**Rule 235**

**ANNUAL AUDITED FINANCIAL REPORTS**

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**Section 1. Authority and Purpose**

This Rule is adopted by the Superintendent of Insurance pursuant to 24 M.R.S.A. §2317(2) and 24‑A M.R.S.A. §§ 212, 221‑A(5), and 4218, in order to ensure that the annual audited financial reports required pursuant to 24-A M.R.S.A. §221‑A and other applicable provisions of the Maine Insurance Code are prepared in compliance with the standards established by the National Association of Insurance Commissioners.

**Section 2. Scope**

This Rule applies to all insurers and health maintenance organizations required to file audited financial reports pursuant to 24-A M.R.S.A. §§ 221‑A and 4233(2), and to all nonprofit corporations regulated under Title 24 M.R.S.A., subject to the same exemptions and limitations that would apply under 24-A M.R.S.A. §221‑A and this Rule if they were authorized as insurers. For purposes of this Rule, the term “insurer” includes health maintenance organizations and nonprofit corporations regulated under Title 24 M.R.S.A. If an insurer is publicly traded, this Rule and the standards incorporated by reference herein apply only to the extent that they do not conflict with applicable federal law and applicable standards promulgated by the Public Company Accounting Oversight Board. For SOX-Compliant Insurers, as defined in Section 16, the provisions of this Rule are superseded to the extent provided therein. Compliance with this Rule does not limit in any way the insurer’s duty to provide such additional information as the Superintendent may request pursuant the Superintendent’s examination authority or other applicable law.

**Section 3. Contents of Annual Audited Financial Report**

The annual audited 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. Financial statements, opinions, and reports filed pursuant to this Rule must be prepared in conformity with the statutory accounting practices prescribed or permitted by the insurance supervisory official of the insurer’s state of domicile for insurers’ regulatory financial statements, with due consideration given to the procedures illustrated in the *Financial Condition Examiners Handbook* or its successor publication promulgated by the National Association of Insurance Commissioners.

The financial statements included in the audited 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 Superintendent. The financial statements shall be comparative, presenting the amounts as of December 31 of the most recent year and the amounts as of the immediately preceding December 31, except for newly formed insurers for which comparative data does not exist. The annual audited financial report shall include the following:

1. Narrative “Report of Independent Certified Public Accountant”;
2. Balance sheet reporting admitted assets, liabilities, capital, and surplus;
3. Statement of operations;

D. Statement of cash flows;

E. Statement of changes in capital and surplus; and

F. Notes to financial statements, as 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 24-A M.R.S.A. §423, with a written description of the nature of these differences.

**Section 4. Time for Filing of Annual Audited Financial Report**

An insurer shall file its audited financial report with the Superintendent on or before June 1 of each year, or such other date as may be provided by law or ordered by the Superintendent upon 90 days’ notice to the insurer. Extensions of the filing date may be granted by the Superintendent for 30-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and a determination by the Superintendent that there is good cause for an extension. The request for extension must be submitted in writing at least ten days before the due date in sufficient detail to permit the Superintendent to make an informed decision on the requested extension.

**Section 5. Designation of Independent Certified Public Accountant**

1. Each insurer required by this Rule to file an annual audited financial report must file with the Superintendent the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit pursuant to this Rule, together with a letter from the accountant stating that the accountant is aware of the provisions of the insurance code and the regulations of the insurance department of the insurer’s 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. This information shall be filed within 60 days after the insurer becomes subject to the requirements of this Section.
2. The insurer shall have a written contract with the accountant. The terms of engagement shall include a commitment by the accountant to comply with the requirements to evaluate the insurer’s internal controls pursuant to generally accepted auditing standards, to notify the insurer and the appropriate regulatory authorities of impaired or misstated financial condition, and to retain work papers and audit communications and make them available for regulatory inspection at the request of the Superintendent pursuant to Section 12 of this Rule.

C. If the currently designated accountant or the accountant designated for the most recently filed audited financial report is dismissed or resigns, the insurer shall notify the Superintendent within five business days. Within ten business days thereafter, the insurer shall also furnish the Superintendent with a separate letter stating whether there were any disagreements in the preceding 24 months with the former designated accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which if not resolved to the satisfaction of the former designated accountant would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. Such disagreements must be reported whether or not they were resolved to the former designated accountant’s satisfaction. The reporting requirement of this Section applies to disagreements 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 make a written request to the former designated 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 designated accountant to the Superintendent together with its own.

**Section 6. Qualifications of Independent Certified Public Accountant**

1. Except as otherwise provided in this Rule, the Superintendent 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 and the rules of the Maine Board of Accountancy, or similar code; and as long as the accountant is in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, and if applicable with the Public Company Accounting Oversight Board, or, for a Canadian or British company, is a chartered accountant in good standing.
2. The Superintendent shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:
3. Is out of compliance with the requirements of Subsection A of this Section; or
4. Has either directly or indirectly entered into any agreement of indemnity or release from liability with respect to the audit of the insurer, including any arrangement 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. Indemnification agreements are not permitted even if the liabilities to be indemnified result in part from knowing or other misrepresentations made by the insurer or its representatives. This Paragraph does not prohibit the purchase of appropriate professional liability insurance from a carrier unaffiliated with the insurer, nor does it prohibit the accountant from pursuing an action for contribution or other legal recourse against the insurer.

C. An insurer may enter into an agreement with a qualified independent certified public accountant 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 24-A M.R.S.A. Chapter 57, the mediation or arbitration provisions shall operate at the option of the statutory successor.

D. No accounting firm partner or other individual serving as the lead partner or audit manager with primary responsibility for rendering a report may act in that capacity for the same insurer or one or more of its insurance subsidiaries or affiliates for more than five consecutive years. Following a period of service, the individual 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 five years.

(1) An insurer may make application to the Superintendent, at least thirty (30) days before the end of the calendar year, for relief from the requirements of this Subsection on the basis of unusual circumstances. The Superintendent may consider the following factors in determining whether the relief should be granted:

(a) The number of partners in the firm, the expertise of the partners, and the number of insurance clients of the firm;

(b) The premium volume of the insurer; and

(c) The number of jurisdictions in which the insurer transacts business.

(2) An insurer granted relief under Paragraph (1) shall file a copy of the Superintendent’s approval with the NAIC, in an electronic format acceptable to the NAIC, and shall make such additional filings as may be required by any state in which the insurer is licensed.

E. The Superintendent shall not recognize an individual as a qualified independent certified public accountant, nor accept an annual audited financial report prepared in whole or in part by an individual, if he or she:

(1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 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 Rule; 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 Rule.

F. The Superintendent shall not recognize an individual or firm as a qualified independent certified public accountant, nor accept an annual audited financial report prepared in whole or in part by an individual or firm, if the individual or firm provides to the insurer, contemporaneously with the audit, any services that would impair the accountant’s independence from the insurer by causing the accountant to function in the role of management, to have the authority to audit the accountant’s own work, or to serve in an advocacy role for the insurer.

(1) The following non-audit services violate this Subsection, unless authorized by the Superintendent pursuant to Paragraph 2:

(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 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 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 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 or expert services unrelated to the audit; or

(i) Any other services that the Superintendent determines are impermissible.

(2) The Superintendent may exempt an insurer from the prohibitions of Paragraph 1 for any calendar year in which the insurer has direct written and assumed premiums of less than $100,000,000 and files a written request with the Superintendent, at least 30 days before the end of the calendar year, explaining the nature of the non-audit services to be provided and demonstrating to the satisfaction of the Superintendent that strict compliance with the required separation of functions would impose an unreasonable financial or organizational hardship upon the insurer, and that the services to be provided will not compromise the integrity of the audit.

(3) A qualified independent certified public accountant who performs the audit may engage in non-audit services that are not described in Paragraph 1, including tax services, only if the insurer is a SOX-Compliant Insurer as defined in Section 16 or if the activity is approved in advance by the Audit Committee in accordance with Subsection H. The Audit Committee may delegate the approval authority to one or more designated members of the Audit Committee if the decisions of any member to whom this authority is delegated are presented to the full Audit Committee for review at each of its scheduled meetings.

(4) The Superintendent shall consider the analogous provisions of Securities and Exchange Commission Final Rule No. 33-8183, *Strengthening the Commission’s Requirements Regarding Auditor Independence* (adopted January 28, 2003), when evaluating whether an accountant is performing services that would impair the accountant’s independence. The SEC Rule may be found online at <http://www.sec.gov/rules/final/33-8183.htm>.

G. If the Superintendent determines that an accountant is not qualified, the insurer shall replace the accountant with another whose relationship with the insurer is qualified within the meaning of this Rule. If the insurer contests the Superintendent’s determination, the Superintendent shall hold an adjudicatory hearing pursuant to 24‑A M.R.S.A. §229.

H. All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer must be preapproved by the Audit Committee, except for non-audit services satisfying all of the following criteria:

(1) The aggregate amount of all 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 Audit Committee and approved prior to the completion of the audit by the Audit Committee or by one or more members of the Audit Committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the Audit Committee.

I. The Superintendent 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 as a partner or senior manager. An insurer may make application to the Superintendent for relief from the requirements of this Subsection on the basis of unusual circumstances. An insurer granted relief shall file a copy of the Superintendent’s approval with the NAIC, in an electronic format acceptable to the NAIC, and shall make such additional filings as may be required by any state in which the insurer is licensed.

**Section 7. Consolidated or Combined Audits**

An insurer may make written application to the Superintendent 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% 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 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 8. Scope of Audit and Report of Independent Certified Public Accountant**

Financial statements furnished pursuant to Section 3 shall be examined by the independent certified public accountant. The audit of the insurer’s financial statements shall be conducted in accordance with applicable generally accepted auditing standards. 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 9. Notification of Adverse Financial Condition**

1. The designated accountant shall make a written report to the Superintendent, to each member of the insurer’s board of directors, and to the insurer’s Audit Committee, within five business days after making any determination that the insurer has materially misstated its financial condition as reported to the Superintendent or that the insurer does not meet the minimum capital and surplus requirements of the Maine Insurance Code. An insurer that has received a report pursuant to this Subsection shall forward a copy of the report to the Superintendent within five business days after receiving the report, and shall provide the independent certified public accountant making the report with evidence that the report has been furnished to the Superintendent.

B. No independent public accountant shall be liable in any manner to any person for any statement made in good faith for the purpose of compliance with the requirements of this Section.

C. If the accountant, subsequent to the date of the audited financial report filed pursuant to this Rule, becomes aware of facts that might have affected his or her report, the accountant shall act in a manner consistent with applicable professional obligations, which at the time of adoption of this Rule include taking such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants.

**Section 10. Evaluation of Insurer’s Internal Controls**

A. An insurer’s board of directors and management shall have effective internal controls designed to provide reasonable assurance regarding the reliability of the financial statements required by Subsections 3(B) through 3(F) of this Rule, including 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 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 financial statements.

B. At the time the annual audited financial report is filed, each insurer shall furnish the Superintendent with a Communication of Internal Control Related Matters Noted in an Audit, which is a written report prepared by the accountant acknowledging that the accountant has evaluated the insurer’s internal controls pursuant to generally accepted auditing standards, and describing any material weaknesses in the insurer’s internal control structure that were noted by the accountant during the audit and were unremediated as of the financial statement date. No further detail need be provided if the accountant does not identify any unremediated material weaknesses. If the internal control evaluation cannot be finalized by the time the annual audited financial report is filed, the insurer may file the evaluation up to 60 days later. If unremediated material weaknesses are identified, the insurer must provide a description of remedial actions taken or proposed, if those actions are not described in the accountant’s report. The accountant shall communicate any material weaknesses and significant deficiencies noted during a financial statement audit to the insurer’s management and Audit Committee. The insurer must retain all communications with the independent certified public accountant relating to material weaknesses or significant deficiencies in accordance with Subsection 12(D), and make them available for examination by the Superintendent.

C. Together with the Communication of Internal Control Related Matters Noted in an Audit required pursuant to Subsection B, all insurers, and all groups of insurers filing annual audited financial reports on a consolidated basis, shall file Management’s Report of Internal Control over Financial Reporting, as of December 31 immediately preceding if their direct written and assumed premiums for the year, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, were $500,000,000 or more, or if the insurer has been ordered by the Superintendent to file the report after the occurrence of a risk-based-capital action level event pursuant to 24‑A M.R.S.A. §§ 6453 through 6456 or a determination of hazardous financial condition pursuant to Bureau of Insurance Rule 710. Except as otherwise provided in Subsection 16(C) for SOX-Compliant Insurers, 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 internal control over financial reporting and an assertion, to the best of management’s knowledge and belief, after diligent inquiry, as to whether its internal 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 internal control over financial reporting;

(4) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(5) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there are any unremediated material weaknesses in its internal control 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).

D. Management shall document and make available upon financial condition examination the basis upon which the assertions in Management’s Report of Internal Control 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) Any documentation provided by the insurer in support of its internal control evaluation during the course of a financial condition examination shall be kept confidential pursuant to Subsection 12(E).

(3) If the insurer considers any information disclosed by a report filed pursuant to Subsection B or C to be confidential under Maine law, the insurer shall file a request for protection from disclosure, identifying with particularity the information the insurer considers to be confidential and the reasons the insurer believes the information filed is not a public record within the meaning of the Maine Freedom of Access Law, 1 M.R.S.A. §§ 401 *et seq.*

***Drafting Note:*** *It is recommended that the company officer responsible for financial reporting not be a member of the Audit Committee and that the independent committee members meet periodically with the independent certified public accountant, with no management present, to discuss the strengths and weaknesses of the insurer’s or group’s internal control environments.*

**Section 11. Accountant’s Letter of Qualifications**

The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual 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 and the rules of professional conduct of the Maine Board of 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 Rule 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 that the annual audited financial report and his opinion thereon must be filed in compliance with this Rule, and that the Superintendent will be relying on this information in the monitoring and regulation of the financial position of insurers;

D. That the accountant consents and agrees to retain and to make available for review by the Superintendent, or the Superintendent’s designee or appointed agent, all work papers and other audit documents, as required pursuant to 24 M.R.S.A. §2307(3), 24-A M.R.S.A. §414(5), or 24‑A M.R.S.A. §4233(2), as applicable;

E. 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; and

F. That the accountant is in compliance with the requirements of Section 6 of this Rule.

**Section 12. CPA Work Papers and Audit Communications**

A. The accountant shall preserve all work papers prepared in the conduct of the accountant’s examination and make them available for review and copying by Bureau of Insurance examiners in accordance with the requirements of this Section and, as applicable, the requirements of 24 M.R.S.A. §2307(3), 24-A M.R.S.A. §414(5), or 24‑A M.R.S.A. §4233(2). The accountant and the insurer shall in like manner preserve and make available any communications related to the audit between the accountant and the insurer. If the work papers or audit communications are maintained in electronic form, the Superintendent may make electronic copies.

B. Work papers include all 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 of the financial statements of an insurer. Work papers may include, but are not limited to, audit planning documentation, work programs, analyses, reconciliations, abstracts, narratives, flow charts, memoranda, letters of confirmation and representation, copies or abstracts of company documents and schedules, and commentaries prepared or obtained by the independent certified public accountant and the accountant’s employees in connection with the accountant’s examination of the financial statements of an insurer.

C. The Superintendent may have access to work papers and audit communications pursuant to this Section at the offices of the insurer, at the offices of the Bureau of Insurance, or at any other reasonable place designated by the Superintendent.

D. The audit work papers and communications shall be retained for at least six years after the audit report is filed. If no examination report covering the period of the audit has been filed in the Bureau of Insurance pursuant to 24-A M.R.S.A. §226(3), the Superintendent, upon timely notice to the accountant or the insurer, as applicable, shall extend the retention period to seven years, or until the examination report has been filed, whichever is sooner.

E. All documents obtained or copied by the Superintendent in accordance with this Section are examination working papers within the meaning of 24-A M.R.S.A. §225(3), and the Superintendent shall protect their confidentiality accordingly.

**Section 13. Requirements for Audit Committees**

A. The board of directors of every insurer required to file an annual audited financial report pursuant to this Rule shall appoint an Audit Committee for the purpose of overseeing its accounting and financial reporting processes of an insurer and audits of financial statements. If a separate Audit Committee is not designated by the insurer, the insurer’s entire board of directors shall constitute the Audit Committee.

B. The Audit Committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to this Rule. Each accountant shall report directly to the Audit Committee.

C. If the insurer is required to maintain an internal audit function pursuant to Section 14, or otherwise maintains an internal audit function, the Audit Committee shall be responsible for overseeing the insurer’s internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities.

D. Each member of the Audit Committee shall be a member of the board of directors of the insurer, or a member of the board of directors of a controlling entity that has elected pursuant to Subsection H to have its audit committee serve as the insurer’s Audit Committee.

E. The Audit Committee must include a minimum proportion of independent members in accordance with the following table. If the same Audit Committee is responsible for multiple insurers, their premium volume shall be combined. If the insurer is financially troubled, the Superintendent may impose enhanced independence requirements pursuant to applicable laws.

|  |  |  |
| --- | --- | --- |
| **Prior Calendar Year Direct Written and Non-Affiliate Assumed Premiums** | | |
| **Under $300,000,000** | **Between $300,000,000 and $500,000,000** | **Over $500,000,000** |
| No minimum require­ments. However, insurers are encouraged to structure their Audit Committees so that at least three-fourths of the members are independent. | At least half the members shall be independent. Insurers are encouraged to structure their Audit Committees so that at least three-fourths of the members are independent. | At least three-fourths of the members shall be independent. |

F. In order to be considered independent for purposes of this Section, a member of the Audit Committee may not, other than in his or her capacity as a member of the 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 the insurer is required by law to have a board of directors with an insufficient number of independent members to meet the standards of Subsection E, the insurer shall appoint other directors to the Audit Committee, subject to the Superintendent’s approval, who are not officers or employees of the insurer or any of its affiliates. In evaluating whether a director is independent within the meaning of this Section, the Superintendent shall consider the standards in Securities and Exchange Commission Final Rule No. 33-8220, *Standards Relating to Listed Company Audit Committees* (adopted April 9, 2003), which may be found online at <http://www.sec.gov/rules/final/33-8220.htm>.

G. If a member of the Audit Committee ceases to be independent for reasons outside the member’s reasonable control, that person, with notice by the responsible entity to the Superintendent, may remain an Audit Committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year after the occurrence of the event that caused the member to be no longer independent.

H. The controlling person of a group of affiliated insurers may designate its audit committee to serve as the Audit Committee for one or more of those the insurers for purposes of this Rule. A controlling person exercising this election shall provide written notice to each of the insurance supervisory officials 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 to the Superintendent by the insurer, which shall include a description of the basis for the change. The election shall remain in effect until rescinded.

I. (1) The Audit Committee shall require the accountant that performs any audit required by this Rule for the insurer to submit a timely report to the Audit Committee in accordance with generally accepted auditing standards, including:

(a) All significant accounting policies and material permitted practices;

(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 Paragraph 1 may be provided to the 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 Audit Committee.

J. An insurer with direct written and assumed premium less than $500,000,000, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, may make application to the Superintendent for a waiver from the requirements of this Section based upon hardship. An insurer granted relief shall file a copy of the Superintendent’s approval with the NAIC, in an electronic format acceptable to the NAIC, and shall make such additional filings as may be required by any state in which the insurer is licensed.

**Section 14. Internal Audit Function Requirements**

A. Each insurer whose insurer-level or group-level premium equals or exceeds the thresholds for conducting an Own Risk and Solvency Assessment (ORSA), as set forth in 24‑A M.R.S. §§ 222(8)(B-3) and 423-F(1), shall establish and maintain an internal audit function in compliance with this Section. If an insurer becomes subject to this section due to an increase in premium volume, it shall have one year after the year the threshold is reached to come into full compliance.

***Drafting Note:*** *An insurer or group of insurers exempt from the requirements of this Section is encouraged, but not required, to consider the establishment of an internal audit function, based upon a review of its business type, sources of capital, and other risk factors and an assessment, in light of these factors, of the estimated costs and potential benefits of an internal audit function.*

B. An insurer that is a member of a group of affiliated insurers may establish its internal audit function at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level.

C. The insurer or group shall establish an internal audit function that brings a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes. The internal audit function shall provide independent, objective, and reasonable assurance to the Audit Committee and insurer management regarding the insurer’s governance, risk management and internal controls, by performing general and specific audits, reviews, and tests, and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and statutory and regulatory requirements.

D. To ensure that internal auditors remain objective, the internal audit function shall be organizationally independent. The internal audit function may not defer ultimate judgment on audit matters to others, and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. This Paragraph does not prohibit dual-reporting relationships as long as they do not impair the independence and objectivity of the internal audit function.

E. The head of the internal audit function shall report to the Audit Committee regularly, no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function’s independence or effectiveness, material findings from completed audits, and the appropriateness of corrective actions implemented by management as a result of audit findings.

**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 Rule; or

(2) Omit to state, or cause another person to omit to state, any material fact whose omission renders misleading, in light of the circumstances under which the statement was made, a statement made to an accountant in connection with any audit, review, or communication required under this Rule.

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 Rule 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 Superintendent, 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 Audit Committee.

**Section 16. SOX-Compliant Insurers**

A. For purposes of this Section, a “SOX-Compliant Insurer” means an insurer that complies, or is a direct or indirect wholly-owned subsidiary of an entity that complies, with all of the following provisions of the Sarbanes-Oxley Act of 2002: the preapproval requirements of Section 201 (Subsection 10A(i) of the Securities Exchange Act of 1934); the audit committee independence requirements of Section 301 (Paragraph 10A(m)(3) of the Securities Exchange Act of 1934); and the internal control assessment requirements of Section 404. An insurer that is not directly or indirectly subject to these provisions of the Sarbanes-Oxley Act may elect to be treated as a SOX-Compliant Insurer by demonstrating to the satisfaction of the Superintendent that it or its direct or indirect parent complies voluntarily with these provisions.

B. A SOX-Compliant Insurer’s compliance with the provisions set forth in Subsection A shall constitute compliance with the Audit Committee requirements of Section 13 and the preapproval requirements of Subsection 6(H).

C. In satisfaction of the internal control reporting requirements of Section 10, a SOX-Compliant Insurer may file its or its parent’s Section 404 Report, meaning management’s report on “internal control over financial reporting” (as defined by the Securities and Exchange Commission) together with the related attestation report of the independent certified public accountant, as prepared in compliance with Section 404 of the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder by the Securities and Exchange Commission, along with either:

(1) A positive statement by management that the scope of the Section 404 Report encompasses all material processes (*e.g.,* assessments, accounting treatments, permitted practices, internal controls, or other internal reporting processes) having a material impact on the preparation of the insurer’s or group’s audited statutory financial statements filed pursuant to Subsections 3(B) through 3(F) of this Rule; or

(2) A report prepared in compliance with Subsection 10(C) on all material processes having a material impact on the preparation of the insurer’s or group’s audited statutory financial statements that were not covered by the Section 404 Report.

**Section 17. Effect of Changes in Premium Volume**

An insurer that ceases to be in compliance with the Audit Committee independence requirements of Section 13 as a result of an increase in premium volume or a business combination shall have one calendar year to come into compliance with the new independence requirements. An insurer that becomes subject to a reporting requirement as a result of an increase in premium volume or a business combination shall have two calendar years to come into compliance with the new reporting requirements.

**Section 18. Foreign and Alien Insurers**

A. Foreign or alien insurers filing audited financial reports and internal control reports in another state in compliance with that state’s requirements are exempt from all other requirements of this Rule as long as:

(1) The Superintendent has determined that the other state’s requirements for audited financial reports, internal control reporting, and audit committee independence are substantially similar to the requirements of this Rule;

(2) A copy of the Audited Financial Report, Communication of Internal Control Related Matters Noted in an Audit, and the Accountant’s Letter of Qualifications that are filed with the other state are filed with the Superintendent, or filed with the National Association of Insurance Commissioners and made available to the Superintendent on request, in accordance with the filing dates specified in this Rule; and

(3) A copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the Superintendent within the time specified in Section 9 of this Rule.

B. If the other state has substantially similar audited financial report requirements but does not have substantially similar internal control report requirements, and the requirements of Subsection A have otherwise been satisfied, then the exemption otherwise available under this Section does not apply to the Management’s Report of Internal Control, which must comply with the applicable provisions of this Rule except that it need not be filed directly with the Superintendent if it is included with the insurer’s filed audited financial report.

C. By asserting an exemption under this Section, an insurer represents that the Superintendent may rely on the documents filed with the other state and acknowledges that any material violation of the applicable reporting requirements constitutes a violation of this Rule and any other applicable Maine law.

D. In the case of Canadian and British insurers, the annual 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. For such insurers, the letter required in Section 5 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the Superintendent pursuant to this Rule and shall affirm that the opinion expressed is in conformity with those requirements. A report filed by a Canadian insurer with the appropriate Canadian regulator shall be considered filed with another state for purposes of this Section.

**Section 19. Effective Date**

This Rule is effective January 1, 2005. The five-year rotation requirement in Subsection 6(D) applies to audited financial reports beginning with the report for calendar year 2002. The 2009 amendments to this rule are effective January 1, 2010, and apply to audited financial reports beginning with the report for calendar year 2010. The 2019 amendments to this Rule are effective January 1, 2020.

**Section 20. Severability**

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

STATUTORY AUTHORITY: 24 M.R.S.A. §2317(2), 24-A M.R.S.A. §§ 212, 221-A(5), and 4218

EFFECTIVE DATE:

January 1, 2005 – filing 2004-582

AMENDED:

January 1, 2010 – filing 2009-682

November 6, 2019 – filing 2019-192