

**STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

Bulletin 2010-16-INS

In the matter of

**Risk-based capital (RBC)
levels for insurers**

**Issued and entered
this 15th day of July 2010
By Ken Ross
Commissioner**

This bulletin supersedes Insurance Bulletin 98-02 issued and entered on June 15, 1998.

Definitions

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

- (1) "Adjusted RBC Report" means an RBC report which has been adjusted by the commissioner in accordance with these guidelines.
- (2) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.
- (3) "NAIC" means the National Association of Insurance Commissioners.
- (4) "Life and/or health insurer" means any insurance company licensed under Chapter 4 of the Insurance Code of 1956, as amended (Code) and as defined in Chapter 6 of the Code, except that "health insurance" is defined as "disability insurance" in the Code, or a licensed property and casualty insurer writing only accident and health (disability) insurance.
- (5) "Property and casualty insurer" means any insurance company licensed under Chapter 4 of the Code and as defined in Chapter 6 of the Code but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.
- (6) "Health organization" means a health maintenance organization, alternative financing and delivery system entity, nonprofit dental care corporation, nonprofit health care corporation licensed under Chapter 35 of the Insurance Code of 1956, Public Act 350 of 1980, or Public Act 125 of 1963. All the above entities are also referred to as "insurer" in this bulletin.

(7) "Negative trend" means, with respect to a life and/or health insurer, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the RBC Instructions.

(8) "RBC instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC and the commissioner, as such RBC Instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(9) "RBC Level" means an insurer's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

(a) "Company Action Level RBC" means, with respect to any insurer, the product of 2.0 and its Authorized Control Level RBC;

(b) "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;

(c) "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions;

(d) "Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC.

(10) "RBC Plan" means a comprehensive financial plan containing the elements specified below. If the commissioner rejects the RBC Plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "Revised RBC Plan." An RBC Plan shall:

(a) Identify the conditions which contribute to the Company Action Level Event;

(b) Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the Company Action Level Event;

(c) Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheet, operating income, net income, capital and surplus, and RBC levels. (The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component);

(d) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(11) "RBC Report" means the report of an insurer's RBC levels as required by the annual statement instructions. If the commissioner adjusts an RBC Report, the report shall be referred to as an "Adjusted RBC Report."

(12) "Total adjusted capital" means the sum of:

(a) An insurer's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under Section 500.438 of the Code, MCL 550.1602, and MCL 550.360; and

(b) Such other items, if any, as the RBC instructions may provide.

RBC Reports

If a domestic insurer files an RBC Report which in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC Report to correct the inaccuracy and may notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment.

Company Action Level Event

(1) "Company Action Level Event" means any of the following:

(a) The filing of an RBC Report by an insurer, or the notification by the commissioner to the insurer of an Adjusted RBC Report which indicates that:

(i) The insurer's total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC; or

(ii) If a life and/or health insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 2.5 and has a negative trend.

(iii) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Property and Casualty RBC instructions.

(iv) If a health organization, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC

and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Health RBC instructions.

(b) Notification to the insurer after a hearing that the commissioner has rejected the insurer's challenge to an Adjusted RBC Report that indicates an event in subsection (a).

(2) In the event of a Company Action Level Event, the commissioner shall require an insurer to prepare and submit an RBC Plan.

(3) If required by the commissioner, the RBC Plan shall be submitted:

(a) Within forty-five (45) days of the Company Action Level Event; or

(b) Within forty-five (45) days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge to an Adjusted RBC Report.

(4) Within sixty (60) days after the submission of an RBC Plan to the commissioner, the commissioner shall notify the insurer whether the RBC Plan is satisfactory. If, in the judgment of the commissioner, the RBC Plan is unsatisfactory, the commissioner shall provide the insurer with the reasons for the determination, and may set forth proposed revisions which will render the RBC Plan satisfactory. Within forty-five (45) days of notification from the commissioner or within forty-five (45) days after notification that the commissioner has rejected the insurer's challenge, the insurer shall prepare and submit a Revised RBC Plan, which may incorporate by reference any revisions proposed by the commissioner.

Regulatory Action Level Event

(1) "Regulatory Action Level Event" means, with respect to any insurer, any of the following events:

(a) The filing of an RBC Report by the insurer, or the notification by the commissioner to an insurer of an Adjusted RBC Report which indicates that the insurer's total adjusted capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;

(b) The notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge to an Adjusted RBC Report.

(c) The failure of the insurer to file an RBC Report by the filing date, unless the insurer has provided an explanation for such failure which is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date;

(d) The failure of the insurer to submit an RBC Plan to the commissioner within the time period set forth in these guidelines;

(e) Notification to the insurer that the commissioner has determined that the RBC Plan or revised RBC Plan submitted by the insurer is unsatisfactory and such notification constitutes a Regulatory Action Level Event with respect to the insurer.

(f) The notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge to a determination by the commissioner under subsection (e);

(g) Notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC Plan or Revised RBC Plan, and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the Company Action Level Event in accordance with its RBC Plan or Revised RBC Plan, provided the insurer has not challenged the determination by the commissioner under subsection (e); or

(h) The notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge to a determination by the commissioner under subsection (g).

(2) In the event of a Regulatory Action Level Event the commissioner shall:

(a) Require the insurer to prepare and submit an RBC Plan or, if applicable, a Revised RBC Plan;

(b) Subsequent to an investigation or analysis, issue a Corrective Order.

(3) In determining corrective actions, the commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions.

(4) An RBC Plan or Revised RBC Plan required by the commissioner shall be submitted:

(a) Within forty-five (45) days after the occurrence of the Regulatory Action Level Event;

(b) Within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge to an Adjusted RBC Report or Revised RBC Plan.

Authorized Control Level Event

(1) "Authorized Control Level Event" means any of the following events:

(a) The filing of an RBC Report or notification by the commissioner to the insurer of an Adjusted RBC Report, provided the insurer does not challenge the Adjusted RBC Report, which indicates that the insurer's total adjusted capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC; or

(b) Notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge to an Adjusted RBC Report that indicates the event in subsection (a)

(c) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a Corrective Order, provided the insurer has not challenged the Corrective Order; or

(d) If the insurer has challenged a Corrective Order, and the commissioner has, after a hearing, rejected the challenge or modified the Corrective Order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the Corrective Order subsequent to rejection or modification by the commissioner.

(2) In the event of an Authorized Control Level Event with respect to an insurer, the commissioner shall:

(a) Take such actions as are appropriate under the "Regulatory Action Level Event" section of these guidelines regarding an insurer with respect to which an Regulatory Action Level Event has occurred; or

(b) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control under Chapter 81 of the Code. In the event the commissioner takes such actions, the Authorized Control Level Event shall be deemed sufficient grounds for the commissioner to take action under Chapter 81, and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth Chapter 81. In the event the commissioner takes actions under this paragraph pursuant to an Adjusted RBC Report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of Section 437 of the Code pertaining to summary proceedings.

Mandatory Control Level Event

(1) "Mandatory Control Level Event" means any of the following events:

(a) The filing of an RBC Report or notification by the commissioner to the insurer of an Adjusted RBC Report, provided the insurer does not challenge the Adjusted RBC Report, which indicates that the insurer's total adjusted capital is less than its Mandatory Control Level RBC; or

(b) Notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge to an Adjusted RBC Report.

(2) In the event of a Mandatory Control Level Event:

(a) The commissioner shall take such actions as are necessary to place the insurer under regulatory control under Chapter 81 of the Code. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the commissioner to take action under Chapter 81,

and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in Chapter 81. If the commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to the protections of Section 437 of the Code pertaining to summary proceedings.

(b) Notwithstanding (a), the commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety (90) day period.

Challenges to Determination or Action by the Commissioner

The request for the submission of an Adjusted RBC Report, RBC Plan, or Revised RBC Plan shall be considered an investigation under Section 222 of the Code, MCL 550.1603 and MCL 550.359. Pursuant to such an investigation, an insurer may challenge a determination or action made by the commissioner. Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which date shall be no less than ten (10) nor more than thirty (30) days after the date of the insurer's request. The hearing shall be closed to the public and is not subject to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

Confidentiality; Prohibition on Announcements, Prohibition on Use in Ratemaking

(1) All RBC Reports (to the extent the information therein is not required to be set forth in a publicly available annual statement schedule) and RBC Plans (including the results or report of any examination or analysis of an insurer performed pursuant hereto and any Corrective Order issued by the commissioner pursuant to examination or analysis) with respect to any domestic insurer or foreign insurer which are filed with the commissioner constitute an investigation made under Section 222 and 234 of the Code and therefore are afforded the confidentiality provisions of Section 222 and 234.

(2) The comparison of an insurer's total adjusted capital to any of its RBC Levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under the provisions of these guidelines, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC Levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its RBC Levels (or any of them) or an inappropriate comparison of any other amount to the insurers' RBC Levels is published in any written publication and the insurer is

able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) The RBC instructions, RBC Reports, Adjusted RBC Reports, RBC Plans and Revised RBC Plans shall be used solely by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and will not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

Exemption

(1) The commissioner may exempt from the application of these guidelines any domestic property and casualty insurer which;

(a) Writes direct business only in this state;

(b) Writes direct annual premiums of \$2,000,000 or less; and

(c) Assumes no reinsurance in excess of five percent (5%) of direct premium written.

Foreign Insurers

(1) The commissioner may request of any foreign insurer the submittal of an RBC Report as of the end of the calendar year just ended the later of:

(a) The date an RBC Report would have been filed by a domestic insurer under these guidelines; or

(b) Fifteen (15) days after the request is received by the foreign insurer.

The commissioner may request of any foreign insurer the prompt submittal of a copy of any RBC Plan that is filed with the insurance commissioner of any other state.

(2) In the event of a Company Action Level Event, Regulatory Action Level Event or Authorized Control Level Event with respect to any foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer (or, if no RBC statute is in force in that state, under the provisions of these guidelines), if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC Plan in the manner specified under that state's RBC statute, the commissioner may require the foreign insurer to file an RBC Plan with the commissioner. In such event, the failure of the foreign insurer to file an

RBC Plan with the commissioner will be considered grounds to conclude that the insurer is no longer safe, reliable, and entitled to public confidence.

(3) In the event of a Mandatory Control Level Event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to the circuit court permitted under the provisions of Chapter 81 of the Code with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the Mandatory Control Level Event may be considered adequate grounds for the application.

Notices

All notices by the commissioner to an insurer which may result in regulatory action hereunder shall be effective upon the date of the notice.


Effective Date

These guidelines become effective immediately.

Any questions regarding this bulletin should be referred to:

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In accordance with Section 3(6) of the Administrative Procedures Act of 1969, as amended, MCLA 24.203(6); MSA 3.560(103)(6), this guideline is a statement of policy or declaration which the agency intends to follow, which does not have the force or effect of law, and which binds the agency but does not bind any other person.



Ken Ross
Commissioner