

**NEW YORK STATE
INSURANCE DEPARTMENT
11 NYCRR 89
REGULATION NO. 118
AUDITED FINANCIAL STATEMENTS**

I, James J. Wrynn, Superintendent of Insurance of the State of New York, pursuant to the authority granted by sections 201, 301, 307(b), 1109, 4710(a)(2) and 5904(b) of New York Insurance Law (McKinney 2009), do hereby repeal Part 89 of Title 11 of the Official Compilation of Codes, Rules and Regulations (No. 118), and promulgate a new Part 89 of Title 11 of the Official Compilation of Codes, Rules and Regulations (No. 118), to take effect upon publication in the State Register, and to read as follows.

[ALL MATERIAL IS NEW]

- Section 89.0 Purpose
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Section 89.0 Purpose

The purpose of this Part is to apply audit and reporting standards upon insurers, fraternal benefit societies and managed care organizations. These standards are modeled on the standards required by the Sarbanes-Oxley Act of 2002.

Section 89.1 Definitions

For the purposes of this Part, the following definitions shall apply:

(a) *AICPA* means the American Institute of Certified Public Accountants.

(b) *Affiliate* of, or person *affiliated* with another person means a person that directly, or indirectly, controls, or is controlled by, or is under common control with, the other person specified.

(c) *Audit committee* means a committee (or equivalent body) established by the board of directors of a company for the purpose of overseeing the accounting and financial reporting processes of a company or group of companies, and auditing of financial statements of the company or group of affected companies, provided that:

(1) for a holding company that controls a group of companies, the audit committee of the holding company may be deemed to be the audit committee for one or more of those controlled companies solely for the purposes of this Part, even if all members of the holding company audit committee are not residents of this state;

(2) for a United States branch of an alien company, the audit committee may be comprised of the audit committee of the person that controls the United States branch; and

(3) for a company that does not otherwise designate an audit committee, the company's entire board of directors shall constitute the audit committee.

(d) *Audited financial report* means and includes those items specified in section 89.3 of this Part.

(e) *Company* means an authorized insurer as defined in Insurance Law section 107(a)(10), a fraternal benefit society as defined in Insurance Law section 4501(a), or a managed care organization (MCO) as defined in subdivision (n) of this section. *Company* does not include alien accredited reinsurers.

(f) *Control* has the meaning:

(1) ascribed by Insurance Law section 1501(a)(2) for a company that is part of a holding company system that is subject to Article 15 of the Insurance Law;

(2) ascribed by Insurance Law section 107(a)(16) for an authorized insurer or fraternal benefit society and its subsidiaries that are not part of a holding company system; or

(3) set forth in 10 NYCRR 98-1.2(j) for a MCO.

(g) *CPA* means:

(1) an independent certified public accountant or accounting firm who or that meets requirements established by the PCAOB and is also a registrant in good standing with the AICPA and every state in which the accountant or the firm is licensed to practice; or

(2) for a United States branch of a Canadian or British insurer, "CPA" also includes a Canadian-chartered or British-chartered accountant.

(h) *Group of companies* means those companies that are:

- (1) part of a holding company system;
- (2) a company and its subsidiaries that are not part of a holding company system; or
- (3) a subset of a group of companies described in either paragraph (1) or (2) of this subdivision, which the company identifies for aggregation to implement and assess internal control over financial reporting.

(i) *Holding company* has the meaning ascribed by:

- (1) Insurance Law section 1501(a)(3) for an authorized insurer subject to Article 15 of the Insurance Law; and
- (2) 10 NYCRR 98-1.2(u) for a MCO.

(j) *Holding company system* has the meaning ascribed by:

- (1) Insurance Law section 1501(a)(6) for an authorized insurer subject to Article 15 of the Insurance Law; and
- (2) 10 NYCRR 98-1.2(v) for a MCO.

(k) *Indemnification* means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the CPA for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the company or its representatives.

(l) *Independent audit committee member* has the meaning described in section 89.12(b) and (c) of this Part.

(m) *Internal control over financial reporting* means a process effected by a company's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of those items specified in section 89.3 of this Part and includes those policies and procedures that:

- (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;
- (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, and that receipts and expenditures are made only in accordance with authorizations of management and directors; and
- (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements.

(n) *MCO* or *managed care organization* means a managed care organization, as such term is defined in 10 NYCRR 98-1.2(x), except for:

- (1) a prepaid health services plan, as defined in 10 NYCRR 98-1.2(ff);
- (2) a primary care partial capitation provider, as defined in 10 NYCRR 98-1.2(gg); and
- (3) a comprehensive HIV special needs plan, as defined in 10 NYCRR 98-1.2(i).

(o) *NAIC* means the National Association of Insurance Commissioners.

(p) *PCAOB* means the Public Company Accounting Oversight Board, which was established by the Sarbanes-Oxley Act of 2002.

(q) *Prior calendar year direct written and assumed premiums* means a company's combined total of direct premiums and assumed premiums from non-affiliates.

(r) *SEC* means the United States Securities and Exchange Commission.

(s) *SOX* means the Sarbanes-Oxley Act of 2002, 15 U.S.C. section 7201 *et seq.*

(t) *SOX compliant company* means a company 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:

- (1) the pre-approval requirements of section 201 of SOX (section 10A(i) of the Securities Exchange Act of 1934, 15 U.S.C. section 78j-1(i));
- (2) the audit committee independence requirements of section 301 of SOX (section 10A(m)(3) of the Securities Exchange Act of 1934, 15 U.S.C. section 78j-1(m)(3)); and
- (3) the internal control over financial reporting requirements of section 404 (Item 308 of SEC Regulation S-K).

(u) *SOX section 404* means section 404 of the Sarbanes-Oxley Act of 2002 titled "management assessment of internal controls" and any rules and regulations promulgated thereunder.

(v) *SOX section 404 report* means "management's report on internal control over financial reporting" as defined by SOX section 404 and any rules or regulations promulgated thereunder.

(w) *Work papers* mean the records kept by a CPA of the procedures followed, the tests performed, the information obtained, the conclusions reached pertinent to the CPA's audit of the financial statements of a company, and any communication between the CPA and the company relating to the CPA's audit of the company. Work papers 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 CPA in the course of the CPA's audit of the financial statements of a company and that support the CPA's opinion.

Section 89.2 General requirements related to filing of annual audited financial reports and audit committee appointment

(a) Every company shall file an audited financial report with the superintendent on or before May 31 for the year ended December 31 immediately preceding, except that a MCO shall file on or before April 1 for the year ended December 31 immediately preceding.

(b) A company shall submit any filings to the superintendent pursuant to this Part at the following locations:

(1) a life insurance company, a risk retention group or fraternal benefit society shall file with the New York City office of the Life Bureau;

(2) a property/casualty insurance company, financial guaranty insurance company, reciprocal insurer, title insurance corporation, or mortgage guaranty insurance company shall file with the New York City office of the Property Bureau;

(3) a co-operative property/casualty insurance company shall file with the Albany office of the Property Bureau; and

(4) an accident and health insurance company, municipal co-operative health benefit plan or MCO shall file with the New York City office of the Health Bureau.

(c) Every company required to file an annual audited financial report pursuant to this Part shall designate a group of individuals to constitute its audit committee.

Section 89.3 Contents of annual audited financial report

(a) The annual audited financial report shall report the financial position of the company as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance department of the state of domicile. In addition, a company may comply by filing statements prepared in accordance with generally accepted accounting principles, provided that appropriate reconciliation is made as required by Insurance Law section 307(b). The annual audited financial report shall include the following:

(1) report of CPA;

(2) balance sheet reporting admitted assets, liabilities, capital and surplus;

(3) statement of operations;

(4) statement of cash flow; and

(5) statement of changes in capital and surplus.

(b) Notes to financial statements shall be those required by the appropriate *Annual Statement Instructions* and those accounting practices and procedures to be followed as specified in Part 83 of this Title (Regulation 172) and shall include a reconciliation of differences, if any, between the audited financial statements filed pursuant to Insurance Law section 307(b) and the annual statement filed pursuant to Insurance Law section 307(a) with a written description of the nature of these differences.

(c) The company shall prepare the financial statements included in the audited financial report in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the company filed with the superintendent, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year after the effective date of this regulation in which a company is required to file an audited financial report, the comparative data may be omitted.

Section 89.4 Designation of CPA

(a) Every company that files an annual audited financial report shall provide to the superintendent in writing the name, address, telephone number and email address of its CPA by March 1, 2010, and except as otherwise provided in this section, provide updated information within 60 days of any change in CPA thereafter.

(b) The company shall obtain a letter from the CPA, and file a copy with the superintendent, stating that the CPA is aware of the provisions of the insurance law and the regulations thereunder of the state of domicile that relate to accounting and financial matters and affirming that the CPA will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance department, specifying such exceptions as the CPA may believe appropriate.

(c) If the CPA is dismissed or resigns:

(1) the company shall submit notification to the superintendent within five business days of the event;

(2) the company shall submit a letter to the superintendent within 15 business days of the event detailing with specificity the nature and extent of any disagreements at the decision-making level with the former CPA within the previous two years (whether or not resolved to the CPA's satisfaction) on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure that might or could have been referenced in the CPA's opinion attached to the audited financial report.;

(3) the company shall submit, with the letter required by paragraph (2) of this subdivision, a letter from the former CPA to the superintendent stating whether the CPA agrees with the statements contained in the company's letter and, if not, stating the reasons for which the CPA does not agree.

Section 89.5 Qualifications of CPA

- (a) A company may utilize a CPA for the purposes specified in this Part provided that the CPA:
- (1) meets the definition of a CPA set forth in section 89.1(g) of this Part;
 - (2) has not 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 company;
 - (3) acts in conformity with the standards of the accounting profession, such as set forth in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics of Professional Conduct of the New York Board of Public Accountancy, or similar code; and
 - (4) utilizes its staff consistent with the standard prescribed by generally accepted auditing standards.
- (b) A company may enter into an agreement with a CPA to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a proceeding commenced under Insurance Law Article 74 against the company, the mediation or arbitration provisions shall apply only with the permission of the successor of the insurer as determined under that Article.
- (c)(1) A company shall not utilize the same lead or coordinating CPA as an audit partner who has primary responsibility for the audit for more than five consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years.
- (2) A company may make application to the superintendent for relief from the rotation requirement contained in paragraph (1) of this subdivision on the basis of unusual circumstances. The application shall be made at least 30 days before the end of the calendar year and include the following details:
- (i) number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
 - (ii) premium volume of the company; and
 - (iii) number of jurisdictions in which the company transacts business.
- (3) If relief is granted from the requirements of this subdivision, the company shall file a copy of each grant of relief received by the company with each state in which it is licensed or doing business and with the NAIC.
- (d) A company may not utilize for any purpose of this Part any work performed or prepared by a CPA who has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. sections 1961 to 1968, or any dishonest conduct or practices under federal or state law.
- (e)(1) A company may not utilize for any purpose of this Part any work performed or prepared by a CPA if that CPA also contemporaneously provides any of the following non-audit services to that company:

(i) bookkeeping or other services related to the accounting records or financial statements of the company;

(ii) financial information systems design and implementation;

(iii) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

(iv) actuarial advisory services involving the determination of amounts recorded in the financial statements. However, the CPA may assist a company in understanding the methods, assumptions and inputs used to determine amounts recorded in the financial statement, but only if it is reasonable to conclude that those amounts will not be subject to question during an audit of the company's financial statements. A CPA's actuary may also issue an actuarial opinion or certification (opinion) on a company's reserves if the following conditions have been met:

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

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

(c) the CPA's actuary tests the reasonableness of the reserves after the company's management has determined the amount of the reserves;

(v) internal audit outsourcing services;

(vi) management functions or human resources;

(vii) broker or dealer, investment adviser, or investment banking services; or

(viii) legal services or expert services unrelated to the audit.

(2) The company shall attach a statement to its audited annual financial statement, when filed, that the CPA does not function in the role of management, does not audit his or her own work, and does not serve in an advocacy role for the company.

(f) A company may permit a CPA who performs the audit to engage in non-audit services, including tax and other services, which are not prohibited by subdivision (e)(1) of this section, but only if the activity is approved in advance by the audit committee, in accordance with subdivision (h) of this section.

(g) A company having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from subdivision (e)(1) of this section. The company shall file with the superintendent a written statement discussing the reasons why the company should be exempt from these provisions. The superintendent may grant the exemption upon a finding that compliance would constitute a financial or organizational hardship upon the company.

(h) The company's audit committee shall pre-approve all auditing services and non-audit services provided to the company by a CPA of the company except that a company need not preapprove non-audit services if:

(1) the company is a SOX compliant company or a direct or indirect wholly-owned subsidiary of a SOX compliant company; or

(2)(i) the aggregate amount of all such non-audit services provided to the company constitute five percent or less of the total amount of fees paid by the company to its CPA during the fiscal year in which the non-audit services are provided;

(ii) the services were not recognized by the company at the time of the engagement to be non-audit services; and

(iii) the services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee, or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(i) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the pre-approvals required by subdivision (h) of this section. 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.

(j)(1) A company shall not utilize a CPA if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that company, was employed by the CPA and participated in the audit of that company 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. A company may make application to the superintendent for relief from the above requirement on the basis of unusual circumstances.

(2) The company shall file, with its annual statement filing, the approval for relief from paragraph (1) of this subdivision with the NAIC and the states in which the company is licensed in or otherwise doing business.

Section 89.6 Consolidated or combined audits

A company may make written application to the superintendent for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements, if the company is part of a group of companies that utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the company's reserves and the company cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

(a) amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

(b) amounts for each company subject to this section shall be stated separately;

(c) noninsurance operations must be shown on the worksheet on a combined or individual basis;

(d) explanations of consolidating and eliminating entries shall be included; and

(e) a reconciliation shall be included of any differences between the amounts shown in the individual company columns of the worksheet and comparable amounts shown on the annual statements of the companies.

Section 89.7 Scope of audit and report of CPA

A company shall have financial statements furnished pursuant to section 89.3 of this Part audited by the CPA. The audit of the company's financial statements shall be conducted in accordance with generally accepted auditing standards.

Section 89.8 Notification of adverse financial condition

(a) Every company required to furnish an annual audited financial report shall require the CPA to submit written notification to the superintendent, the board of directors and the company's audit committee within five business days of any determination by the CPA that the company has materially misstated its financial condition as reported to the superintendent as of the balance sheet date currently under audit or that the company does not meet the minimum capital or surplus requirement of the insurance law as of that date, including, for applicable MCOs, the contingent reserve requirement of 10 NYCRR 98-1.11(e).

(b) A company shall require that if the CPA, subsequent to the date of the audited financial report filed pursuant to this Part, becomes aware of facts that might have affected the report, the CPA acts in accordance with professional obligations imposed by the AICPA and PCAOB.

Section 89.9 Communication of internal control related matters noted in an audit

(a) In addition to the annual audited financial report, every company shall obtain from its CPA a written communication stating whether or not the CPA has noted any unremediated material weaknesses in the company's internal control over financial reporting during the audit. The communication prepared by the CPA shall also contain a description of any unremediated material weakness as of December 31 of the immediately preceding year.

(b) The company shall provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the CPA's communication.

(c) The company shall submit the written communication to the superintendent as part of the filing of each annual audited financial report filed with the superintendent, as required by Insurance Law 307(b) or 10 NYCRR 98-1.16(c).

Section 89.10 CPA's letter of qualifications

(a) Every company subject to this Part shall retain a CPA who agrees by written contract with such company to comply with the provisions of Insurance Law section 307(b) and this Part. The contract must specify:

(1) that the CPA is independent with respect to the company and is acting in conformity with the standards of the CPA's profession, such as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the New York Board of Public Accountancy, or similar code and meets the definition of a CPA set forth in subdivision (g) of section 89.1 of this Part;

(2) that the CPA understands the annual audited financial report, that the CPA's opinion thereon will be filed in compliance with this Part and that the superintendent will be relying on this information in the monitoring and regulation of the financial condition of the company;

(3) that the CPA consents to the requirements of section 89.11 of this Part and that the CPA consents and agrees to make available the work papers for review by the superintendent; and

(4) that the CPA represents that it is in compliance with the requirements of section 89.5 of this Part.

(b) Every company subject to this Part shall further require that the CPA include, as part of each submission to the Department for which the CPA is responsible, the background and experience in general, and the experience of the staff assigned to the engagement and whether each is a CPA.

Section 89.11 Availability and maintenance of CPA work papers

Every company shall require the CPA to make available for review by Department examiners, all work papers prepared in the conduct of the CPA's audit and any communications related to the audit between the CPA and the company, at the offices of the company, at the Department, or at any other reasonable place designated by the superintendent. Every company shall require that the CPA retain the audit work papers and communications for six calendar years from the date of the audit report or until the filing of the report on examination covering the period of the audit, whichever is longer, as required by Part 243 of this Title (Regulation 152).

Section 89.12 Requirements for audit committees

(a) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any CPA (including resolution of disagreements between management and the CPA regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to this Part. The CPA shall report directly to the audit committee.

(b) Every member of the audit committee shall be a member of the board of directors, a member of the board of directors of a member of the holding company system described in subdivision (j) of section 89.1 of this Part or, for a United States branch of an alien company, a member of the audit committee of the person that controls the branch.

(c) 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 company or be an affiliated person of the company or any subsidiary thereof, except to the extent that any law may require board participation by otherwise non-independent members, and, in such case, the member may participate in the audit committee and be designated as independent for audit committee purposes, unless the member is an officer or employee of the company or one of its affiliates.

(d) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person may remain an audit committee member of the responsible company until the earlier of the next annual meeting of the responsible company or one year from the occurrence of the event that caused the member to be no longer independent, provided that the company promptly notifies the superintendent.

(e) The company shall submit written notification to the superintendent of the selection of its audit committee within 30 days of the effective date of this Part and within 30 days of any change in membership of the audit committee. The notice shall include a description of the reason for the change.

(f)(1) The audit committee shall require the CPA that performs any audit for a company that is required by this Part to timely report to the audit committee:

(i) all significant accounting policies and material permitted practices;

(ii) all material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the company, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the CPA; and

(iii) other material written communications between the CPA and the management of the company, such as any management letter or schedule of unadjusted differences.

(2) If a company is a member of a group of companies, the reports required by paragraph (1) of this subdivision may be provided to the audit committee on an aggregate basis for the group, provided that any substantial differences among companies in the system are identified to the audit committee.

(g) The proportion of independent audit committee members for a company shall meet or exceed the following minimum criteria:

(1) if the company's prior calendar year direct written and assumed premiums are equal to or less than \$300,000,000, no members of the audit committee shall be required to be independent;

(2) if the company's prior calendar year direct written and assumed premiums are greater than \$300,000,000 but not more than \$500,000,000, 50 percent or more of the members of the audit committee shall be independent, unless otherwise provided by law as for a MCO; or

(3) if the company's prior calendar year direct written and assumed premiums are more than \$500,000,000, 75 percent or more of the members of the audit committee shall be independent.

(h) Changes in required number of independent audit committee members.

(1) A company that is required to have a higher number of independent audit committee members due to changes in premium shall have one year following the year the threshold is exceeded to comply with the independence requirements; and

(2) a company that becomes subject to a different independence requirement as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the newly effective independence requirements.

(i) This section shall not apply to:

(1) a domestic life insurer that is subject to Insurance Law section 1202(b)(2);

(2) a foreign insurer or an alien insurer not entered into this state through a United States branch; or

(3) a company that is a SOX compliant company or a directly or indirectly wholly-owned subsidiary of a SOX compliant company.

Section 89.13 Conduct of company in connection with the preparation of required reports and documents

(a) Any director or officer of a company, or any other person acting under the direction thereof, shall not, directly or indirectly:

(1) make or cause to be made a materially false or misleading statement to a CPA in connection with any audit, review or communication required under this Part; or

(2) 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 a CPA in connection with any audit, review or communication required under this Part.

(b) Any officer or director of a company, or any other person acting under the direction thereof, shall not directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any CPA engaged in the performance of an audit pursuant to this Part if that person knew or should have known that the action, if successful, could result in rendering the company's financial statements materially misleading, including any action taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence a CPA:

(1) to issue or reissue a report on a company's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the superintendent, generally accepted auditing standards, or other professional or regulatory standards);

(2) not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(3) not to withdraw an issued report; or

- (4) not to communicate matters to a company's audit committee.

Section 89.14 Management's report of internal control over financial reporting

(a) Every company required to file an audited financial report pursuant to this Part 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 company's or group of companies' internal control over financial reporting. This report of internal control over financial reporting, together with any communication about unremediated material weaknesses discovered during the CPA's audit described under section 89.9 of this Part, shall be submitted to the superintendent upon the filing date upon which each audited financial report is required to be filed. Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(b)(1) In lieu of the report required by subdivision (a) of this section, a company may file its or its parent's SOX section 404 report with the superintendent, if the company is:

- (i) directly subject to SOX section 404;
- (ii) not directly subject to SOX section 404, but is a SOX compliant company; or
- (iii) a member of a holding company system whose parent is:
 - (a) directly subject to SOX section 404; or
 - (b) not directly subject to SOX section 404, but is a SOX compliant company.

(2) If a company elects to file the SOX section 404 report described in paragraph (1) of this subdivision, the company shall submit an addendum that contains:

- (i) a statement by the company's chief executive officer and chief financial officer (or equivalent positions or titles) that no internal controls having a material impact on the preparation of the company's audited statutory financial statements are excluded from the report. If either of these two officers is based in a holding company or other entity outside of the United States, the two most senior United States-based officers shall be the signatories; or
- (ii) if internal controls of the company that have a material impact on the preparation of the company's audited statutory financial statements are not described in the SOX section 404 report, a report that sets forth the impact of these material internal controls on the preparation of the company's audited financial reports that were not included in the SOX section 404 report.

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

- (1) a statement that the company has established and continues to maintain adequate internal control over financial reporting and an assertion, to the best of the company'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;

(2) a statement that briefly describes the approach or processes by which the company evaluated the effectiveness of its internal control over financial reporting;

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

(4) disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by the company as of December 31 immediately preceding;

(5) a statement regarding the inherent limitations of internal control systems; and

(6) notarized signatures of the company's chief executive officer and chief financial officer (or equivalent positions or titles) attesting to the statements and disclosures contained in paragraphs (1) through (5) of this subdivision. If either of these two officers is based in a holding company or other entity outside of the United States, the two most senior United States-based officers shall be the signatories.

(d) The company shall document the basis upon which the assertions, as required by subdivision (c) of this section, are made. The company may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities. The company 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.

Section 89.15 Canadian and British insurer

(a) In the case of a United States branch of a Canadian or British insurer, the annual audited financial report shall be the annual statement of total business on the form filed by the insurer with its supervision authority duly audited by an independent chartered accountant.

(b) For each insurer described in subdivision (a) of this section, the letter required in section 89.4(b) of this Part shall state that the CPA is aware of the requirements relating to the annual audited financial report filed with the superintendent pursuant to section 89.3 of this Part and shall affirm that the opinion expressed is in conformity with those requirements.

Section 89.16 Effective date and special rules

(a) Effective date.

(1) The requirements of this Part, subject to subdivision (b) of this section, shall apply beginning with the reporting period ending December 31, 2010.

(2) A company acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with this Part.

(b) Special rules.

(1) To be exempt from filing, an audited financial statement pursuant to this Part, an assessment co-operative property/casualty insurer with less than \$250,000 in direct premiums written in this State, including direct premiums of its affiliates, during the subject calendar year and fewer than 500 policyholders or reinsurance contract holders at the end of such calendar year shall submit an affidavit sworn to by a responsible officer of the insurer specifying the amount of direct premiums written in New York State and number of policyholders or reinsurance contract holders.

(2) A foreign insurer or an alien insurer not entered into this state through a United States branch, which files an audited financial report in another state pursuant to that state's requirements that have been found by the superintendent to be substantially similar to the requirements in this Part, shall be exempt from Sections 89.2 through 89.11 of this Part if:

(i) a copy of the audited financial report, communication of internal control related matters noted in an audit, and the CPA's letter of qualifications that are filed with the other state are also filed with the superintendent in accordance with the filing dates specified in Sections 89.2, 89.9 and 89.10 of this Part, respectively; and

(ii) a copy of any notification of adverse financial condition report filed with the other state is filed with the superintendent within the time frame specified in Section 89.8 of this Part.

(3) An alien or foreign insurer required to file management's report of internal control over financial reporting in another state shall not be required to file the report in this state provided that the other state has substantially similar reporting requirements and the report is filed with the superintendent or commissioner of the other state within the time specified by that other state.

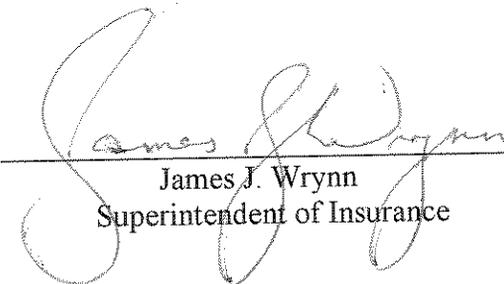
(4) Upon written application by any company, the superintendent may, if not inconsistent with any statutory requirement to the contrary, extend a filing date or grant an exemption from compliance with any and all provisions of this Part if the superintendent finds, upon review of the application, that compliance with this Part would constitute a financial or organizational hardship upon the company. A company shall file an application for a hardship exemption with the superintendent prior to the event or period for which the extension or exemption is requested. The company shall file, with its annual statement filing, both its request for relief and the approval of that request with the states that it is licensed in or doing business in and the NAIC. If a non-domestic state accepts electronic filing with the NAIC, the company shall file the approval in an electronic format acceptable to the NAIC.



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

I, James J. Wrynn, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the new Part 89 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 118), promulgated by me on *FEBRUARY 28*, 2011, pursuant to the authority granted by sections 201, 301, 307(b), 1109, 4710(a)(2) and 5904(b) of the Insurance Law, to take effect publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed regulation was published in the State Register on January 12, 2011. No other publication or prior notice is required by statute.


James J. Wrynn
Superintendent of Insurance

FEBRUARY 28, 2011