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The tracked changes marked below are the revisions adopted by the Financial Condition (E) Committee during its conference call on May 18, 2006 and by Executive/Plenary at its meeting on June 11, 2006.

~~MODEL REGULATION REQUIRING~~
ANNUAL ~~AUDITED~~-FINANCIAL REPORTING~~S~~ MODEL REGULATION

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Section 1. Authority

This regulation is promulgated by the commissioner of insurance pursuant to Sections [insert applicable sections] of the [insert state] insurance law.

Section 2. Purpose and Scope

The purpose of this regulation is to improve the [insert state] Insurance Department's surveillance of the financial condition of insurers by requiring (1) an annual ~~financial examination~~ audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants ~~of the financial statements reporting the financial position and the results of operations of insurers~~, (2) Communication of Internal Control Related Matters Noted in an Audit, and (3) Management's Report of Internal Control over Financial Reporting.

Every insurer (as defined in Section 3) shall be subject to this regulation. Insurers having direct premiums written in this state of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificateholders of directly written policies nationwide at the end of the calendar year shall be exempt from this regulation for the year (unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities) except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be so exempt.

Foreign or alien insurers filing ~~the a~~ Audited financial reports in another state, pursuant to ~~such that other~~ state's requirement for filing of audited-Audited financial reports ~~that, which~~ has been found by the commissioner to be substantially similar to the requirements herein, are exempt from Sections 4 through 13 of this regulation if:

- A. A copy of the Audited ~~F~~financial ~~R~~report, Communication of Internal Control Related Matters Noted in an Audit, ~~Report on Significant Deficiencies in Internal Controls~~, and the Accountant's Letter of Qualifications that are filed with the other state are filed with the commissioner in accordance with the filing dates specified in Sections 4, ~~11~~ 11 and 12, respectively (Canadian insurers may submit accountants' reports as filed with the ~~Canadian Dominion Department of Insurance~~ Office of the Superintendent of Financial Institutions, Canada).
- B. A copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the commissioner within the time specified in Section 10.

Foreign or alien insurers required to file Management's Report of Internal Control over Financial Reporting in another state are exempt from filing the Report in this state provided the other state has substantially similar reporting requirements and the Report is filed with the commissioner of the other state within the time specified.

This regulation shall not prohibit, preclude or in any way limit the commissioner of insurance from ordering or conducting or performing examinations of insurers under the rules and regulations of the [insert state] Department of Insurance and the practices and procedures of the [insert state] Department of Insurance.

Section 3. Definitions

The terms and definitions contained herein are intended to provide definitional guidance as the terms are used within this regulation.

- A. “Accountant” or “independent certified public accountant” means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.
- B. An “affiliate” of, or person “affiliated” with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- C. “Audit committee” means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or Group of insurers, and audits of financial statements of the insurer or Group of insurers. The aAudit committee of any entity that controls a Group of insurers ~~one or more insurers under [insert state law equivalent to the model Insurance Holding Company System Regulatory Act]~~ may be deemed to be the aAudit committee for one or more of these controlled insurers solely for the purposes of this regulation at the election of the controlling person. Refer to Section 14DE for exercising this election. If an aAudit committee is not designated by the insurer, the insurer’s entire board of directors shall constitute the aAudit committee.
- BD. “Audited financial report” means and includes those items specified in Section 5 of this regulation.
- CE. “Indemnification” means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.
- F. “Independent board member” has the same meaning as described in Section 14C.
- DG. “Insurer” means a licensed insurer as defined in Sections [insert applicable sections] of the [insert state] insurance law or an authorized insurer as defined in Sections [insert applicable sections] of the [insert state] insurance law.
- H. “Group of insurers” means those licensed insurers included in the reporting requirements of [insert state law equivalent of the model Insurance Holding Company System Regulatory Act], or a subset of ~~such~~ insurers as identified by management, for the purpose of assessing the effectiveness of iInternal controls over financial reporting.
- I. “Internal control over financial reporting” means a process effected by an entity’s board of directors, management and other personnel designed to provide

reasonable assurance regarding the reliability of the financial reporting statements, i.e., those items specified in Section 5B through 5G of this regulation, including the audited financial report that is prepared for external purposes, and includes those policies and procedures that:

- (1) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;
- (2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in Section 5B through 5G of this regulation, including the audited statutory financial statements, and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and
- (3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the audited financial reporting statements, i.e., those items specified in Section 5B through 5G of this regulation.

J. “SEC” means the United States Securities and Exchange Commission.

K. “Section 404” means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC’s rules and regulations promulgated thereunder.

L. “Section 404 Report” means management’s report on “internal control over financial reporting” as defined by the SEC and the related attestation report of the independent certified public accountant as described in Section 3A.

M. “SOX Compliant Entity” means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934); (ii) the Audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and (iii) the Internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

Section 4. General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointment

A. All insurers shall have an annual audit by an independent certified public accountant and shall file an ~~a~~Audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer.

B. Extensions of the June 1 filing date may be granted by the commissioner for thirty-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten (10) days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

C. If an extension is granted in accordance with the provisions in Section 4B, a similar extension of thirty (30) days is granted to the filing of Management's Report of Internal Control over Financial Reporting.

€D. Every insurer required to file an annual aAudited financial report pursuant to this regulation shall designate a group of individuals as constituting its aAudit committee, as defined in Section 3. The Audit committee of an entity that controls an insurer may be deemed to be the insurer's Audit committee for purposes of this regulation at the election of the controlling person.

Section 5. Contents of Annual Audited Financial Report

The annual aAudited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department of Insurance of the state of domicile.

The annual aAudited financial report shall include the following:

- A. Report of independent certified public accountant.
- B. Balance sheet reporting admitted assets, liabilities, capital and surplus.
- C. Statement of operations.
- D. Statement of cash flows.
- E. Statement of changes in capital and surplus.
- F. Notes to financial statements. These notes shall be those required by the appropriate NAIC *Annual Statement Instructions* and the NAIC *Accounting Practices and Procedures Manual*. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to Section [insert applicable section] of the [insert state] insurance law with a written description of the nature of these differences.
- G. The financial statements included in the aAudited financial report shall be prepared in a form and using language and groupings substantially the same as the

relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. (However, in the first year in which an insurer is required to file an ~~a~~Audited financial report, the comparative data may be omitted).

Section 6. Designation of Independent Certified Public Accountant

- A. Each insurer required by this regulation to file an annual ~~a~~Audited financial report must within sixty (60) days after becoming subject to the requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm ~~(generally referred to in this regulation as the “accountant”)~~ retained to conduct the annual audit set forth in this regulation. Insurers not retaining an independent certified public accountant on the effective date of this regulation shall register the name and address of their retained independent certified public accountant not less than six (6) months before the date when the first ~~a~~Audited financial report is to be filed.
- B. The insurer shall obtain a letter from the accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the regulations of the insurance department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance department, specifying such exceptions as he or she may believe appropriate.
- C. If an accountant who was the accountant for the immediately preceding filed ~~a~~Audited financial report is dismissed or resigns, the insurer shall within five (5) business days notify the commissioner of this event. The insurer shall also furnish the commissioner with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant’s satisfaction and those not resolved to the former accountant’s satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the

insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

Section 7. Qualifications of Independent Certified Public Accountant

- A. The commissioner shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:
- (1) Is not in good standing with the ~~American Institute of~~ AICPAs and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or
 - (2) Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as *indemnification*) with respect to the audit of the insurer.
- B. Except as otherwise provided in this regulation, the commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the ~~American Institute of Certified Public Accountants~~ AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the [insert state] Board of Public Accountancy, or similar code.
- C. A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under [cite applicable receivership statute], the mediation or arbitration provisions shall operate at the option of the statutory successor.
- D. (1) The lead (or coordinating) audit partner (having primary responsibility for the audit) No partner or other person responsible for rendering a report may not act in that capacity for more than seven (7) five (5) consecutive years. The person shall be disqualified from acting Following a period of service the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two (2) five (5) consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty (30) days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:
- (a) Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

- (b) Premium volume of the insurer; or
- (c) Number of jurisdictions in which the insurer transacts business.

(2) The insurer shall file, with its annual statement filing, the approval for relief from Subsection D(1) with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

~~(23) The requirements of this subsection shall become effective two (2) years after the enactment of this regulation.~~

E. The commissioner shall ~~not~~neither recognize as a qualified independent certified public accountant, nor accept an annual aAudited financial report, prepared in whole or in part by, a natural person who:

- (1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practices under federal or state law;
- (2) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this regulation; or
- (3) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this regulation.

F. The commissioner of insurance, as provided in Section [insert applicable section] of the insurance code, may, as provided in [insert applicable citation], hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual aAudited financial report made pursuant to this regulation and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this regulation.

G. (1) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual aAudited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:

- (a) Bookkeeping or other services related to the accounting records or financial statements of the insurer;

- (b) Financial information systems design and implementation;
- (c) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- (d) Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification ("opinion") on an insurer's reserves if the following conditions have been met:
 - (i) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;
 - (ii) The insurer has competent personnel (or engages a third party actuary) to estimate the ~~loss~~-reserves for which management takes responsibility; and
 - (iii) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the ~~loss~~-reserves;
- (e) Internal audit outsourcing services;
- (f) Management functions or human resources;
- (g) Broker or dealer, investment adviser, or investment banking services;
- (h) Legal services ~~and/or~~ expert services unrelated to the audit; ~~and or~~
- (i) Any other services that the commissioner determines, by regulation, are impermissible.

Drafting Note: Any additions or deletions from the list of prohibited services by a state must be carefully considered as uniformity among states is essential in this section. In determining whether other services are impermissible, the commissioner shall consider utilizing the guidance provided in the ~~Securities and Exchange Commission's (SEC)'s~~ Final Rule No. 33-8183, *Strengthening the Commission's Requirements Regarding Auditor Independence* adopted

January 28, 2003, in order to evaluate whether the provision of such services impairs the independence of the accountant.

(2) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.

H. Insurers having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from Subsection G(1). The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

I. A qualified independent certified public accountant who performs the audit may engage in other non-audit services ~~for an insurer~~, including tax services, that are not described in Subsection G(1)(a) ~~through G(1)(i)~~ or that do not conflict with Subsection G(2), only if the activity is approved in advance by the ~~a~~Audit committee ~~for the insurer~~, in accordance with Subsection ~~I~~J.

Drafting Note: A qualified independent certified public accountant who performs the audit may also engage in other non-audit services for an insurer, including tax services, that are not described in Subsection G(1)(a) ~~through G(1)(i)~~ or that do not conflict with Subsection G(2) if the ~~a~~Audit committee is in compliance with the SEC's Final Rule No. 33-8183, *Strengthening the Commission's Requirements Regarding Auditor Independence* adopted January 28, 2003 and has approved such activity.

H. All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the ~~a~~Audit committee ~~of the insurer~~. The preapproval requirement is waived with respect to non-audit services if ~~the insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity~~ or:

(1) The aggregate amount of all such non-audit services provided to the insurer constitutes not more than five percent (5%) of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;

(2) The services were not recognized by the insurer at the time of the engagement to be non-audit services; and

(3) The services are promptly brought to the attention of the aAudit committee of the insurer and approved prior to the completion of the audit by the aAudit committee or by one or more members of the aAudit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the aAudit committee.

~~JK.~~ The aAudit committee of an insurer may delegate to one or more designated members of the aAudit committee the authority to grant the preapprovals required by Subsection J. The decisions of any member to whom this authority is delegated shall be presented to the full aAudit committee at each of its scheduled meetings.

~~K. Insurers having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from Subsection G(1). The insurer shall file with the commissioner a written statement discussing reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.~~

L. (1) The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.

(2) The insurer shall file, with its annual statement filing, the approval for relief from Subsection L(1) with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

Section 8. Consolidated or Combined Audits

An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves

and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

- A. Amounts shown on the consolidated or combined ~~a~~Audited financial report shall be shown on the worksheet;
- B. Amounts for each insurer subject to this section shall be stated separately;
- C. Noninsurance operations may be shown on the worksheet on a combined or individual basis;
- D. Explanations of consolidating and eliminating entries shall be included; and
- E. A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

Section 9. Scope of ~~Examination~~Audit and Report of Independent Certified Public Accountant

Financial statements furnished pursuant to Section 5 shall be examined by ~~an~~the independent certified public accountant. The ~~examination~~audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the ~~American Institute of Certified Public Accountants~~AICPA, *Consideration of Internal Control in a Financial Statement Audit*, the ~~auditor~~independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to Section 16, the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, *Defining Professional Requirements in Statements on Auditing Standards or its replacement*) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the *Financial Condition Examiners Handbook* promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

Section 10. Notification of Adverse Financial Condition

- A. The insurer required to furnish the annual ~~a~~Audited financial report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its ~~a~~Audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under ~~examination~~audit or that the insurer does not meet the minimum capital and surplus requirement of the [insert state] insurance code as of that date. An insurer that has received a report pursuant to this paragraph shall

forward a copy of the report to the commissioner within five (5) business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five (5) business days.

- B. No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with Subsection A.
- C. If the accountant, subsequent to the date of the ~~a~~Audited financial report filed pursuant to this regulation, becomes aware of facts that might have affected his or her report, the commissioner notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants AICPA.

Section 11. Communication of Internal Control Related Matters Noted in an Audit Report on Significant Deficiencies in Internal Controls

- A. In addition to the annual ~~audited~~Audited financial ~~statements~~report, each insurer shall furnish the ~~domiciliary~~ commissioner with a written ~~report~~communication as to any unremediated material weaknesses in ~~on its~~ internal controls over financial reporting noted during the audit. Such communication shall be prepared by the accountant within sixty (60) days after the filing of the annual ~~a~~Audited financial report, and shall ~~which must contain:~~

~~(1) —~~Aa description of any unremediated material weaknesses (as the term material weakness is defined by Statement on Auditing Standard 60, Communication of Internal Control Related Matters Noted in an Audit, or its replacement) (exclusive of any significant deficiencies as defined by the audit standard) as of December 31 immediately preceding (so as to coincide with the ~~a~~Audited financial report discussed in Section 4(A)) in the insurer's ~~internal control structure over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state this condition.~~

Drafting ~~n~~Note: The insurer is expected to maintain information about significant deficiencies communicated by the ~~auditor~~independent certified public accountant. Such information should be made available to the examiner conducting a financial condition examination for review and kept in such a manner as to remain confidential. ~~The implementation guidance should clarify that auditors are only required to perform the work required by SAS 60 or its replacement.~~

~~(2) A description of the AICPA authoritative audit standard, i.e., SAS 60, Communication of Internal Control Related Matters Noted in an Audit, or its replacement used to define material weakness.~~

B. The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

~~describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. SAS No. 60, Communication of Internal Control Structure Matters Noted in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants) requires an accountant to communicate significant deficiencies (known as "reportable conditions") noted during a financial statement audit to the appropriate parties within an entity. No report should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the Department within sixty (60) days after the filing of the annual audited financial statements. The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if the actions are not described in the accountant's report.~~

Section 12. Accountant's Letter of Qualifications

The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual ~~a~~Audited financial report, a letter stating:

- A. That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the ~~American Institute of Certified Public Accountants~~ AICPA and the Rules of Professional Conduct of the [insert state] Board of Public Accountancy, or similar code;
- B. The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this regulation shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;
- C. That the accountant understands the annual ~~a~~Audited financial report and his opinion thereon will be filed in compliance with this regulation and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;
- D. That the accountant consents to the requirements of Section 13 of this regulation and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers, as defined in Section 13;

- E. A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the [American Institute of Certified Public Accountants \(AICPA\)](#); and
- F. A representation that the accountant is in compliance with the requirements of Section 7 of this regulation.

Section 13. Definition, Availability and Maintenance of [Independent Certified Public Accountants](#) Workpapers

- A. Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's [examination audit](#) of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her [examination audit](#) of the financial statements of an insurer and which support the accountant's opinion.
- B. Every insurer required to file an [audited](#) financial report pursuant to this regulation, shall require the accountant to make available for review by insurance department examiners, all workpapers prepared in the conduct of the accountant's [examination audit](#) and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the insurance department or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the insurance department has filed a report on examination covering the period of the audit but no longer than seven (7) years from the date of the audit report.
- C. In the conduct of the aforementioned periodic review by the insurance department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the department. Such reviews by the department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the department.

Section 14. Requirements for Audit Committees

This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

- A. The ~~a~~Audit committee for an insurer shall be directly responsible for the appointment, compensation and oversight of the work of any accountant employed by that insurer (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing ~~an~~the ~~a~~Audited financial report or related work pursuant to this regulation, and ~~e~~Each accountant shall report directly to the ~~a~~Audit committee.
- B. Each member of the ~~a~~Audit committee of the entity responsible for overseeing the audited financial report for the insurer shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to Subsection E and Section 3C. of the responsible entity that is responsible for overseeing the Audited financial report for the insurer as designated pursuant to Section 3C.
- C. In order to be considered ~~to be~~ independent for purposes of this section, a member of ~~an~~the ~~a~~Audit committee of an entity responsible for overseeing the audited financial report for the insurer may not, other than in his or her capacity as a member of the ~~a~~Audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if ~~domiciliary~~ law requires board participation by otherwise non-independent members, that law shall prevail and ~~such~~ members may participate in the ~~a~~Audit committee and be designated as independent for ~~a~~Audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.
- D. If a member of ~~an~~the ~~a~~Audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the ~~domiciliary~~ state, may remain an ~~a~~Audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

Drafting Note: In determining independence, the commissioner shall consider utilizing guidance provided in the SEC's Final Rule No. 33-8220, *Standards Relating to Listed Company Audit Committees* adopted April 9, 2003.

- E. To exercise the election of the controlling person to designate the ~~a~~Audit committee for purposes of this regulation, the ultimate controlling person shall provide written notice to the ~~domiciliary~~ commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice ~~of~~to the ~~domiciliary~~ commissioner ~~of~~by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

F. (1) The ~~A~~ audit committee shall require the accountant that performs for an insurer any audit required by this regulation to timely report to the ~~a~~ Audit committee ~~of the insurer~~ in accordance with the requirements of SAS 61, *Communication with Audit Committees*, or its replacement, including:

(a) All ~~critical~~ significant accounting policies and material permitted practices ~~to be used~~;

~~Drafting Note: Subsection F(1)(a) is intended to include permitted accounting practices allowed by a state.~~

(b) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

(c) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(2) If an insurer is a member of an insurance holding company system, the reports required by Subsection F(1) may be provided to the ~~a~~ Audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the ~~a~~ Audit committee.

G. The proportion of independent ~~a~~ Audit committee members ~~for non-SEC registrants subject to this regulation~~ shall meet or exceed the following criteria: ~~Companies that are SEC registrants are deemed to be in compliance with the subsection if they are in compliance with the related SEC requirements.~~

<u>Prior Calendar Year Direct Written and Assumed Premiums</u>		
<u>\$0 - \$25300,000,000</u>	<u>Over \$25300,000,000 - \$1500,000,000</u>	<u>Over \$1500,000,000</u>
<u>No minimum requirements. See also Note A and B.</u>	<u>Majority (50% or more) of members shall be independent. See also Note A and B.</u>	<u>Supermajority of members (75% or more) shall be independent. See also Note A and B.</u>

Note A: The commissioner has ~~discretionary~~ authority ~~afforded by state law~~ to require the entity's board to enact improvements to the independence of the ~~a~~ Audit committee membership if the insurer is in a RBC action level event, meets ~~any~~ one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All ~~boards~~insurers with less than \$1500,000,000 in prior year direct written and assumed premiums are encouraged to structure their ~~a~~Audit committees with at least a supermajority of ~~truly~~-independent ~~a~~Audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

H. An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$2500,000,000 may make application to the commissioner for a waiver from the Section 14 requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from Section 14 with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

~~I. This section shall apply to domestic insurers of this state, i.e., foreign and alien insurers are exempt from these requirements.~~

~~J. This section shall not apply to an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.~~

Section 15. Conduct of Insurer in Connection with the Preparation of Required Reports and Documents

A. No director or officer of an insurer shall, directly or indirectly:

(1) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this regulation; or

(2) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this regulation.

B. No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance ~~of~~ an audit pursuant to this regulation if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

C. For purposes of Subsection B of this section, actions that, “if successful, could result in rendering the insurer’s financial statements materially misleading” include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

(1) To issue or reissue a report on an insurer’s financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards);

(2) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(3) Not to withdraw an issued report; or

(4) Not to communicate matters to an insurer’s ~~a~~Audit committee.

~~D. A director or officer shall return bonuses or profits from stock sales received within the last twelve (12) months resulting from material non-compliance with financial reporting requirements as a result of misconduct as described in Subsections A and B of this section.~~

Drafting Note: In determining what types of sanctions or penalties could be assessed for violations of items included in Subsections A through ~~DC~~, each state should refer to its individual authority provided by state statutes.

Section 16. Management’s Report of Internal Control over Financial Reporting

A. Every insurer required to file an ~~a~~Audited financial report pursuant to this regulation that has annual direct written and assumed premiums, ~~excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program,~~ of \$500,000,000 or more shall prepare a report of the insurer’s or ~~g~~Group of insurers’ Internal control over financial reporting, as these terms are defined in Section 3. The report shall be filed with the ~~domiciliary~~ commissioner ~~in conjunction~~along with the Communication of Internal Control Related Matters Noted in an Audit described under Section 11. Management’s Report of Internal Control over Financial Reporting shall be as of December 31 immediately preceding. ~~A foreign insurer is not required to file this report if it is subject to a substantially similar reporting requirement in the jurisdiction of its domicile that similarly exempts insurers domiciled in this state from this reporting requirement.~~

B. Notwithstanding the premium threshold in Subsection A, the ~~domiciliary~~ commissioner may require an insurer to file Management’s Report of Internal Control over Financial Reporting if the insurer is in any RBC level event, or

meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in (include reference to Corrective Action statute).

C. ~~(1)~~—An insurer or a ~~g~~Group of insurers that is

~~(a1)~~ An SEC registrant directly subject to Section 404;

~~(b2)~~ A member part of a holding company system whose parent is a SEC registrant directly subject to Section 404;

~~(e3)~~ not directly subject to Section 404 but is a SOX Compliant Entity A non-SEC registrant that is compliant with all aspects of Section 404 of the Sarbanes Oxley Act of 2002; or;

~~(d4)~~ A member of a holding company system whose parent that is not directly subject to Section 404 but is a SOX Compliant Entity a non-SEC registrant but is compliant with all aspects of Section 404 of the Sarbanes Oxley Act of 2002;

~~(2)~~—M may file its or its parent's Section 404 rReport on internal control and an addendum in satisfaction of this Section 16 requirement provided that those internal controls of the insurer or ~~g~~Group of insurers having a material impact on the preparation of the insurer's or Group of insurers' its audited statutory financial statements (those items included in Section 5B through 5G of this regulation) were included in the scope of the Section 404 Report its internal control review process. The addendum is shall be a positive statement by management that there are no material processes with respect to the preparation of its the insurer's or Group of insurers' audited statutory financial statements (those items included in Section 5B through 5G of this regulation) excluded from the r Section 404 rReport. A Section 404 report shall include management's report on internal control over financial reporting and the report of the independent registered public accounting firm on internal control over financial reporting pursuant to Section 404 above. If there are internal controls of the insurer or Group of insurers over financial reporting that have a material impact on the preparation of the insurer's or Group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the internal control review in the preparation of the Section 404 rReport, the insurer or ~~g~~Group of insurers may file either file (i) a Section 16 report, or (ii) its the Section 404 rReport and a Section 16 report for those internal controls that have a material impact on related to the preparation of its the insurer's or Group of insurers' audited statutory financial statements not covered by the Section 404 rReport.

D. Management's Report of Internal Control over Financial Reporting shall include:

- (1) A statement that management is responsible for establishing and maintaining adequate Internal control over financial reporting;
- (2) A statement that management has established iInternal control over financial reporting and an assertion~~that~~, to the best of management's knowledge and belief, ~~after diligent inquiry, after diligent inquiry,~~ ~~as to whether~~ its iInternal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;
- (3) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its iInternal control over financial reporting; and
- (4) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;
- (45) Disclosure of any unremediated material weaknesses in the iInternal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the iInternal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its iInternal controls over financial reporting;
- (6) A statement regarding the inherent limitations of internal control systems; and
- (7) Signatures of the chief executive officer and the chief financial officer (or equivalent position/title).

E. Management shall document and make available upon financial condition examination the basis upon which its assertions, required in Subsection D above, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

- (1) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.
- (2) Management's ~~r~~Report on iInternal ~~e~~Control over ~~f~~Financial ~~r~~Reporting, required by Subsection A above, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the state insurance department.

Drafting Note: It is the ~~expectation~~ recommendation that the company officer responsible for financial reporting would not be a member of the ~~a~~ Audit committee and that the independent committee members would meet periodically, with no management present, with the ~~external auditor~~ independent certified public accountant to discuss the strengths and weaknesses of the insurer's or Group of insurers' internal control environments.

Section 147. Exemptions and Effective Dates

- A. Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this regulation if the commissioner finds, upon review of the application, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten (10) days from a denial of an insurer's written request for an exemption from this regulation, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with the regulations of the [insert state] Department of Insurance pertaining to administrative hearing procedures.
- B. Domestic insurers retaining a certified public accountant on the effective date of this regulation who qualify as independent shall comply with this regulation for the year ending December 31, 20[] and each year thereafter unless the commissioner permits otherwise.
- C. Domestic insurers not retaining a certified public accountant on the effective date of this regulation who qualifies as independent may meet the following schedule for compliance unless the commissioner permits otherwise.
- (1) As of December 31, 20[], file with the commissioner an Audited ~~F~~financial ~~R~~report:
 - ~~(a) — Report of independent certified public accountant;~~
 - ~~(b) — Audited balance sheet; and~~
 - ~~(c) — Notes to audited balance sheet.~~
 - (2) For the year ending December 31, 20[] and each year thereafter, such insurers shall file with the commissioner all reports and communication required by this regulation.
- D. Foreign insurers shall comply with this regulation for the year ending December 31, 20[] and each year thereafter, unless the commissioner permits otherwise.

E. The requirements of Section 7D shall ~~become effective two (2) years after the enactment of this regulation~~ be in effect for audits of the year beginning January 1, 2010 and thereafter.

F. The requirements of Section 14E are to be in effect January 1, 200810. An insurer or Group of insurers that is not required to have independent Audit committee members or only a majority of independent Audit committee members (as opposed to a supermajority) because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one (1) year following the year the threshold is exceeded (but not earlier than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements.

Drafting Note: Adoption of Subsection 14E is assumed to occur one year prior to the effective date of Section 16.

FG. The requirements of Section 16 and other modified sections [identify modified sections], except for Section 14E covered above, are effective beginning with the reporting period ending December 31, 200910 and each year thereafter. An insurer or ~~g~~Group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two (2) years following the year the threshold is exceeded (but not earlier than December 31, 200910) to file a report. Likewise, an insurer acquired in a business combination shall have two (2) calendar years following the date of acquisition or combination to comply with the reporting requirements.

Section 158. Canadian and British Companies

- A. In the case of Canadian and British insurers, the annual ~~a~~Audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their ~~domiciliary~~ supervision authority duly audited by an independent chartered accountant.
- B. For such insurers, the letter required in Section 6B shall state that the accountant is aware of the requirements relating to the annual ~~a~~Audited ~~financial report statement~~ filed with the commissioner pursuant to Section 4 and shall affirm that the opinion expressed is in conformity with those requirements.

Section 169. Severability Provision

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

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