

Chapter Ins 50

ANNUAL AUDITED FINANCIAL REPORTS, ANNUAL FINANCIAL STATEMENTS AND EXAMINATIONS

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Note: Chapter Ins 50 was created as an emergency rule effective March 12, 1993.

Subchapter I — Annual Audited Financial Reports

Ins 50.01 Definitions. In this chapter:

(1) "Alien insurer" has the meaning provided under s. 600.03 (2), Stats.

(2) "Audited financial report" means a financial report prepared and conforming to s. Ins 50.06.

(3) "Executive officer" means any individual charged with the active management and control in an executive capacity of a person, whether incorporated or unincorporated and includes, but is not limited to, a chair of the board, president, vice president, treasurer, secretary, controller, and any individuals performing similar functions.

(4) "Foreign insurer" has the meaning provided under s. 600.01 (20), Stats.

(5) "Independent certified public accountant" means:

(a) An independent certified public accountant, or independent accounting firm, in good standing with the American institute of certified public accountants and in all states in which the accountant or firm is licensed, or required to be licensed, to practice; or

(b) For Canadian and British companies, a Canadian chartered or British chartered accountant.

(6) "Insurer" means an insurer licensed under s. 185.981 or ch. 611, 612, 613, 614 or 618, Stats., and the state life fund.

(7) "Policyholder surplus" means capital and surplus.

(8) "State of domicile" means the state where an insurer is domiciled or, for an alien insurer, its port of entry state.

(9) "Work papers" means records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the independent certified public accountant's examination of the financial statements of an insurer. "Work papers" include, but are not limited to, audit planning documentation, audit guides, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of examination of the financial statements of an insurer or which support the opinion of the independent certified public accountant regarding the financial statements.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.02 Applicability. Unless otherwise ordered by the commissioner, this subchapter applies to all insurers except:

(1) An insurer is not subject to this subchapter for a calendar year in which the insurer has:

(a) Direct premiums written in this state of less than \$100,000 and less than 1,000 policyholders or certificate holders of directly written policies in the state at the end of the calendar year; and

(b) Assumed premiums nationwide of less than \$1,000,000 under reinsurance contracts or treaties.

(2) A foreign or alien insurer is exempt from this chapter except for s. Ins 50.03 if:

(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

(b) It files audited financial reports with that state's commissioner of insurance or equivalent agency.

(3) An insurer licensed under ch. 612, Stats., if the insurer:

(a) Has direct total written premium for the calendar year, including premiums on nonproperty coverage, of less than \$300,000;

(b) Has a net of reinsurance premium to policyholder surplus ratio of less than 6 to 1 as of the December 31 of the year for which an audited financial report is otherwise required;

(c) Is not authorized under its articles of incorporation to do business in more than 4 counties;

(d) Does not engage in the writing of nonproperty coverage unless the nonproperty coverage is 100% reinsured;

(e) Does not engage in the interchange of reinsurance with other insurers licensed under ch. 612, Stats., except town mutual reinsurance corpo-

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rations organized under s. 612.71, Stats., where the interchange reinsurance premiums exceed 20% of the annual net premiums written by the assuming insurer licensed under ch. 612, Stats.; and

(f) Does not own real estate, including, but not limited to, home office headquarters, whose cost or book value exceeds 10% of its total assets.

Note: Sections 50.01 to 50.17 first applies to financial reports for fiscal years ending on or after December 31, 1993.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.03 Filing by exempt foreign and alien insurers. A foreign or alien insurer which is exempt from this subchapter under s. Ins 50.02 (2) shall:

(1) File a copy of the audited financial report, report on significant deficiencies in internal controls, and the accountant's letter of qualifications which are filed with the other state with the commissioner not later than the filing dates specified in ss. Ins 50.05, 50.12 and 50.13, respectively. Canadian insurers which are not subject to this subchapter under s. Ins 50.02 (2) shall submit to the commissioner accountants' reports as filed with the Canadian Dominion department of insurance not later than the filing dates specified in s. Ins 50.05.

(2) File with the commissioner a copy of any notification of adverse financial condition report filed with, or required to be filed with, the other state within the time specified in s. Ins 50.11.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.04 Authority to obtain information or examine not restricted. This subchapter does not limit the authority of the commissioner to require an insurer or any other person to provide information, or to conduct an examination of an insurers or any other person, under any other statute or rule.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.05 Filing and extensions for filing of annual audited financial reports. (1) An insurer shall:

(a) Annually obtain or cause an audit of the insurer by an independent certified public accountant; and

(b) File an audited financial report that complies with s. Ins 50.06 with the commissioner on or before June 1 for the immediately preceding calendar year.

(2) The commissioner may require an insurer to file the audited financial report earlier than the date specified under sub. (1) if the commissioner gives 90 days advance notice to the insurer.

(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 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.

(4) An insurer may not retain an accountant or accounting firm to comply with sub. (1) or s. Ins 50.07 unless the accountant or accounting firm is an independent certified public accountant, regardless of whether

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the commissioner has issued a ruling under s. Ins. 50.08 (1). An insurer may not retain an accountant or accounting firm to comply with sub. (1) or s. Ins 50.07 if the commissioner under s. Ins 50.08 (1) rules that the accountant or accounting firm is not qualified or if the accountant or accounting firm does not comply with s. Ins 50.08 (2).

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.06 Contents of annual audited financial report. The annual audited financial report required under s. Ins 50.05 shall comply with all of the following:

(1) 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 department of insurance, or equivalent agency, of the state of domicile, or, for a domestic insurer, in conformity with accounting practices prescribed or permitted in annual statements filed with the commissioner, as provided under s. Ins 7.02.

(2) Include all of the following:

(a) The report of the independent certified public accountant.

(b) A balance sheet reporting admitted assets, liabilities, capital and surplus.

(c) A statement of operations.

(d) A statement of cash flows.

(e) A statement of changes in capital and surplus.

(f) Notes to financial statements. These notes shall be those required by the appropriate national association of insurance commissioners' annual statement instructions and any other notes required by generally accepted accounting principles and shall also include:

1. A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement required under subch. II of this chapter with a written description of the nature of these differences.

2. A summary of ownership and relationships of the insurer and all affiliates.

(3) Include financial statements 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. 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, except in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.07 Designation of independent certified public accountant. (1) An insurer shall, within 60 days after the insurer becomes subject to this subchapter:

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(a) Provide the commissioner in writing the name and address of the independent certified public accountant retained to conduct the annual audit required by this subchapter.

(b) File with the commissioner a copy of the letter required to be obtained under sub. (3).

(2) Insurers not retaining an independent certified public accountant on the effective date of this rule shall register the name and address of their retained independent certified public accountant not less than 6 months before the date when the first audited financial report is to be filed.

(3) An insurer shall obtain a letter from the independent certified public accountant it retains to conduct the annual audit required by this subchapter. The letter shall state that the independent certified public accountant:

(a) Is aware of the provisions of the insurance code and the rules and regulations of the insurance department or equivalent agency of the state of domicile of the insurer that relate to accounting and financial matters of insurers; and

(b) Will express an opinion on whether the financial statements conform to the statutory accounting practices prescribed or otherwise permitted by that department or equivalent agency and will specify exceptions as appropriate.

(4) If an independent certified public accountant for the immediately preceding filed audited financial report of an insurer is dismissed or resigns, the insurer shall comply with all of the following:

(a) The insurer shall within 5 business days notify the commissioner of the dismissal or resignation.

(b) The insurer shall within 15 business days furnish the commissioner with a letter which clearly states that there was no disagreement required to be disclosed under this paragraph or which describes any disagreement between the insurer and the independent certified public accountant in the 24 months preceding the dismissal or resignation, which:

1. Was on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; and

2. Would require the independent certified public accountant to make reference to the subject matter of the disagreement in connection with the opinion required under s. Ins 50.06. The requirement to provide a description applies regardless of whether the disagreement was resolved or whether the former independent certified public accountant was satisfied with the resolution.

(c) The insurer shall within 15 business days furnish the commissioner with a letter from the independent certified public accountant addressed to the insurer stating whether the independent certified public accountant agrees with the statements contained in the insurer's letter required under par. (b) and, if not, stating the reasons why not.

Ins 50.08 Qualifications of independent certified public accountants. (1) The commissioner may rule that an accountant or accounting firm is not qualified for purposes of expressing an opinion on the financial statements in the annual audited financial report required under this subchapter and prohibit insurers from retaining the accountant or an accounting firm, and require insurers to replace the accountant or accounting firm, if the commissioner finds there is cause, including, but not limited to, a finding that the accountant or accounting firm:

(a) Is not in good standing with the American institute of certified public accountants and in all states in which the accountant or accounting firm is, or is required to be, licensed to practice, or, for a Canadian or British company, that it is not a chartered accountant;

(b) Has not conformed to the standards of the accounting 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 accounting examining board, or a similar code;

(c) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 USC 1961 to 1968, or any dishonest conduct or practices under federal or state law;

(d) Has been found to have violated the insurance laws or rules of this state; or

(e) Has demonstrated a pattern or practice of failing to detect or disclose material information in financial reports.

(2) After December 31, 1994, 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 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. The commissioner may grant relief from the rotation requirement on the basis of unusual circumstances. 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.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.09 Consolidated or combined audits. An insurer may file audited consolidated or combined financial statements in lieu of separate annual audited financial statements required under this subchapter if the commissioner approves in writing and if the insurer is part of a group of insurers which utilizes a pooling or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. If the commissioner permits a consolidated report under this section the report shall include a columnar consolidating or combining work sheet, as follows:

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(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the work sheet.

(2) Amounts for each insurer subject to this section shall be stated separately.

(3) Noninsurance operations may be shown on the work sheet 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 amounts shown in the individual insurer columns of the work sheet and comparable amounts shown on the annual statements of the insurers.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.10 Scope of examination and report of independent certified public accountant. Financial statements furnished under s. Ins 50.06 shall be audited by an 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. The independent certified public accountant may also give consideration 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. The commissioner may require that an independent certified public accountant conduct additional procedures or provide additional reports.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.11 Notification of adverse financial condition. (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 or that the insurer does not meet the minimum capital and surplus or compulsory surplus requirements.

(2) An insurer who receives a report required under sub. (1) shall forward a copy of the report to the commissioner within 5 business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence that the report has been furnished to the commissioner.

(3) An independent certified public accountant shall furnish to the commissioner a copy of its report required under sub. (1) within 10 business days after it is furnished to the insurer under sub. (1) unless the independent certified public accountant receives evidence the insurer has provided it within the 10 business day period to the commissioner as required under sub. (2).

(4) An executive officer or director of an insurer which receives notice under sub. (1) shall report the notification in writing to the commissioner within 5 business days of the date the executive officer or director first

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acquires knowledge of the notification unless prior to that date the insurer complies with sub. (2).

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.12 Report of significant deficiencies in internal controls. An insurer shall file with the commissioner within 60 days of the date an annual financial statement is filed, or is required under s. Ins 50.05 to be filed, a written report 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 statement 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 public accountant's report.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.13 Accountant's letter of qualifications. An accountant or accounting firm retained by an insurer to comply with this subchapter shall furnish the insurer, and the insurer shall obtain and include with the filing of the annual audited financial report required under s. Ins 50.05, a letter from the accountant or accounting firm stating:

(1) That the accountant or accounting firm 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 board of public accountancy of this state, 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. This subchapter does not prohibit the accountant or accounting firm from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

(3) That the accountant or accounting firm understands that the annual audited financial report and his or her opinion on the annual audited financial report will be filed in compliance with this chapter and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.

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

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

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(6) A representation that the accountant or accounting firm is an independent certified public accounting firm and that there are no grounds for disqualification of the accountant or accounting firm under s. Ins 50.08.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.15 Availability and maintenance of CPA work papers. (1) An insurer shall require the accountant or accounting firm which conducts an audit or other procedure under this subchapter to make available for review all work papers and any communications related to the audit or procedure between the insurer and the accountant or accounting firm at the offices of the insurer or at a reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit work papers and communications until the commissioner 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.

(2) The commissioner may photocopy work papers and retain the copies. All working papers and communications obtained by the commissioner under this section may be treated by the commissioner as confidential under s. 601.465, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.16 Exemptions. (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.

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

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.17 Canadian and British companies. (1) In the case of Canadian and British insurers, for the purpose of this subchapter the annual audited financial report shall be defined as the annual statement of total business on the form filed by the insurers with their domiciliary supervisory authority duly audited by an independent chartered accountant.

(2) For Canadian and British insurers, the letter required in s. Ins 50.07 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the commissioner under s. Ins 50.05 and shall affirm that the opinion expressed is in conformity with those requirements.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Subchapter II — Annual Financial Statements

Ins 50.20 Insurers to file annual financial statements. (1) An insurer shall file an annual financial statement with the commissioner. Except as otherwise required by law, rule, order or instruction of the commissioner, an insurer shall file the annual financial statement:

(a) On the national association of insurance commissioners annual statement blank appropriate for the lines of business the insurer is authorized to write, except an insurer licensed under ch. 612, Stats., may file on the town mutual annual statement blank prescribed by the commissioner; and

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(b) Prepared in accordance with the national association of insurance commissioners annual statement instructions and the accounting practices or procedures prescribed or permitted by the applicable national association of insurance commissioners accounting practices and procedures manual except an insurer licensed under ch. 612 shall prepare the statement as prescribed by the commissioner.

(2) Insurers shall file the annual statement required under sub. (1) by March 1, except insurers organized under ch. 612, Stats., shall file by February 15 and the commissioner may prescribe a different date for individual insurers.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.25 Insurers to file with the national association of insurance commissioners. (1) This section applies to all licensed insurers, except:

(a) Those categories of insurers whose annual or quarterly statements the national association of insurance commissioners does not collect on the date filing is required, unless otherwise required by the commissioner;

(b) An insurer organized under ch. 612, Stats., unless otherwise ordered by the commissioner; and

(c) Insurers the commissioner exempts after finding an exemption is in the public interest.

(2) An insurer shall annually on or before March 1 file with the national association of insurance commissioners a copy of the annual statement it is required to file under s. Ins 50.20 and any supplemental information which the commissioner requires to included with the annual statement. The insurer shall include with the copy a signed jurat page and actuarial certificate and shall also file copies of any subsequent amendments or addendums filed with the commissioner with the national association of insurance commissioners.

(3) An insurer shall file a quarterly financial statement with and in the form prescribed by the national association of insurance commissioners within 45 days of the end of each quarter.

(4) An insurer shall file the information required under sub. (2) or (3) in the form of media prescribed by the national association of insurance commissioners.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 50.30 Actuarial opinion required. An insurer shall file with the annual financial statement required under s. Ins 50.20 a statement of actuarial opinion from a qualified actuary in accordance with the national association of insurance commissioners annual statement instructions.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Subchapter III — Examinations

Ins 50.50 Examinations. (1) The commissioner may determine the nature, scope and frequency of examinations under s. 601.43, Stats., except at a minimum every insurer licensed in this state shall be examined every 5 years, unless it is a limited service health organization, town mutual, a gift annuity licensee under ch. 615, Stats., motor club, warranty plan, or an insurer exempted under 610.49, 1981, Stats.

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(2) Factors the commissioner may consider in determining the scheduling of an examination include, but are not limited to, results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, other criteria in the Examiners' Handbook adopted by the national association of insurance commissioners, and the priority of conducting an examination of an insurer relative to other insurers.

(3) The commissioner may determine the nature and scope of an examination. An examination may, but need not, cover all aspects of the insurer's assets, condition, affairs and operations, and may involve or be supplemented by review of audit procedures performed by accountants. Examinations may include, but are not limited to, the following types of examinations:

(a) Compliance examinations which are a general review of the insurer's corporate affairs and insurance operations to determine compliance with chs. 600 to 646, Stats. A compliance examination may consist of review of an accountant's work papers or be supplemented by such a review.

(b) Targeted examinations are limited to a review of specified areas. Areas that may be targeted may include, but are not limited to, life reserve valuations, claims analyses, organizational and capital changes, loss reserves or market conduct.

(c) Comprehensive examinations which are complete examinations of the condition and affairs of the insurer.

(4) After the commissioner issues an adopted examination report, the insurer examined shall promptly file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(5) The office of the commissioner of insurance, under s. 601.465, Stats., may refuse to disclose and prevent any person from disclosing, in response to a request for production, deposition, subpoena, or otherwise, information obtained from the national association of insurance commissioners or another insurance department under pledge of confidentiality or for the purpose of conducting an investigation or examination or obtained, produced or created in the course of an inquiry under s. 601.42, Stats., or examination under s. 601.43, Stats. This privilege applies to information obtained, produced or created before or after the effective date of s. 601.465, Stats., and regardless of whether an inquiry, investigation or examination has been concluded, except it does not apply to a document which is an adopted examination report. An adopted examination report is available for public inspection as required under s. 601.44 (6), Stats. The office or the commissioner may disclose the content of an examination report, preliminary examination report or results, or any matter relating a report or the results of an examination to further legal or regulatory action, or to the insurance department of any other state or country or to law enforcement officials of this or any other state or agency of the federal government, so long as the department, agency or office agrees in writing to hold it confidential.

History: Cr. Register, July, 1993, No. 451, ef. 8-1-93.

Ins 50.55 Examination of foreign and alien insurers. (1) The commissioner may accept, under s Ins 50.50, an examination report on a licensed

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foreign or alien insurer which is prepared by the insurance department for the insurer's state of domicile until December 31, 1993. After December 31, 1993, an examination report from the insurance department of the insurer's state of domicile may only be accepted if:

(a) The insurance department is at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or

(b) The examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(2) A foreign or alien insurer shall file written notice with the commissioner if it has not received an examination call for an examination which will be acceptable under this section for the determination of the financial condition of the insurer within 4 years after the date for which the last examination of the insurer examined the financial condition of the insurer.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.