

MERCER INTERNATIONAL INC.

Form T-3/A

September 09, 2009

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
Amendment No. 1
to
FORM T-3
APPLICATION FOR QUALIFICATION OF INDENTURE
UNDER THE
TRUST INDENTURE ACT OF 1939, AS AMENDED
MERCER INTERNATIONAL INC.
(Name of Applicant)
Suite 2840, 650 West Georgia Street, Vancouver, British Columbia, Canada V6B 4N8
(Address of principal executive offices)
SECURITIES TO BE ISSUED UNDER THE INDENTURE TO BE QUALIFIED**

| TITLE OF CLASS | AMOUNT |
|---|---|
| 8.5% Convertible Senior Subordinated Notes due 2011 | Up to aggregate principal amount of \$68,000,000* |

Approximate date of proposed Exchange Offer:
As soon as practicable after the date of this Application for Qualification

Name and address of agent for service:

With a copy to:

**H.S. Sangra, Esq.
Sangra Moller LLP
Barristers & Solicitors
1000 925 West Georgia Street
Vancouver, British Columbia
Canada V6C 3L2**

**David R. Wilson, Esq.
Davis Wright Tremaine LLP
Suite 2200
1201 Third Avenue
Seattle, Washington 98101-3045**

*The actual aggregate principal amount of 8.5% Convertible Senior Subordinated Notes due 2011 to be issued pursuant to the Indenture, which is defined below, may be less and depends upon the aggregate amount of 8.5% Convertible Senior Subordinated Notes due 2010 that are exchanged as described in Item 2.

The Applicant hereby amends this application for qualification on such date or dates as may be necessary to delay its effectiveness until: (1) the 20th day after the filing of a further amendment which specifically states that it shall supersede this application for qualification or (2) such date as the Securities and Exchange Commission, acting pursuant to Section 307(c) of the *Trust Indenture Act of 1939*, as amended, may determine upon the written request of the Applicants.

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EXPLANATORY NOTE

This Amendment No.1 (the Amendment No.1) to the Application for Qualification of Indenture on Form T-3 filed by Mercer International Inc., (the Company) a Washington corporation, with the Securities and Exchange Commission on July 13, 2009 (the Form T-3) is being filed solely to:
file a revised Exhibit T3C;

update Item 2. Securities Act Exemption Applicable; and

update Item 8. Analysis of Indenture Provisions pursuant to revisions made to Exhibit T3C.

In order to incorporate further clarifications and a final draft of the indenture relating to the New Convertible Notes (as hereinafter defined), this Amendment No.1 amends and restates (i) Item 2. Securities Act Exemption Applicable, (ii) Item 8. Analysis of Indenture Provisions, and (iv) Exhibit T3C.

All other information in the Form T-3 is unchanged and has been omitted.

GENERAL

ITEM 2. SECURITIES ACT EXEMPTION APPLICABLE.

Upon the terms set forth in an amended and restated offering circular dated September 9, 2009 (the Offering Circular) and the related amended and restated letter of transmittal, the Company is offering to exchange (the Exchange Offer) any and all of its outstanding 8.5% Convertible Senior Subordinated Notes due 2010 (the Old Convertible Notes). For each \$1,000 principal amount of the Old Convertible Notes, the Company is offering to exchange: (i) \$1,000 in principal amount of the Company s new 8.5% Convertible Senior Subordinated Notes due 2011 (the New Convertible Notes); *plus* (ii) a premium of 17 shares of Mercer common stock (Common Stock); *plus* (iii) a premium of 15 warrants to purchase one share of Common Stock per warrant (the Warrants); (iv); and accrued and unpaid interest on the Old Convertible Notes to, but excluding, the settlement date of the Exchange Offer.

If the Exchange Offer is completed, the New Convertible Notes will be governed by the indenture (the Indenture) to be qualified under this Application for Qualification on Form T-3.

As the New Convertible Notes are proposed to be offered for exchange by the Company with its existing noteholders exclusively and solely for the outstanding Old Convertible Notes, the transaction is exempt from registration under the Securities Act of 1933, as amended (the Securities Act), pursuant to the provisions of Section 3(a)(9) thereof. No sales of securities of the same class as the New Convertible Notes have been or are to be made by the Company by or through an underwriter at or about the same time as the Exchange Offer for which the exemption is claimed. No consideration has been, or is to be, given, directly or indirectly, to any person in connection with the transaction, except for the customary payments to be made in respect of preparation, printing, and mailing of the Offering Circular and related documents. The Company has retained Georgeson Inc. and BNY Mellon Shareowner Services as information agent and exchange agent, respectively, in connection with the Exchange Offer. We have agreed to pay the information agent and the exchange agent reasonable and customary fees for their services and will reimburse the information agent and the exchange agent for their reasonable out-of-pocket expenses. The Company will also pay reasonable and customary remuneration to legal and accounting advisors for the provision of legal and accounting services, respectively. No holder of the Old Convertible Notes has made or will be requested to make any cash payment to the Company in connection with the Exchange Offer, other than payment of any applicable taxes.

INDENTURE SECURITIES

ITEM 8. ANALYSIS OF INDENTURE PROVISIONS.

The New Convertible Notes will be issued under the Indenture to be dated as of the consummation of the Exchange Offer and entered into between the Company and Wells Fargo Bank, National Association, as trustee (the Trustee). The following is a general description of certain provisions of the Indenture. The description is qualified in its entirety by reference to the form of Indenture filed as Exhibit T3C hereto and incorporated by reference herein. Capitalized terms used in this Item 8 and not defined herein have the meanings assigned to them in the Indenture.

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(A) Events of Defaults; Withholding of Notice.

The following will be Events of Default under the Indenture:

- i. the Company's failure to pay principal or premium, if any, on any New Convertible Note when due, whether or not prohibited by the subordination provisions of the Indenture;
- ii. the Company's failure to pay any interest on any New Convertible Note when due if such failure continues for 30 days, whether or not prohibited by the subordination provisions of the Indenture;
- iii. the Company's failure to perform any other agreement required of it in the Indenture if such failure continues for 60 days after notice is given in accordance with the Indenture;
- iv. the Company's failure to pay the purchase price of any New Convertible Note when due, whether or not prohibited by the subordination provisions of the Indenture;
- v. the Company's failure to provide timely notice of a change in control if such failure continues for 30 days after such change of control;
- vi. if any indebtedness for money borrowed by the Company or one of its Significant Subsidiaries (all or substantially all of the outstanding voting securities of which are owned, directly, or indirectly, by the Company) in an aggregate outstanding principal amount in excess of \$10 million is not paid at final maturity or upon acceleration and such indebtedness is not discharged, or such acceleration is not cured or rescinded, within 30 days after written notice as provided in the Indenture; and

vii. certain events in bankruptcy, insolvency or reorganization of the Company or any of its significant subsidiaries. If an event of default, other than an event of default described in clause (vii) above with respect to the Company, occurs and is continuing, either the Trustee or the holders of at least 25% in aggregate principal amount of the outstanding New Convertible Notes may declare the principal amount of the New Convertible Notes to be due and payable immediately. If an event of default described in clause (vii) above occurs with respect to the Company, the principal amount of the New Convertible Notes will automatically become immediately due and payable. Any payment by the Company on the New Convertible Notes following any acceleration will be subject to the subordination provisions of the Indenture.

After any such acceleration, but before a judgment or decree based on acceleration, the holders of a majority in aggregate principal amount of the New Convertible Notes may, under certain circumstances, rescind and annul such acceleration if all events of default, other than the non-payment of accelerated principal, have been cured or waived. Subject to the Trustee's duties in the case of an event of default, the Trustee will not be obligated to exercise any of its rights or powers at the request of the holders, unless the holders have offered to the Trustee reasonable indemnity. Subject to the Indenture, applicable law and the Trustee's indemnification, the holders of a majority in aggregate principal amount of the outstanding New Convertible Notes will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the New Convertible Notes.

No holder will have any right to institute any proceeding under the Indenture or for the appointment of a receiver or a trustee, or for any other remedy under the Indenture unless:

the holder has previously given the Trustee written notice of a continuing event of default;

the holders of at least 25% in aggregate principal amount of the New Convertible Notes then outstanding have made a written request and have offered reasonable indemnity to the Trustee to institute such proceeding as trustee; and

the Trustee has failed to institute such proceeding within 60 days after such notice, request and offer, and has not received from the holders of a majority in aggregate principal amount of the New Convertible Notes then outstanding a direction inconsistent with such request within 60 days after such notice, request and offer.

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However, the above limitations do not apply to a suit instituted by a holder for the enforcement of payment of the principal of or any premium or interest on any New Note on or after the applicable due date or the right to convert the note in accordance with the Indenture.

Generally, the holders of not less than a majority of the aggregate principal amount of outstanding New Convertible Notes may waive any default or event of default unless:

the Company fails to pay principal, premium or interest on any New Convertible Note when due;

the Company fails to convert any New Convertible Note into shares of Common Stock in accordance with the provisions of the New Convertible Note and the Indenture; or

the Company fails to comply with any of the provisions of the Indenture that would require the consent of the holder of each outstanding New Convertible Note affected.

(B) Authentication and Delivery of the Securities under the Indenture and Application of Proceeds Thereof.

The New Convertible Notes to be issued under the Indenture may be executed by manual or facsimile signature on behalf of the Company by the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer or any Vice President of the Company (individually, an Officer), and delivered to the Trustee. The Trustee shall, upon a written order of the Company signed by two Officers, authenticate New Convertible Notes for original issue up to the aggregate principal amount stated in paragraph 4 of Section 2.02 of the Indenture. The aggregate principal amount of New Convertible Notes outstanding at any time may not exceed such amount except as provided in Section 2.07 of the Indenture.

There will be no proceeds from the issuance of the New Convertible Notes because the New Convertible Notes are being issued in exchange for the Old Convertible Notes.

(C) Release of any Note Collateral Subject to the Lien of the Indenture.

None. The New Convertible Notes are unsecured.

(D) Satisfaction and Discharge of the Indenture; Redemption of the Securities.

The Company may discharge its obligations under the Indenture while the New Convertible Notes remain outstanding if (1) all outstanding New Convertible Notes have or will become due and payable at their scheduled maturity within one year or (2) all outstanding Notes are scheduled for redemption within one year, and, in either case, the Company has deposited with the Trustee or a paying agent an amount sufficient to pay and discharge all of the outstanding New Convertible Notes on the date of their scheduled maturity or the scheduled date of redemption, including interest provided, however, that the foregoing shall not discharge the Company's obligation to effect conversion, registration of transfer or exchange of securities in accordance with the terms of the Indenture.

i. Redemption at the option of the Company

The New Convertible Notes may not be redeemed at the Company's option prior to November 15, 2009. Thereafter the New Convertible Notes may be redeemed at the Company's option in whole, or in part, upon not less than 30 nor more than 60 days' notice by mail to holders of the New Convertible Notes at 100% of the principal amount of the New Convertible Notes together with (except as described under Conversion below) accrued and unpaid interest, if any, up to, but not including, the redemption date.

If fewer than all of the New Convertible Notes are to be redeemed, the Trustee will select the New Convertible Notes to be redeemed by lot, or in its discretion, on a pro rata basis. If any New Convertible Note is to be redeemed in part only, a replacement New Convertible Note in principal amount equal to the unredeemed principal portion will be issued. If a portion of a holder's New Convertible Notes is selected for partial redemption and a holder converts a portion of its New Convertible Notes, the converted portion will be deemed to be of the portion selected for redemption.

ii. Repurchase by the Company

If a Change in Control occurs, a holder of the New Convertible Notes will have the right to require the Company to purchase all or any part of their New Convertible Notes 30 business days after the occurrence of such change in control at a purchase price equal to 100% of the principal amount of the New Convertible Notes together with accrued and unpaid interest, if any, up to, but excluding, the purchase date. New Convertible Notes submitted for purchase

must be in integral multiples of \$1,000 principal amount. The Company is obligated to give notice, as provided in the Indenture, of the occurrence of a change in control to all holders of the New Convertible Notes within 10 business days after

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the occurrence of such change in control. To exercise the repurchase right, a holder of the New Convertible Notes must deliver to the paying agent, at any time prior to the close of business on the business day prior to the change in control purchase date, written notice of the exercise of such right. Such notice must specify the New Convertible Notes for which the purchase right is being exercised.

The Company will not be required to purchase the New Convertible Notes upon a change in control if a third party makes an offer to purchase the New Convertible Notes in the manner, at the time and otherwise in compliance with the requirements set forth in the Indenture applicable to an offer to purchase upon a change in control made by the Company and purchases all the New Convertible Notes properly tendered and not withdrawn under such offer. In addition, the Company is not required to make an offer to purchase upon a change of control if a notice of redemption has been given pursuant to the optional redemption provisions of the New Convertible Notes.

The Company may not purchase any New Convertible Note at any time when the subordination provisions of the Indenture otherwise would prohibit the Company from making such repurchase. If the Company fails to repurchase the New Convertible Notes when required, this failure will constitute an event of default under the Indenture whether or not repurchase is permitted by the subordination provisions of the Indenture.

iii. **Conversion**

Subject to and in compliance with the provisions of the Indenture, a holder of New Convertible Notes is entitled, at such holder's option, to convert any portion of the principal amount of a New Convertible Note that is an integral multiple of \$1,000 into shares of Common Stock, unless previously repurchased or redeemed at the conversion rate in effect at the time of conversion. The initial conversion rate is approximately 129 shares of Common Stock per \$1,000 principal amount of New Convertible Notes, which is equivalent to a conversion price of \$7.75.

The Company will not issue fractional shares of Common Stock upon conversion of New Convertible Notes but instead will pay cash for the fractional amount based upon the closing market price of the shares of Common Stock on the last trading day prior to the date of conversion.

(E) Evidence of Compliance with Conditions and Covenants.

The Company is required to furnish to the Trustee, on an annual basis, a statement by its officers as to whether or not the Company, to the officers' knowledge, is in default in the performance or observance of any of the terms, provisions and conditions of the Indenture, specifying any known defaults.

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CONTENTS OF APPLICATION FOR QUALIFICATION.

This application for qualification comprises:

- (a) Pages numbered 1 to 8, consecutively.
- (b) The statement of eligibility and qualification on Form T-1 of the Trustee under the Indenture to be qualified (included as Exhibit T3G hereto).
- (c) The following exhibits in addition to those filed as part of the Form T-1 statement of eligibility and qualification of the Trustee:

| EXHIBIT | DESCRIPTION |
|-----------------|---|
| Exhibit T3A | Articles of Incorporation of the Company, as amended. Incorporated by reference to Form 8-A dated March 1, 2006. |
| Exhibit T3B | Bylaws of the Company. Incorporated by reference to Form 8-A dated March 1, 2006. |
| Exhibit T3C* | Form of Indenture between the Company and Wells Fargo Bank, National Association, as Trustee. |
| Exhibit T3D.1 | Not applicable. |
| Exhibit T3E.1** | Offering Circular, dated July 13, 2009. Incorporated by reference to Exhibit (a)(1)(i) of the Company's Schedule TO dated July 13, 2009. |
| Exhibit T3E.2 | Amended and Restated Offering Circular, dated September 9, 2009. Incorporated by reference to Exhibit (a)(1)(v) of Amendment No. 3 to the Company's Schedule TO dated September 9, 2009. |
| Exhibit T3E.3** | Letter of Transmittal, dated July 13, 2009. Incorporated by reference to Exhibit (a)(1)(ii) of the Company's Schedule TO dated July 13, 2009. |
| Exhibit T3E.4 | Amended and Restated Letter of Transmittal, dated September 9, 2009. Incorporated by reference to Exhibit (a)(1)(vi) of Amendment No. 3 to the Company's Schedule TO dated September 9, 2009. |
| Exhibit T3E.5** | Letter to DTC Participants, dated July 13, 2009. Incorporated by reference to Exhibit (a)(1)(iii) of the Company's Schedule TO dated July 13, 2009. |
| Exhibit T3E.6 | Amended and Restated Letter to DTC Participants, dated September 9, 2009. Incorporated by reference to Exhibit (a)(1)(vii) of Amendment No. 3 to the Company's Schedule TO dated September 9, 2009. |
| Exhibit T3E.7** | Letter to Clients for use by brokers, dealers, commercial banks, trust companies and other nominees, dated July 13, 2009. Incorporated by reference to Exhibit (a)(1)(iv) of the Company's Schedule TO dated July 13, 2009. |
| Exhibit T3E.8 | Amended and Restated Letter to Clients for use by brokers, dealers, commercial banks, trust companies and other nominees, dated September 9, 2009. Incorporated by reference to Exhibit (a)(1)(viii) of Amendment No. 3 to the Company's Schedule TO dated September 9, 2009. |

- Exhibit T3E.9 Press Release, dated July 13, 2009. Incorporated by reference to Exhibit 99.1 of the Company's Current Report on Form 8-K dated July 13, 2009.
- Exhibit T3E.10 Press Release, dated August 11, 2009. Incorporated by reference to Exhibit 99.1 of the Company's Current Report of Form 8-K dated August 11, 2009.
- Exhibit T3E.11 Press Release, dated August 25, 2009. Incorporated by reference to Exhibit 99.1 of the Company's Current Report on Form 8-K dated August 25, 2009.
- Exhibit T3E.12 Press Release, dated September 9, 2009. Incorporated by reference to Exhibit 99.1 of the Company's Current Report on Form 8-K dated September 9, 2009.

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| EXHIBIT | DESCRIPTION |
|----------------|--|
| Exhibit T3F | Cross-reference sheet showing the location in the Indenture of the provisions inserted therein pursuant to Sections 310 through 318(a), inclusive, of the Trust Indenture Act of 1939. Included as part of Exhibit T3C herewith. |
| Exhibit T3G** | Statement of eligibility and qualification of the Trustee on Form T-1. |

* Filed herewith

** Filed previously
with the
Form T-3

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SIGNATURE

Pursuant to the requirements of the *Trust Indenture Act of 1939*, the applicant has duly caused this application to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the City of Vancouver, Province of British Columbia, on this 9th day of September, 2009.

(SEAL)

MERCER INTERNATIONAL INC.

Attest: /s/ David K. Ure

By: /s/ David Gardossi

Name: David K. Ure
Title: Vice President and
Controller

Name: David Gandossi
Title: Chief Financial Officer

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| Exhibit T3E.9 | Press Release, dated July 13, 2009. Incorporated by reference to Exhibit 99.1 of the Company's Current Report on Form 8-K dated July 13, 2009. |
| Exhibit T3E.10 | Press Release, dated August 11, 2009. Incorporated by reference to exhibit 99.1 of the Company's Current Report of Form 8-K dated August 11, 2009. |
| Exhibit T3E.11 | |

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Press Release, dated August 25, 2009. Incorporated by reference to Exhibit 99.1 of the Company's Current Report on Form 8-K dated August 25, 2009.

Exhibit T3E.11 Press Release, dated September 9, 2009. Incorporated by reference to Exhibit 99.1 of the Company's Current Report on Form 8-K dated September 9, 2009.

Exhibit T3F Cross-reference sheet showing the location in the Indenture of the provisions inserted therein pursuant to Sections 310 through 318(a), inclusive, of the Trust Indenture Act of 1939. Included as part of Exhibit T3C herewith.

Exhibit T3G** Statement of eligibility and qualification of the Trustee on Form T-1.

* Filed herewith

** Filed previously
with the
Form T-3