proposed.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Within 60 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

- (a) by order approve such proposed rules; or
- (b) institute proceedings to determine whether the proposed rules should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/pcaob.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number PCAOB 2008-05 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number PCAOB 2008-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and

review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/pcaob/shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with the Commission, and all written communications relating to the proposed rule between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. PCAOB-2008-05 and should be submitted on or before [insert 30 days from publication in the Federal Register].

By the Commission.

Florence E. Harmon
Deputy Secretary