

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R205-08

Effective January 1, 2010

EXPLANATION – Matter in *italics* is new; matter in brackets [~~TSomitted material~~ST] is material to be omitted.

AUTHORITY: §§1-30, NRS 679B.130, 680A.265 and 680A.270.

A REGULATION relating to insurance; requiring the board of directors of certain insurers to establish an audit committee to oversee the accounting and financial reporting processes and the audits of the insurer; establishing the duties and responsibilities of an audit committee; prohibiting the officers and directors of certain insurers from making or failing to make certain statements; requiring certain insurers to document and maintain certain information; requiring certain insurers to provide certain reports to the Commissioner of Insurance; authorizing a waiver of the provisions of this regulation for certain insurers; exempting certain insurers from the provisions of this regulation; and providing other matters properly relating thereto.

Section 1. Chapter 680A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 28, inclusive, of this regulation.

Sec. 2. *“Affiliate” has the meaning ascribed to it in NRS 692C.030.*

Sec. 3. *“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.*

Sec. 4. *“Direct written and assumed premiums” means the combined total of direct premiums from non-affiliates for the reporting entities.*

Sec. 5. *“Group of insurers” means those licensed insurers required to be reported by an insurance holding corporation pursuant to the provisions of chapter 692C of NRS, or a set of*

insurers identified by management for the purpose of assessing the effectiveness of internal control over financial reporting.

Sec. 6. *“Insurance holding corporation” has the meaning ascribed in NRS 692B.050.*

Sec. 7. *“Internal control over financial reporting” means a process effected by the board of directors, management and other personnel of an insurer or other entity and designed to provide reasonable assurance regarding the reliability of the financial statements required pursuant to NRS 680A.265 and 680A.270 and the regulations adopted pursuant thereto, including, without limitation, 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, and that receipts and expenditures are being made only in accordance with the authorization of management and the board of 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 of the entity.*

Sec. 8. *“Section 404” means Section 404 of the Sarbanes-Oxley Act of 2002, Public Law 107-204, 15 U.S.C. § 7262, and the regulations adopted pursuant thereto.*

Sec. 9. *“Section 404 Report” means the Management Report of Internal Control over Financial Reporting, as defined by the Securities and Exchange Commission, and the related attestation report of the independent certified public accountant.*

Sec. 10. *“SOX Compliant Entity” means an entity that is required to comply with, or voluntarily complies with, the following provisions of the Sarbanes-Oxley Act of 2002, Public Law 107-204:*

- 1. The requirements for preapproval pursuant to 15 U.S.C. § 78j-1(h);*
- 2. The requirements for the independence of members of the audit committee pursuant to 15 U.S.C. § 78j-1(m)(3); and*
- 3. The requirements for internal control evaluation and reporting pursuant to 15 U.S.C. § 7262(b).*

Sec. 11. *1. The purpose of sections 11 to 28, inclusive, of this regulation is to improve the Division’s surveillance of the financial condition of insurers by requiring:*

- (a) An annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants;*
- (b) The filing of a Communication of Internal Control Related Matters Noted in an Audit;*
and
- (c) The filing of a Management Report on Internal Control Over Financial Reporting.*

2. A foreign or alien insurer is exempt from the provisions of sections 12 to 21, inclusive, of this regulation if:

- (a) The insurer files an Audited Financial Report with the insurance regulatory authority of another state pursuant to the requirements of that state for filing an annual Audited Financial Report, if such requirements have been found by the insurance regulatory authority to be substantially similar to the requirements of this chapter; and*

(b) Copies of the following that are filed with the insurance regulatory authority of that state are filed with the Commissioner in accordance with the filing dates specified in sections 12, 18, 19 and 20 of this regulation, respectively:

- (1) An annual Audited Financial Report;*
- (2) Notification of Adverse Financial Condition;*
- (3) Communication of Internal Control Related Matters Noted in an Audit; and*
- (4) An Accountant's Letter of Qualifications.*

3. A foreign or alien insurer required to file the Management Report on Internal Control Over Financial Reporting with the insurance regulatory authority of another state is exempt from filing in this State if the other state has substantially similar reporting requirements and if the report is filed with the insurance regulatory authority of the other state within the time specified.

4. The provisions of sections 11 to 28, inclusive, of this regulation do not prohibit, preclude or in any way limit the authority of the Commissioner to order, conduct or perform examinations of an insurer pursuant to the provisions of chapter 679B of NRS and the regulations adopted pursuant thereto.

Sec. 12. 1. *All insurers shall have an annual audit conducted by an independent certified public accountant and, except as otherwise provided in this subsection and subsection 2, shall file with the Commissioner an annual Audited Financial Report for each year on or before June 1 of the following year. The Commissioner may require an insurer to file an Audited Financial Report earlier than June 1 if the Commissioner provides at least 90 days' advance notice to the insurer.*

2. *Subject to the provisions of this subsection and NRS 680A.265, upon good cause shown by the insurer and its independent certified public accountant, the Commissioner may grant one or more 30-day extensions of the filing date. A request for an extension must be submitted in writing not less than 10 days before the date on which the annual Audited Financial Report is to be filed and must contain sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.*

3. *If an extension is granted pursuant to subsection 2 for filing the Audited Financial Report, a 30-day extension of the filing date of the Management Report on Internal Control Over Financial Reporting is also granted.*

4. *Every insurer required to file an annual Audited Financial Report pursuant to sections 11 to 28, inclusive, of this regulation shall designate a group of individuals as its audit committee. The audit committee of an entity that controls an insurer may be deemed the audit committee of the insurer for purposes of sections 11 to 28, inclusive, of this regulation.*

Sec. 13. 1. *The annual Audited Financial Report must include a report of the financial position of the insurer as of the end of the most recent calendar year and the results of the insurer's operations, cash flows and changes in capital and surplus for that year, in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance regulatory authority of the state of domicile.*

2. *The annual Audited Financial Report must include, without limitation:*

- (a) A report of an independent certified public accountant;*
- (b) A balance sheet reporting admitted assets, liabilities, capital and surplus;*
- (c) A statement of operations;*
- (d) A statement of cash flow;*

- (e) A statement of changes in capital and surplus;*
- (f) A summary of the ownership and relationships of the insurer and each of its affiliated companies, if any; and*
- (g) All notes to financial statements required by the appropriate annual statement instructions manual, as adopted by reference in NAC 679B.033, and the Accounting Practices and Procedures Manual, as adopted by reference in NAC 679B.033. The notes must include a reconciliation of differences, if any, between the annual Audited Financial Report filed with the Commissioner pursuant to NRS 680A.265 and the annual statement filed with the Commissioner pursuant to NRS 680A.270, with a written description of the nature of these differences.*

3. The financial statements included in the annual Audited Financial Report must be:

- (a) Prepared in a form and using language and groupings that are substantially similar to the relevant sections of the annual statement of the insurer filed with the Commissioner pursuant to NRS 680A.270; and*
- (b) Comparative, presenting the amounts as of December 31 of the most recent calendar year and the amounts as of December 31 of the immediately preceding calendar year, except that, in the first year in which an insurer is required to file an annual Audited Financial Report, the insurer may include only the data from the most recent year, omitting the comparative data from the immediately preceding calendar year.*

Sec. 14. 1. *Each insurer required to file an annual Audited Financial Report pursuant to NRS 680A.265 and the regulations adopted pursuant thereto must, within 60 days after becoming subject to the requirement, register with the Commissioner, in writing, the name and address of the independent certified public accountant or accounting firm retained to*

conduct the annual audit. An insurer who has not retained an independent certified public accountant or accounting firm on or before January 1, 2010, shall register with the Commissioner the name and address of the independent certified public accountant or accounting firm retained by the insurer not less than 6 months before the date when the first annual Audited Financial Report is to be filed.

2. The insurer shall obtain from the accountant, and shall file with the Commissioner, a copy of a letter stating that the accountant is aware of the provisions of title 57 of NRS and the regulations adopted pursuant thereto that relate to accounting and financial matters and affirming that the accountant will express his opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the provisions of title 57 of NRS and the regulations adopted pursuant thereto, specifying such exceptions as he may believe appropriate.

3. Subject to the provisions of subsections 4 and 5, if an independent certified public accountant who was the accountant for the most recent filing of the annual Audited Financial Report is dismissed or resigns, the insurer shall, within 5 business days after the dismissal or resignation, notify the Commissioner of the dismissal or resignation. Within 10 business days after notifying the Commissioner of the dismissal or resignation of the accountant, the insurer shall file with the Commissioner a separate letter stating whether, during the 24 months preceding the dismissal or resignation, there were any disagreements between the former accountant and the insurer on any matter of accounting principles or practices, financial statement disclosure, or the scope or procedure of an audit and which disagreements, if not resolved to the satisfaction of the former accountant, would have caused the accountant to

make a reference to the subject matter of the disagreement in connection with his opinion filed with the annual Audited Financial Report of the insurer.

4. The disagreements that are required to be reported pursuant to subsection 3 include both those resolved and those not resolved to the satisfaction of the former accountant. The disagreements contemplated by this section are those disagreements that occur at the decision-making level, including, without limitation, disagreements between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

5. The insurer shall request in writing that the former accountant 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 he does not agree. The insurer shall furnish the responsive letter from the former accountant to the Commissioner together with its own letter.

Sec. 15. 1. *The Commissioner will not recognize a person or firm as a qualified independent certified public accountant if the person or firm:*

(a) Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or, for an insurer domiciled in Canada or Great Britain, is not a chartered accountant or accounting firm; or

(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability, with respect to the audit of the insurer, 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.

2. *The Commissioner will recognize an independent certified public accountant as qualified if the accountant conforms to the standards contained in the AICPA Code of Professional Conduct and Bylaws. As used in this subsection, “AICPA” means the American Institute of Certified Public Accountants.*

3. *A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to the annual Audited Financial Report that has been certified by the independent certified public accountant resolved by mediation or arbitration. If a delinquency proceeding has commenced against an insurer pursuant to chapter 696B of NRS, any such mediation or arbitration provision is enforceable at the option of the statutory successor in interest to the insurer.*

4. *Beginning with the reporting period beginning on January 1, 2010, and subject to the provisions of subsections 5, 6 and 7, the lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than 5 consecutive years, beginning when the insurer registers the independent certified public accountant with the Commissioner pursuant to section 14 of this regulation. The independent certified public accountant 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 5 consecutive years.*

5. *An insurer may apply to the Commissioner for permission for an independent certified public accountant to continue in his capacity in rendering the annual Audited Financial Report of the insurer for more than 5 consecutive years or to return to a position which would be responsible for rendering an annual Audited Financial Report for the insurer and its subsidiary or affiliate in less than 5 years, upon a showing of unusual circumstances. The application must be made at least 30 days before the end of the calendar year.*

6. *The Commissioner will consider, without limitation, the following factors in determining whether to grant an exception pursuant to subsection 5:*

(a) *Whether the independent certified public accountant is an accounting firm, the number of partners within the accounting firm and the expertise of those partners;*

(b) *The number of insurers who are clients of the accounting firm;*

(c) *The premium volume of the insurer; and*

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

7. *The insurer shall file with its annual statement filing the approval from the Commissioner for the exception granted pursuant to subsection 5 with the states in which it is licensed or doing business and with the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners.*

8. *The Commissioner will not recognize as a qualified independent certified public accountant, or accept an annual Audited Financial Report prepared in whole or in part by, a natural person who:*

(a) *Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 to 1968, inclusive, or any dishonest conduct or practices under federal or state law;*

(b) *Has been found to have violated any provision of title 57 of NRS or any regulation adopted pursuant thereto with respect to any previous reports submitted pursuant to NRS 680A.265 and the regulations adopted pursuant thereto; or*

(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in any previous annual Audited Financial Report filed pursuant to NRS 680A.265 and the regulations adopted pursuant thereto.

9. The Commissioner may, pursuant to the provisions of NAC 679B.161 to 679B.480, inclusive, hold a hearing to determine whether an independent certified public accountant is qualified for the purposes of NRS 680A.265 and the regulations adopted pursuant thereto. If, based on the evidence presented, the Commissioner determines that the accountant is not qualified for purposes of expressing his opinion on the financial statements in the annual Audited Financial Report made pursuant to NRS 680A.265 and the regulations adopted pursuant thereto, the Commissioner may require the insurer to replace the accountant with an independent certified public accountant who is qualified.

10. Except as otherwise provided in subsection 12, the Commissioner will 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, any of the following non-audit services:

(a) Bookkeeping or other services relating to the accounting records or financial statements of the insurer.

(b) The design and implementation of a financial information system.

(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 of an insurer's reserves if the following conditions have been met:

- (1) Neither the accountant nor the accountant's actuary have performed any management functions or made any management decisions;*
 - (2) The insurer has competent personnel or engages a competent 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 function or human resources.*
 - (g) Broker or dealer, investment advisor or investment banking services.*
 - (h) Legal services or expert services unrelated to the audit.*
 - (i) Any other services that the Commissioner determines are impermissible.*

11. With respect to services provided by a qualified independent certified public accountant, the principles of independence are based on, without limitation, the following three basic principles and any violation of these principles would impair the accountant's independence:

- (a) The accountant may not function in the role of management;*
- (b) The accountant may not audit his own work; and*
- (c) The accountant may not serve in an advocacy role for the insurer.*

12. An insurer having direct written and assumed premiums of less than \$100 million in any calendar year may request an exemption from the provisions of subsection 10. To make

such a request the insurer must file with the Commissioner a written statement discussing the reasons why the insurer should be so exempt. If the Commissioner finds, upon review of this statement, that compliance with sections 11 to 28, inclusive, of this regulation would constitute a financial or organizational hardship upon the insurer, the Commissioner will grant the exemption.

13. A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in subsection 10 or that do not conflict with subsection 10 only if the activity is approved in advance by the audit committee, in accordance with subsection 14.

14. 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. The preapproval requirement is waived with respect to non-audit services if:

(a) The insurer is a SOX Compliant Entity or a direct or indirect wholly owned subsidiary of a SOX Compliant Entity; or

(b) The following conditions are met:

(1) The aggregate amount of all such non-audit 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 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, before completion of the audit, are approved 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.

15. The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by subsection 14. The decisions of any member to whom this authority is delegated must be presented to the full audit committee at each of its scheduled meetings.

16. Except as otherwise provided in subsection 17, the Commissioner will 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 on which the most current statutory opinion is due. This section only applies to partners and senior managers involved in the audit.

17. The Commissioner may, upon a written application by the insurer, grant an exception from the provisions of subsection 16 on the basis of unusual circumstances.

18. The insurer shall file, with its annual statement filing, a copy of the approval of the exception granted pursuant to the provisions of subsection 17 with any state in which it is licensed or doing business and with the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners.

Sec. 16. 1. *An insurer may apply in writing to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of a separate annual Audited Financial Report if the insurer:*

- (a) Is part of a group of insurance companies that uses a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves; and*
- (b) Cedes all of its direct and assumed business to the pool.*

2. *If the Commissioner approves the consolidated or combined filing, the insurer shall file with its report a columnar consolidating or combining worksheet as follows:*

- (a) The amounts shown on the consolidated or combined annual Audited Financial Report must be shown on the worksheet;*
- (b) The amounts for each insurer subject to the consolidated or combined annual Audited Financial Report filed pursuant to NRS 680A.265 and the regulations adopted pursuant thereto must be stated separately;*
- (c) The amounts from the operations of the insurer which are not related to insurance must be shown on the worksheet on a combined or individual basis;*
- (d) Explanations of entries which are consolidated or eliminated must be included; and*
- (e) A reconciliation must be included of any differences between the amount shown on the column for the individual insurer and the comparable amount shown on the annual statement of the insurers.*

Sec. 17. 1. *The insurer's financial statements must be examined by an independent certified public accountant for the purposes of NRS 680A.265 and the regulations adopted pursuant thereto. The audit of the insurer's financial statements must be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319,*

Consideration of Internal Control in a Financial Statement Audit, included in the AICPA Professional Standards, as adopted by reference in subsection 2, the independent certified public accountant must obtain an understanding of the insurer's internal control sufficient to plan the audit. If required by AU Section 319, for those insurers required to file a management report of internal control over financial reporting pursuant to section 24 of this regulation, the independent certified public accountant shall consider the most recently available report in planning and performing the audit of the financial statements.

Consideration should be given to the procedures set forth in the Financial Condition Examiners Handbook, adopted by reference in NAC 679B.033, as the independent certified public accountant deems necessary.

2. The AICPA Professional Standards are hereby adopted by reference and may be obtained by mail from the American Institute of Certified Public Accountants, Member Service Center, Order Processing, 220 Leigh Farm Road, Durham, NC 27707-8110 or by ordering via telephone at (888) 777-7077, by facsimile at (800) 362-5066 or on the Internet at <http://www.cpa2biz.com> at the price of \$135 for members of the American Institute of Certified Public Accountants and \$168.75 for nonmembers.

Sec. 18. 1. *An insurer required to furnish an annual Audited Financial Report shall require the independent certified public accountant to report, in writing and within 5 business days, to the board of directors or its audit committee each determination by the independent certified public accountant that the insurer:*

(a) Has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under audit; or

(b) As of that date, does not meet the minimum capital and surplus requirements as set forth in this chapter and chapter 680A of NRS.

2. An insurer who receives a report from its independent certified public accountant pursuant to this section shall, within 5 business days after receipt of the report:

(a) Forward a copy of the report to the Commissioner; and

(b) Provide evidence to the independent certified public accountant making the report that the insurer has forwarded a copy of the report to the Commissioner.

3. If the independent certified public accountant fails to receive the evidence within the required period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next 5 business days.

4. An independent certified public accountant shall not be liable in any manner to any person for any statement made in connection with subsection 1, 2 or 3 if the statement is made in good faith in compliance with this section.

5. If, after the date on which the Audited Financial Report has been filed pursuant to NRS 680A.265 and the regulations adopted pursuant thereto, the independent certified public accountant becomes aware of facts that might have affected his report, the accountant shall take such action as prescribed in AU Section 561, Subsequent Discovery of Facts Existing at the Date of the Auditor's Report, of the AICPA Professional Standards, adopted by reference in section 17 of this regulation.

Sec. 19. 1. *In addition to the annual Audited Financial Report, each insurer shall furnish the Commissioner with a completed Communication of Internal Control Related Matters Noted in an Audit as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit.*

2. *The report required pursuant to the provisions of this section must be prepared by the independent certified public accountant within 60 days after the date on which the annual Audited Financial Report is filed with the Commissioner and must contain a description of any unremediated material weakness in the insurer's internal control over financial reporting noted during the audit of the insurer's financial statements by the accountant, as of December 31 of the most recent calendar year.*

3. *If there are no unremediated material weaknesses noted, the report to the Commissioner must state that there are no unremediated material weaknesses noted.*

4. *The insurer must provide a description of any remedial actions taken or proposed to be taken to correct any unremediated material weaknesses, if the actions taken by the insurer are not described in the accountant's report.*

5. *As used in this section, "unremediated material weakness" has the meaning ascribed to it in the Statements of Auditing Standards No. 112, Communicating Internal Control Related Matters Identified in an Audit, included in the AICPA Professional Standards, adopted by reference in section 17 of this regulation.*

Sec. 20. *An independent certified public accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual Audited Financial Report, a letter which states each of the following:*

1. *That the accountant is independent with respect to the insurer and conforms to the standards of his profession as contained in the AICPA Code of Professional Conduct and Bylaws, the pronouncements of the American Institute of Certified Public Accountants and the Rules of Professional Conduct of the Nevada State Board of Accountancy.*

2. *The background and experience of the accountant in general, the experience of the staff of the accountant in audits of insurers, and whether each member of that staff which will audit the insurer is an independent certified public accountant. The provisions of sections 11 to 28, inclusive, of this regulation will not be construed as prohibiting the accountant from using such staff as he deems necessary if such use of staff is consistent with the standards prescribed by generally accepted auditing standards.*

3. *That the accountant understands that the annual Audited Financial Report and his opinion thereon will be filed pursuant to NRS 680A.265 and the regulations adopted pursuant thereto, and that the Commissioner will be relying on this information to monitor and regulate the financial position of the insurers.*

4. *That the accountant consents to the requirements of section 21 of this regulation and that the accountant consents and agrees to make available for review by the Commissioner, or the Commissioner's designee or appointed agent, the workpapers as defined in section 21 of this regulation.*

5. *That the accountant is properly licensed, certified or chartered by the appropriate licensing authority in the state or country in which the accountant is licensed, certified or chartered and that the accountant is a member in good standing of the American Institute of Certified Public Accountants.*

6. *That the accountant is in compliance with the requirements for a qualified independent certified public accountant as set forth in section 15 of this regulation.*

Sec. 21. 1. *Every insurer required to file an annual Audited Financial Report pursuant to NRS 680A.265 and the regulations adopted pursuant thereto shall require the independent certified public accountant to make available for review by the Commissioner, or his*

designated agent, all workpapers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, the Division, or at any other reasonable place designated by the Commissioner. The insurer shall require that the independent certified public accountant retain the workpapers and communications relating to the audit until the Division has filed a report on the examination covering the period of the audit but not longer than 7 years from the date of the Audited Financial Report.

2. To complete the periodic review of the workpapers of the independent certified public accountant pertaining to its audit of the financial statements, the examiners of the Division may make and retain a photocopy of any pertinent workpapers relating to the audit. All workpapers and communications obtained during the course of such reviews must be afforded the same confidentiality as other examination workpapers generated by the Division.

3. As used in this section, "workpapers" means the records kept by an independent certified public accountant of the procedure followed, the test performed, the information obtained and the conclusion reached pertinent to the accountant's audit of the financial statements of an insurer. The term includes, without limitation, audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his audit of the financial statements of an insurer and which support the accountant's opinion.

Sec. 22. *1. The provisions of this section do not apply to a foreign or alien insurer licensed in this State or an insurer that is a SOX Compliant Entity or a direct or indirect wholly owned subsidiary of a SOX Compliant Entity.*

2. *The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant for the purpose of preparing or issuing the Audited Financial Report or related work pursuant to sections 11 to 28, inclusive, of this regulation. Any dispute between the management of the insurer and the accountant during the course of the audit regarding the financial reporting for the preparation or issuance of the annual Audited Financial Report of the insurer must be resolved by the audit committee. Each accountant shall report directly to the audit committee.*

3. *Each member of the audit committee must be a member of the board of directors of the insurer or a member of the board of directors of an entity that controls a group of insurers. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.*

4. *Except as otherwise provided in this subsection, to be considered independent for the purposes of this section, a member of the audit committee may not, other than in his capacity as a member of the audit committee, the board of directors, or any other board or committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. If, by law, participation on the board of directors by otherwise non-independent members is required, such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates. 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 sections 11 to 28, inclusive, of this regulation at the election of the controlling person.*

5. *If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, the insurer shall provide notice to the Commissioner, and the member may remain an audit committee member of the insurer until the earlier of the next annual meeting of the insurer or 1 year after the occurrence of the event that caused the member to be no longer independent.*

6. *To exercise the election of the controlling person to designate the audit committee for purposes of sections 11 to 28, inclusive, of this regulation, the ultimate controlling person shall provide written notice to the insurance regulatory authority of other affected states. Notification must be made timely before the issuance of the Audited Financial Report and include a description of the basis for the election. The election may be changed through notice to the Commissioner by the insurer, which must include a description of the basis for the change. The election remains in effect for perpetuity or until rescinded.*

7. *The audit committee shall require the independent certified public accountant that performs any audit for an insurer as required by sections 11 to 28, inclusive, of this regulation to timely report to the audit committee in accordance with the requirements of Statements of Auditing Standards No. 61, Communication with Audit Committees, included in the AICPA Professional Standards, as adopted by reference in section 17 of this regulation, including, without limitation:*

- (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 the management of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and*

(c) Any other material written communications between the independent certified public accountant and the management of the insurer, including any management letter or schedule of unadjusted differences.

8. If an insurer is a member of an insurance holding company system, the reports required by subsection 7 may be provided to the audit committee on an aggregate basis for the insurers in the holding company system if the independent certified accountant identifies to the audit committee any substantial differences among insurers in the system.

9. The proportion of independent audit committee members must meet or exceed the following criteria:

<i>Previous Calendar Year Direct Written and Assumed Premiums</i>		
<i>\$0 – 300,000,000</i>	<i>\$300,000,001 – 500,000,000</i>	<i>Over \$500,000,000</i>
<i>No minimum requirements.</i>	<i>Majority (50 percent or more) of members shall be independent.</i>	<i>Supermajority (75 percent or more) of members shall be independent.</i>

10. The Commissioner may require the board of directors of an insurer or a group of insurers to enact improvements to the independence of the audit committee membership, if:

(a) The insurer is subject to filing the Risk-Based Capital (RBC) report and the insurer has identified a risk-based capital action level event pursuant to the provisions of NAC 681B.400 to 681B.595, inclusive;

(b) The insurer meets one or more of the standards of an insurer deemed to be in hazardous financial condition identified pursuant to NRS 680A.205 and NAC 680A.220 to 680A.226, inclusive; or

(c) The insurer otherwise exhibits qualities of a troubled insurer.

11. All insurers with less than \$500 million in direct written and assumed premiums for the previous calendar year are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

12. An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, of less than \$500 million may apply in writing to the Commissioner for a waiver from the requirements of this section based on hardship. If the waiver is granted, the insurer shall file, with its annual statement filing, the approval for the waiver with the states in which it is licensed or doing business and with the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners.

13. The requirements of this section become effective on January 1, 2010, except that:

(a) An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premiums must comply with the independence requirements within 1 year after the year the threshold is exceeded; and

(b) An insurer that becomes subject to one of the independence requirements because of a business combination must comply with the independence requirements within 1 calendar year after the date of acquisition or combination.

Sec. 23. 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 sections 11 to 28, inclusive, of this regulation; or

(b) In light of the circumstances under which the statements were made, omit to state, or cause another person to omit to state, any material fact necessary for the annual Audited Financial Report, in order to make statements made be misleading to an accountant in connection with any audit, review or communication required by sections 11 to 28, inclusive, of this regulation.

2. No director or officer 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 sections 11 to 28, inclusive, of this regulation if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading. Such actions include, without limitation, 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 an annual Audited Financial Report on an insurer's financial statements that may be materially misleading, if not warranted by the circumstances because of material violations of statutory accounting principles prescribed by the Commissioner, generally accepted auditing standards, or other professional or regulatory standards;

(b) Not to perform an audit, review or other procedure 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.

Sec. 24. 1. Except as otherwise provided in subsections 2 and 3, beginning with the reporting period ending December 31, 2010, and each year thereafter, every insurer required to file an Audited Financial Report pursuant to NRS 680A.265 and the regulations adopted pursuant thereto that has annual direct written and assumed premiums of \$500 million or more, excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, must prepare a report of the insurer's or group of insurers' internal control over financial reporting. The Management Report on Internal Control Over Financial Reporting must be filed with the Commissioner along with the Communication of Internal Control Related Matters Noted in an Audit report described in section 19 of this regulation. The Management Report on Internal Control Over Financial Reporting must be current as of the previous December 31.

2. An insurer or a group of insurers:

(a) That is not required to file an Audited Financial Report because the total written premium of the insurer or group of insurers is below the threshold and subsequently becomes subject to the reporting requirements shall file the Management Report on Internal Control Over Financial Reporting within 2 years after the year in which the threshold is exceeded; or

(b) That is acquired in a business combination shall file the Management Report on Internal Control Over Financial Reporting within 2 calendar years after the date of acquisition or combination.

3. In addition to an insurer described in subsection 1, the Commissioner may require an insurer to file the Management Report on Internal Control Over Financial Reporting if:

(a) The insurer is subject to the Risk-Based Capital Report pursuant to the provisions of NRS 681B.290 and the insurer has identified a risk-based capital action level event that requires the insurer to file a corrective action plan pursuant to the provisions of NAC 681B.400 to 681B.595, inclusive;

(b) The insurer meets one or more of the standards of an insurer deemed to be in hazardous financial condition identified pursuant to the provisions of NRS 680A.205 and NAC 680A.220 to 680A.226, inclusive; or

(c) The insurer otherwise exhibits qualities of a troubled insurer.

4. An insurer or group of insurers that is:

(a) Directly subject to the provisions of Section 404;

(b) A member of a holding company system whose parent is directly subject to Section 404;

(c) Not directly subject to Section 404 but a SOX Compliant Entity; or

(d) 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 section's requirement, if 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' statutory Audited Financial Reports were included in the scope of the Section 404 Report. The addendum must be a positive statement by the management of the insurer that there are no material processes with respect to the preparation of the insurer's or group of insurers' statutory Audited Financial Reports excluded from the Section 404 Report.

5. 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' statutory Audited Financial

Reports and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may file:

(a) The Management Report on Internal Control Over Financial Reporting; or

(b) The Section 404 Report and the Management Report on Internal Control Over Financial Reporting for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' statutory Audited Financial Reports not covered by the Section 404 Report.

6. A Management Report on Internal Control Over Financial Reporting must include each of the following:

(a) A statement that the management of the insurer is responsible for establishing and maintaining adequate internal control over financial reporting.

(b) A statement that the management of the insurer has established internal control over financial reporting and an assertion, to the best of the 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 the management of the insurer 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) A statement disclosing any unremediated material weaknesses in the internal control over financial reporting identified by the management of the insurer as of the previous December 31. The management of the insurer may not 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.

(g) Signatures of the chief executive officer and the chief financial officer or, in the absence of one of these positions, signatures of two other principal officers or directors who have an equivalent position or title.

7. The management of the insurer shall document and make available upon examination of its financial condition the basis upon which its assertions are made, as required pursuant to subsection 6. Such basis may include its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

8. The management of the insurer has 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.

9. The Management Report on Internal Control Over Financial Reporting and any documentation provided in support thereof during the course of a financial condition examination must be kept confidential by the Division.

10. As used in this section, “unremediated material weakness” has the meaning ascribed to it in the Statements of Auditing Standards No. 112, Communicating Internal Control Related Matters Identified in an Audit, included in the AICPA Professional Standards, adopted by reference in section 17 of this regulation.

Sec. 25. Upon written application of an insurer or group of insurers, the Commissioner may grant an exemption from compliance with any or all provisions of sections 11 to 28, inclusive, of this regulation if the Commissioner finds, upon review of the application, that compliance with any or all of the provisions of sections 11 to 28, inclusive, of this regulation would constitute a financial or organizational hardship upon the insurer or group of insurers. An exemption may be granted at any time and from time to time for a specified period or periods. Within 10 days after a denial of an insurer's written request for an exemption from any or all provisions of sections 11 to 28, inclusive, of this regulation, the insurer may request in writing a hearing on its application for an exemption. The hearing must be held in accordance with the provisions of NAC 679B.161 to 679B.480, inclusive.

Sec. 26. 1. Domestic insurers retaining a qualified independent certified public accountant on December 31, 2009, shall comply with the provisions of sections 11 to 28, inclusive, of this regulation for the year ending December 31, 2009, and each year thereafter unless the Commissioner permits otherwise.

2. Domestic insurers not retaining a qualified independent certified public accountant on December 31, 2009, shall meet the following schedule for compliance unless the Commissioner permits otherwise:

(a) As of December 31, 2009, file with the Commissioner an Audited Financial Report; and

(b) For the year ending December 31, 2010, and each year thereafter, file with the Commissioner all reports and communication required by sections 11 to 28, inclusive, of this regulation.

3. Foreign and alien insurers shall comply with the provisions of sections 11 to 28, inclusive, of this regulation for the year ending December 31, 2010, and each year thereafter, unless the Commissioner permits otherwise.

Sec. 27. *1. In the case of Canadian and British insurers, the annual Audited Financial Report is defined as the Annual Statement of Total Business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.*

2. For an insurer domiciled in Canada or Great Britain, the letter required by section 14 of this regulation must state that the accountant is aware of the requirements relating to the annual Audited Financial Report filed with the Commissioner pursuant to NRS 680A.265 and the regulations adopted pursuant thereto and must affirm that the opinion expressed is in conformity with those requirements.

Sec. 28. *If any section or portion of sections 2 to 28, inclusive, of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of sections 2 to 28, inclusive, of this regulation or the applicability of sections 2 to 28, inclusive, of this regulation to other persons or circumstances shall not be affected.*

Sec. 29. NAC 680A.002 is hereby amended to read as follows:

680A.002 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 680A.003 to 680A.018, inclusive, *and sections 2 to 10, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 30. NAC 680A.012, 680A.174, 680A.175, 680A.176, 680A.178, 680A.180, 680A.182, 680A.184, 680A.185, 680A.186, 680A.188, 680A.190, 680A.192, 680A.194, 680A.196, 680A.198, 680A.200, 680A.202 and 680A.204, inclusive, are hereby repealed.

Sec. 31. This regulation becomes effective on January 1, 2010.

TEXT OF REPEALED SECTIONS

680A.012 “Insurer” defined. (NRS 679B.130) “Insurer” means an insurer licensed to transact the business of insurance in this State.

680A.174 Exemption from filing for certain foreign and alien insurers. (NRS 679B.130, 680A.265)

1. A foreign or alien insurer which files an audited financial report in another state, in accordance with that state’s requirements for filing audited financial reports, is exempt from filing its annual audited financial report in accordance with NAC 680A.172 to 680A.204, inclusive, if:

(a) The Commissioner determines that the requirements of the other state for filing such reports are substantially similar to the requirements set forth in NAC 680A.172 to 680A.204, inclusive;

(b) The foreign or alien insurer files with the Commissioner, in accordance with the appropriate filing dates specified in NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, a copy of its audited financial report, its report, if any, on significant deficiencies in internal controls, and the certified public accountant’s letter of qualifications which have been filed with the insurance regulatory authority of the other state; and

(c) The foreign or alien insurer files with the Commissioner a copy of each notification of a report of adverse financial condition filed with the insurance regulatory authority of the other state within the time specified in NAC 680A.198.

2. For the purposes of this section, an insurer which is domiciled in Canada may submit its accountants' reports which the insurer filed with the Canadian Dominion Department of Insurance.

680A.175 Exemption from filing based on financial or organizational hardship. (NRS 679B.130, 680A.265)

1. In addition to the exemptions provided in NAC 680A.172 and 680A.174, the Commissioner may, upon the written application of an insurer, grant an exemption from compliance with the requirements of NRS 680A.265 if the Commissioner finds, upon review of the application, that compliance with those requirements would constitute a financial or organizational hardship on the insurer. The Commissioner may grant an exemption pursuant to this section at any time and from time to time for one or more specified periods.

2. If the Commissioner denies the written application of an insurer for an exemption pursuant to subsection 1, the insurer may, within 10 days after the denial, request in writing a hearing on the application. The hearing will be held in accordance with the provisions of NAC 679B.161 to 679B.480, inclusive.

680A.176 Authority of Commissioner to examine insurer not limited. (NRS 679B.130, 680A.265) The provisions of NAC 680A.172 to 680A.204, inclusive, do not prohibit, preclude or in any way limit the Commissioner from ordering, conducting or performing an examination of an insurer pursuant to chapter 679B of NRS.

680A.178 Filing date for report: Notice of earlier date; extensions of time. (NRS 679B.130, 680A.265)

1. The Commissioner may require an insurer to file its annual audited financial report earlier than June 1 upon notice to the insurer by the Commissioner made at least 90 days before the earlier filing date.

2. The Commissioner may grant one or more 30-day extensions of the filing date as determined in accordance with NRS 680A.265 and subsection 1 upon a showing by the insurer and its independent certified public accountant of good cause for the extension. A request for a 30-day extension must be submitted in writing not less than 10 days before the date on which the annual audited financial report is to be filed and must contain sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

680A.180 Contents of report; form for financial statement. (NRS 679B.130, 680A.265)

1. The annual audited financial report must include a report of the financial position of the insurer as of the end of the most recent calendar year and the results of the insurer's operations, cash flows and changes in capital and surplus for that year.

2. The annual audited financial report of an insurer must include:

- (a) A report of the independent certified public accountant;
- (b) A balance sheet which reports the admitted assets, liabilities, capital and surplus of the insurer;
- (c) A statement of operations;
- (d) A statement of cash flows;
- (e) A statement of changes in capital and surplus;

(f) Any notes to financial statements required by the appropriate instructions for annual statements of the National Association of Insurance Commissioners, and any other notes required by generally accepted accounting principles;

(g) A reconciliation of the differences, if any, between the annual audited financial report and the annual statement filed with the Commissioner pursuant to NRS 680A.270, with a written description of the nature of those differences; and

(h) A summary of the ownership and relationships of the insurer and each of its affiliated companies, if any.

3. A financial statement included in an annual audited financial report must be prepared in a form which uses language and groupings that are substantially similar to the relevant sections of the annual statement of the insurer filed with the Commissioner pursuant to NRS 680A.270. The financial statement must include comparative data as of December 31 of the two most previous calendar years, except that, in the first year in which an insurer is required to file an annual audited financial report, the insurer may include only the data from the most previous calendar year.

680A.182 Independent certified public accountant: Registration of name by insurer; acknowledgment of applicable requirements. (NRS 679B.130, 680A.265)

1. An insurer required by NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, to file an annual audited financial report shall, within 60 days after becoming subject to the requirement, register with the Commissioner in writing the name and address of the independent certified public accountant who will audit the report.

2. The insurer shall obtain a letter from the independent certified public accountant and file a copy of the letter with the Commissioner which:

(a) States that the accountant is aware of the provisions of title 57 of NRS, and the regulations adopted pursuant thereto, that relate to accounting and financial matters, and affirms that the accountant will express his opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by title 57 of NRS, and the regulations adopted pursuant thereto, specifying such exceptions as he deems appropriate; and

(b) For an insurer domiciled in Canada or Great Britain, states that the accountant is aware of the requirements relating to the annual audited financial report filed with the Commissioner pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, and affirms that the opinion expressed is in conformity with those requirements.

680A.184 Dismissal or resignation of independent certified public accountant: Duties of insurer. (NRS 679B.130, 680A.265)

1. If the independent certified public accountant who was the accountant for the most recent filing of the annual audited financial report of an insurer is dismissed or resigns, the insurer shall:

(a) Not later than 5 business days after the dismissal or resignation, notify the Commissioner of the dismissal or resignation; and

(b) Not later than 10 business days after notifying the Commissioner of the dismissal or resignation of the accountant, file with the Commissioner a separate letter which sets forth:

(1) Each disagreement which occurred during the 24 months immediately preceding the dismissal or resignation between the accountant and the insurer on any matter of accounting principles or practices, disclosure on a financial statement or the scope or procedure of the audit; and

(2) Which disagreements, if not resolved to the satisfaction of the accountant, caused him to make a reference to the subject matter of the disagreement in his opinion filed with the annual audited financial report of the insurer.

2. The disagreements required to be reported pursuant to this section include both those resolved to the former accountant's satisfaction and those which have not been resolved to the former accountant's satisfaction. The insurer shall request in writing that the former accountant furnish a letter addressed to the insurer stating:

(a) Whether the accountant agrees with the statements contained in the insurer's letter filed pursuant to subsection 1 and, if not, stating the reasons he does not agree; and

(b) If the insurer is domiciled in Canada or Great Britain, that the accountant is aware of the requirements relating to the annual audited financial report filed with the Commissioner pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, and affirming that the opinion of the accountant is expressed in conformity with those requirements.

3. Upon receipt of the accountant's response letter, the insurer shall file with the Commissioner a copy of the response letter from the former accountant and any written response of the insurer to the accountant's response letter.

4. For the purposes of this section, a disagreement between the insurer and its accountant is a disagreement which occurs between the insurer and the accountant at the decision-making level and includes, without limitation, a disagreement between the personnel of the insurer responsible for preparation of the financial statements of the insurer and the personnel of the independent certified public accountant responsible for rendering its opinion on those statements.

680A.185 Agreement for mediation or arbitration of dispute with independent certified public accountant. (NRS 679B.130, 680A.265)

1. Except as otherwise provided in subsection 2, a qualified independent certified public accountant may enter into an agreement with an insurer to have any dispute relating to an annual audited financial report certified by the accountant resolved by mediation or arbitration.

2. If a delinquency proceeding pursuant to chapter 696B of NRS has commenced against an insurer, any such mediation or arbitration provision is enforceable at the option of the successor in interest to the insurer.

680A.186 Requirements for recognition as qualified independent certified public accountant by Commissioner. (NRS 679B.130, 680A.265)

1. Except as otherwise provided in subsection 2 and NAC 680A.188 and 680A.190, the Commissioner will recognize an independent certified public accountant as a qualified independent certified public accountant if the independent certified public accountant conforms to the standards contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants, and the Rules of Professional Conduct and the regulations of the Nevada State Board of Accountancy, or other similar code.

2. The Commissioner will not recognize as a qualified independent certified public accountant an independent certified public accountant who:

(a) Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the independent certified public accountant is licensed or certified to practice;

(b) For an insurer domiciled in Canada or Great Britain, is not a chartered accountant or accounting firm; or

(c) Has either directly or indirectly entered into an agreement of indemnity or release from liability with respect to an audit of the insurer if the intent or effect of the agreement or release is to shift or limit in any manner the potential liability of the accountant for failure to adhere to

applicable auditing or professional standards, whether or not resulting in part from a knowing or other misrepresentation made by the insurer or its representatives.

680A.188 Length of service of independent certified public accountant to same insurer; limitations; exceptions. (NRS 679B.130, 680A.265)

1. Except as otherwise provided in this section, an independent certified public accountant who is responsible for rendering an annual audited financial report for an insurer may act in that capacity for a period of not more than 7 consecutive years, which begins to run from the date on which the insurer registers the accountant with the Commissioner pursuant to NAC 680A.182. At the end of the 7-year period, the independent certified public accountant is disqualified from acting in that or a similar capacity for the same insurer or any insurance subsidiary or affiliate of the insurer for a period of at least 2 years.

2. An insurer may apply to the Commissioner for permission for an independent certified public accountant to continue in his capacity in the rendering of the annual audited financial report of the insurer for more than 7 consecutive years, or to return to a position which would be responsible for rendering an annual audited financial report for the insurer and its subsidiary or affiliate in less than 2 years, upon a showing of unusual circumstances. The Commissioner will consider the following factors, without limitation, in determining if the relief should be granted:

- (a) If the independent certified public accountant is an accounting firm, the number of partners within the independent certified public accountant and the expertise of those partners;
- (b) The number of insurers who are clients of the accountant;
- (c) The volume of premiums of the insurer; or
- (d) The number of jurisdictions in which the insurer transacts business.

680A.190 Conditions for refusal by Commissioner to recognize independent certified public accountant as qualified. (NRS 679B.130, 680A.265) The Commissioner will not recognize as a qualified independent certified public accountant, or accept any annual audited financial report prepared in whole or in part by, any natural person who:

1. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 to 1968, inclusive, or any dishonest conduct or practices under federal or state law;
2. Has been found to have violated any provision of title 57 of NRS, or any regulation adopted pursuant thereto, with respect to any previous annual audited financial report submitted pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive; or
3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous annual audited financial reports filed pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive.

680A.192 Hearing to consider qualifications of independent certified public accountant. (NRS 679B.130, 680A.265) The Commissioner will, if he deems it necessary, hold a hearing to determine whether an independent certified public accountant is qualified for the purposes of NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive. If, based on the evidence presented, the Commissioner determines that the accountant is not qualified, the Commissioner will:

1. Rule that the accountant is not qualified for purposes of expressing his opinion on the financial statements in the annual audited financial report to be made pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, and require the insurer to replace the accountant with an independent certified public accountant who is so qualified; or

2. Take any other action determined to be necessary by the Commissioner.

680A.194 Consolidated report for insurance pool; worksheet required; contents. (NRS 679B.130, 680A.265)

1. An insurer may make a written application to the Commissioner for approval to file a consolidated or combined annual audited financial report in lieu of separate annual audited financial reports if the insurer:

(a) Is part of a group of insurers that uses a pooling agreement or an agreement for 100 percent reinsurance which affects the solvency and integrity of the reserves of the insurer; and

(b) Cedes all of its direct and assumed business to the pool.

2. If the Commissioner approves the consolidated or combined filing, the insurer shall file with its report a columnar worksheet, as follows:

(a) Amounts shown on the consolidated or combined annual audited financial report must be shown on the worksheet;

(b) Amounts for each insurer subject to the consolidated or combined annual audited financial report filed pursuant to this section must be stated separately;

(c) Amounts for the operations of the insurer which are not related to insurance must be shown on the worksheet on a combined or individual basis;

(d) Explanations of entries which are consolidated or eliminated must be included; and

(e) A reconciliation must be included of any differences between the amount shown on the column for the individual insurer and the comparable amount shown on the annual statement of the insurer.

680A.196 Standards and procedures for examinations by independent certified public accountants. (NRS 679B.130, 680A.265) An examination of the insurer's financial statements

by an independent certified public accountant for the purposes of NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, must be conducted in accordance with:

1. Generally accepted auditing standards; and
2. Such other procedures set forth in the Financial Condition Examiners Handbook which composes Volume One of the Examiners Handbook published by the National Association of Insurance Commissioners, as adopted by reference in NAC 679B.033, as the independent certified public accountant deems necessary.

680A.198 Separate reporting of determination that insurer misstated its financial condition or does not meet minimum requirements for capital and surplus; procedure upon discovery of additional facts. (NRS 679B.130, 680A.265)

1. An independent certified public accountant of an insurer required to furnish an annual audited financial report shall report to the board of directors or audit committee of the insurer each determination by the accountant that the insurer:

(a) Has materially misstated its financial condition as reported to the Commissioner as of the date of the balance sheet currently under examination; or

(b) Does not, as of that date, meet the minimum requirements for capital and surplus as set forth in chapter 680A of NRS.

↪ The report must be in writing and provided to the insurer not later than 5 business days after the accountant makes such a determination.

2. An insurer who receives a report from its independent certified public accountant pursuant to this section shall, not later than 5 business days after the date on which it receives the report from the accountant:

(a) Forward a copy of the report to the Commissioner; and

(b) Provide the independent certified public accountant who made the report with evidence that the insurer has forwarded a copy of the report to the Commissioner. If the independent certified public accountant does not, within the 5-business-day period, receive evidence from the insurer that the insurer has forwarded a copy of the report to the Commissioner in accordance with this section, the independent certified public accountant shall file with the Commissioner a copy of its report within the next 5 business days.

3. An independent certified public accountant is not liable in any manner to any person for any statement made in connection with this section if the statement is made in good faith in compliance with this section.

4. If the independent certified public accountant, after the annual audited financial report reviewed by the accountant has been filed pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, becomes aware of any facts which affect his report, the accountant shall take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants, which is hereby adopted by reference. A copy of the Professional Standards may be obtained from the American Institute of Certified Public Accountants:

(a) By mail at The American Institute of Certified Public Accountants, AICPA/CPA2Biz, Customer Service Center, P.O. Box 2209, Jersey City, New Jersey 07303-2209;

(b) By telephone at (888) 777-7077; or

(c) On the Internet at <http://www.cpa2biz.com>,

↪ at a cost of \$145.

680A.200 Deficiency in structure for internal control; remedial action taken by insurer. (NRS 679B.130, 680A.265) If, following the audit of the financial statements of an

insurer, an independent certified public accountant notes any significant deficiency in the insurer's structure for internal control, the insurer shall, not later than 60 days after the date on which the annual audited financial report is filed with the Commissioner, file a written report which provides a description of the deficiency and of the remedial actions taken or proposed to correct the significant deficiency, if those actions are not otherwise described in the accountant's report filed with the annual audited financial report.

680A.202 Letter from independent certified public accountant must be included in filing of report; contents. (NRS 679B.130, 680A.265) An independent certified public accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter which states:

1. That the accountant is independent of the insurer and that he conforms to the standards of his 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 and the regulations of the Nevada State Board of Accountancy, or other similar code.
2. The background and experience of the accountant in general and the experience of the staff of the accountant in auditing insurers, and whether each member of that staff which will audit the insurer is an independent certified public accountant. The provisions of NAC 680A.172 to 680A.204, inclusive, will not be construed as prohibiting the accountant from utilizing such staff as he deems necessary if that use of staff is consistent with the standards prescribed by generally accepted auditing standards.
3. That the accountant understands that the annual audited financial report and his opinion thereon will be filed in compliance with NRS 680A.265 and NAC 680A.172 to 680A.204,

inclusive, and that the Commissioner will be relying on this information to monitor and regulate the financial position of the insurer.

4. That the accountant consents to make his workpapers available for review by the Commissioner or his designated agent in accordance with NAC 680A.204.

5. That the accountant is properly licensed, certified or chartered by the appropriate licensing authority in the state or country in which the accountant is licensed, certified or chartered, and that the accountant is a member in good standing in the American Institute of Certified Public Accountants.

6. That the accountant is in compliance with the requirements for a qualified independent certified public accountant as set forth in NAC 680A.186, 680A.188 and 680A.190.

680A.204 Workpapers and communications related to audit must be available for review; retention; confidentiality. (NRS 679B.130, 680A.265)

1. The independent certified public accountant of an insurer required to file an annual audited financial report pursuant to NRS 680A.265 shall make available for review by the Commissioner or his designated agent all of the workpapers prepared by the accountant in the conduct of his examination and any communications related to the audit between the accountant and the insurer at the offices of the insurer, at the Insurance Division of the Department of Business and Industry, or at any other reasonable place designated by the Commissioner. The independent certified public accountant shall retain the workpapers and communications pertaining to its audit of the financial statements of an insurer for 7 years after the date of the report by the accountant on the annual audited financial report or until the Insurance Division has completed its examination of the annual audited financial report, whichever occurs first.

2. In the conduct of their examination of an annual audited financial report, the examiners of the Division may make a photocopy of any pertinent workpapers relating to the audit which will be retained by the Division. The examination by the examiners is considered to be an investigation, and all workpapers and communications obtained during the course of such an investigation will be afforded the same confidentiality as other working papers relating to the examination which are generated by the Division.

680A.198 Separate reporting of determination that insurer misstated its financial condition or does not meet minimum requirements for capital and surplus; procedure upon discovery of additional facts.

680A.200 Deficiency in structure for internal control; remedial action taken by insurer.

680A.202 Letter from independent certified public accountant must be included in filing of report; contents.

680A.204 Workpapers and communications related to audit must be available for review; retention; confidentiality.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R205-08

The Commissioner of Insurance adopted regulations assigned LCB File No. R205-08 which pertain to chapter 680A of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

A workshop was held on November 7, 2008, which was continued on November 21, 2008, and a hearing was held on December 15, 2008, at the offices of the Department of Business and Industry, Division of Insurance (Division), 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, with a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Real Estate Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104, regarding the adoption of the regulation concerning the Model Audit Rule and financial reporting.

Public comment was solicited by posting notice of the hearing in the following public locations: the Division's Carson City and Las Vegas offices, Carson City Courthouse, Office of the Attorney General, the Donald W. Reynolds Press Center, Capitol Building Lobby, Capitol Building Press Room, Blasdel Building, Legislative Counsel Bureau, Nevada State Library, Carson City Library, Churchill County Library, Clark County District Library, Douglas County Library, Elko County Library, Esmeralda

County Library, Eureka Branch Library, Humboldt County Library, Lander County Library, Lincoln County Library, Lyon County Library, Mineral County Library, Pershing County Library, Storey County Library, Tonopah Public Library, Washoe County Library, and White Pine County Library. Additionally, the Division maintains a general list of interested parties, comprised mainly of insurance companies, agencies and other persons regulated by the Division. These persons were notified of the hearing and that copies of the regulation could be obtained from or examined at the offices of the Division in Carson City.

The first workshop was attended by two interested parties in Las Vegas and eight interested parties in Carson City. The second or continued workshop was attended by four interested parties in Las Vegas and seven interested parties in Carson City. The hearing was attended by three interested parties in Las Vegas and eight interested parties in Carson City. The Division received written comments with proposed language changes from the Legislative Counsel Bureau (LCB), American Council of Life Insurers (ACLI), Property Casualty Insurers Association of America (PCI) and National Association of Insurance Commissioners (NAIC). There were no other written comments received from the public.

Peggy Willard-Ross, Chief Examiner for the Corporate and Financial Section of the Division, testified that the proposed regulation was being amended in order for the Division to meet the financial regulation standards and accreditation program of the NAIC. The purpose of the regulation is to improve the Division's surveillance of the financial condition of insurers by requiring (1) an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants, (2)

**STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE**

IN THE MATTER OF THE

**CAUSE NO. 08.0692
LCB File No. R205-08**

**REGULATION CONCERNING
MODEL AUDIT RULE**

**SUMMARY OF PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by Nevada Revised Statute (NRS) 233B.061, on the amended proposed regulation concerning the Model Audit Rule was held before Betty C. Baker, Acting Commissioner of Insurance, on November 7, 2008, and was continued on November 21, 2008 at the offices of the Department of Business and Industry, Division of Insurance (Division), in Carson City, Nevada, and video-conferenced to the Bradley Building, 2501 E. Sahara Avenue, Las Vegas, Nevada. A public hearing on the proposed amended regulation was also held before the Acting Commissioner, on December 15, 2008 at the Division offices in Carson City and video-conferenced to the Bradley Building in Las Vegas. The regulation is proposed under the authority of NRS 679B.130, NRS 680A.265 and NRS 680A.270.

The first workshop was attended by two interested parties in Las Vegas and eight interested parties in Carson City. The second or continued workshop was attended by four interested parties in Las Vegas and seven interested parties in Carson City. The hearing was attended by three interested parties in Las Vegas and eight interested parties in Carson City. The Division received written comments with proposed language changes from the Legislative Counsel Bureau (LCB), American Council of Life Insurers (ACLI), Property Casualty Insurers Association of America (PCI) and National Association of Insurance Commissioners (NAIC). There were no other written comments received from the public.

Peggy Willard-Ross, Chief Examiner for the Corporate and Financial Section of the Division, testified that the proposed regulation was being amended in order for the Division to meet the financial regulation standards and accreditation program of the NAIC. The purpose of the regulation is to improve the Division's surveillance of the financial condition of insurers by requiring (1) an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants, (2) communication of internal control related matters noted in an audit, and (3) management's report of internal control over financial reporting.

The following people provided testimony during the hearing, before the Hearing Officer, Betty C. Baker, Acting Commissioner of Insurance: Ms. Willard-Ross, representing the Division; Shane Chesney, Senior Deputy Attorney General, representing the State of Nevada Attorney General's Office; Sam Sorich, representing PCI; Jeanette Belz, representing J.K. Belz & Associates, Inc.; Kay Lockhart, representing Nevada Independent Insurance Agents (NIIA); Alice A. Molasky-Arman, representing Western Insurance Company; John Mangan, representing ACLI; and Jack Kim, representing United HealthCare.

Based upon the testimony received at the hearing, the proposed regulation is amended as shown in **Exhibit "A"** attached hereto and incorporated into this Order:

RECOMMENDATION OF THE HEARING OFFICER

Having presided over both of the workshops and the hearing, and after reviewing the record for Cause No. 08.0692, LCB File No. R205-08, it is recommended that the proposed regulation be adopted, as amended, as a permanent regulation of the Division.

DATED this 22nd day of February, 2009.

/s/
BETTY C. BAKER
Hearing Officer

ORDER OF THE COMMISSIONER

Having reviewed the record in this matter, and considering the recommendation of the Hearing Officer, it is hereby ordered that the proposed regulation, LCB File No. R205-08, be adopted, as amended, as a permanent regulation of the Division.

IT IS SO ORDERED this 25th day of February, 2009.

_____/s/_____
SCOTT J. KIPPER
Commissioner of Insurance