

211 CMR 23.00: AUDITS OF INSURERS BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS FOR YEARS ENDING 1991 AND AFTER

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23.01: Authority

211 CMR 23.00 *et seq.* is promulgated by the Commissioner of Insurance pursuant to M.G.L. c. 175, §§ 4 and 25.

23.02: Purpose

The purpose of 211 CMR 23.00 *et seq.* is to improve the Division's surveillance of the financial condition of insurers by requiring an annual audit by independent certified public accountants (CPA) of the financial statements reporting the financial position and the results of operations of insurers. 211 CMR 23.00 will assure that CPA audits are conducted which will enhance the protection of Massachusetts policyholders.

211 CMR 23.00 *et seq.* shall not prohibit, preclude, or in any way limit the Commissioner of Insurance, or her or his designee, from ordering or conducting or performing examinations of insurers under the Commissioner's jurisdiction as to practices, procedures, financial condition, market conduct and other aspects of the operations of such insurers.

23.03: Applicability

(1) Every insurer shall be subject to 211 CMR 23.00 *et seq.*.

(2) Exemptions. Insurers having both direct premiums written of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificate holders of directly written policies nationwide at the end of such calendar year shall be exempt from 211 CMR 23.00 *et seq.* for such year; except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more and insurers having both premiums written in Massachusetts of \$100,000 or more in any year and having 1,000 or more Massachusetts policyholders at the end of any year shall not be so exempt.

(a) Upon written application of any insurer, the Commissioner may grant an exemption from compliance with 211 CMR 23.00 *et seq.* if the Commissioner finds, upon review of the application, that compliance with 211 CMR 23.00 *et seq.* 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 211 CMR 23.00 *et seq.* such insurer may request in writing a hearing on its application for an exemption. Such hearing shall be held in accordance with M.G.L. c. 30A and the practices of the Division pertaining to administrative hearing procedures.

(b) Insurers not retaining a certified public accountant on the effective date of 211 CMR 23.00 *et seq.* who qualifies as independent shall meet the following schedule for compliance unless the Commissioner permits otherwise.

23.03: continued

1. As of December 31, 1991, file with the Commissioner;
 - a. Report of independent certified public accountant;
 - b. Audited balance sheet;
 - c. Notes to audited balance sheet.
 - d. For the year ending December 31, 1992 and each year thereafter, insurers shall file all reports required by 211 CMR 23.00 *et seq.* unless the Commissioner permits otherwise.

23.04: Definitions

Accountant and Independent Certified Public Accountant: An independent certified public accountant or firm licensed to practice in the Commonwealth of Massachusetts or in any state with similar licensing requirements and a member in good standing of the American Institute of Certified Public Accountants and in all states in which they are licensed to practice. It shall also mean, for Canadian and British companies, a Canadian or British chartered accountant.

Audited financial report: Those items specified in 211 CMR 23.00.

Commissioner: The Commissioner of Insurance or his or her designee.

Division: The Division of Insurance of the Commonwealth of Massachusetts.

Indemnification: An agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

Insurer: Any insurance company doing business in the Commonwealth of Massachusetts under M.G.L. c. 175 and includes, but is not limited to, all life, accident and health, property and liability, title, "b" reinsurers and surplus line companies regulated by the Division of Insurance of the Commonwealth of Massachusetts. Insurer shall also include reciprocal insurance exchanges as defined in M.G.L. c. 175, § 94A.

Workpapers: 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 his or her examination of the financial statements of an insurer. Workpapers include, but are not limited to, audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, reconciliations, flow charts, abstracts of company documents and schedules or commentaries, copies of company records or other documents prepared or obtained by the independent certified public accountant in the course of his examination of the financial statements of an insurer.

23.05: Filing of Annual Audited Financial Reports

(1) Filing. Beginning with the audited financial report for the year ending December 31, 1991, all insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 1 for the year ended December 31 immediately preceding. The Commissioner may require an insurer to file an audited financial report earlier than June 1 with 90 days advance notice to the insurer.

The annual audited financial report shall be considered part of the insurer's annual statement filing, except as to the due dates provided in 211 CMR 23.00 *et seq.*, as provided by M.G.L. c. 175, § 25 and shall be subject to the penalties provided by M.G.L. c. 175, § 26.

(2) Extensions. Extensions of the June 1 filing date may be granted by the Commissioner for 30-day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting such extension and determination by the Commissioner of good cause for an extension. The request for any extension must be submitted in writing not less than ten days prior to the due date of the audited financial report in sufficient detail to

permit the Commissioner to make an informed decision with respect to the requested extension.

23.06: Contents of Annual Audited Financial Report

The annual Audited Financial Report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Division.

The annual Audited Financial Report shall include the following:

- (1) Opinion of independent certified public accountant.
- (2) Balance sheet reporting admitted assets, liabilities, capital and surplus.
- (3) Statement of operations.
- (4) Statement of cash flows.
- (5) Statement of changes in capital and surplus.
- (6) Notes to financial statements. These notes shall be those required by the appropriate NAIC Annual Statement Instructions and any other notes required by generally accepted accounting principles and shall also include:
 - (a) A reconciliation of differences, if any, between the audited statutory financial statements and the Annual Statement filed pursuant to M.G.L. c. 175, § 25 with a written description of the nature of these differences.
 - (b) A summary of ownership and relationships of the insurer and all affiliated companies.
- (7) Report on Significant Deficiencies in Internal Controls.
- (8) Accountant's Letter
- (9) The financial statements included in the Audited Financial Report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the Annual Statement of the insurer filed with the Commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. (However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted).

23.07: Designation of Independent Certified Public Accountant

Each insurer required by 211 CMR 23.00 *et seq.* to file an annual audited financial report must within 60 days after becoming subject to such requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm (generally referred to as the "accountant") retained to conduct the annual audit set forth in 211 CMR 23.00 *et seq.*. Insurers not retaining an independent certified public accountant on the effective date of 211 CMR 23.00 *et seq.* shall register the name and address of their retained certified public accountant not less than six months before the date when the first audited financial report is to be filed. Insurers shall notify the Commissioner of the engagement of an accountant within 30 days of such appointment if such accountant was not the accountant for purposes of 211 CMR 23.00 *et seq.* for the immediately preceding year.

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 211 CMR that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Division, specifying such exceptions as he or she may believe appropriate.

23.07: continued

If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns the insurer shall within five business days notify the Division of this event. The insurer shall also furnish the Commissioner with a separate letter within ten business days of the above notification stating whether in the 24 months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practice, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The disagreements required to be reported in response to 211 CMR 23.07 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 decision making level, *i.e.*, 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 such former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not stating the reasons for which the accountant does not agree; and the insurer shall furnish such responsive letter from the former accountant to the Commissioner together with its own.

23.08: Qualifications of Independent Certified Public Accountant

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

- (a) is not duly licensed to practice in Massachusetts or in a state with similar licensing requirements;
- (b) is not in good standing with the American Institute of CPAs and in all states in which the accountant is licensed to practice; and
- (c) 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.

For a Canadian or British company, the Commissioner shall not recognize any person or firm as a qualified independent certified public accountant that is not a chartered accountant.

(2) Except as otherwise provided herein, an independent certified public accountant shall be recognized as independent and qualified as long as he or she conforms to the standards of his or her 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 Massachusetts Board of Public Accountancy (or similar code).

(3) No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following any period of service such 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 two years. An insurer may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining if the relief should be granted:

- (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.

The requirements of 211 CMR 23.08(3) shall become effective for years beginning after December 31, 1992.

(4) The Commissioner shall not 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

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previous reports submitted under this 211 CMR 19.00 *et seq.* or 211 CMR 23.00 *et seq.*;
or

23.08: continued

(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of 211 CMR 19.00 *et seq.* or 211 CMR 23.00 *et seq.*.

(5) 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 M.G.L. c. 175, § 6; M.G.L. c. 175, § 180A, *et seq.*; or M.G.L. c. 176G, § 20, the mediation or arbitration provisions shall operate at the option of the receiver.

(6) The Commissioner may hold a hearing to determine whether a certified public accountant is qualified under 211 CMR 23.00 *et seq.*, whether the accountant is independent, whether an audit performed by the accountant conforms to generally accepted auditing standards, or whether the annual audited financial report on which the accountant has given an opinion presents fairly the financial position and results of operations of the insurer and, considering the evidence presented, may rule that the certified public accountant is not qualified under 211 CMR 23.00 *et seq.* is not independent for purposes of expressing his opinion, did not conduct the audit in accordance with generally accepted auditing standards or that the annual audited financial report on which the accountant gave his opinion did not fairly present the financial position and results of operations of the insurer. After such finding, the Commissioner may require the insurer to replace the accountant.

23.09: 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 such insurer cedes all of its direct and assumed business to the pool. In such cases, an organizational chart of all companies included in the consolidation shall be filed with the report. In addition, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

- (1) Amounts shown on the consolidated or combined Audited Financial Report shall be shown on the worksheet;
- (2) Amounts for each insurer subject to 211 CMR 23.09 shall be stated separately.
- (3) Noninsurance operations may be shown on the worksheet on a combined or individual basis.
- (4) Explanations of consolidating and eliminating entries shall be included.
- (5) A reconciliation shall be included of any differences between the amount shown in the individual insurer columns of the worksheet and comparable amounts shown on the Annual Statements of the insurers.

23.10: Scope of Examination and Report of Independent Certified Public Accountant

Financial statements furnished pursuant to 211 CMR 23.06 shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. Consideration should also be given to such other 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.

23.11: Notification of Adverse Financial Condition

The insurer required to furnish the annual Audited Financial Report shall require the independent certified public accountant to report, in writing, immediately, but not later than five business days, to an officer and all members of 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 examination or that the insurer does not meet the Massachusetts minimum capital and surplus requirement as of that date. An insurer who has received a report pursuant to 211 CMR 23.11 shall forward a copy of the report to the Commissioner within five business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. If the independent certified public accountant fails to receive such evidence within the required five business days period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next five business days.

No independent public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if such statement is made in good faith in compliance with the above paragraph.

If the accountant, subsequent to the date of the Audited Financial Report filed pursuant to this 211 CMR 23.00 *et seq.*, becomes aware of facts which might have affected his report, the Division notes the obligation of the accountant to take such action as prescribed in Volume 1, Section UA 561 of the Professional Standards of the American Institute of Certified Public Accountants.

23.12: Report on Significant Deficiencies in Internal Controls

In addition to the annual audited financial statements, each insurer shall furnish the Commissioner with a written report prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. 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 statement audit to the appropriate parties within an entity. No report should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the Division as required by 211 CMR 23.05 and 23.06. The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the accountant's report.

23.13: 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 his or her 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 Massachusetts Board of Public 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 211 CMR 23.00 *et seq.* shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where such use is consistent with the standards prescribed by generally accepted auditing standards.
- (3) That the accountant understands the annual audited financial report and his opinion thereon will be filed in compliance with 211 CMR 23.00 *et seq.* and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.

23.13: continued

(4) That the accountant consents to the requirements of 211 CMR 23.14 and that the accountant consents and agrees to make available for review by the Commissioner, his designee or his appointed agent, the workpapers, as defined in 211 CMR 23.04.

(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 and in all states in which he or she is licensed to practice.

(6) A representation that the accountant is in compliance with the requirements of 211 CMR 23.08.

23.14: Availability and Maintenance of CPA Workpapers

Every insurer required to file an Audited Financial Report pursuant to 211 CMR 23.00 *et seq.*, shall require the accountant to make available for review by the Commissioner or his or her appointed agent, the work papers prepared in the conduct of the examination or audit of the insurer, which shall include its parent and affiliates, as they relate to the examination of the insurer and any communications related to the audit between the accountant and the insurer at the offices of the insurer, at the Division 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 Division has filed a Report on Examination covering the period of the audit but no longer than seven years from the date of the audit report.

The aforementioned reviews by the Commissioner shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be confidential. The insurer shall require that the independent certified public accountant provide photocopies of any of the working papers which the Division considers relevant which may be retained by the Division.

23.15: 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 domiciliary supervision authority duly audited by an independent chartered accountant.

(2) For such insurers, the letter required in 211 CMR 23.07 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the Commissioner pursuant to 211 CMR 23.05 and shall affirm that the opinion expressed is in conformity with such requirements.

23.16: Severability

If any provision of 211 CMR 23.00 *et seq.* or application thereof to any regulatee is held invalid, such invalidity shall not affect other provisions of 211 CMR 23.00 *et seq.* and, to that end, the provisions of 211 CMR 23.00 *et seq.* are severable.

REGULATORY AUTHORITY

211 CMR 19.00: M.G.L. c. 175, §§ 4 and 25.

NON-TEXT PAGE