

ARC 7124B

INSURANCE DIVISION[191]**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 505.8, the Iowa Insurance Division hereby gives Notice of Intended Action to adopt new Chapter 98, "Annual Financial Reporting Requirements," Iowa Administrative Code.

The rules in Chapter 98 improve the Iowa Insurance Division's surveillance of the financial condition of insurers by requiring an annual audit of financial statements by certified public accountants, Communication of Internal Control Related Matters Noted in an Audit, and Management's Report of Internal Control Over Financial Reporting.

This chapter does not provide for waivers.

Any interested person may make written comments on the proposed rules on or before September 30, 2008. Written comments may be sent to Matt Hargrafen, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted electronically to matt.hargrafen@iid.iowa.gov or via facsimile to (515)281-3059.

A public hearing will be held at the office of the Insurance Division at 10 a.m. on September 30, 2008. The Division is located at 330 Maple Street, Des Moines, Iowa.

These rules are intended to implement Iowa Code section 505.8.

The following amendment is proposed.

Adopt the following **new** 191—Chapter 98:

CHAPTER 98
ANNUAL FINANCIAL REPORTING REQUIREMENTS
[Prior to January 1, 2010, see 191—5.25(505)]

191—98.1(505) Authority. This chapter is promulgated by the commissioner of insurance pursuant to Iowa Code section 505.8.

191—98.2(505) Purpose. The purpose of this chapter is to improve the Iowa insurance division's surveillance of the financial condition of insurers by requiring an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants, Communication of Internal Control Related Matters Noted in an Audit, and Management's Report of Internal Control Over Financial Reporting.

98.2(1) Every insurer (as defined in rule 98.3(505)) shall be subject to this chapter. Insurers having direct premiums written in this state of less than \$1 million in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from this chapter for such 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 or treaties of reinsurance of \$1 million or more will not be so exempt.

98.2(2) Foreign or alien insurers filing the audited financial report in another state, pursuant to that state's requirement for filing of audited financial reports, which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from rules 98.4(505) through 98.11(505) if:

a. A copy of the audited financial report, Communication of Internal Control Related Matters Noted in an Audit, and the letter to the insured with the accountant's qualifications that are filed with such other state

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are filed with the commissioner in accordance with the filing dates specified in rules 98.4(505), 98.11(505), and 98.17(505), respectively (Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions Canada).

b. A copy of any Notification of Adverse Financial Condition Report filed with such other state is filed with the commissioner within the time specified in rule 98.10(505).

98.2(3) 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.

98.2(4) This rule shall not prohibit, preclude or in any way limit the commissioner of insurance from ordering or conducting or performing examinations of insurers pursuant to Iowa Code chapter 507.

191—98.3(505) Definitions. The terms and definitions contained herein are intended to provide definitional guidance as the terms are used within this chapter.

"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 the individual or firm is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

"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.

"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 audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this chapter at the election of the controlling person. Refer to subrule 98.13(5) for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

"Audited financial report" means and includes those items specified in rule 98.5(505).

"Group of insurers" means those licensed insurers included in the reporting requirements of Iowa, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

"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.

"Independent board member" has the same meaning as described in subrule 98.13(3).

"Insurer" means a licensed insurer under Title XIII of the Iowa Code, except entities organized under Iowa Code chapters 512A, 512B, 518, and 518A.

"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 statements, i.e., those items specified in paragraphs "b" through "g" of subrule 98.5(2), 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 paragraphs "b" through "g" of subrule 98.5(2), 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, i.e., those items specified in paragraphs "b" through "g" of subrule 98.5(2).

"NAIC" means the National Association of Insurance Commissioners.

"SEC" means the United States Securities and Exchange Commission.

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“*Section 404*” means Section 404 of the Sarbanes-Oxley Act, 15 U.S.C. Section 7262, and the SEC’s rules and regulations promulgated thereunder.

“*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.

“*SOX*” means the Sarbanes-Oxley Act of 2002, Pub.L. 107-204, 116 Stat. 745.

“*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 SOX: (1) the preapproval requirements of Section 202 (Section 10A(i) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78j-l(i)); (2) the audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78j-l(m)(3)); and (3) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K, 17 C.F.R. Section 228.308).

191—98.4(505) General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment.

98.4(1) All insurers shall have an annual audit by an independent certified public accountant and shall file an 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 90 days’ advance notice to the insurer.

98.4(2) Extensions of the June 1 filing date may be granted by the commissioner for 30-day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting such 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 days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

98.4(3) If an extension is granted in accordance with the provisions of rule 98.4(505), a similar extension of 30 days is granted to the filing of Management’s Report of Internal Control Over Financial Reporting.

98.4(4) Every insurer required to file an annual audited financial report pursuant to this chapter shall designate a group of individuals who shall constitute its audit committee. The audit committee of an entity that controls an insurer may be deemed to be the insurer’s audit committee for purposes of this chapter at the election of the controlling person.

191—98.5(505) Contents of annual audited financial report.

98.5(1) 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 in conformity with statutory accounting practices prescribed, or otherwise permitted, by the division of insurance of the state of domicile.

98.5(2) The annual audited 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 flow.
- e. Statement of changes in capital and surplus.
- f. Notes to financial statements. These notes shall be those required by the appropriate National Association of Insurance Commissioners (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 Iowa Code sections 508.11 and 515.63, with a written description of the nature of these differences.

g. 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 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 audited financial report, the comparative data may be omitted.

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191—98.6(505) Designation of independent certified public accountant. Each insurer required by this chapter to file an annual audited financial report must, within 60 days after becoming subject to such requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit as set forth in this chapter. Insurers not retaining an independent certified public accountant on August 28, 1991, shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first audited financial report is to be filed.

98.6(1) 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 Title XIII of the Iowa Code and administrative rules thereunder that relate to accounting and financial matters and affirming that the accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the insurance division, specifying such exceptions as the accountant may believe appropriate.

98.6(2) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the division of this event. The insurer shall also furnish the commissioner with a separate letter within ten business days of the above notification stating whether in the 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, and if any such disagreements, if not resolved to the satisfaction of the former accountant, would have caused the accountant to make reference to the subject matter of the disagreement in connection with the opinion. The disagreements required to be reported in response to this rule include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this rule are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for the presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request such 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 the disagreement; and the insurer shall furnish such responsive letter from the former accountant to the commissioner together with its own.

191—98.7(505) Qualifications of independent certified public accountant.

98.7(1) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant that:

- a.* Is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, is not a chartered accountant; or
- b.* 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.

98.7(2) Except as otherwise provided herein, independent certified public accountants shall be recognized as qualified as long as they conform to the standards of their profession, as contained in the Code of Professional Ethics of the AICPA and rules and regulations and the code of ethics and rules of professional conduct of the Iowa accountancy examining board, or similar code.

98.7(3) 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 Iowa Code chapter 507C, the mediation or arbitration provisions shall operate at the option of the statutory successor.

98.7(4) The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than five consecutive years. 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 five 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 30 days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

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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.

98.7(5) The insurer shall file, with its annual statement filing, the approval for relief from subrule 98.7(4) with the states in which it is licensed or doing business 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.

98.7(6) The commissioner shall neither recognize as a qualified independent certified public accountant nor accept any annual audited financial report prepared in whole or in part by any natural person who:

a. 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;

b. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this chapter; or

c. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this chapter.

98.7(7) The commissioner of insurance, under 191—Chapter 3, may 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 the opinion of the accountant on the financial statements in the annual audited financial report made pursuant to this chapter and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this chapter.

98.7(8) The commissioner shall not recognize as a qualified independent certified public accountant or accept an annual audited financial report prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following nonaudit 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:

(1) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

(2) The insurer has competent personnel (or engages a third-party actuary) to estimate the reserves for which management takes responsibility; and

(3) 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 an audit; or

i. Any other services that the commissioner determines, by rule, are impermissible.

98.7(9) 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 the accountant's own work, and cannot serve in an advocacy role for the insurer.

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98.7(10) Insurers having direct written and assumed premiums of less than \$100 million in any calendar year may request an exemption from subrule 98.7(8). 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 subrule 98.7(8) would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

98.7(11) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services that are not described in subrule 98.7(8) or that do not conflict with subrule 98.7(9), only if the activity is approved in advance by the audit committee, in accordance with subrule 98.7(12).

98.7(12) All auditing services and nonaudit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to nonaudit services if the insurer is a SOX compliant entity or a direct or indirect wholly owned subsidiary of a SOX compliant entity or if:

a. The aggregate amount of all such nonaudit services provided to the insurer constitutes not more than 5 percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the nonaudit services are provided;

b. The services were not recognized by the insurer at the time of the engagement to be nonaudit services; and

c. 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.

98.7(13) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by subrule 98.7(12). The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

98.7(14) 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 subrule 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.

98.7(15) The insurer shall file, with its annual statement filing, the approval for relief from the requirements of subrule 98.7(14) with the states in which it is licensed or doing business 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.

191—98.8(505) 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 which utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such 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:

1. Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet.

2. Amounts for each insurer subject to this rule shall be stated separately.

3. Noninsurance operations may be shown on the worksheet on a combined or individual basis.

4. Explanations of consolidating and eliminating entries shall be included.

5. 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.

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191—98.9(505) Scope of audit and report of independent certified public accountant. Financial statements furnished pursuant to rule 98.5(505) shall be examined by the independent certified public accountant. The 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 AICPA, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU Section 319, for those insurers required to file a Management's Report of Internal Control Over Financial Reporting pursuant to rule 98.15(505), 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.

191—98.10(505) Notification of adverse financial condition.

98.10(1) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its 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 audit or that the insurer does not meet the applicable minimum capital and surplus requirements of Iowa Code sections 508.5, 508.10, 515.8, 515.10 and 515.12(5) as of that date. An insurer who has received a report pursuant to this rule shall forward a copy of the report to the commissioner within five business days of receipt of such 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 such evidence within the required five-business-day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five business days.

98.10(2) No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with subrule 98.10(1) if such statement is made in good faith in compliance with this rule.

98.10(3) If the accountant, subsequent to the date of the audited financial report filed pursuant to this rule, becomes aware of facts which might have affected this report, the insurance division notes the obligation of the accountant to take such action as prescribed in Volume 1, AU Section 561 of the Professional Standards of the AICPA.

191—98.11(505) Communication of Internal Control Related Matters Noted in an Audit. In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within 60 days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness (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) as of December 31 immediately preceding (so as to coincide with the audited financial report discussed in rule 98.4(505)) in the insurer's internal control over financial reporting noted by the accountant during the course of the audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state. 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.

191—98.12(505) Definition, availability and maintenance of independent certified public accountants' work papers. Work papers 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 audit of the financial statements of an insurer. Work papers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation,

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abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the accountant's audit of the financial statements of an insurer and which support the accountant's opinion.

98.12(1) Every insurer required to file an audited financial report pursuant to this chapter shall require the accountant to make available for review by insurance division examiners all work papers prepared in the conduct of the accountant's audit and any communications between the accountant and the insurer that are related to the audit at the offices of the insurer, at the insurance division, or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit work papers and communications until the insurance division has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

98.12(2) In the conduct of the aforementioned periodic review by the insurance division examiners, it shall be agreed that photocopies of pertinent audit work papers may be made and retained by the division. Such reviews by the division examiners shall be considered investigations, and all work papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination work papers generated by the division.

191—98.13(505) Requirements for audit committees. This rule shall not apply to foreign or alien insurers licensed in this state or to an insurer that is a SOX compliant entity or a direct or indirect wholly owned subsidiary of a SOX compliant entity.

98.13(1) 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 chapter. Each accountant shall report directly to the audit committee.

98.13(2) 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 an entity elected pursuant to subrule 98.13(5).

98.13(3) In order to be considered independent for purposes of this rule, a member of the audit committee may not, other than in the member's 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 law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes unless they are officers or employees of the insurer or one of its affiliates.

98.13(4) 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 state, 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 from the occurrence of the event that caused the member to no longer be independent.

98.13(5) To exercise the election of the controlling person to designate the audit committee for purposes of this chapter, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and shall include a description of the basis for the election. The election may be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity until rescinded.

98.13(6) The audit committee shall require the accountant that performs for an insurer any audit required by this chapter to timely report to the audit committee in accordance with the requirements of SAS 61, Communication with Audit Committees, or its replacement, 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, the 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.

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98.13(7) If an insurer is a member of an insurance holding company system, the reports required by subrule 98.13(6) 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.

98.13(8) The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
\$0 - \$300 million	Over \$300 million - \$500 million	Over \$500 million
No minimum requirements.	Majority (50 percent or more) of members shall be independent.	Supermajority of members (75 percent or more) shall be independent.

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

b. Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

98.13(9) An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$500 million may make application to the commissioner for a waiver from the requirements of this rule based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this rule 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.

191—98.14(505) Conduct of insurer in connection with the preparation of required reports and documents.

98.14(1) No director or officer of an insurer shall, directly or indirectly:

a. 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 chapter; or

b. 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 rule.

98.14(2) 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 chapter if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

98.14(3) For purposes of subrule 98.14(2), 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:

a. 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);

b. Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

c. Not to withdraw an issued report; or

d. Not to communicate matters to an insurer's audit committee.

191—98.15(505) Management's Report of Internal Control Over Financial Reporting.

98.15(1) Every insurer required to file an audited financial report pursuant to this chapter that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of \$500 million or more shall prepare a report of the insurer's or

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group of insurers' internal control over financial reporting. The report shall be filed with the commissioner along with the Communication of Internal Control Related Matters Noted in an Audit described under rule 98.11(505). Management's Report of Internal Control Over Financial Reporting shall be as of December 31 immediately preceding.

98.15(2) Notwithstanding the premium threshold in subrule 98.15(1), the 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 hazardous to policyholders, creditors or the general public.

98.15(3) An insurer or a group of insurers that is (1) directly subject to Section 404; part of a holding company system whose parent is directly subject to Section 404; not directly subject to Section 404 but is a SOX compliant entity; or a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity may file its or its parent's Section 404 Report and an addendum in satisfaction of this rule's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in subrule 98.5(2), paragraphs "b" through "g") were included in the scope of the Section 404 Report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in subrule 98.5(2), paragraphs "b" through "g") excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers 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 Section 404 Report, the insurer or group of insurers may either file (1) a report as described in this rule, or (2) the Section 404 Report and a report as described in this rule for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

98.15(4) Management's Report of Internal Control Over Financial Reporting shall include:

- a. A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;
- b. 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;
- c. A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;
- d. A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;
- e. 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 one or more unremediated material weaknesses in its internal control over financial reporting;
- f. A statement regarding the inherent limitations of internal control systems; and
- g. Signatures of the chief executive officer and the chief financial officer (or equivalent position/title).

98.15(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subrule 98.15(4), 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.

a. 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.

b. Management's Report of Internal Control Over Financial Reporting, required by subrule 98.15(1), and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the state insurance department.

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191—98.16(505) Exemptions. Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this chapter if the commissioner finds, upon review of the application, that compliance with this chapter 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 days from a denial of an insurer's written request for an exemption from this chapter, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with 191—Chapter 3.

191—98.17(505) Letter to insured with accountant's 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:

1. That the accountant is independent with respect to the insurer and conforms to the standards of the accountant's profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the rules of professional conduct of the Iowa accountancy examining board, or similar code.

2. 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 chapter shall be construed as prohibiting the accountant from utilizing such staff as is deemed appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

3. That the accountant understands the annual audited financial report and the opinion thereon will be filed in compliance with this chapter and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.

4. That the accountant consents to the requirements of rule 98.18(505) and that the accountant consents and agrees to make available for review by the commissioner, or a designee or appointed agent, the workpapers, as defined in rule 98.12(505).

5. A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA.

6. A representation that the accountant is in compliance with the requirements of rule 98.7(505).

191—98.18(505) Canadian and British companies. 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 supervisory authority, duly audited by an independent chartered accountant. For such insurers, the letter required in rule 98.6(505) shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to rule 98.4(505).

191—98.19(505) Severability provision. If any rule or portion of a rule of this chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the chapter or the applicability of its provision to other persons or circumstances shall not be affected.

191—98.20(505) Effective date. This chapter is applicable on or after January 1, 2010.

These rules are intended to implement Iowa Code section 505.8.