
STAFF QUESTIONS AND ANSWERS

SUCCESSION TO REGISTRATION STATUS – FORM 4

February 4, 2015

Summary: The questions and answers below set out staff guidance to assist registered public accounting firms with respect to succeeding to a predecessor firm's registration status with the Public Company Accounting Oversight Board ("PCAOB" or "Board") by filing Form 4. This guidance does not constitute Board rules, nor has it been approved by the Board.

The questions and answers below were prepared by the PCAOB staff to supplement PCAOB Release No. 2008-005, *Rules on Succeeding to the Registration Status of a Predecessor Firm* (July 29, 2008), PCAOB Release No. 2013-010, *Amendments to Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications* (December 4, 2013) and the instructions to Form 4, which can be found at <http://pcaobus.org/Rules/Rulemaking/Pages/default.aspX>. Please note that the instructions to Form 4 include various "notes" intended to address anticipated questions.

Q1. What is Form 4?

A1. In the circumstances in which it is available, the Form 4 succession process allows an unregistered firm to succeed to the PCAOB registration status of a predecessor firm that was registered without any interruption in the registration status. Under certain circumstances, however, that registration status may only be temporary, as discussed in Q&A 9 below.

Q2. What are the circumstances in which a firm can succeed to a predecessor's registration status by filing Form 4?

A2. The Form 4 succession process is available (1) if there has been a change in a registered firm's form of organization, or the registered firm has changed the jurisdiction under the law of which it is organized; or (2) if a

registered firm is acquired by an unregistered firm, or combines with any other entity or entities, including other registered firms, to form a new public accounting firm. Form 4 can be used only in those circumstances and only if the firm seeking to succeed to registration status makes certain representations required in the form. In the absence of those conditions, a firm cannot use Form 4 to succeed to the registration status of a predecessor and would need to file a registration application on Form 1 if it wished to seek registration.

Q3. Is a firm that results from the circumstances described in Q&A 2 above required to file Form 4?

A3. A firm that results from the circumstances described in Q&A 2 above should not assume that it is registered with the PCAOB just because a predecessor firm was registered with the PCAOB. If the firm wishes to be registered with the PCAOB, Form 4 provides an optional route to registration, but the firm is not required to use the Form 4 process and can choose, instead, to file an application for registration on Form 1.

Q4. Can or should Form 4 be filed in circumstances in which a registered firm has acquired another firm?

A4. If a registered firm acquires another firm in such a way that the acquiring registered firm continues to exist as the same legal entity, that firm continues to be registered and need not, and cannot, file Form 4. The acquiring registered firm would, however, need to report the acquisition when it files its annual report on Form 2 for the period in which the acquisition occurred.

Q5. By when must Form 4 be filed to be timely?

A5. PCAOB Rule 2109(a) governs the timeliness of Form 4 filings. A Form 4, to be timely, must be filed within 14 days after the change or combination takes effect.

Q6. If a firm meets the conditions to succeed to a predecessor's registration status using Form 4 but its license to engage in the business of accounting or auditing is pending at the time the Form 4 is due, may the firm submit the form and provide the licensing information later?

A6. Yes. If a firm meets the conditions for Form 4, it may submit the form timely and file a Form 3 within 30 days after receiving its license to report that item of information to the Board.

Q7. If a firm files Form 4 to succeed to the registration status of a registered firm, how soon will it be deemed to have succeeded to the predecessor's registration status?

A7. If a firm files a timely Form 4, succession to the predecessor's registration status is automatic. As discussed below, however, in some cases that registration status may only be temporary.

Q8. If a firm can make the representations required by Form 4 but has failed to file a timely Form 4, is it still possible for the firm to succeed to a predecessor's registration status?

A8. Under PCAOB Rule 2108(d), a firm that is in a position to file Form 4 but has failed to do so timely may submit a completed Form 4 along with a request for leave to file the form out of time. The submission must be accompanied by an exhibit describing the reasons 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. The Board will evaluate the request in light of the relevant facts and circumstances and the public interest and may, in its discretion, grant or deny the request.

During the period that a request for leave to file out of time is pending with the Board, a firm should not assume that it is a registered public accounting firm. A Board decision to grant 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 a Board decision to deny the request would mean that the firm was not registered during that period.

Q9. In what circumstances would a firm's succession to the registration status of a predecessor firm through Form 4 be only temporary?

A9. If the event giving rise to the Form 4 filing is an unregistered firm's acquisition of a registered firm or a combination of firms into a new firm, the firm

must address four yes-or-no questions, set out in Item 3.2.e. If the firm answers yes to any one of those questions or, in the event the firm asserts that non-U.S. law prevents it from doing so, the firm can succeed to the predecessor's registration status, but only temporarily. In that situation, to succeed temporarily, the firm must also represent that it either has filed an application for registration on Form 1 or will do so no later than 45 days after the date of the acquisition or combination giving rise to the Form 4 filing.

Q10. How long does temporary succession to registration last?

A10. In general, temporary registration ceases to be effective on the earlier of the 91st day after the effective date of the acquisition or combination as reported on Form 4 or the date on which the Board approves a Form 1 registration application submitted by the firm. Temporary registration can be extended in certain circumstances, as described in PCAOB Rule 2108(b)(2)(iii)-(iv).

Q11. A firm seeking to file a Form 4 would, necessarily, be an unregistered firm. How does such a firm access the PCAOB's Web-based system to be able to file the form?

A11. In every situation in which a Form 4 can be filed, there is necessarily at least one firm involved that was a registered firm before the change or combination that gives rise to the Form 4 filing. The firm that seeks to file a Form 4 must identify that firm (or one of those firms) on Form 4 as the predecessor firm to whose registration status the firm is succeeding. The firm should access the PCAOB system using that firm's user ID and password.

Q12. Should the predecessor registered firm, to whose registration status the firm is succeeding, file Form 1-WD to withdraw from registration?

A12. In the event of a Form 4 that is timely filed or that is permitted to be filed out of time, the predecessor must not file Form 1-WD to withdraw from registration. In the event of a Form 4 that is submitted untimely and as to which the Board denies leave to file out of time, the parties should bear in mind that the representations in the Form 4 submission are inconsistent with any assertion that the predecessor continues to exist as a public accounting firm, and are inconsistent with continuing to conduct business under the predecessor's name

as if it were a registered public accounting firm. As with any such entity, a Form 1-WD should be filed to withdraw the predecessor from registration.

Q13. In the event that a combination of firms giving rise to a Form 4 filing involves any registered firms other than the firm designated in Form 4 as the predecessor, should those other firms file Form 1-WD to withdraw from registration?

A13. Yes, any such firms should file Form 1-WD seeking to withdraw from registration, and the firm filing Form 4 must represent that each such registered firm has done so.

Q14. What should a firm do if it discovers that it provided incorrect information in a filed Form 4 or omitted information that should have been included?

A14. Form 4 filings should be complete and accurate, and an individual in the firm must, on behalf of the firm, certify that the 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 the statements were made, not misleading. Inaccuracies or omissions could form the basis for disciplinary sanctions for failing to comply with the rules and instructions relating to Form 4, and it is therefore in a firm's interest to correct such errors as soon as possible. A firm may do so by filing an amendment pursuant to PCAOB Rule 2205 (which applies to Form 4 through PCAOB Rule 2109(d)) and the Form 4 instructions specific to amendments.

Q15. If a Form 4 as filed appears on its face to be timely, but a subsequent amendment reveals that the original filing was in fact untimely, what is the firm's registration status?

A15. In that circumstance, the original Form 4 filing would be voided and its effect would be null. If the firm still wanted to try to succeed to the predecessor's registration status, it would need to submit a new Form 4 and request leave to file out of time.

Q16. Can a firm make changes to a Form 4 that has been submitted with a request for leave to file out of time and is pending in that status?

A16. In that circumstance, a firm can withdraw the pending submission and replace it with a new submission. A note to General Instruction No. 7 of Form 4 describes the process.

Q17. Once a firm has filed a timely Form 4, or the Board has granted leave to file a Form 4 out of time, should any subsequent changes to information that was provided on the Form 4 be submitted through an amendment to the Form 4?

A17. No. Amendments are appropriate only to correct information that was incorrect at the time of the filing, or to supply omitted information that should have been supplied at the time of the filing. The amendment process should not be used to update information that has changed since the Form 4 was filed. To the extent, however, that the subsequent changes are events that are required to be reported on a special report on Form 3, the firm should report them on Form 3 in accordance with Rule 2203.

Q18. Can a firm request confidential treatment for information on Form 4?

A18. A firm may request confidential treatment for certain limited aspects of a Form 4 filing, which are identified in General Instruction No. 9 to Form 4. Confidential treatment requests are not automatically granted. For each request for confidential treatment, a firm must attach, as Exhibit 99.1, the information required by PCAOB Rule 2300(c)(2) which requires both a representation that the information has not otherwise been publicly disclosed and either (1) a detailed explanation of the grounds on which the information is considered proprietary, or (2) a detailed explanation of the basis for asserting that the information is protected by law from public disclosure and a copy of the specific provision of law. If the firm attaches an Exhibit 99.1 that fails to include this information, the request for confidential treatment may be denied solely on the basis of that failure.

Q19. May a firm refrain from providing information on Form 4 if non-U.S. law prohibits the firm from providing or obtaining the information?

A19. If a non-U.S. firm complies with the requirements of PCAOB Rule 2207 (which applies to Form 4 through PCAOB Rule 2109(d)) and the relevant instructions to Form 4, it may withhold certain limited information because of asserted non-U.S. legal restrictions and still succeed to a predecessor's

registration status. PCAOB Rules nevertheless reserve to the Board the right to subsequently require the information. In addition, while a non-U.S. firm may withhold answers to the yes-or-no questions discussed in Q&A 9 on the basis of a non-U.S. legal restriction, doing so will result in succession to registration being temporary only, and the firm would need to file a registration application on Form 1 to seek registration beyond the period of the temporary registration.

Q20. Does the Form 4 process affect any aspect of Securities and Exchange Commission Rules or Commission staff guidance concerning the consequences of mergers or similar transactions involving accounting firms?

A20. No. The Form 4 process has no effect on such matters; it merely allows the new entity to be registered with the PCAOB.

Q21. What should I do if I have further questions?

A21. If you have questions, you should first review the Board's release adopting the reporting requirements, the release amending the reporting requirements, including the rules and Instructions to Form 4, which can be found at <http://pcaobus.org/Rules/Rulemaking/Pages/default.aspx>, and the instructions for filling out Form 4 that are available for download after you log into the registration and reporting system. The instructions to Form 4 include various notes intended to address anticipated questions. If you still have questions, you can email the PCAOB's registration staff at registration-help@pcaobus.org or call the registration staff's helpline at (202) 207-9329. The hours of operation for the help line are 9 a.m. to 4:30 p.m. EDT, Monday through Friday.