CHAPTER 45-03-20
ANNUAL FINANCIAL REPORTING MODEL REGULATION

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45-03-20-01. Purpose and scope.

1. The purpose of this chapter is to improve the North Dakota insurance department'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. Communication of internal control-related matters noted in an audit; and

   c. Management's report of internal control over financial reporting.

2. Every insurer, as defined in section 45-03-20-02, is subject to this chapter, except a company, so defined, which is licensed only in North Dakota. The commissioner may exempt an insurer, or type of insurer, from the requirements of this chapter. Insurers having direct premiums written in this state of less than one million dollars in any calendar year and less than one thousand policyholders or certificate holders of direct written policies nationwide at the end of the calendar year are exempt from this chapter for that 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 one million dollars or more will not be so exempt.

3. Foreign or alien insurers filing the audited financial report in another state, pursuant to the other 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 sections 45-03-20-03 through 45-03-20-12 if:

   a. A copy of the audited financial report, communication of internal control-related matters noted in an audit, and the accountant's letter of qualifications which are filed with another state are filed with the commissioner in accordance with the filing dates specified in sections 45-03-20-03, 45-03-20-10, and 45-03-20-11, 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 another state is filed with the commissioner within the time specified in section 45-03-20-09.

4. 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.

5. This chapter may not prohibit, preclude, or in any way limit the insurance commissioner from ordering or conducting or performing examinations of insurers under the rules and regulations of the North Dakota insurance department and the practices and procedures of the North Dakota insurance department.

History: Effective October 1, 1995; amended effective April 1, 1996; April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-02. Definitions.

The terms and definitions in this section are intended to provide definitional guidance as the terms are used within this chapter.

1. "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 and in all states in which they are licensed to practice. For Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

2. An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

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. 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 subsection 5 of section 45-03-20-12.1 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.

4. "Audited financial report" means and includes those items specified in section 45-03-20-04.

5. "Group of insurers" means those licensed insurers included in the reporting requirements of North Dakota Century Code chapter 26.1-10, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financing reporting.

6. "Indemnification" means an agreement of indemnity or a release from liability if the intent or effect is to shift or limit in any manner the potential liability of a 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.

7. "Independent board member" has the same meaning as described in subsection 3 of section 45-03-20-12.1.

8. "Insurer" means a licensed insurer as defined in North Dakota Century Code chapter 26.1-02.

9. “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, that is those items specified in subsections 2 through 7 of section 45-03-20-04 and includes those policies and procedures that:

   a. Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

   b. Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in subsections 2 through 7 of section 45-03-20-04 and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

   c. 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 subsections 2 through 7 of section 45-03-20-04.

10. "Section 404" means section 404 of the Sarbanes-Oxley Act of 2002 [Pub. L. 107-204; 116 Stat. 745] and the United States securities and exchange commission’s rules and regulations promulgated thereunder.

11. "Section 404 report" means management’s report on internal control over financial reporting as defined by the United States securities and exchange commission and the related attestation report of the independent certified public accountant as described in subsection 1.

12. "SOX-compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002 [Pub. L. 107-204; 116 Stat. 745]:

   a. The preapproval requirements of section 201 (section 10A(i) of the Securities Exchange Act of 1934 [Pub. L. 73-291; 48 Stat. 881]);

   b. The audit committee independence requirements of section 301 (section 10A(m)(3) of the Securities Exchange Act of 1934 [Pub. L. 73-291; 48 Stat. 881]; and

   c. The internal control over financial reporting requirements of section 404 (item 308 of the United States securities and exchange commission regulation S-K).

History: Effective October 1, 1995; amended effective January 1, 2008; April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-03. General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment.

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 first for the year ended December thirty-first immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June first with ninety days' advance notice to the insurer.

2. Extensions of the June first filing date may be granted by the commissioner for thirty-day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting an extension and determination by the commissioner of good cause for

an extension. The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

3. If an extension is granted in accordance with the provisions in subsection 2 of section 45-03-20-03, a similar extension of thirty days is granted to the filing of management's report of internal control over financial reporting.

4. Every insurer required to file an annual audited financial report pursuant to this chapter shall designate a group of individuals as constituting its audit committee, as defined in section 45-03-20-02. 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.

History: Effective October 1, 1995; amended effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-04. Contents of annual audited financial report.

The annual audited financial report must report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cashflows, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the department of insurance of the state of domicile.

The annual audited financial report must include the following:

1. Report of independent certified public accountant.

2. Balance sheet reporting admitted assets, liabilities, capital, and surplus.

3. Statement of operations.

4. Statement of cashflows.

5. Statement of changes in capital and surplus.

6. Notes to financial statements. These notes must be those required by the appropriate national association of insurance commissioners annual statement instructions and the national association of insurance commissioners accounting practices and procedures manual. These notes must include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to North Dakota Century Code section 26.1-03-07 with a written description of the nature of these differences.

7. The financial statements included in the audited financial report must 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 must be comparative, presenting the amounts as of December thirty-first of the current year and the amounts as of the immediately preceding December thirty-first. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

History: Effective October 1, 1995; amended effective August 1, 2000; April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-05. Designation of independent certified public accountant.

1. Each insurer required by this chapter to file an annual audited financial report within sixty days after becoming subject to the requirement, shall 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 under this chapter. Insurers not retaining an independent certified public accountant on October 1, 1995, shall register the name and address of their retained independent certified public accountants not less than six months before the date when the first audited financial report is to be filed.

2. The insurer shall obtain a letter from the accountant and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the rules and regulations of the insurance department of the state of domicile 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 that department, specifying the exceptions as the accountant may believe appropriate.

3. 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 commissioner 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 twenty-four months preceding the event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused the accountant to make reference to the subject matter of the disagreement in connection with the accountant's opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decisionmaking level, that is between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which the accountant does not agree; and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

History: Effective October 1, 1995; amended effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-06. Qualifications of independent certified public accountant.

1. The commissioner shall not recognize any 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 a Canadian or British company, that 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.

2. Except as otherwise provided in this chapter, the commissioner shall recognize an independent certified public accountant as qualified as long as the independent certified public accountant conforms to the standards of the independent certified public accountant's

profession, as contained in the code of professional ethics of the American institute of certified public accountants and rules and regulations and code of ethics and rules of professional conduct of the North Dakota board of accountancy, or similar code.

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 North Dakota Century Code chapter 26.1-06.1, the mediation or arbitration provisions shall operate at the option of the statutory successor.

4. a. 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 must 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 thirty days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

   (1) Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;

   (2) Premium volume of the insurer; or

   (3) Number of jurisdictions in which the insurer transacts business.

   b. The insurer shall file, with its annual statement filing, the approval for relief from subdivision a with the states that it is licensed in or doing business in 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.

5. 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 1961-1968, 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.

6. The commissioner 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 an opinion 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.

7. a. The commissioner shall not recognize as a qualified independent certified public accountant, nor 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:

(1) Bookkeeping or other services relating to the accounting records or financial statements of the insurer;

(2) Financial information systems design and implementation;

(3) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

(4) Actuarially oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an insurer's reserves if the following conditions have been met:

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

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

(c) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

(5) Internal audit outsourcing services;

(6) Management functions or human resources;

(7) Broker or dealer, investment adviser, or investment banking services;

(8) Legal services or expert services unrelated to the audit; or

(9) Any other services that the commissioner determines, by regulation, are impermissible.

b. 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.

8. Insurers having direct written and assumed premiums of less than one hundred million dollars in any calendar year may request an exemption from subdivision a of subsection 7. The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

9. A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in subdivision a of subsection 7 or that do not conflict with subdivision b of subsection 7, only if the activity is approved in advance by the audit committee, in accordance with subsection 10.

10. 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:

    a. The aggregate amount of all such nonaudit services provided to the insurer constitutes not more than five 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.

11. The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by subsection 10. 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.

12. a. 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, or chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.

    b. The insurer shall file, with its annual statement filing, the approval for relief from subdivision a with the states that it is licensed in or doing business in and 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.

History: Effective October 1, 1995; amended effective January 1, 2008; April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-07. 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 one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet must be filed with the report, as follows:

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

2. Amounts for each insurer subject to this section must 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 must be included.

5. A reconciliation must 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.

History: Effective October 1, 1995.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-08. Scope of audit and report of independent certified public accountant.

Financial statements furnished under section 45-03-20-04 must 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 319 of the professional standards of the American institute of certified public accountants, 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 319, for those insurers required to file a management’s report of internal control over financial reporting pursuant to section 45-03-20-12.3, the independent certified public accountant should consider, as that term is defined in statements on auditing standards 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 examiner's handbook promulgated by the national association of insurance commissioners as the independent certified public accountant deems necessary.

History: Effective October 1, 1995; amended effective January 1, 2008; April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-09. Notification of adverse financial condition.

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 minimum capital and surplus requirement of the North Dakota insurance statute as of that date. An insurer who has received a report under this section shall forward a copy of the report to the commissioner within five business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five-business-day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five business days.

2. 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 subsection 1.

3. If the accountant, subsequent to the date of the audited financial report filed under this chapter, becomes aware of facts that might have affected the accountant's report, the commissioner notes the obligation of the accountant to take action as prescribed in volume 1,

section AU 561 of the professional standards of the American institute of certified public accountants.

History: Effective October 1, 1995; amended effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-10. Communication of internal control-related matters noted in an audit.

1. 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 controls over financial reporting noted during the audit. Such communication shall be prepared by the accountant within sixty 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 statements on auditing standards no. 60, communication of internal control-related matters noted in an audit or its replacement, as of December thirty-first immediately preceding, in the insurer's internal control over financial reporting noted by the accountant during the course of the accountant's audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

2. 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.

History: Effective October 1, 1995; amended effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-11. Accountant's letter of qualifications.

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

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 American institute of certified public accountants and the rules of professional conduct of the North Dakota board of accountancy, 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 may be construed as prohibiting the accountant from utilizing the staff as 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 accountant's 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 section 45-03-20-12 and that the accountant consents and agrees to make available for review by the commissioner, the commissioner's designee, or the commissioner's appointed agent, the workpapers, as defined in section 45-03-20-12.

5. A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American institute of certified public accountants.

6. A representation that the accountant is in compliance with the requirements of section 45-03-20-06.

History: Effective October 1, 1995.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-12. Definition, availability, and maintenance of independent certified public accountant workpapers.

1. Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the independent certified public accountant's audit of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the accountant's audit of the financial statements of an insurer and which support the accountant's opinion thereof.

2. Every insurer required to file an audited financial report under this chapter, shall require the accountant to make available for review by insurance department examiners, 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, at the insurance department, or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the insurance department has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

3. In the conduct of the aforementioned periodic review by the insurance department examiners, it must be agreed that photocopies of pertinent audit workpapers may be made and retained by the department. Such reviews by the department examiners must be considered investigations and all working papers and communications obtained during the course of the investigations must be afforded the same confidentiality as other examination workpapers generated by the department.

History: Effective October 1, 1995; amended effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-12.1. Requirements for audit committees.

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

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.

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 subsection 5 of this section and subsection 3 of section 45-03-20-02.

3. In order to be considered independent for purposes of this section, 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 an officer or employee of the insurer or one of its affiliates.

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 be no longer independent.

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 include a description of the basis for the election. The election can 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.

6. a. 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 statements on auditing standards no. 61, communication with audit committees, or its replacement, including:

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

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

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

   b. If an insurer is a member of an insurance holding company system, the reports required by subdivision a 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.

7. The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
$0-$300,000,000	Over $300,000,000-$500,000,000	Over $500,000,000
No minimum requirements. See also notes A and B.	Majority (50% or more) of members shall be independent. See also notes A and B.	Supermajority of members (75% or more) shall be independent. See also note A.

Note A: The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a risk-based capital 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.

Note B: All insurers with less than $500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

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

8. An insurer with direct written and assumed premium, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than five hundred million dollars may make application to the commissioner for a waiver from this section requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and 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.

History: Effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-12.2. Conduct of insurer in connection with the preparation of required reports and documents.

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 chapter.

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.

3. For purposes of subsection 2, actions that if successful, could result in rendering the insurer's financial statements materially misleading include 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.

History: Effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-12.3. Management's report of internal control over financial reporting.

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 five hundred million dollars or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in section 45-03-20-02. The report shall be filed with the commissioner along with the communication of internal control-related matters noted in an audit described under section 45-03-20-10. Management's report of internal control over financial reporting shall be as of December thirty-first immediately preceding.

2. Notwithstanding the premium threshold in subsection 1, the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer is in any risk-based capital level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in chapter 45-03-13.

3. An insurer or a group of insurers that is:

   a. Directly subject to section 404;

   b. Part of a holding company system whose parent is directly subject to section 404;

   c. Not directly subject to section 404 but is 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 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 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 subsections 2 through 7 of section 45-03-20-04) 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 a report under this section, or the section 404 report and a report under this section 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.

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 thirty-first 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 is 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 or title.

5. Management shall document and make available upon financial condition examination the basis upon which its assertions required in subsection 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 on internal control over financial reporting, required by subsection 1, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the insurance department.

History: Effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-13. Exemptions and effective dates.

1. 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 must be held in accordance with the rules and regulations of the North Dakota insurance department pertaining to administrative hearing procedures.

2. Domestic insurers retaining a certified public accountant on October 1, 1995, who qualify as independent shall comply with this chapter for the year ending December 31, 1996, and each year thereafter unless the commissioner permits otherwise.

3. Domestic insurers not retaining a certified public accountant on October 1, 1995, who qualify as independent may meet the following schedule for compliance unless the commissioner permits otherwise:

   a. As of December 31, 1996, file with the commissioner an audited financial report.

   b. For the year ending December 31, 1996, and each year thereafter, the insurers shall file with the commissioner all reports and communications required by this chapter.

4. Foreign insurers shall comply with this chapter for the year ending December 31, 1996, and each year thereafter, unless the commissioner permits otherwise.

5. The requirements of subsection 4 of section 45-03-20-06 shall be in effect for audits of the year beginning January 1, 2010, and thereafter.

6. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

7. The requirements of section 45-03-20-01, subsection 3 of section 45-03-20-03, subsections 7 through 12 of section 45-03-20-06, and sections 45-03-20-08 and 45-03-20-12.3, except for section 45-03-20-12.1 covered above, are effective beginning with the reporting period ending December 31, 2010, and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded, but not earlier than December 31, 2010, to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

History: Effective October 1, 1995; amended effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-14. Canadian and British companies.

1. 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 supervision authority duly audited by an independent chartered accountant.

2. For such insurers, the letter required in subsection 2 of section 45-03-20-05 shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to section 45-03-20-03 and shall affirm that the opinion expressed is in conformity with those requirements.

History: Effective April 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1