

1 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES,
2 INSURANCE DIVISION

3 DIVISION 11
4 ANNUAL STATEMENTS AND REPORTS BY INSURERS

5
6
7 Annual Audited Financial Reports
8

9 **836-011-0100**

10 **Authority;** [*Effective Date*] **Purpose; Scope**

11 (1) OAR 836-011-0100 to 836-011-0230 are adopted by the Director pursuant to ORS
12 731.488. The purpose of OAR 836-011-0100 to 836-011-0230 is to improve the Director's
13 surveillance of the financial condition of insurers by requiring [*an annual examination by*
14 *independent certified public accountants of the financial statements reporting the financial*
15 *position and the results of operations of insurers.*] **the following:**

16 **(a) An annual audit of financial statements reporting the financial position and the**
17 **results of operations of insurers by independent certified public accountants;**

18 **(b) Communication of Internal Control Related Matters Noted in an Audit; and**

19 **(c) Management's Report of Internal Control over Financial Reporting.**

20 **(2) OAR 836-011-0100 to 836-011-0230 apply to every authorized insurer, subject to**
21 **exemptions in OAR 836-011-0130.**

22 [(2)] **(3)** OAR 836-011-0100 to 836-011-0230 do not limit the Director's authority to
23 order, conduct or perform examinations of insurers under the Insurance Code.
24 Stat. Auth.: ORS 731.244 & ORS 731.488
25 Stats. Implemented: ORS 731.488[(2)]
26

27 **836-011-0110**

28 [*Definition of Independent Certified Public Accountant*] **Definitions**

29 As used in OAR 836-011-0100 to 836-011-0230:

30 (1) "Accountant" [*and*] **or** "independent certified public accountant" [*mean*] **means** an
31 independent certified public accountant or accounting firm in good standing with the American
32 Institute of Certified Public Accountants and in each state in which the accountant or accounting
33 firm is licensed to practice. For a Canadian or British insurer, the term means a Canadian-
34 chartered or British-chartered accountant.

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

38 **(3) "Audit committee" means a committee or equivalent body established by the**
39 **board of directors of an entity for the purpose of overseeing the accounting and financial**
40 **reporting processes of an insurer or group of insurers, and audits of financial statements of**
41 **the insurer or group of insurers. The audit committee of an entity that controls a group of**
42 **insurers may be considered to be the audit committee for one or more of the controlled**
43 **insurers solely for the purposes of OAR 836-011-0100 to 836-011-0230 at the election of the**
44 **controlling person. OAR 836-011-0223(6) governs the exercise of this election. If an audit**

1 committee is not designated by the insurer, the insurer’s entire board of directors
2 constitutes the audit committee.

3 [(2)] (4) "Audited financial report" means a report that includes the items specified in
4 OAR 836-011-0140.

5 (5) “Group of insurers” means those authorized insurers included in the reporting
6 requirements of ORS 732.517 to 732.592, or a set of insurers as identified by management,
7 for the purpose of assessing the effectiveness of internal control over financial reporting.

8 (6) “Indemnification” means an agreement of indemnity or a release from liability
9 when the intent or effect is to shift or limit in any manner the potential liability of the
10 person or firm for failure to adhere to applicable auditing or professional standards,
11 whether or not resulting in part from knowing of other misrepresentations made by the
12 insurer or its representatives.

13 (7) “Independent board member” has the same meaning given the term in OAR
14 836-011-0223(4)

15 (8) “Internal control over financial reporting” means a process effected by an
16 entity’s board of directors, management and other personnel designed to provide
17 reasonable assurance regarding the reliability of the financial statements, i.e., those items
18 specified in OAR 836-011-0140(2) and (3), except for OAR 836-011-0140(2)(a), and includes
19 those policies and procedures that:

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

22 (b) Provide reasonable assurance that transactions are recorded as necessary to
23 permit preparation of the financial statements, i.e., those items specified in OAR 836-011-
24 0140(2) and (3), except for OAR 836-011-0140(2)(a), and that receipts and expenditures are
25 being made only in accordance with authorizations of management and directors; and

26 (c) Provide reasonable assurance regarding prevention or timely detection of
27 unauthorized acquisition, use or disposition of assets that could have a material effect on
28 the financial statements, i.e., those items specified in OAR 836-011-0140(2) and (3), except
29 for OAR 836-011-0140(2)(a).

30 (9) “SEC” means the United States Securities and Exchange Commission.

31 (10) “Section 404” means Section 404 of the Sarbanes-Oxley Act of 2002 and the
32 SEC’s rules and regulations promulgated thereunder.

33 (11) “Section 404 Report” means management’s report on “internal control over
34 financial reporting” as defined by the SEC and the related attestation report of the
35 independent certified public accountant as described in section (1) of this rule.

36 (12) “SOX Compliant Entity” means an entity that either is required to be
37 compliant with, or voluntarily is compliant with, all of the following provisions of the
38 Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (Section
39 10A(i) of the Securities Exchange Act of 1934); (ii) the Audit committee independence
40 requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934);
41 and (iii) the Internal control over financial reporting requirements of Section 404 (Item 308
42 of SEC Regulation S-K).

43 Stat. Auth.: ORS 731.244 & ORS 731.488

44 Stats. Implemented: ORS 731.488[(2)(c)]

45
46 **836-011-0120**

1 **General requirements Related to Filing and Extensions for Filing of Annual Audited**
2 **Financial Reports and Audit Committee Appointment**

3 [(1) Each insurer shall have an annual audit performed by an independent certified
4 public accountant and shall file an audited financial report with the Director on or before June 1
5 for the year ending December 31 immediately preceding. The report must satisfy the
6 requirements of OAR 836-011-0140.]

7 [(2) The Director may require an insurer to file an audited financial report on a date
8 earlier than June 1 if the Director gives the insurer not less than 90 days' notice prior to the
9 earlier date.]

10 [(3) The Director may grant one or more 30-day extensions of the June 1 filing date upon
11 request of the insurer if the insurer and the independent certified public accountant performing
12 the audit show the reasons for requesting the extension and if the Director determines that good
13 cause exists for the extension. The request for extension must be submitted in writing not less
14 than ten days prior to the filing date and must include sufficient detail to permit the Director to
15 make an informed decision.]

16 [(4) The requirements under section (1) of this rule are subject to exemptions under OAR
17 836-011-0130.]

18 **(1) All insurers shall have an annual audit by an independent certified public**
19 **accountant and shall file an audited financial report with the Director on or before June 1**
20 **for the year ended December 31 immediately preceding. The Director may require an**
21 **insurer to file an audited financial report earlier than June 1 with advance notice of 90**
22 **days to the insurer.**

23 **(2) Extensions of the June 1 filing date may be granted by the Director for 30-day**
24 **periods upon a showing by the insurer and its independent certified public accountant of**
25 **the reasons for requesting an extension and determination by the Director of good cause**
26 **for an extension. The request for extension must be submitted in writing not less than 10**
27 **days prior to the due date in sufficient detail to permit the Director to make an informed**
28 **decision with respect to the requested extension.**

29 **(3) If an extension is granted in accordance with section (2) of this rule, a similar**
30 **extension of 30 days is granted to the filing of Management's Report of Internal Control**
31 **over Financial Reporting.**

32 **(4) Every insurer required to file an annual audited financial report pursuant to**
33 **OAR 836-011-0100 to 836-011-0230 shall designate a group of individuals as constituting its**
34 **audit committee, as defined in OAR 836-011-0110. The audit committee of an entity that**
35 **controls an insurer may be designated as the insurer's audit committee for purposes of**
36 **OAR 836-011-0100 to 836-011-0230 at the election of the controlling person.**

37 Stat. Auth.: ORS 731.244 & ORS 731.488

38 Stats. Implemented: ORS 731.488[(2)(b)]

39
40 **836-011-0130**

41 **Exemptions**

42 (1) The following **authorized** insurers are exempt from the requirements of OAR 836-
43 011-0100 to 836-011-0230:

44 (a) An insurer having direct premiums written in this state of less than \$1,000,000 in any
45 calendar year and having fewer than 1,000 policyholders or certificate holders of directly written
46 policies nationwide at the end of the same calendar year is exempt from OAR 836-011-0100 to

1 836-011-0230 for [such] **the** year unless the Director determines with respect to the insurer that
2 compliance is necessary for the Director to carry out statutory responsibilities. The exemption
3 under this subsection does not apply to any insurer that has assumed premiums pursuant to
4 contracts or treaties of reinsurance, or both, of \$1,000,000 or more.

5 (b) A foreign or alien insurer that has filed [an] **the** audited financial report in another
6 state pursuant to the other State's requirement of audited financial reports, if the Director
7 determines that the other state's requirements are substantially similar to the requirements of
8 OAR 836-011-0100 to 836-011-0230 and if the foreign or alien insurer does both of the
9 following:

10 (A) Files with the Director a copy of the Audited Financial Report, the [*Report on*
11 *Significant Deficiencies in Internal Controls*] **Communication of Internal Control Related**
12 **Matters Noted in an Audit** and the Accountant's Letter of Qualifications that are filed with the
13 other state, in accordance with the filing dates specified in OAR 836-011-0120, 836-011-0200,
14 and 836-011-0210. In lieu of the requirements of this paragraph, a Canadian insurer may file
15 accountants' reports as filed with the [*Canadian Dominion Department of Insurance*] **Office of**
16 **the Superintendent of Financial Institutions, Canada.**

17 (B) Files with the Director a copy of any Notification of Adverse Financial Condition
18 Report filed with the other state. The copy must be filed with the Director within the time
19 specified in OAR 836-011-0190.

20 (c) An insurer to whom the Director has granted an exemption under section (2) of this
21 rule, during the period in which the exemption is effective.

22 **(d) A foreign or alien insurer required to file Management's Report of Internal**
23 **Control over Financial Reporting in another state is exempt from filing the Report in this**
24 **state if the other state has substantially similar reporting requirements and the Report is**
25 **filed with the insurance commissioner of the other state within the time specified.**

26 (2) Upon written application of any insurer, the Director may grant an exemption from
27 compliance with **one or more provisions of** OAR 836-011-0100 to 836-011-0230 if the Director
28 finds upon review of the application that compliance would constitute a financial or
29 organizational hardship upon the insurer. An exemption may be granted at any time and from
30 time to time for a specified period or periods. Not later than the 10th day after denial of an
31 insurer's written request for an exemption under this section, the insurer may request in writing a
32 hearing on its application for an exemption.

33 Stat. Auth.: ORS 731.244 & ORS 731.488

34 Stats. Implemented: ORS 731.488[(2)(h)]

35 36 **836-011-0140**

37 **Contents of Annual Audited Financial Report**

38 (1) An annual audited financial report required under OAR 836-011-0120 must report the
39 financial position of the insurer as of the end of the most recent calendar year and the results of
40 its operations, cash flows and changes in capital and surplus for the year then ended in
41 conformity with statutory accounting practices prescribed or otherwise permitted by the
42 Department of Insurance of the state of domicile.

43 (2) The annual audited financial report shall include the following:

44 (a) A report of an independent certified public accountant;

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

46 (c) A statement of operations;

1 (d) A statement of cash [*flows*] **flow**;

2 (e) A statement of changes in capital and surplus; **and**

3 (f) Notes to financial statements. The notes shall be those required by the appropriate
4 National Association of Insurance Commissioners (NAIC) Annual Statement Instructions and
5 the NAIC Accounting Practices and Procedures Manual. The notes shall include a reconciliation
6 of differences, if any, between the audited statutory financial statements and the annual statement
7 filed pursuant to ORS 731.574, with a written description of the nature of the differences.

8 (3) The financial statements included in the audited financial report shall be prepared in a
9 form and using language and groupings substantially the same as the relevant sections of the
10 annual statement of the insurer filed with the Director. The financial statement shall be
11 comparative, presenting the amounts as of December 31 of the current year and the amounts as
12 of the immediately preceding December 31. However, in the first year in which an insurer is
13 required to file an audited financial report, the comparative data may be omitted.

14 Stat. Auth.: ORS 731.244 & ORS 731.488

15 Stats. Implemented: ORS 731.488[(2)(a)]

16
17 **836-011-0150**

18 **Designation of Independent Certified Public Accountant**

19 (1) Each insurer required by OAR 836-011-0120 to file an annual audited financial
20 report, within 60 days after becoming subject to the requirement, must register with the Director
21 in writing the name and address of the independent certified public accountant or accounting
22 firm retained to conduct the annual audit set forth in OAR 836-011-0120 and 836-011-0150.

23 [*This section establishes the initial registration requirement for an insurer when the insurer first*
24 *becomes subject to the requirement. Except as provided in section (3) of this rule, an insurer that*
25 *has already registered the name and address of the independent certified public accountant or*
26 *accounting firm under this section need not register its certified public accountant with the*
27 *Director.*]

28 **An insurer not retaining an independent certified public accountant on July 1,**
29 **2008 shall register the name and address of its retained independent certified public**
30 **accountant not less than six months before the date on which the first audited financial**
31 **report is to be filed.**

32 (2) An insurer shall obtain a letter from the [*certified public*] accountant retained by the
33 insurer stating that the accountant is aware of the provisions of the Insurance Code and the rules
34 of the Insurance Department of the state of domicile that relate to accounting and financial
35 matters and affirming that the accountant will express the opinion of the accountant on the
36 financial statements in terms of their conformity with the statutory accounting practices
37 prescribed or otherwise permitted by that Department, specifying exceptions that the accountant
38 believes appropriate. The insurer shall file a copy of the letter with the Director.

39 (3) If the [*certified public*] accountant who was the certified public accountant for the
40 immediately preceding filed audited financial report is dismissed or resigns, the insurer shall so
41 notify the Director not later than the fifth business day after the dismissal or resignation. The
42 insurer shall also do the following:

43 (a) Notify the Director in a separate letter, not later than the 10th business day after the
44 date of the notice of dismissal or resignation, whether in the 24 months preceding the
45 engagement there were any disagreements with the former accountant on any matter of
46 accounting principles or practices, financial statement disclosure or auditing scope or procedure
that, if not resolved to the satisfaction of the former accountant, would have caused the former

1 accountant to make reference to the subject matter of the disagreement in connection with the
2 accountant's opinion. The disagreements required to be reported in response to this subsection
3 include both those resolved to the former accountant's satisfaction and those not resolved to the
4 former accountant's satisfaction, and are those disagreements that occur at the decision making
5 level, between personnel of the insurer responsible for presentation of its financial statements
6 and personnel of the accounting firm responsible for rendering its report.

7 (b) Request the former accountant, in writing, to furnish a letter addressed to the insurer
8 stating whether the accountant agrees with the statements contained in the insurer's letter and, if
9 not, stating the reasons for which the accountant does not agree.

10 (c) Furnish the Director the letter received from the former accountant under subsection
11 (b) of this section together with a response by the insurer to that letter.

12 Stat. Auth.: ORS 731.244 & ORS 731.488

13 Stats. Implemented: ORS 731.488[(2)(c)]

14 15 **836-011-0160**

16 **Qualifications of Independent Certified Public Accountant**

17 (1) The Director shall not recognize any person as a qualified independent certified
18 public accountant for the purposes of OAR 836-011-0100 to 836-011-0230 if the person:

19 (a) Is not in good standing with the American Institute of Certified Public Accountants
20 (AICPA) and in all states in which the person is licensed to practice as a certified public
21 accountant or, if the insurer is a Canadian or British insurer, the person is not a chartered
22 accountant; or

23 (b) [*With respect to the audit of the insurer,*] Has either directly or indirectly entered into
24 an agreement of indemnity or a release from liability[, *the intent or effect of which is to shift or*
25 *limit in any manner the potential liability of the person for failure to adhere to applicable*
26 *auditing or professional standards, whether or not resulting in part from knowing or other*
27 *misrepresentations made by the insurer or its representatives*] **(collectively referred to as**
28 **indemnification) with respect to the audit of the insurer.**

29 (2) Except as otherwise provided in this rule, the Director shall recognize an independent
30 certified public accountant as qualified as long as the certified public accountant conforms to the
31 standards of the certified public accountant profession, as contained in the Code of Professional
32 Ethics of the American Institute of Certified Public Accountants and the rules and the Code of
33 Professional Conduct of the Oregon State Board of Accountancy, or a similar code of conduct of
34 the state board regulating the practice of accountancy in the state in which the accountant is
35 licensed to practice.

36 (3) A qualified independent certified public accountant may enter into an agreement with
37 an insurer to have disputes relating to an audit resolved by mediation or arbitration. In the event
38 of a delinquency proceeding commenced against the insurer under ORS 734.130, however, the
39 mediation or arbitration provisions shall operate at the option of the statutory successor.

40 (4) [*No partner or other person responsible for rendering a report*] **The lead or**
41 **coordinating audit partner having primary responsibility for the audit** may **not** act in that
42 capacity for more than [*seven*] **five** consecutive years. [*Following a period of service,*] The
43 partner or other person is disqualified from acting in that or a similar capacity for the same
44 insurer or its insurance subsidiaries or affiliates for a period of [*two*] **five consecutive** years. An
45 insurer may apply to the Director for relief from the [*prohibition in*] **rotation requirement of**
46 this section on the basis of unusual circumstances. **An insurer must apply for relief at least 30**

1 **days before the end of the calendar year.** The Director may consider the following factors in
2 determining whether the relief should be granted:

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

5 (b) The premium volume of the insurer;

6 (c) The number of jurisdictions in which the insurer transacts insurance.

7 **(5) An insurer to which relief from the rotation requirements under section (4) of**
8 **this rule has been granted shall file with its annual statement filing the Director's approval**
9 **for relief with the states that it is licensed in or doing business in, and with the NAIC. If the**
10 **nondomestic state accepts electronic filing with the NAIC, the insurer shall file the**
11 **approval in an electronic format acceptable to the NAIC.**

12 [(5)] **(6)** The Director shall not recognize an individual as an independent certified public
13 accountant, or accept an annual audited financial report required by OAR 836-011-0100 to 836-
14 011-0230 that is prepared in whole or part by an individual, if the individual:

15 (a) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and
16 Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices
17 under federal or state law;

18 (b) Has been found to have violated the insurance laws of this state with respect to any
19 previous reports submitted under OAR 836-011-0100 to 836-011-0230; or

20 (c) Has demonstrated a pattern or practice of failing to detect or disclose material
21 information in any report filed under OAR 836-011-0100 to 836-011-0230.

22 (7) The Director may hold a hearing to determine whether [a] **an independent** certified
23 public accountant is qualified and, considering the evidence presented, may rule that the
24 accountant is not qualified for purposes of expressing the accountant's opinion on the financial
25 statements in the annual audited financial report made pursuant to OAR 836-011-0100 to 836-
26 011-0230 and require the insurer to replace the accountant with another accountant who is
27 qualified with respect to the insurer as provided in OAR 836-011-0100 to 836-011-0230.

28 **(8) The Director may not recognize an accountant as a qualified independent**
29 **certified public accountant or accept an annual audited financial report prepared in whole**
30 **or in part by the accountant if the accountant provides to an insurer, contemporaneously**
31 **with the audit, the following non-audit services:**

32 **(a) Bookkeeping or other services related to the accounting records or financial**
33 **statements of the insurer;**

34 **(b) Financial information systems design and implementation;**

35 **(c) Appraisal or valuation services, fairness opinions, or contribution-in-kind**
36 **reports;**

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

44 **(A) Neither the accountant nor the accountant's actuary has performed any**
45 **management functions or made any management decisions;**

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

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

5 (e) Internal audit outsourcing services;

6 (f) Management functions or human resources;

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

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

9 (i) Any other services that the Director has determined by rule to be impermissible.

10 (9) In general, the principles of independence with respect to services provided by a
11 qualified independent certified public accountant are largely predicated on three basic
12 principles, violations of which would impair the accountant's independence. The principles
13 are that the accountant cannot function in the role of management, cannot audit the
14 accountant's own work, and cannot serve in an advocacy role for the insurer.

15 (10) An insurer having direct written and assumed premiums of less than
16 \$100,000,000 in any calendar year may request an exemption from section (8) of this rule.
17 The insurer shall file with the Director a written statement discussing the reasons why the
18 insurer should be exempt from these provisions. If the Director finds, upon review of this
19 statement, that compliance with section (8) of this rule would constitute a financial or
20 organizational hardship upon the insurer, the Director may grant an exemption.

21 (11) A qualified independent certified public accountant who performs the audit
22 may engage in other non-audit services, including tax services, that are not described in
23 section (8) of this rule and that do not conflict with section (9) of this rule only if the activity
24 is approved in advance by the audit committee in accordance with section (12) of this rule.

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

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

34 (b) The services were not recognized by the insurer at the time of the engagement to
35 be non-audit services; and

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

40 (13) The audit committee may delegate to one or more designated members of the
41 Audit committee the authority to grant the preapprovals required by section (12) of this
42 rule. The decisions of any member to whom this authority is delegated shall be presented to
43 the full audit committee at each of its scheduled meetings.

44 (14)(a) The Director may not recognize an independent certified public accountant
45 as qualified for a particular insurer if a member of the board, president, chief executive
46 officer, controller, chief financial officer, chief accounting officer or any person serving in

1 an equivalent position for that insurer was employed by the independent certified public
2 accountant and participated in the audit of that insurer during the one-year period
3 preceding the date that the most current statutory opinion is due. This section applies only
4 to partners and senior managers involved in the audit. An insurer may apply to the
5 Director for relief from the requirement of this subsection on the basis of unusual
6 circumstances.

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

11 Stat. Auth.: ORS 731.244 & ORS 731.488

12 Stats. Implemented: ORS 731.488

14 **836-011-0170**

15 **Consolidated or Combined Audits [NO CHANGE]**

16 An insurer may apply in writing to the Director for approval to file audited consolidated
17 or combined financial statements in lieu of separate annual audited financial statements if the
18 insurer is part of a group of insurers that uses a pooling or one hundred percent reinsurance
19 agreement affecting the solvency and integrity of the insurer's reserves and if the insurer cedes
20 all of its direct and assumed business to the pool. In such a case, a columnar consolidating or
21 combining worksheet shall be filed with the report as follows:

22 (1) Amounts shown on the consolidated or combined audited financial report shall be
23 shown on the worksheet.

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

25 (3) Noninsurance operations may be shown on the worksheet on a combined or
26 individual basis.

27 (4) Explanations of consolidating and eliminating entries shall be included.

28 (5) A reconciliation shall be included of any differences between the amounts shown in
29 the individual insurer columns of the worksheet and comparable amounts shown on the annual
30 statements of the insurers.

31 Stat. Auth.: ORS 731.244 & ORS 731.488

32 Stats. Implemented: ORS 731.488[(2)(a)]

34 **836-011-0180**

35 **Scope of [Examination] [Audit] and Report of Independent Certified Public Accountant**

36 Financial statements furnished pursuant to OAR 836-011-0140 shall be [examined]
37 **audited** by an independent certified public accountant. The [examination] **audit** of the insurer's
38 financial statements must be conducted in accordance with generally accepted auditing
39 standards. In accordance with AU Section 319 of the Professional Standards of the AICPA,
40 Consideration of Internal Control in a Financial Statement Audit, the independent certified
41 public accountant shall obtain an understanding of internal control sufficient to plan the
42 audit. To the extent required by AU 319, for those insurers required to file a
43 Management's Report of Internal Control over Financial Reporting pursuant to OAR 836-
44 011-0227, the independent certified public accountant shall consider (as that term is
45 defined in Statement on Auditing Standards (SAS) No. 102, Defining Professional
46 Requirements in Statements on Auditing Standards or its replacement) the most recently

1 **available report in planning and performing the audit of the statutory financial statements.**

2 Consideration shall also be given to other procedures illustrated in the **Financial Condition**
3 **Examiner's Handbook** promulgated by the National Association of Insurance Commissioners
4 as the certified public accountant determines to be necessary.

5 Stat. Auth.: ORS 731.244 & ORS 731.488

6 Stats. Implemented: ORS 731.488[(2)(d)-ORS 731.488(2)(e)]

7
8 **836-011-0190**

9 **Notification of Adverse Financial Condition**

10 (1) An insurer required to furnish the annual audited financial report shall require the
11 independent certified public accountant to report in writing to the board of directors or its audit
12 committee any determination by the independent certified public accountant that the insurer has
13 materially misstated its financial condition as reported to the Director as of the date of the
14 balance sheet currently under *[examination]* **audit** or that the insurer does not meet the minimum
15 capital and surplus requirement of the Oregon Insurance Code as of that date. The insurer shall
16 require the independent certified public accountant to submit the report not later than the fifth
17 business day after the independent certified public accountant makes such a determination. An
18 insurer that has received a report under this section shall forward a copy of the report to the
19 Director not later than the fifth business day after receiving the report and shall provide the
20 independent certified public accountant with evidence that the report was furnished to the
21 Director. If the independent certified public accountant does not receive the evidence within the
22 required period, the independent certified public accountant shall furnish to the Director a copy
23 of its report not later than the fifth business day after the end of the period within which the
24 insurer was required to submit the report.

25 (2) An independent certified public accountant shall not be liable to any person for any
26 statement made in connection with the requirements of section (1) of this rule if the statement is
27 made in good faith and in compliance with section (1) of this rule.

28 (3) If the accountant, after the date of the audited financial report filed pursuant to OAR
29 836-011-0100 to 836-011-0230, becomes aware of facts that might have affected the report, the
30 Director notes the obligation of the accountant to act as prescribed in **Volume 1, Section AU 561**
31 **of the Professional Standards of the American Institute of Certified Public Accountants**
32 **(AICPA).**

33 Stat. Auth.: ORS 731.244 & ORS 731.488

34 Stats. Implemented: ORS 731.488[(2)(f)]

35
36 **836-011-0200**

37 *[Report on Significant Deficiencies in Internal Controls]* **Communication of Internal Control**
38 **Related Matters Noted in an Audit**

39 (1) In addition to the annual audited financial *[statements]* **report**, each insurer shall
40 furnish the Director with a written *[report prepared by the accountant describing significant*
41 *deficiencies in the insurer's internal control structure noted by the accountant during the audit.*
42 *SAS No. 60 Communications of Internal Control Structure Matter Noted in an Audit (AU Section*
43 *325 of the Professional Standards of the American Institute of Certified Public Accountants)*
44 *requires an accountant to communicate significant deficiencies, known as "reportable*
45 *conditions," noted during a financial statement audit to the appropriate parties within an entity.*
46 *A report shall not be issued if the accountant does not identify significant deficiencies. If*

1 *significant deficiencies are noted, the insurer shall file the written report annually with the*
2 *Director]* **communication as to any unremediated material weaknesses in its internal**
3 **control over financial reporting noted during the audit. The communication must be**
4 **prepared by the accountant** not later than the 60th day after the filing of the annual audited
5 financial [*statements.*] **report and shall contain a description of any unremediated material**
6 **weakness (as the term material weakness is defined by Statement on Auditing Standard 60,**
7 **Communication of Internal Control Related Matters Noted in an Audit, or its replacement) as**
8 **of December 31 immediately preceding (so as to coincide with the audited financial report**
9 **required by OAR 836-011-0120(1)) in the insurer's internal control over financial**
10 **reporting noted by the accountant during the course of their audit of the financial**
11 **statements. If no unremediated material weaknesses were noted, the communication must**
12 **so state.**

13 (2) The insurer shall submit with the report required under section (1) of this rule a
14 description of remedial actions taken or proposed to correct [*significant deficiencies*]
15 **unremediated material weaknesses**, if the actions are not described in the accountant's report.

16 **(3) The insurer shall maintain information about significant deficiencies**
17 **communicated by the independent certified public accountant. The information must be**
18 **made available to the examiner conducting a financial condition examination for review**
19 **and kept in such a manner as to remain confidential.**

20 Stat. Auth.: ORS 731.244 & ORS 731.488

21 Stats. Implemented: ORS 731.488[(2)(g)]

22 **836-011-0210**

23 **Accountant's Letter of Qualifications**

24 (1) [*An insurer shall include with the filing of each annual audited financial report with*
25 *the Director a letter meeting the requirements of section (2) of this rule from the independent*
26 *certified public accountant who prepared the report.] **An accountant shall furnish the insurer,**
27 **in connection with and for inclusion in the filing of the annual audited financial report, a**
28 **letter stating:***

29 [(2) *The independent certified public accountant who prepares an annual audited*
30 *financial report for an insurer shall furnish the insurer, in connection with the report, a letter*
31 *stating the following:*]

32 (a) That the accountant is independent with respect to the insurer and conforms to the
33 standards of the accounting profession as contained in the Code of Professional Ethics and
34 pronouncements of the American Institute of Certified Public Accountants (**AICPA**) and the
35 Rules of Professional Conduct of the Oregon State Board of Accountancy, or a similar code of
36 conduct of the state board regulating the practice of accountancy in the state in which the
37 accountant is licensed to practice.

38 (b) The background and experience in general, and the experience in audits of insurers
39 [*specifically*], of the staff assigned to the engagement and whether each is an independent
40 certified public accountant.

41 (c) That the accountant understands that the annual audited financial report and the
42 opinion of the accountant thereon must be filed in compliance with OAR 836-011-0100 to 836-
43 011-0230 and that the Director will rely on the information contained in the report and opinion in
44 the monitoring and regulation of the financial position of insurers.
45

1 (d) That the accountant consents to the requirements of OAR 836-011-220 and that the
2 accountant agrees to make the workpapers described in OAR 836-011-0220 available for review
3 by the Director, or the Director's designee or appointed agent.

4 (e) A representation that the accountant is currently licensed by an appropriate state
5 licensing authority and is a member in good standing in the American Institute of Certified
6 Public Accountants.

7 (f) A representation that the accountant is in compliance with OAR 836-011-0160.

8 (3) This rule does not prohibit an independent certified public accountant from using such
9 staff as the accountant determines appropriate when use of the staff is consistent with the
10 standards prescribed by generally accepted auditing standards.

11 Stat. Auth.: ORS 731.244 & ORS 731.488

12 Stats. Implemented: ORS 731.488[(2)(b)-ORS 731.488(2)(c)]

13
14 **836-011-0220**

15 [*Certified Public Accountant Workpapers*] **Definition, Availability and Maintenance of**
16 **Independent Certified Public Accountants Workpapers**

17 [(1) *Each insurer required to file an audited financial report pursuant to OAR 836-011-*
18 *0100 to 836-011-0230 shall require the independent certified public accountant performing the*
19 *audit to make available for review by Department examiners the work papers prepared in the*
20 *conduct of the accountant's examination and any communications related to the audit between*
21 *the accountant and the insurer, at the offices of the insurer, at the Insurance Division of the*
22 *Department of Consumer and Business Services, or at any other place designated by the*
23 *Director. The insurer shall require that the accountant retain the audit workpapers and*
24 *communications until the Director has filed a Report on Examination covering the period of the*
25 *audit but in any event not longer than seven years from the date of the audit report. For purposes*
26 *of this rule, workpapers include:]*

27 [(a) *The records kept by the independent certified public accountant of the procedures*
28 *followed, the tests performed, the information obtained and the conclusions reached pertinent to*
29 *the examination by the accountant of the financial statements of the insurer; and]*

30 [(b) *Audit planning documentation, work programs, analyses, memoranda, letters of*
31 *confirmation and representation, abstracts of company documents and schedules or*
32 *commentaries prepared or obtained by the independent certified public accountant in the course*
33 *of examination of the financial statements of an insurer, supporting the opinion of the*
34 *accountant.]*

35 [(2) *In the conduct of an examination of an insurer by the Director and examiners, the*
36 *insurer and independent certified public accountant shall allow the Director and examiners to*
37 *make and retain copies of pertinent audit workpapers. Such reviews by the Director are*
38 *investigations and all working papers and communications obtained in the course of such*
39 *investigations are afforded the same confidentiality as other examination workpapers generated*
40 *by the Director under the **Insurance Code**.]*

41 **(1) For the purpose of this rule, workpapers are the records kept by an independent**
42 **certified public accountant of the procedures followed, the tests performed, the information**
43 **obtained and the conclusions reached pertinent to the accountant's audit of the financial**
44 **statements of an insurer. Accordingly, workpapers may include audit planning**
45 **documentation, work programs, analyses, memoranda, letters of confirmation and**
46 **representation, abstracts of company documents and schedules or commentaries prepared**

1 or obtained by the independent certified public accountant in the course of the
2 accountant's audit of the financial statements of an insurer and which support the
3 accountant's opinion.

4 (2) An insurer that is required to file an audited financial report pursuant to OAR
5 836-011-0100 to 836-011-0230 shall require the accountant to make available for review by
6 Department of Consumer and Business Service examiners, all workpapers prepared in the
7 conduct of the accountant's audit and any communications related to the audit between the
8 accountant and the insurer, at the offices of the insurer, at the Department or at any other
9 reasonable place designated by the Director. The insurer shall require that the accountant
10 retain the audit workpapers and communications until the Department has filed a report
11 on examination covering the period of the audit but no longer than seven years from the
12 date of the audit report.

13 (3) In the conduct of a periodic review by the Department examiners, it shall be
14 agreed that photocopies of pertinent audit workpapers may be made and retained by the
15 Department. Any such review by the Department examiners is an investigation and all
16 working papers and communications obtained during the course of such an investigation
17 must be given the same confidentiality as other examination workpapers generated by the
18 Department.

19 Stat. Auth.: ORS 731.244 & ORS 731.488

20 Stats. Implemented: ORS 731.488[(2)(i)]

21
22 **836-011-0223 [NEW RULE]**

23 **Requirements for Audit Committees**

24 (1) This rule does not apply to an authorized foreign or alien insurer or to an
25 insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a
26 SOX Compliant Entity.

27 (2) The audit committee shall be directly responsible for the appointment,
28 compensation and oversight of the work of an accountant, including resolution of
29 disagreements between management and the accountant regarding financial reporting, for
30 the purpose of preparing or issuing the audited financial report or related work pursuant
31 to OAR 836-011-0100 to 836-011-0230. Each accountant shall report directly to the audit
32 committee.

33 (3) Each member of the audit committee must be a member of the board of
34 directors of the insurer or a member of the board of directors of an entity elected pursuant
35 to section (6) of this rule.

36 (4) To be considered independent for purposes of this rule, a member of the audit
37 committee may not accept any consulting, advisory or other compensatory fee from the
38 entity or be an affiliated person of the entity or any subsidiary thereof, other than in the
39 member's capacity as a member of the audit committee, the board of directors or any other
40 board committee. However, if a law requires board participation by an otherwise non-
41 independent member, that law prevails and the member may participate in the audit
42 committee and be designated as independent for audit committee purposes, unless the
43 member is an officer or employee of the insurer or one of its affiliates.

44 (5) If a member of the audit committee ceases to be independent for a reason outside
45 the member's reasonable control, that person, with notice by the responsible entity to the
46 Director, may remain an audit committee member of the responsible entity until the earlier

1 of the date of the next annual meeting of the responsible entity or one year from the
2 occurrence of the event that caused the member to be no longer independent.

3 (6) To exercise the election of the controlling person to designate the audit
4 committee for purposes of OAR 836-011-0100 to 836-011-0230, the ultimate controlling
5 person shall provide written notice to the Director. The notice must be provided in a timely
6 manner prior to the issuance of the statutory audit report and must include a description of
7 the basis for the election. The insurer may change the election by notifying the Director.
8 The notice to the Director must include a description of the basis for the change. The
9 election remains in effect for perpetuity, until rescinded.

10 (7) The audit committee shall require the accountant that performs for an insurer
11 any audit required by OAR 836-011-0100 to 836-011-0230 to timely report to the Audit
12 committee in accordance with the requirements of SAS 61, *Communication with Audit*
13 *Committees*, or its replacement, including:

14 (a) All significant accounting policies and material permitted practices;

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

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

22 (8) If an insurer is a member of an insurance holding company system, the reports
23 required by section (7) of this rule may be provided to the audit committee on an aggregate
24 basis for insurers in the holding company system, but only if any substantial differences
25 among insurers in the system are identified to the Audit committee.

26 (9) The proportion of independent audit committee members shall meet or exceed
27 the following criteria:

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

29
30 (10) (Note A) The Director is authorized by state law to require an entity's board to
31 enact improvements to the independence of the audit committee membership if the insurer
32 is in a RBC action level event, meets one or more of the standards of an insurer determined
33 to be in hazardous financial condition or otherwise exhibits qualities of a troubled insurer.

34 (11) (Note B) All insurers with less than \$500,000,000 in prior year direct written
35 and assumed premiums are encouraged to structure their audit committees with at least a
36 supermajority of independent Audit committee members.

1 (12) (Note C) Prior calendar year direct written and assumed premiums shall be the
2 combined total of direct premiums and assumed premiums from non-affiliates for the
3 reporting entities.

4 (13) An insurer with direct written and assumed premium, excluding premiums
5 reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of
6 less than \$500,000,000 may apply to the Director for a waiver from the requirements of this
7 rule on the basis of hardship. The insurer shall file, with its annual statement filing, the
8 approval for relief from this rule with the states that it is licensed or authorized in or doing
9 business in and with the NAIC. If a nondomestic state accepts electronic filing with the
10 NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.
11 Stat. Auth.: ORS 731.244 & ORS 731.488

12 Stats. Implemented: ORS 731.488

13
14 836-011-0225 [NEW RULE]

15 Conduct of Insurer in Connection with the Preparation of Required Reports and
16 Documents

17 (1) A director or officer of an insurer may not directly or indirectly:

18 (a) Make or cause to be made a materially false or misleading statement to an
19 accountant in connection with any audit, review or communication required under OAR
20 836-011-0100 to 836-011-0230; or

21 (b) Omit to state, or cause another person to omit to state, any material fact
22 necessary in order to make statements made, in light of the circumstances under which the
23 statements were made, not misleading to an accountant in connection with any audit,
24 review or communication required under OAR 836-011-0100 to 836-011-0230.

25 (2) An officer or director of an insurer, or any other person acting under the
26 direction thereof, may not directly or indirectly take any action to coerce, manipulate,
27 mislead or fraudulently influence any accountant engaged in the performance of an audit
28 pursuant to OAR 836-011-0100 to 836-011-0230 if that person knew or should have known
29 that the action, if successful, could result in rendering the insurer's financial statements
30 materially misleading.

31 (3) For purposes of section (2) of this rule, actions that, "if successful, could result in
32 rendering the insurer's financial statements materially misleading" include, but are not
33 limited to, actions taken at any time with respect to the professional engagement period to
34 coerce, manipulate, mislead or fraudulently influence an accountant:

35 (a) To issue or reissue a report on an insurer's financial statements that is not
36 warranted in the circumstances, due to material violations of statutory accounting
37 principles prescribed by the Director, generally accepted auditing standards, or other
38 professional or regulatory standards;

39 (b) Not to perform audit, review or other procedures required by generally accepted
40 auditing standards or other professional standards;

41 (c) Not to withdraw an issued report; or

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

43 Stat. Auth.: ORS 731.244 & ORS 731.488

44 Stats. Implemented: ORS 731.488

45
46 836-011-0227 [NEW RULE]

1 Management's Report of Internal Control over Financial Reporting

2 (1) Each insurer required to file an audited financial report pursuant to OAR 836-
3 011-0100 to 836-011-0230 that has annual direct written and assumed premiums of
4 \$500,000,000 or more, excluding premiums reinsured with the Federal Crop Insurance
5 Corporation and Federal Flood Program, shall prepare a report of the insurer's or group
6 of insurers' internal control over financial reporting. The insurer shall file the report with
7 the Director, along with the Communication of Internal Control Related Matters Noted in
8 an Audit, as described in OAR 836-011-0200. The Management's Report of Internal
9 Control over Financial Reporting shall be as of December 31 immediately preceding.

10 (2) Notwithstanding the premium threshold in section (1) of this rule, the Director
11 may require an insurer to file a Management's Report of Internal Control over Financial
12 Reporting if the insurer is in any RBC level event or meets any one or more of the
13 standards of an insurer determined to be in hazardous financial condition as defined in
14 ORS 731.385.

15 (3) An insurer or a group of insurers described in this section may file its or its
16 parent's Section 404 Report and an addendum in satisfaction of this rule, but only if the
17 internal controls of the insurer or group of insurers having a material impact on the
18 preparation of the insurer's or group of insurers' audited statutory financial statements
19 (those items included in OAR 836-011-0140(2) and (3), except for OAR 836-011-0140(2)(a))
20 were included in the scope of the Section 404 Report. This section applies to an insurer or a
21 group of insurers that is:

22 (a) Directly subject to Section 404;

23 (b) Part of a holding company system whose parent is directly subject to Section
24 404;

25 (c) Not directly subject to Section 404 but is a SOX Compliant Entity; or

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

28 (4) An addendum provided by an insurer or group of insurers under section (3) of
29 this rule must be a positive statement by management that there are no material processes
30 with respect to the preparation of the insurer's or group of insurers' audited statutory
31 financial statements (those items included in OAR 836-011-0140(2) and (3), except for OAR
32 836-011-0140(2)(a)) excluded from the Section 404 Report. If there are internal controls of
33 the insurer or group of insurers that have a material impact on the preparation of the
34 insurer's or group of insurers' audited statutory financial statements and those internal
35 controls were not included in the scope of the Section 404 Report, the insurer or group of
36 insurers may file either (i) a report under this rule, or (ii) the Section 404 Report and a
37 report under this rule for those internal controls that have a material impact on the
38 preparation of the insurer's or group of insurers' audited statutory financial statements
39 not covered by the Section 404 Report.

40 (5) A Management's Report of Internal Control over Financial Reporting must
41 include:

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

44 (b) A statement that management has established internal control over financial
45 reporting and an assertion, to the best of management's knowledge and belief, after
46 diligent inquiry, as to whether its internal control over financial reporting is effective to

1 provide reasonable assurance regarding the reliability of financial statements in
2 accordance with statutory accounting principles;

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

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

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

9 (f) A statement regarding the inherent limitations of internal control systems; and

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

12 (6) For a Management's Report of Internal Control over Financial Reporting under
13 section (5) of this rule, management may not conclude that the internal control over
14 financial reporting is effective to provide reasonable assurance regarding the reliability of
15 financial statements in accordance with statutory accounting principles if there is one or
16 more unremediated material weaknesses in its Internal control over financial reporting

17 (7) Management shall document and make available upon financial condition
18 examination the basis upon which its assertions, required in section (5) of this rule, are
19 made. Management may base its assertions, in part, upon its review, monitoring and
20 testing of internal controls undertaken in the normal course of its activities. In addition:

21 (a) Management shall have discretion as to the nature of the internal control
22 framework used, and the nature and extent of documentation, in order to make its
23 assertion in a cost effective manner and, as such, may include assembly of or reference to
24 existing documentation.

25 (b) Management's Report on Internal Control over Financial Reporting, required
26 by section (1) of this rule, and any documentation provided in support thereof during the
27 course of a financial condition examination, shall be kept confidential by the Department.
28 Stat. Auth.: ORS 731.244 & ORS 731.488

29 Stats. Implemented: ORS 731.488

30
31 **836-011-0230 [NO CHANGE]**

32 **Canadian and British Companies**

33 In the case of Canadian and British insurers, the annual audited financial report is the
34 annual statement of total business on the form filed by such companies with their domiciliary
35 supervision authority and audited by an independent chartered accountant. For such insurers, the
36 letter required under OAR 836-011-0150 shall state that the accountant is aware of the
37 requirements relating to the annual audited statement filed with the Director under OAR 836-
38 011-0120 and shall affirm that the opinion expressed conforms to those requirements. .

39 Stat. Auth.: ORS 731.244 & ORS 731.488

40 Stats. Implemented: ORS 731.488[(2)(b)-ORS 731.488(2)(c)]

41
42 **836-011-0235 [NEW RULE]**

43 **Effective Dates**

44 (1) The requirements of OAR 836-011-0160(4) as amended effective July 1, 2008
45 apply to audits of the year beginning January 1, 2010 and thereafter.

1 **(2) The requirements of OAR 836-011-0223 first apply beginning January 1, 2010.**
2 **An insurer or group of insurers that is not required to have independent audit committee**
3 **members or only a majority of independent audit committee members, as opposed to a**
4 **supermajority, because the total written and assumed premium is below the threshold and**
5 **subsequently becomes subject to one of the independence requirements due to changes in**
6 **premium has one year following the year the threshold is exceeded, but not earlier than**
7 **January 1, 2010, to comply with the independence requirements. Likewise, an insurer that**
8 **becomes subject to one of the independence requirements as a result of a business**
9 **combination shall have one calendar year following the date of acquisition or combination**
10 **to comply with the independence requirements.**

11 **(3) The requirements of OAR 836-011-0100 to 836-011-0230 as amended effective**
12 **July 1, 2008, except for OAR 836-011-0223, are effective beginning with the reporting**
13 **period ending December 31, 2010 and each year thereafter. An insurer or group of insurers**
14 **that is not required to file a report because the total written premium is below the**
15 **threshold and subsequently becomes subject to the reporting requirements shall have two**
16 **years following the year the threshold is exceeded, but not earlier than December 31, 2010,**
17 **to file a report. Likewise, an insurer acquired in a business combination shall have two**
18 **calendar years following the date of acquisition or combination to comply with the**
19 **reporting requirements.**

20 **Stat. Auth.: ORS 731.244 & ORS 731.488**

21 **Stats. Implemented: ORS 731.488**

22 _____

23

1 **DEPARTMENT OF CONSUMER AND BUSINESS SERVICES,**
2 **INSURANCE DIVISION**

3 **DIVISION 24**
4 **DOMESTIC INSURERS; ORGANIZATION;**
5 **CORPORATE PROCEDURES**
6 **Shares, Shareholders, and Members**

7
8 **836-024-0056 [TO BE REPEALED]**
9 **Schedule A**

10 *The following information shall be included in a proxy statement or information*
11 *statement required by OAR 836-024-0003 to 836-024-0061:*

12 (1) *Item 1: Revocability of Proxy. State whether or not the person giving the proxy has*
13 *the power to revoke it. If the right of revocation before the proxy is exercised is limited or is*
14 *subject to compliance with any formal procedure, briefly describe the limitation or procedure.*

15 (2) *Item 2: Dissenters' Rights of Appraisal. Outline briefly the rights of appraisal or*
16 *similar rights of dissenting security holders with respect to any matter to be acted upon and*
17 *indicate any statutory procedure required to be followed by such security holders in order to*
18 *perfect their rights. Where such rights may be exercised only within a limited time after the date*
19 *of the adoption of a proposal, the filing of a charter amendment or other similar act, state*
20 *whether the person solicited will be notified of such date.*

21 (3) *Item 3: Persons Making Solicitations Not Subject to OAR 836-024-0051 to 836-024-*
22 *0055:*

23 (a) *If the solicitation is made by the management of the insurer, so state. Give the name*
24 *of any director of the insurer who has informed the management in writing that he intends to*
25 *oppose any action intended to be taken by the management and indicate the action that he*
26 *intends to oppose.*

27 (b) *If the solicitation is made otherwise than by the management of the insurer, state the*
28 *names and addresses of the persons by whom and on whose behalf it is made and the names and*
29 *addresses of the persons by whom the cost of solicitation has been or will be borne, directly or*
30 *indirectly.*

31 (c) *If the solicitation is to be made by specially engaged employes or paid solicitors,*
32 *state:*

33 (A) *The material features of any contract or arrangement for such solicitation and*
34 *identify the parties; and*

35 (B) *The cost or anticipated cost of the solicitation.*

36 (4) *Item 4: Interest of Certain Persons in Matters to Be Acted Upon. Describe briefly any*
37 *substantial interest, direct or indirect, by security holdings or otherwise, of any director,*
38 *nominee for election as director, officer and, if the solicitation is made otherwise than on behalf*
39 *of management, each person on whose behalf the solicitation is made, in any matter to be acted*
40 *upon, other than elections to office.*

41 (5) *Item 5: Voting Securities:*

42 (a) *State, as to each class of voting securities of the insurer entitled to be voted at the*
43 *meeting, the number of shares outstanding and the number of votes to which each class is*
44 *entitled;*

1 (b) Give the date as of which the record list of security holders entitled to vote at the
2 meeting will be determined. If the right to vote is not limited to security holders of record on that
3 date, indicate the conditions under which other security holders may be entitled to vote;

4 (c) If action is to be taken with respect to the election of directors, and if the persons
5 solicited have cumulative voting rights, make a statement that they have such rights and state
6 briefly the conditions precedent to the exercise of such rights.

7 (6) Item 6: Nominees and Directors:

8 (a) If action is to be taken with respect to the election of directors, furnish the
9 information described in subsections (2) to (5) of this item, in tabular form to the extent
10 practical, with respect to each person whose term of office as a director will continue after the
11 meeting;

12 (b) Name the person, state when his term of office or the term of office for which he is a
13 nominee will expire, and all other positions and offices with the insurer presently held by him;
14 and indicate whether he is a nominee for election as director at the meeting;

15 (c) State his present principal occupation or employment and give the name and
16 principal business of any corporation or other organization in which such employment is carried
17 on. Furnish similar information as to all of his principal occupations or employments during the
18 last five years, unless he is now a director and was elected to his present term of office by a vote
19 of security holders at a meeting for which proxies were solicited under OAR 836-024-0003 to
20 836-024-0061 or under the former similar rule compiled in OAR 836-011-0006 to 836-011-
21 0061, adopted by Administrative Order IC-44, effective from January 1, 1970 to June 22, 1976;

22 (d) If he is or has previously been a director of the insurer, state the period or periods
23 during which he served as such;

24 (e) State, as of the most recent practical date, the approximate amount of each class of
25 equity securities of the insurer or any of its parents, subsidiaries or affiliates, other than
26 directors' qualifying shares, beneficially owned directly or indirectly by him. If he is not the
27 beneficial owner of any such securities, make a statement to that effect.

28 (7) Item 7: Remuneration and Other Transactions with Management and Others:

29 (a) Furnish the information reported or required in Item One of Schedule SIS under the
30 heading "Information Regarding Management and Directors" if action is to be taken with
31 respect to:

32 (A) The election of directors;

33 (B) Any remuneration plan, contract, or arrangement in which any director, nominee for
34 election as a director, or officer of the insurer will participate;

35 (C) Any pension or retirement plan in which any such person will participate; or

36 (D) The granting or extension to any such persons of any options, warrants, or rights to
37 purchase any securities, other than warrants or rights issued to security holders on a pro rata
38 basis.

39 (b) If the solicitation is made on behalf of persons other than the management,
40 information shall be furnished only as to Item One-A under such heading of Schedule SIS.

41 (8) Item 8: Bonus, Profit Sharing, and Other Remuneration Plans. If action is to be taken
42 with respect to any bonus, profit sharing, or other remuneration plan of the insurer, furnish:

43 (a) A brief description of the material features of the plan, each class of persons who will
44 participate in the plan, the approximate number of persons in each such class and the basis of
45 such participation;

1 (b) *The amounts which would have been distributable under the plan during the last*
2 *calendar year, if the plan had been in effect, to:*

3 (A) *Each person named in Item Seven of this schedule;*

4 (B) *Directors and officers as a group; and*

5 (C) *All other employes as a group.*

6 (c) *If the plan to be acted upon may be amended (other than by a vote of security holders)*
7 *in a manner which would materially increase the cost thereof to the insurer or materially alter*
8 *the allocation of the benefits as between the groups specified in subsection (2) of this item, the*
9 *nature of such amendments shall be specified.*

10 (9) *Item 9: Pension and Retirement Plans. If action is to be taken with respect to any*
11 *pension or retirement plan of the insurer, furnish:*

12 (a) *A brief description of the material features of the plan, each class of persons who will*
13 *participate in the plan, the approximate number of persons in each class and the basis of such*
14 *participation.*

15 (b) *State:*

16 (A) *The approximate total amount necessary to fund the plan with respect to past*
17 *services, the period over which such amount is to be paid, and the estimated annual payments*
18 *necessary to pay the total amount over such period;*

19 (B) *The estimated annual payment to be made with respect to current services; and*

20 (C) *The amount of such annual payments to be made for the benefit of:*

21 (i) *Each person named in Item Seven of this schedule;*

22 (ii) *Directors and officers as a group; and*

23 (iii) *Employes as a group.*

24 (D) *If the plan to be acted upon may be amended (other than by a vote of security*
25 *holders) in a manner which would materially increase the cost of the plan to the insurer or*
26 *materially alter the allocation of the benefits as between the groups specified in paragraph (c) of*
27 *subsection (2) of this item, the nature of such amendments shall be specified.*

28 (10) *Item 10: Options, Warrants, or Rights. If action is to be taken with respect to the*
29 *granting or extension of any options, warrants, or rights (all referred to in this item as*
30 *"warrants") to purchase securities of the insurer or any subsidiary or affiliate, other than*
31 *warrants issued to all security holders on a pro rata basis:*

32 (a) *Furnish the title and amount of securities called for or to be called for; the prices,*
33 *expiration dates, and other material conditions upon which the warrants may be exercised; the*
34 *consideration received or to be received by the insurer, subsidiary, or affiliate for the granting*
35 *or extension of the warrants; and the market value of the securities called for or to be called for*
36 *by the warrants, as of the latest practical date;*

37 (b) *If known, state separately the total amount of securities called for or to be called for*
38 *by warrants received or to be received by the following persons and name each such person:*

39 (A) *Each person named in Item Seven of this schedule; and*

40 (B) *Each other person who will be entitled to acquire five percent or more of the*
41 *securities called for or to be called for by such warrants.*

42 (c) *If known, state the total amount of securities called for or to be called for by such*
43 *warrants received or to be received by all directors and officers of the company as a group and*
44 *all employes, without naming them.*

45 (11) *Item 11: Authorization or Issuance of Securities:*

1 (a) If action is to be taken with respect to the authorization or issuance of any securities
2 of the insurer, furnish the title, amount, and description of the securities to be authorized or
3 issued;

4 (b) If the securities are other than additional shares of common stock of a class
5 outstanding, furnish a brief summary of the following, if applicable: Dividend, voting,
6 liquidation, preemptive and conversion rights, redemption and sinking fund provisions, interest
7 rate, and date of maturity;

8 (c) If the securities to be authorized or issued are other than additional shares of
9 common stock of a class outstanding, the Commissioner may require financial statements
10 comparable to those contained in the annual financial statement required under ORS 731.574.

11 (12) Item 12: Mergers, Consolidations, Acquisitions, and Similar Matters:

12 (a) If action is to be taken with respect to a merger, consolidation, acquisition or similar
13 matter, furnish in brief outline:

14 (A) The rights of appraisal or similar rights of dissenters with respect to any matters to
15 be acted upon and indicate any procedure required to be followed by dissenting security holders
16 in order to perfect such rights;

17 (B) The material features of the plan or agreement;

18 (C) The business done by the company to be acquired or whose assets are being
19 acquired;

20 (D) If available, the high and low sales prices for each quarterly period within the last
21 two years;

22 (E) The percentage of outstanding shares that must approve the transaction before it is
23 consummated.

24 (b) For each company involved in a merger, consolidation or acquisition, the following
25 financial statements shall be furnished:

26 (A) A comparative balance sheet as of the close of the last two fiscal years;

27 (B) A comparative statement of operating income and expenses for each of the last two
28 fiscal years and, as a continuation of each statement, a statement of earnings per share after
29 related taxes and cash dividends paid per share;

30 (C) A pro forma combined balance sheet and income and expense statement for the last
31 fiscal year giving effect to the necessary adjustments with respect to the resulting company.

32 (13) Item 13: Restatement of Accounts. If action is to be taken with respect to the
33 restatement of an asset, capital or surplus account of the insurer:

34 (a) State the nature of the restatement and the date it is to be effective;

35 (b) Outline briefly the reasons for the restatement and for the selection of the particular
36 effective date;

37 (c) State the name and amount of each account affected by the restatement and the effect
38 of the restatement on each account.

39 (14) Item 14: Matters Not Required to Be Submitted. If action is to be taken with respect
40 to any matter which is not required to be submitted to a vote of security holders, state:

41 (a) The nature of such matter;

42 (b) The reason for submitting it to a vote of security holders; and

43 (c) What action is intended to be taken by the management in the event of a negative vote
44 on the matter by the security holders.

45 (15) Item 15: Amendment of Charter, By-Laws, or Other Documents. If action is to be
46 taken with respect to any amendment of the insurer's charter, by-laws, or other documents as to

1 *which information is not required under any other item in this schedule, state briefly the reasons*
2 *for and general effect of such amendment and the vote needed for its approval.*

3 Stat. Auth.: ORS 731 & 732

4 Stats. Implemented: ORS 732.415(4)

5
6 **836-024-0061 [TO BE REPEALED]**

7 **Schedule B**

8 *The following information shall be included in statements filed by or on behalf of each*
9 *participant (other than the insurer) in a proxy solicitation in an election contest:*

10 *(1) Item 1: Insurer. State the name and address of the insurer.*

11 *(2) Item 2: Identify and Background:*

12 *(a) State the participant's name and business address and present principal occupation*
13 *or employment; and the name, principal business and address of any corporation or other*
14 *organization in which such employment is carried on.*

15 *(b) State the participant's residence address and information as to all material*
16 *occupations, positions, offices, or employments during the last 10 years, giving:*

17 *(A) Starting and ending dates of each; and*

18 *(B) The name, principal business and address of any business corporation, or other*
19 *business organization in which each such occupation, position, office, or employment was*
20 *carried on.*

21 *(c) State whether or not the participant is or has been a participant in any other proxy*
22 *contest involving this insurer or other companies within the past ten years. If so, identify the*
23 *principals, the subject matters, and the relationship of the participant to the parties and the*
24 *outcome.*

25 *(d) State whether or not, in a judicial or administrative proceeding during the last ten*
26 *years, the participant has been convicted of any offense (excluding Class C and Class D traffic*
27 *infractions, Class C misdemeanors and similar offenses) and, if so, give the date, nature of*
28 *conviction, name and location of the court or administrative agency, and penalty imposed or*
29 *other disposition of the case. A negative answer to this sub-Item need not be included in the*
30 *proxy statement or other proxy soliciting material.*

31 *(3) Item 3: Interest in Securities of the Insurer:*

32 *(a) State the amount of each class of securities of the insurer that the participant owns*
33 *beneficially, directly, or indirectly;*

34 *(b) State the amount of each class of securities of the insurer that the participant owns of*
35 *record but not beneficially;*

36 *(c) State with respect to all securities of the insurer purchased or sold within the past two*
37 *years, the dates on which they were purchased or sold by the participant and the amount*
38 *purchased or sold on each such date;*

39 *(d) If any part of the purchase price or market value of any of the securities specified in*
40 *subsection (c) of this item is represented by funds borrowed or otherwise obtained for the*
41 *purpose of acquiring or holding the securities, so state and indicate the amount of the*
42 *indebtedness as of the latest practical date. If the funds were borrowed or obtained otherwise*
43 *than pursuant to a margin account or bank loan in the regular course of business of a bank,*
44 *broker, or dealer, briefly describe the transaction and state the names of the parties;*

45 *(e) State whether or not the participant is a party to any contract, arrangement, or*
46 *understanding with any person with respect to any securities of the insurer, including, but not*

1 limited to, a joint venture, loan, or option arrangement, puts or calls, guarantee against losses
2 or guarantee of profits, division of losses or profits, or the giving or withholding of proxies. If so,
3 name the persons with whom such a contract, arrangement or understanding exists and give the
4 details thereof;

5 (f) State the amount of securities of the insurer owned beneficially, directly, or indirectly,
6 by each associate of the participant and the name and address of each such associate;

7 (g) State the amount of each class of securities of any parent, subsidiary or affiliate of the
8 insurer that the participant owns beneficially, directly, or indirectly.

9 (4) Item 4: Further Matters:

10 (a) Describe the time and circumstances under which the participant became a
11 participant in the solicitation and state the nature and extent of his activities or proposed
12 activities as a participant;

13 (b) Describe briefly, and where practical state the approximate amount of any material
14 interest, direct or indirect, of the participant and of each of his associates in any material
15 transactions since the beginning of the insurer's last fiscal year, or in any material proposed
16 transactions, to which the insurer or any of its subsidiaries or affiliates was or is to be a party;

17 (c) State whether or not the participant or any of his associates have any arrangement or
18 understanding with any person:

19 (A) With respect to any future employment by the insurer or its subsidiaries or affiliates;
20 or

21 (B) With respect to any future transactions to which the insurer or any of its subsidiaries
22 or affiliates will or may be a party.

23 (d) Describe any arrangement or understanding stated under subsection (3) of this item
24 and state the names of the parties thereto.

25 (5) Item 5: Signature. The statement shall be dated and signed in the following manner:
26 **I certify that the statements made in this statement are true, complete, and correct to the best**
27 **of my knowledge and belief.**

28 _____ (Date) _____
29 _____

30 **Signature of participant or authorized representative.**

31 Stat. Auth.: ORS 731 & 732

32 Stats. Implemented: ORS 732.415(4)

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