ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

RENUMBERING, RENUMBERING AND AMENDING, AMENDING, AND CREATING A RULE

To renumber Ins 50.15, 50.17 ;

To renumber and amend Ins 50.16 (title);

To amend Ins 50.02(2)(a), 50.05 (title), 50.05(3), 50.08(2), 50.10 (title), 50.10, 50.11(1), 50.12 (title), 50.12, 50.13(4) ;

To create Ins 50.01(1g), (1r), (4g), (4r), (6m), (7d), (7h), (7p), (7t), (8m), 50.05(5), 50.08(3), (4), (5), (6), (7), (8), (9), 50.11(5), 50.12(2), 50.15, 50.16, 50.17, 50.18(3), (4), (5), (6), (7), Wis. Adm. Code,

Relating to audit, control and financial reporting requirements.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

1. **Statutes interpreted:**

   ss. 600.01, 601.41(3), 601.42 and 623.02, Stats.

2. **Statutory authority:**

   ss. 600.01 (2), 601.41 (3), 601.42 and ch. 623, Stats.

3. **Explanation of OCI's authority to promulgate the proposed rule under these statutes:**

   OCI has set standards for accounting practices related to the preparation and submission of annual audited financial reports, annual financial statements and examinations required of insurers doing business in Wisconsin.

4. **Related statutes or rules:**

   See the statutes interpreted in paragraph 1, above.

5. **The plain language analysis and summary of the proposed rule:**

   The provisions of subch. I of ch. Ins 50, Wis. Adm. Code, establish the requirement to file an annual audited financial report (CPA audit) and the related standards including applicability, auditor qualification requirements and the auditor duty to report adverse financial conditions. The proposed rule is based upon a model regulation adopted by the National Association of Insurance Commissioners (NAIC) at the June, 2006, national meeting. The proposed rule updates and adds certain general requirements including those related to auditor independence, the scope of the audit and report, communication of internal control matters noted in the audit, an audit committee, and management's report of internal control over financial reporting. With respect to auditor independence the proposed rule provides that the lead auditor may not serve in that capacity for a period more than

five years. The rule specifies various non-audit services that, if performed by the auditor, would impair the auditor's independence in relation to the insurer. Insurers with less than $100 million in direct and assumed premium may request a waiver from the requirement based upon financial or organizational hardship. Partners and senior managers of the audit engagement may not serve as a member of the board of directors, or officer, or controller, or similar position of the insurer if employed by the independent accounting firm that audited the insurer during the one-year period which preceded the most current statutory opinion. With respect to corporate responsibility the proposed rule provides that every insurer required to file an annual audited financial report shall also be required to have an audit committee that is directly responsible for the appointment, oversight and compensation of the auditor. Insurers with less than $ 500 million in direct and assumed premium may apply for a waiver from this requirement based on hardship. With respect to internal control by an insurer over financial reporting the proposed rule requires that management of insurers with more than $ 500 million in direct and assumed premium file a report with the Commissioner regarding its assessment of internal control over financial reporting, including a statement whether the controls are effective to provide reasonable assurance regarding the reliability of the statutory financial statements and disclosure of any unremediated material weaknesses in internal control over financial reporting.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There are no federal regulations which address annual financial reports, annual financial statements and examinations to be prepared by insurers doing business in Wisconsin. Certain insurers, however are SEC registrants, and are subject to audit committee independence and preapproval requirements of the Securities and Exchange Act of 1934, management reports on internal control over financial reporting requirements of Section 404 of the Sarbanes-Oxley Act of 2002, and SEC regulations promulgated thereunder.

7. Comparison of similar rules in adjacent states as found by OCI:

Illinois: Il. Adm. Code Title 50, Part 925, Section 925.70, requires annual audited financial reports from insurers doing business in the state that are prepared by a qualified independent certified public accountant. The state has indicated to the NAIC that consideration of the Model audit regulation will be considered in the fall of 2008.

Iowa: Iowa Adm. Code 191-5.25, requires annual audited financial reports from insurers doing business in the state that are prepared by a qualified independent certified public accountant. The state has indicated to the NAIC that it has initiated the process for consideration of the Model audit regulation through prehearing exposure to be followed by submission to its rules committee in late 2008.

Michigan: Mich. Comp. Laws, Ch. 500, requires annual audited financial reports from insurers authorized to do business in the state that are prepared by an independent certified public accountant. The state has indicated to the NAIC that there is legislation pending to modify its s. 10 concerning audit reports.

Minnesota: Minn. Stat. Ch. 60A.129, Subd. 3, requires annual audited financial reports from insurers doing business in the state that are prepared by an independent certified public accountant. The state has indicated to the NAIC that consideration of the Model audit regulation is contemplated in 2009.

8. **A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:**

   The proposed rule is based upon a model regulation adopted by the National Association of Insurance Commissioners (NAIC) at the June, 2006, national meeting. The proposed rule is under consideration as it has been recommended by the NAIC, will increase the ability of management and regulators to monitor financial status, and will provide control documentation contemplated in the enhanced financial surveillance procedures adopted by the NAIC and required as an accreditation standard for statutory examinations conducted after January 1, 2010.

9. **Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:**

   The proposed rule establishes direct and assumed premium thresholds and waiver provisions that minimize the effect upon smaller insurers.

10. **See the attached Private Sector Fiscal Analysis.**

11. **A description of the Effect on Small Business:**

    This rule will have little or no effect on small businesses.

12. **Agency contact person:**

    A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at:
    http://oci.wi.gov/ocirules.htm

    or by contacting Inger Williams, OCI Services Section, at:

    Phone: (608) 264-8110
    Email: inger.williams@wisconsin.gov
    Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474
    Mail: PO Box 7873, Madison, WI 53707-7873

The rule changes are:

SECTION 1. Section Ins 50.01(1g), (1r), (4g), (4r), (6m), (7d), (7h), (7p), (7t), (8m) are created to read:

Ins 50.01(1g) "Affiliate" of, or person "affiliated" with, a specific person means 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.

(1r) "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 the controlled insurers solely for the purposes of this chapter at the election of the controlling person under s. Ins 50.15 (6). If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

(4g) "Group of insurers" means those licensed insurers included in the reporting requirements of ch. 617, Stats., or a set of insurers identified by the insurers' management or controlling person for the purpose of assessing the effectiveness of internal control over financial reporting.

(4r) "Independent board member" has the meaning given in s. Ins 50.15 (4).

(6m) "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 financial statements, including the items specified in s. Ins 50.06(2) (b) to (3), 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, including those items specified in s. Ins 50.06 (2) (b) to (3), 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 audited financial statements, including those items specified in s. Ins 50.06 (2) (b) to (3).

(7d) "SEC" means the United States Securities and Exchange Commission.

(7h) "Section 404" means section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

(7p) "Section 404 Report" means management's report on internal control over financial reporting as defined by the SEC and the related attestation report of the independent certified public accountant.

(7t) "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:

(a) The preapproval requirements of section 201, section 10 A (i), of the Securities and Exchange Act of 1934;

(b) The audit committee independence requirements of section 301, section 10 A (m) (3) of the Securities and Exchange Act of 1934; and

(c) The internal control over financial reporting requirements of Section 404, item 308 of SEC Regulation S-K.

(8m) "Ultimate controlling person" means a person who is not controlled by any other person.

SECTION 2. Section Ins 50.02 (2) (a) is amended to read:

Ins 50.02 (2) (a) It complies with another state's requirement to submit audited financial reports and the other state's requirement is found by the commissioner~~, in writing,~~ to be substantially similar to the requirements of this chapter; and

SECTION 3. Section Ins 50.05 (title) and 50.05 (3) are amended to read:

Ins 50.05 (title) ~~**Filing**~~ **General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment.**

(3) The commissioner may grant extensions of the filing date under sub. (1) for 31-day periods if the insurer and independent certified public accountant establish there is good cause for an extension. A request for an extension shall be submitted in writing not less than 10 days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension. If an extension is granted in accordance with this subsection, a similar extension of 31 days is granted to the filing of management's report of internal control over financial reporting.

SECTION 4. Section Ins 50.05 (5) is created to read:

Ins 50.05 (5) Every insurer required to file an annual audited financial report pursuant to this chapter shall designate a group of individuals to constitute its audit committee. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this chapter at the election of the controlling person.

SECTION 5. Section Ins 50.08 (2) is amended to read:

Ins 50.08 (2) After December 31, 1994, and prior to January 1, 2010, no accounting firm partner or other person responsible for rendering a report required of an independent certified public accountant may act in that capacity for more than ~~seven~~ 7 consecutive years. Following any period of service such a person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of 2 years. Effective January 1, 2010, the lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than 5 consecutive years, including consecutive years immediately preceding January 1, 2010, and 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. ~~The commissioner may grant~~ An insurer may make application to the commissioner for relief from the rotation requirement on the basis of unusual circumstances. The application should be made at least thirty days before the end of the calendar year. Factors the commissioner may consider in determining if the relief should be granted include, but are not limited to:

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

(b) Premium volume of the insurer; or

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

SECTION 6. Section Ins 50.08 (3), (4), (5), (6), (7), (8), (9) are created to read:

Ins 50.08 (3) The insurer shall file with its annual statement filing the approval for relief from sub. (2) with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

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

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

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 advisor, or investment banking services.

8. Legal services or expert services unrelated to the audit.

9. Any other services that the commissioner determines are impermissible. The commissioner may consider utilizing the guidance provided in the Securities and Exchange Commission Final Rule No. 33-8183, Strengthening the Commission's Requirements Regarding Auditor Independence, adopted January 28, 2003, in order to evaluate whether the provision of such services impairs the independence of the accountant.

(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.

(5) Insurers having direct written and assumed premiums of less than $ 100,000,000 in any calendar year may request an exemption from sub. (4) (a). The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from the provisions. If the commissioner finds upon review of the statement that compliance with sub. (4) (a) would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

(6) 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 sub. (4) (a) or that do not conflict with sub. (4) (b), only if the activity is approved in advance by the audit committee, in accordance with sub. (7), provided that the audit committee is in compliance with the Securities and Exchange Commission Final Rule 33-8183, Strengthening the Commission's Requirements Regarding Auditor Independence, adopted January 28, 2003.

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

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

(b) The services were not recognized by the insurer at the time of the engagement to be non-audit 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 members of the board of directors to whom authority to grant the approvals has been delegated by the audit committee.

(8) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by sub. (7). The decisions of any member to whom the authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

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

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

SECTION 7. Section Ins 50.10 (title) and 50.10 are amended to read:

Ins 50.10 (title) Scope of ~~examination~~ audit and report of independent certified public accountant. Financial statements furnished under s. Ins 50.06 shall be audited by ~~an~~ the independent certified public accountant. The independent certified public accountant shall conduct the audit of the insurer's financial statements in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU Section 319, for those insurers required to file a management's report of internal control over financial reporting pursuant to s. Ins 50.17, the independent certified public accountant should consider, as that term is defined in Statement on Auditing Standards, SAS, No. 102, Defining Professional Requirements in Statements on Auditing Standards, or its replacement, the most recently available report in planning and performing the audit of the statutory financial statements. The independent certifed public accountant shall give consideration to 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. The commissioner may require that an independent

certified public accountant conduct additional procedures or provide additional reports.

SECTION 8. Section Ins 50.11 (1) is amended to read:

Ins 50.11(1) An insurer shall require the independent certified public accountant to report, in writing and within 5 business days, to the board of directors of the insurer 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 ~~examination~~ audit or that the insurer does not meet the minimum capital and surplus or compulsory surplus requirements.

SECTION 9. Section Ins 50.11 (5) is created to read:

Ins 50.11 (5) If the independent certified public accountant, subsequent to the date of the audited financial report filed pursuant to this chapter, becomes aware of facts that might have affected the report, the independent certified public accountant shall take the action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

SECTION 10. Section Ins 50.12 (title) and 50.12 are amended to read:

Ins 50.12 ~~Report of significant deficiencies in internal controls~~ Communication of internal control related matters noted in an audit. (1). An insurer shall file with the commissioner within 60 days of the date an annual ~~financial statement~~ audited financial report is filed, or is required under s. Ins 50.05 to be filed, a written ~~report~~ communication prepared by the independent certified public accountant describing any ~~significant deficiencies in the insurer's internal control structure. SAS No. 60, Communication of Internal Control Structure Matters Noted in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants) requires an accountant to communicate significant deficiencies (known as "reportable conditions") noted during a financial staement audit to the appropriate parties within an entity. An insurer is not required to file a report under this section if the independent certified public accountant does not identify significant deficiencies. An insurer shall promptly file with the commissioner a description of remedial actions taken or proposed to correct significant deficiencies, if the actions are not described in the independent certified accountant's report.~~ unremediated material weaknesses in its internal controls over financial reporting noted during the audit. Such communication shall be prepared by the independent certified public accountant and shall contain a description of any unremediated material weakness, as the term material weakness is defined by Statement on Auditing Standard 60, Communication of Internal Control Related Matters Noted in an Audit, or its replacement, as of December 31 immediately preceding, so as to coincide with the audited financial report discussed in s. Ins 50.05(1), in the insurer's internal control over financial reporting noted by the accountant during the course of the audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

SECTION 11. Section Ins 50.12 (2) is created to read:

Ins 50.12 (2) The insurer shall provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the independent certified public accountant's communication.

SECTION 12. Section ins 50.13 (4) is amended to read:

Ins 50.13 (4) That the accountant or accounting firm consents to the requirements of s. Ins ~~50.15~~ 50.14 and that the accountant or accounting firm consents and agrees to make available work papers for review by the commissioner.

SECTION 13. Section Ins 50.15 is renumbered to be Ins 50.14.

SECTION 14. Section Ins 50.15 (title) and 50.15 are created to read:

Ins 50.15 Requirements for audit committees.

Ins 50.15 (1) This section does 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.

(2) 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.

(3) 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 sub. (6) and s. Ins 50.01 (1r).

(4) In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in the 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 a law requires board participation by otherwise non-independent members, the law shall prevail and the members may participate in the audit committee and be designated as independent for audit committee purposes, unless the members are an officer or employee of the insurer or one of its affiliates.

(5) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, the member, with notice by the insurer to the commissioner, may remain an audit committee member of the insurer until the earlier of the next annual meeting of the insurer or one year from 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 this chapter, the ultimate controlling person shall provide written notice to the commissioner of the affected insurers. Notification shall be made timely prior to the issuance of the audited financial 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.

(7) (a) The audit committee shall require the independent certified public accountant that performs for an insurer any audit required by this chapter to timely report to the audit committee in accordance with the requirements of SAS 61, Communication with Audit Committees, or its replacement, including:

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, ramification of the use of the alternative disclosures and treatments, and the treatment preferred by the independent certified public accountant

3. Other material written communications between the independent certified public 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 sub. (7) (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.

(8) The proportion of independent audit committee members shall meet or exceed the criteria contained in the following table unless the commissioner orders a greater proportion of independent audit committee members:

Prior Calendar Year Direct Written and Non-Affiliated Assumed Premiums		
$0 - $300,000,000	**$300,000,000 - $500,000,000**	**Over $500,000,000**
No minimum requirements.	Majority (50% or more) of members shall be independent.	Supermajority of members (75% or more) shall be independent.

(9) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $ 500,000,000 may make application to the commissioner for a waiver from this section based upon hardship. The insurer shall file with its annual statement filing the approval for relief from the requirements of this section with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

SECTION 15. Section Ins 50.16 (title) and 50.16 are created to read:

Ins 50.16 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.

(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 independent certified public 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. In this subsection, 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 independent certified public 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.

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

SECTION 16. Section Ins 50.17 (title) and 50.17 are created to read:

Ins 50.17 Management's report of internal control over financial reporting.

(1) Every insurer required to file an audited financial report pursuant to this subchapter that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of $ 500,000,000 or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting as the terms are defined in s. Ins 50.01. The report shall be filed with the commissioner along with the Communication of Internal Control Related Matters Noted in an Audit described in s. Ins 50.12. Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(2) Notwithstanding the premium threshold in sub. (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 event as described in s. Ins 51.01, or the insurer is in financially hazardous condition.

(3) In lieu of the management's report of internal control over financial reporting, an insurer or a group of insurers may file a report described in sub. (4) if any of the following criteria are applicable:

(a) The insurer is directly subject to Section 404.

(b) The insurer is part of a holding company system whose parent is directly subject to Section 404.

(c) The insurer is not directly subject to Section 404 but is a SOX Compliant Entity.

(d) The insurer is a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity.

(4) An insurer qualifying under sub. (3) may file its or its parent's Section 404 report and an addendum in satisfaction of the requirements under sub. (1) or (2), provided that the internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurer's audited statutory financial statements, those items included in s. Ins 50.06 (2) (b) to (3), 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 s. Ins 50.06 (2) (b) to (3), 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) A management's report of internal control over financial reporting pursuant to sub. (1) or (2); or

(b) The Section 404 report and a management's report of 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' audited statutory financial statements not covered by the Section 404 report.

(5) Management's report of internal control over financial reporting shall include:

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

(b) A statement that management has established internal control over financial reporting and an assertion to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles.

(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting.

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

(e) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management 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 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.

(g) Signatures of the chief executive officer and the chief financial officer, or equivalent position or title.

(6) Management shall document and make available upon financial condition examination the basis upon which its assertions required in this section 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 this section, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential.

SECTION 17. Section Ins 50.16 is renumbered to be Ins 50.18, and as renumbered 50.18 (title) and 50.18(1) are amended to read:

Ins 50.18 Exemptions <u>and effective dates.</u> (1) The commissioner may grant an exemption from compliance with this subchapter if the commissioner finds that compliance would constitute a financial or organizational hardship upon the insurer<u>, except as provided in subs. 50.08(2), 50.08(9)(a) and 50.15(9)</u>.

(2) An exemption may be granted at any time and from time to time for a specified period.

SECTION 18. Section Ins 50.18 (3), (4), (5), (6), (7), are created to read:

Ins 50.18(3) Subject to subs. (6) and (7), this subchapter shall apply to domestic insurers retaining a certified public accountant on the effective date of this subsection who qualifies as independent, for the year ending December 31, 2008, and each year thereafter.

(4) Subsections Ins 50.08 (3) to (9) shall apply to domestic insurers not retaining a certified public accountant on the effective date of this subsection who qualifies as independent, for the year ending December 31, 2009, and each year thereafter.

(5) Sections Ins 50.08 (3) to (9), 50.11 (5), 50.12 (2) and 50.16 shall apply to foreign and alien insurers otherwise subject to this subchapter for the year ending December 31, 2010, and each year thereafter.

(6) The requirements of s. Ins 50.15 are effective January 1, 2010. 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. 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 s. Ins 50.17 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 and assumed premium is below the threshold and subsequently becomes subject to the reporting requirements shall have 2 years following the year the threshold is exceeded, but not earlier than December 31, 2010, to file a report. An insurer acquired in a business combination shall have 2 calendar years following the date of acquisition or combination to comply with the reporting requirements.

SECTION 19. Section Ins 50.17 is renumbered to be Ins 50.19

SECTION 20. This chapter may be enforced under ss. 601.41, 601.64, 601.65, Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

These changes will take effect on the first day of the month after publication, as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin, this 31st day of October, 2008.

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Kimberly Shaul
Deputy Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Section Ins 50.01, 50.02, 50.05, 50.08, 50.10, 50.11, 50.12, 50.13, 50.14, 50.15, 50.16, 50.17, 50.18, 50.19 relating to audit, control and financial reporting requirements

This rule change may have a significant financial effect on a small number of companies in the private sector regulated by OCI. Costs associated with implementing the provisions of the proposed rule, other than those related to enhanced documentation of internal controls over financial reporting will not be significant. Provisions related to enhanced documentation of internal controls over financial reporting apply only to insurers with more than $ 500 million in direct and assumed premium, and a majority of these insurers have developed the systems and procedures necessary to achieve compliance voluntarily or as a result of their status as SEC registrants.