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Amendments to
Rules 21 through 24 and 26 through 38 of the
Massachusetts Automobile Insurance Plan
Docket No. C2008-01

Decision and Order on Amendments

I. Introduction

On February 6, 2008, I promulgated amendments to the Massachusetts Automobile Insurance Plan (“MAIP”) Rules 21 through 24 and Rules 26 through 38 on an emergency basis (the “Emergency Rules”) pursuant to Article X of the Commonwealth Automobile Reinsurers (“CAR”) Plan of Operation. Amendments to the Emergency Rules were necessary in view of the imminent introduction of competitive rating and the implementation of an assigned risk plan in the residual market for private passenger motor vehicle insurance on April 1, 2008. I determined that the Emergency Rules were necessary to ensure the fair and equitable operation of CAR during the transition to the assigned risk plan. I further determined that the observance of normal requirements for promulgation of the amended Rules would delay their implementation and be contrary to the public interest.

We held a hearing on April 10, 2008, to afford all interested parties the opportunity to provide oral and written comment on the Emergency Rules and any recommendations for modification or amendments. Eight individuals spoke at the well-

attended hearing, and a number of others submitted written statements. The record remained open until April 18 and additional written statements were submitted.

II. The Rules

Rule 21

Rule 21 establishes the timetable for gradually implementing the MAIP, identifying the only types of risks that can be placed in the MAIP during the transition year, April 1, 2008 to March 31, 2009. A number of speakers at the hearing expressed concerns about the application of this rule.¹ One focus of their concern is whether the Rule creates a gap in guaranteed access to private passenger motor vehicle insurance during the transition year, which would prevent some individuals from obtaining such insurance if they are declined voluntary coverage. Their concerns are unwarranted. Every driver who cannot obtain insurance on a voluntary basis during the transition year is guaranteed insurance either through an exclusive representative producer (“ERP”) or through the MAIP.²

The voluntary market has not required companies to “take-all-comers” for decades. *Commerce Insurance Company v. Commissioner of Insurance*, 447 Mass. 478 (2006).³ Guaranteed access of all Massachusetts drivers to insurance has been accomplished through the agency of ERPs before the introduction of the MAIP. Rule 21 does not end this promise of guaranteed insurance, but does establish two mutually-exclusive routes by which a risk can obtain the guaranteed insurance during the transition year.⁴ Some residual market risks will obtain insurance through the MAIP while others will obtain it through ERPs, as in the past. No one, except in the limited circumstances

¹ No substantive changes have been made to Rule 21 since its effective date of July 16, 2007. Indeed this rule, and its impact, has been the subject of several previous public hearings. At no time prior to this hearing were these concerns raised.

² Exceptions to this rule exist. A person is not guaranteed automobile insurance if, for example, he has failed to pay any of the premiums due to his insurance carrier for the past twelve months, or if he does not hold, or is not eligible to hold, a driver’s license. M.G.L. 175, §§ 113H(A)(1) and 113H(A)(2).

³ In 1983, the Massachusetts legislature repealed the “take-all-comers” law by enacting Chapter 241 of the Acts of 1983, thereby ceasing to require an insurance company to write insurance voluntarily for every person who sought it.

⁴ The MAIP does not completely supersede the ERP-based system until April 1, 2009.

allowed by law,⁵ will be unable to obtain private passenger motor vehicle insurance during the transition year.

We provide this guide of the options that companies have during the transition year to dispel any lingering confusion about the practical application of the Rule 21 provisions.

Rule 21 does not change a company's options or obligations regarding risks who are not eligible for placement in the MAIP during the transition year ("MAIP-ineligible risk"). Through March 31, 2009, a company considering a MAIP-ineligible risk from a producer who is not an ERP may either write the risk voluntarily, elect to write the risk and cede it to CAR, or decline to write it. If the MAIP-ineligible risk obtains insurance through an ERP, however, the company must write the risk and may choose to retain it voluntarily or cede it to CAR.⁶ These options and obligations represent no change to the way business is handled under the current CAR rules. No MAIP-ineligible consumer will be unable to obtain insurance during the transition year, but he or she may have to obtain that insurance through an ERP, if no company writes the insurance voluntarily. During the transition year, drivers not eligible for placement through the MAIP are guaranteed insurance through an ERP.

Rule 21 creates different options for ERP servicing carriers and other companies regarding risks who are eligible for placement in the MAIP during the transition year ("MAIP-eligible risk"). A MAIP-eligible risk is not entitled to guaranteed acceptance by his or her ERP's servicing carrier. An ERP's servicing carrier either may write a MAIP-eligible risk voluntarily or decline to write it; these are the same options any company has with its voluntary producers.⁷ If an ERP's servicing carrier declines to voluntarily insure or renew a risk who is MAIP-eligible, the ERP will need to assist the MAIP-eligible driver to obtain insurance through the MAIP, if no company can be found that will write

⁵ See note 2 *supra*.

⁶ Under Rule 21.B, a company during the transition year can cede to the CAR pool only those risks who are not eligible for placement in the MAIP.

⁷ Under Rule 21.B, a company during the transition year cannot cede to the CAR pool those risks who are eligible for placement in the MAIP.

the risk voluntarily. A voluntary agent will have the same obligation. During the transition year, MAIP-eligible drivers are guaranteed insurance through the MAIP.

Rule 21 requires that a company must renew “Clean-in-Three” risks with renewal dates during the period April 1, 2008 through March 31, 2011. This requirement exists whether the risk is written through an ERP or a voluntary producer. Even if a “Clean-in-Three” risk is written through an ERP with whom the company will cease to have a direct relationship as of April 1, 2009, a company may not non-renew a “Clean-in-Three” risk except in one of the circumstances set out in Rule 21.C.1 through 3. After March 31, 2009, companies must renew “Clean-in-Three” risks but they may decline any new business that does not meet their underwriting standards. This requirement is intended to provide a structured transition for consumers, producers and companies to a new residual market in conjunction with companies’ abilities to set their own rates. Until companies, producers and consumers become familiar and comfortable with the new environment, the Clean-in-Three non-renewal requirement will help minimize unnecessary market disruption and facilitate a successful transition to the MAIP. On or after April 1, 2009, incentives to companies to minimize the number of Clean-in-Three risks that are unable to obtain voluntary coverage will be provided through the credit system created under Rule 29.H.

Rule 22

The definition of Newly Writing Company has been revised to be consistent with the amendment to Rule 30.A.

Rule 27

Rule 27 prescribes maximum coverage limits for risks written through the MAIP, and is virtually identical to CAR Rule 6. Assigned risk plans are required to offer, at a minimum, the coverages identified in M.G.L. c. 175, §113H (“§113H”), up to the prescribed coverage levels. The coverages include optional insurance that exceeds the statutory minimums for mandatory insurance. Rule 27 allows higher maximum limits of coverage than those required by §113H.

The Emergency Rules propose no substantive changes to Rule 27. One company, nonetheless, suggests amending the rule to set a standard for the excess coverage that a company must offer a MAIP insured. It contends that when carriers could cede business

to CAR, they were more amenable to writing residual market business at the higher coverage limits in the CAR rules because, whatever the level of coverage, the insured losses would be pooled and shared by all the carriers. Under the MAIP, however, carriers have an incentive to offer only the minimum mandatory limits because the carrier is directly responsible for the full profit/loss of the particular assigned risk.

The company proposes to amend Rule 27 to state minimum limits that companies must offer to MAIP insureds. It observes that approximately 87 percent of the insured population carries a limit above the statutory minimum for property damage liability coverage, and suggests setting minimum limits at levels that would be high enough to meet the needs of most consumers but low enough to allow carriers to control the cost of their MAIP business.

Section 113H provides that the coverages and the limits of coverage offered by an assigned risk plan are available to insureds *at the option of the applicant*. Companies must offer MAIP applicants all options available under the MAIP, and permit them to choose what is appropriate for their needs. Failure to advise consumers of their options allowed under the law may expose a company to possible administrative action. Furthermore, proposals to change those limits of coverage in Rule 27 that exceed the §113H requirements should be addressed first at CAR, rather than through this forum.

Rule 29.E

Concern was raised regarding whether private passenger motor vehicle insurance business written under a group marketing plan pursuant to M.G.L. c. 175, § 193R is eligible for credits under Rule 29.E. In accordance with Rule 26.A.3.b(1), an applicant may not be placed in the MAIP if he/she obtains insurance pursuant to a group marketing plan; the company must provide the group member with a voluntary policy. Companies have observed that although voluntary policies written through a group marketing plan are counted in a Member's quota share, under the Emergency Rules, they are not explicitly eligible to receive voluntary credits. Accordingly, we have amended Rule 29.E.1 to make clear that a Member will receive voluntary credit for certain exposures that would be MAIP-eligible, but for the fact that they are written under a group marketing plan approved by the Commissioner in accordance with M.G.L. c. 175, § 193R.

Rule 29.F

Rule 29.F postpones implementation of the household procedure rule until April 1, 2009. Those opposed to the delay assert that it is easier for insureds to have a single carrier insure all household members, rather than to permit the MAIP to assign MAIP-eligible household members to different carriers as it receives their applications. We have been presented with no facts and no compelling policy reason for altering the date for implementing the household procedure rule, and decline to do so.

Rule 30.A

The Emergency Rules amended Rule 30.A to establish a time frame for determining when a new Member qualifies for an ARC appointment. The amendment requires appointment only after the Member begins reporting detailed statistical data pursuant to Part VII of the Commissioner's statistical plan.⁸ That part of the plan requires companies that exceed the reporting thresholds of \$100,000 in written premium or \$50,000 in paid losses for private passenger automobile insurance, as identified in the Annual Statement reconciliation process, to report detailed statistical data no later than the December shipment of the second following year. This link to the statistical plan potentially could result in a maximum period of three years during which a new entrant to our market would not have risks assigned to it from the MAIP.

Some insurers currently writing private passenger automobile insurance in our market object to any delay whatsoever in assigning risks to new entrants under the MAIP. Other speakers expressed concern only as to the linkage between the Emergency Rule and the statistical plan that creates the potential three year period before a new entrant could receive residual market assignments. We address these concerns separately.

1. Linkage of the Eligibility for Appointment as an ARC to the Commissioner's Statistical Plan.

Some speakers argue that the potential three-year delay generated by linking eligibility for an ARC appointment to the statistical plan is excessive and would be unique to our market. Their arguments persuade us to decouple this linkage and to adopt a

⁸ Under Rule 23, an insurer becomes an active member of CAR as soon as it writes a single private passenger motor vehicle policy. At that time it receives a reporting number and fully assumes the obligations of a CAR member. Assigned Risk Companies ("ARCs") are a subset of CAR Members who have been appointed by the Governing Committee to issue insurance policies to risks referred through the MAIP. For purposes of the MAIP, they are servicing carriers as defined in G.L. c. 175, §113H.

provision that requires a new entrant to accept MAIP assignments two years after its first private passenger motor vehicle insurance rate becomes effective for use in Massachusetts. This rule will establish a period of two years during which a new entrant will not receive an assignment from the MAIP, a result which aligns with our historical practice in Massachusetts and with residual markets throughout the United States that are structured as assigned risk plans, as discussed more fully below.

2. Maximum Two-Year Lag in MAIP Assignments for New Entrants.

Some of the insurers that currently write in our market object to any delayed assignments of MAIP risks for new entrants to our market. That delay, they argue, results in an unfair and inequitable distribution of the residual market risk.⁹ The companies' arguments for requiring new entrants in the market to accept MAIP assignments immediately do not present a balanced analysis of the multiple factors that are relevant to decisions to enter the Massachusetts market and demonstrate a less than candid recitation of the history of, and reasons for, delay in requiring a company to become an ARC.

The companies are concerned that new entrants will be able to charge lower rates than companies currently writing in the market because the new entrant's rates need not include a residual market load. Good business, these companies argue, will migrate to the new entrants, forcing insurers who must insure assigned risks to raise their voluntary rates to mitigate the inadequate residual market rates that they must offer. The companies fail to consider that a new entrant's rates may be equal to, or greater, than their own rates. They fear that a new entrant might come in intending to write only during the period when it is not burdened with residual market business; thereby allowing it to undercut its competitors. This simplistic reasoning is, at best, naive.

The substantial start-up costs, including marketing and infrastructure expenses, that are involved in establishing a business, particularly in a newly competitive and somewhat idiosyncratic market, make it highly unlikely that any new entrant will not have a long-term commitment to our market. Indeed, a prudent insurer's rate structure will

⁹ Comments at the hearing that technology allows for timely reporting imply that a major issue that must be considered is the availability of computer-based information systems. Those systems have now been in place for many years and no longer present either a significant barrier to or enhanced capacity for data reporting. They have no immediate relevance to the issue of deciding when a new entrant is eligible for appointment as an ARC.

anticipate the imminent burden of assignments; if it fails to, the company will be faced with the unsavory prospect of requiring rate increases after only two years in the market.

The companies overlook, as well, that competition must be conducted fairly. Insurance rates must not be inadequate under G.L. c. 175E, §9. This statute specifically prohibits insurers, or rating organizations, from filing in bad faith rates that it knows or should know are grossly inadequate for the insurance provided, and which are filed and used to compete unfairly for motor vehicle insurance business. An insurer which files such rates faces the possibility that its rates will be increased to an adequate level. We will not hesitate to invoke this remedy in this market if necessary.

Companies that oppose any delay in eligibility for MAIP assignments conveniently fail to acknowledge that, historically, companies have not been required to become servicing carriers for the residual market when they first start to write private passenger business in Massachusetts. CAR Rule 13 required a company that wrote 5,000 exposures in a particular policy year to become a servicing carrier thereafter, but not until the second year after it met that threshold.¹⁰ Utilizing a full policy year of data to establish an accurate basis for determining eligibility to become a servicing carrier is consistent with past practice in our market. The uncertain effects of competition on consumer choice and, consequently, on market share support retention of a foundation that has functioned well. During its second year in the market, a company will solidify its market share and develop data adequate to support its rate filings. A two-year time period before a company receives assignments from the residual market conforms to established practice, and will ensure that MAIP assignment quota shares are calculated on data that fairly represents the company's position in the market.

Following the hearing, the Property Casualty Insurers Association of America ("PCI") submitted a spreadsheet showing that almost all of the 40 auto insurance residual market plans surveyed have a two-year lag between entry into the market and assignment of residual market risks. PCI observed that the two-year lag reflects the constraints of countrywide statistical reporting. The two year time frame under the amended Rule is consistent with nationwide practice.

¹⁰ CAR notified the company of its eligibility status in the year after it wrote 5,000 exposures, but did not require it to become a servicing carrier until January 1 of the next policy year.

Significantly, once a company is appointed an ARC, it will receive a MAIP quota share that is based on its written voluntary market exposures during the most recent twelve months of business. Quota shares are based on voluntary market shares which lag two years behind the current year in other states with assigned risk plans. In Massachusetts, once a new entrant is eligible to receive MAIP assignments, its quota share, like that of every other company writing private passenger automobile insurance, will be calculated on the same most recent twelve-month basis, updated monthly. That is, the MAIP brings a new entrant up to par with existing companies immediately.

The MAIP Rules further balance any benefit that might accrue from a delay in receiving MAIP assignments with an obligation to honor those assignments for three years, in the event that a company withdraws from the Massachusetts market.¹¹ MAIP assignments are made for a three year period; a company that withdraws from the market must continue to meet its MAIP obligations for that period. We have amended Rule 30.A accordingly and are concurrently amending the definition of Newly Writing Company in Rule 22.

Rule 30.C

Rule 30.C establishes procedures that a company must follow when it takes a risk out of the MAIP and writes it voluntarily. One such procedure requires the company to pay a commission to the producer of record for a MAIP policyholder after the company writes the policy voluntarily, even if it has no other relationship to the producer of record. This obligation ends on April 1, 2011.

Producers object to this provision and argue that it interferes with the producer-client relationship and threatens the lifeblood of an agency. They contend that ARCs should be required to pay commissions to producers of record in perpetuity, unless the policyholder decides not to do business with that producer of record.

A Decision issued on January 2, 2008 incorporated into Rule 30.C the limitation on the payment of commissions to a producer of record with whom a company has no contractual relationship, when that company elects to write a risk voluntarily that it formerly insured through the MAIP. The Emergency Rules did not change this provision,

¹¹ We clarified this requirement further in Rule 38.

and the producers have offered no new arguments in support of their position. The rule will remain unchanged.

Rule 31

Concerns were raised regarding the Rule 31 requirement that all licensed insurance producers be certified Assigned Risk Producers (ARPs). Specifically, insurance companies that act as direct writers, or that use what are known as captive or exclusive producers (“captive producers”) to sell and service their private passenger motor vehicle insurance policies, stated that it is unduly burdensome and financially inefficient to require all of their employee or captive producers to become certified as ARPs. These companies suggest, as an alternative, that they be permitted to designate particular employee or captive producers to be certified ARPs to write and service MAIP business on behalf of the company. These specially designated producers, they argue, would be appropriately trained to provide quality service to the company’s MAIP consumers.

It is important, and indeed required, that consumers work with properly trained and certified insurance producers when purchasing private passenger motor vehicle insurance through the MAIP. As set forth in Rules 26 and 29, MAIP risks are assigned to an ARC by application. The practical effect of this process is that, regardless of the identity of the insurer that will write and service the MAIP risk after it is assigned, the producer with whom the consumer interacts to complete the MAIP application must be proficient in the MAIP application and assignment process. It is critical, therefore, that *all* property and casualty producers, whether they are an employee producer of a direct writer, a captive producer or an independent producer, are trained and certified as ARPs in accordance with Rule 31. As such, we decline to amend Rule 31 to permit ARCs that are direct writers, or ARCs that use captive producers, to designate only certain producers to be certified ARPs to write and service MAIP business on behalf of the ARC.

Substitution of the term “licensed producer” for the term “ARP” in the first paragraph of Emergency Rule 31 also raised concerns that it is overly broad. We agree with this assessment, and have amended Rule 31 accordingly.

Rule 36

Rule 36 was introduced to the MAIP Rules on an emergency basis. Emergency Rule 36 authorizes a Member (“assignor Member”) to contract with an Assigned Risk

Company (“ARC”) to handle all the assignor Member’s current and future MAIP assignments. The contract, called a Limited Assignment Distribution Agreement (“LADA”), obligates the ARC to assume liability for the assignor Member’s entire MAIP assignments. Rule 36 identifies some of the specific terms of the LADA.¹² The fourth term, which requires the ARC to offer the same premiums and services to its voluntary insureds, its MAIP assignments based on its voluntary Market share and those it receives pursuant to LADAs, has engendered considerable controversy. The concern arises from the possibility that the assignor Member’s rates may be lower than the ARC’s. This triggers the belief among some that Emergency Rule 36 is not “fair” to consumers because an ARC, purportedly, should issue a policy at what is presumed to be the assignor Member’s lower rate. Opponents of this Emergency Rule appear to view this as a widespread problem and fear that it will encourage companies to enter into LADAs with the aim of requiring MAIP insureds to pay higher premiums. These concerns are vastly overstated and unsubstantiated.

The underlying assumption, that the ARC’s voluntary premium almost always will be higher than that of the assignor Member’s that has entered into a LADA, is not necessarily true. Indeed, the current rates of some companies that have traditionally contracted with other carriers to handle residual market business are higher than those of carriers that have expressed interest in servicing that business for those assignor Members. This criticism, furthermore, ignores the dynamic nature of managed competition; the relative rates that insurers charge can change at any time.

The carefully crafted provisions of Emergency Rule 36 will protect consumers from inordinately high rates by ARCs. The ARC must have a voluntary premium structure that will sustain the minimum 1% market share that it must write directly, as required by Rule 36.B.1, in order to assume §113H servicing carrier responsibilities under

¹² The LADA must provide that: 1) the ARC is responsible for servicing as §113H servicing carrier all of the assigning Member’s MAIP quota share in addition to servicing MAIP assignments based on its own quota share; 2) the ARC is solely responsible for ensuring that its practices comply with all MAIP Rules, state laws and regulations with respect to all business serviced, including business serviced under LADAs; 3) the ARC assumes all of the assigning Member’s legal servicing carrier liabilities with respect to all of the Member’s MAIP quota share; and 4) the ARC offers the same premiums and provides the same level of service to all MAIP assignments for which it acts as §113H servicing carrier.

a LADA.¹³ If an ARC is part of an insurance group, furthermore, it must use the same rates that its other group members use in the voluntary market. The ARC, as a practical matter, will not be able to have an inordinately high rate; the ARC must have a real, *i.e.*, competitive, rate. Rule 36.C also protects consumers from a potential monopoly at the hands of an ARC; there is a limitation on how much business an ARC can write and continue to accept from other Members under LADAs.

The critics of Emergency Rule 36.A.4 also overlook the provision in Emergency Rule 36.B that limits the premium that a §113H servicing carrier can charge an assigned risk. A §113H servicing carrier must charge either its own voluntary premium or the premium for that risk calculated using the MAIP rates on file with the Commissioner, ***whichever is lower***. Ultimately, the highest premium that can apply to a MAIP risk that is written under a LADA is the premium under the MAIP rates approved for CAR. Those rates must meet the same statutory standards as rates filed by any carrier. Accordingly, the contention that Rule 36 will permit unrestrained premium gouging of MAIP assignees written under LADAs is unfounded.

Emergency Rule 36, as drafted, exactly follows the statutory requirements for residual market premiums set out in the Lane-Bolling Amendment. The precise language of that amendment, as currently appearing in G.L. c. 175, §113H, provides as follows (emphasis added):

“The premium charges filed by or on behalf of the plan shall provide that such premium charges for all vehicles rated in accordance with the Massachusetts Private Passenger Automobile Insurance Manual and all other nonfleet private passenger vehicles shall not exceed ***the premium charges which would be used by each risk's servicing carrier*** for that risk if such risk were not insured in the plan.”

Rule 36 requires that the MAIP risk written under a LADA will be charged the voluntary premium of his or her §113H servicing carrier¹⁴ or the premium calculated using the

¹³ We have not allowed companies to enter our market without the Commissioner's explicit permission with the sole intention of servicing the residual market. Our rules require that a company that wishes to provide services in the residual market also must have a real presence in our voluntary market, either independently or through the insurance group of which it is a member.

¹⁴ See the definitions of ARC and LADA in Rule 22.

MAIP rates on file with the Commissioner for a similar risk. Lane-Bolling guarantees a premium no greater than the premium charged by a §113H servicing carrier, but not assignment to a particular §113H servicing carrier. It does not entitle a residual market risk to any particular company's premium structure.

Concerns that focus on the rates to be charged policyholders written under LADAs fail to recognize the benefits and the realities of such arrangements. LADAs are not new with the advent of the MAIP; for many years some carriers have contracted with other insurers to service residual market business written through ERPs. Because the residual market for private passenger motor vehicle insurance in large part comprises new and inexperienced drivers and those with bad driving records, sound administrative practices support the desirability of addressing their particular needs by maximizing the support and resources available to them. An insurance company that has only a small MAIP quota share is not likely to have the dedicated personnel and resources appropriate for monitoring its few assigned risks. In contrast, an ARC with specialized experience and possible economies of scale, will be able to provide more adequate support for assigned risks. LADAs therefore promote greater efficiency and better oversight of the residual market.¹⁵

Some speakers have complained that small companies that enter into LADAs to service their MAIP quotas shares will have a competitive advantage relative to the larger insurers, who are not permitted to enter into LADAs. This criticism fails to consider that an assignor company will have to pay the ARC to service its quota share. This cost to the assignor Member will represent its share of the economic burden of the Massachusetts residual market and will be reflected in the assignor Member's rate structure. Only if an ARC inadequately prices the cost of its acceptance of responsibility for all of an assignor Member's MAIP quota share will the assignor Member escape its fair share of the residual market burden. We anticipate that this will rarely happen with ARCs that are experienced with residual market drivers; we expect that ARCs will not undervalue their services.

¹⁵ An assignor Member may have a greater market share than the direct market share of the ARC with which it contracts. Members with market shares in excess of 5% are prohibited from entering into LADAs without the Commissioner's permission; ARCs are required to have only a 1% direct market share. This possibility does not undercut the fact that ARCs in general have greater, more focused experience with residual market drivers.

Emergency Rule 36.A.4, by requiring equal treatment of all risks serviced by an ARC, both those based on its quota share and those written under LADAs, addresses the most important fairness issue for consumers. It requires equal treatment of all risks serviced by an ARC, who all receive policies written on that specific ARC's paper. The critics of Rule 36 overlook the inherent fairness of requiring that all risks that an ARC insures be subject to the same rate structure. An ARC cannot discriminate among the MAIP assignments for which it acts as a §113H servicing carrier. Rule 36 avoids the possibility that an ARC could charge different premiums to insureds with the same rating characteristics in the same rating territory. Adoption of the approach suggested by the critics of Rule 36 would secure a premium windfall for some drivers based on the accident of MAIP assignment.

"Fairness" in the context of a residual market that is based on the (intentionally) random nature of assignment of risks to insurers appropriately is focused on ensuring that each servicing carrier affords equal treatment to all its insureds. "Fairness," like beauty, is in the eye of the beholder. The accident of random assignment does not give rise to an "entitlement" to a particular company's rate that is worthy of being recognized in the context of the MAIP. To those drivers with bad driving records who enjoy a premium windfall, we note their good fortune, but we decline to undertake to increase their numbers.

Rule 38

Rule 38 has been amended to clarify the obligations of a company that is terminated as an ARC.

III. Conclusion

We approve the MAIP rules promulgated on an emergency basis, as further amended consistent with this Decision. The amended rules are set out in Appendix A to this Decision.

Dated: May 6, 2008

Nonnie S. Burnes
Commissioner of Insurance

Elisabeth A. Ditomassi
Deputy Commissioner

[Appendix "A" \(Clean\)](#)

[Appendix "A" \(Redlined\)](#)