



**COMMONWEALTH OF MASSACHUSETTS**  
**Office of Consumer Affairs and Business Regulation**  
**DIVISION OF INSURANCE**  
One South Station • Boston, MA 02110-2208  
(617) 521-7794 • FAX (617) 521-7758  
<http://www.mass.gov/doi>

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

GREGORY BIALECKI  
SECRETARY OF HOUSING AND  
ECONOMIC DEVELOPMENT

NONNIE S. BURNES  
COMMISSIONER OF INSURANCE

---

**Emergency Amendments to Rules 22 and 29 of Commonwealth Automobile Reinsurers**

**C2009-01**

---

**Decision and Order**

**I. Introduction**

Article X of the Plan of Operation of Commonwealth Automobile Reinsurers (“CAR”) authorizes the Commissioner of Insurance (“Commissioner”) to promulgate CAR Rules on an emergency basis if she finds that the immediate adoption of a Rule is necessary for the fair and equitable operation of CAR and that observance of the normal requirements for promulgation of Rules would be contrary to the public interest. The Commissioner, in accordance with Article X, promulgated amendments to Rules 22 and 29 of the Massachusetts Automobile Insurance Plan (“MAIP”) as Emergency Rules (“the Emergency Rules” or “the 2009 emergency amendments”) on February 5, 2009, to be effective immediately.

The Commissioner scheduled a public hearing for 10:00 a.m. on March 6, 2009, at the Division of Insurance (“Division”) to afford all interested persons an opportunity to provide oral and written comment about the Emergency Rules, including recommendations for modification or amendment of those Rules. Any person wanting to provide oral comment about the Emergency Rules was requested to submit a Notice of Intent to Provide Oral Comment, along with a short written statement of the issues to be addressed in such comment, no later than March

2, 2009. The Division received four Notices of Intent to Provide Oral Comment.<sup>1</sup> Following completion of oral comments, the docket was left open until 5:00 pm on March 13, 2009, for submission of any further written comment. The persons who provided oral and written comment are listed in Appendix A.

## **II. History and Background**

Pursuant to M.G.L. c. 175, § 113H (“§ 113H”), CAR operates a Plan with Rules of Operation whereby motor vehicle insurance is provided to applicants who have been unable to obtain insurance voluntarily.<sup>2</sup> This segment of the Massachusetts motor vehicle market commonly is referred to as “the involuntary market” or “the residual market.” The CAR Plan and Rules of Operation ensure that all insurers that write Massachusetts motor vehicle insurance equitably share the residual market burden.

Private passenger motor vehicle insurance was offered to residual market drivers through a reinsurance facility operated by CAR (“§ 113H reinsurance facility plan”) for decades.<sup>3</sup> CAR, at the request of the Commissioner, in 2004 submitted proposed amendments to the CAR Rules to govern the operation of the private passenger motor vehicle insurance residual market under a new model, the assigned risk plan (the MAIP). CAR proposed amendments to then-current CAR Rules 2, 9 through 14, and 17; and proposed new rules (numbered 21 through 40) to govern the MAIP. CAR Rules 1 through 20 now apply only to the residual market for commercial motor vehicle insurance; Rules 21 through 40 apply to the residual market for private passenger motor vehicle insurance.

The CAR Rules have been amended periodically to address changing market conditions. The 2008 implementation of managed competition in private passenger motor vehicle insurance

---

<sup>1</sup> The Division received a Notice of Intent to Provide Oral Comment from Ralph Iannaco, on behalf of CAR; Francis A. Mancini, on behalf of the Massachusetts Association of Insurance Agents; Edward N. Patrick, Jr., on behalf of Safety Insurance Company; and Susan K. Scott, on behalf of Premier Insurance Company of Massachusetts.

<sup>2</sup> Massachusetts’s law long has required every person who drives a motor vehicle to have liability insurance. M.G.L. c. 90. A person is not guaranteed motor vehicle insurance, however, if, for example, he or she has failed to pay any of the premiums due to his insurance carrier for the past twelve months, or does not hold, or is not eligible to hold, a driver’s license. M.G.L. 175, § 113H(A)(1) and 113H(A)(2).

<sup>3</sup> An insurance company could choose not to voluntarily retain a policy it wrote for an individual, and could “cede” this business to the residual market under the § 113H reinsurance facility plan.

required further evaluation of the CAR Rules.<sup>4</sup> Rule 22, which defines terms used throughout the MAIP Rules, and Rule 29, which relates to the financial obligations of CAR members to share in the private passenger motor vehicle insurance residual market, are at issue in this proceeding.

### **III. Discussion and Analysis**

#### ***A. Emergency Rule 22***<sup>5</sup>

Rule 22 defined a MAIP Member as “any insurer which is licensed to write motor vehicle insurance policies or bonds in Massachusetts and which does not qualify for inactive membership status. Groups of companies under the same ownership or management will be treated as a single Member.”<sup>6</sup>

Emergency Rule 22 changed the definition of “Member” by changing “or” to “and” in the second sentence and by adding a third sentence: “Groups of companies under either the same ownership or management, but not both, may elect to be treated either separately or as a single Member.” These changes make the definition of “Member” in Emergency Rule 22 identical to the long-standing definition of “Member” in CAR Rule 2.<sup>7</sup>

CAR and other speakers questioned whether Emergency Rule 22 conflicts with § 113H(C), which provides that “[n]ot more than one insurer in a group under the same management shall serve as a servicing carrier at the same time.” These concerns arose despite the use of this exact definition in Rule 2 for years. Emergency Rule 22 does not conflict with § 113H(C); it provides further exposition, as does Rule 2, of the statutory provision. Emergency Rule 22 recognizes and addresses the situation where, within an insurer group (with shared ownership), there are subgroups of companies under different managements that sell motor

---

<sup>4</sup> In the new managed competition environment, insurers now are permitted to place policyholders in different risk groups, using one of two mechanisms: placement in different affiliated companies in the same insurer group or placement in different risk categories created within a single insurance company. See Division of Insurance Bulletin 2008-17, Policy Placement Requirements for Private Passenger Motor Vehicle Insurance Policies with Effective Dates On or After April 1, 2009.

<sup>5</sup> For ease of reference, I refer to the amended versions of MAIP Rules 22 and 29 that were promulgated on an emergency basis on February 5, 2009 as “Emergency Rule 22” and “Emergency Rule 29.”

<sup>6</sup> “Rule 22” and “Rule 29” denote the text of the rules that existed prior to the emergency amendments.

<sup>7</sup> Appendix B contains a history of the changing definition of “Member” in Rule 22, compared to the enduring definition of “Member” in Rule 2.

vehicle insurance in Massachusetts.<sup>8</sup> It makes explicit that companies in a group under either the same ownership or management, but not both, may elect to be treated as separate CAR Members, and, therefore, may be eligible separately for appointment as a residual market servicing carrier under § 113H.

The definition of “Member” is fundamental to CAR’s operations and to the residual market. A uniform definition of the term “Member” throughout the CAR Rules therefore is reasonable, absent some compelling justification otherwise. It is unclear why CAR ever defined “Member” in MAIP Rule 22 differently than in CAR Rule 2.<sup>9</sup> CAR has offered no explanation for its decision to implement and maintain a different definition of “Member” for the MAIP, other than to assert that the use of the same definition will have different effects in CAR Rules 1 through 20 from those in MAIP Rules 21 through 40.<sup>10</sup>

Companies within an insurer group under different managements can elect under Emergency Rule 22, as they did in the past under Rule 2, to operate independently as Members and as servicing carriers.<sup>11</sup> The Emergency Rule 22 “Member” definition has the same effect on

---

<sup>8</sup> The current MAIP rules, like the CAR rules that preceded them, set forth conditions under which a Member is required to accept financial responsibility for its share of the residual market either as a servicing carrier or by paying another servicing carrier to manage the Member’s residual market assignments. If the Member chooses to service its own residual market assignments, that Member must be able to issue policy forms and calculate premiums based on the forms and rates in effect for the residual market. Division of Insurance Bulletin 2008-17 provides guidance to insurers on ways to comply with § 113H(C) when an insurer group has more than one insurance company under the same management that actively is marketing private passenger motor vehicle insurance.

<sup>9</sup> The Commissioner’s first decision addressing Rules 21 through 40, issued on August 27, 2004, noted that CAR’s proposed amendments to Rule 2 and the new Rule 22 contained inconsistencies and recommended that CAR revise its proposal to achieve consistency and clarity. When CAR submitted amended rules to comply with the Commissioner’s August 27 remand, however, it made no change to the definition of “Member” in either rule. See CAR Bulletin 788, Proposed Changes to Rules of Operation, September 24, 2004. CAR did not undertake to reconcile the differences between Rules 2 and 22 as part of its submission. See the Rule 22 definition of “Member” at page 104 of the *Order on Proposed Changes to Rules of Operation 2, 9 through 14, and 17 And Rules 21 through 40*, which was filed in Docket No. C2004-02 on November 23, 2004.

<sup>10</sup> Natalie Hubley, on behalf of CAR, stated that under the previous reinsurance mechanism for the residual market, a new entrant to the Massachusetts market would share in the residual market deficit in the year that the company first wrote in Massachusetts. Under the MAIP, she stated, the new company will not share for two years. Ms. Hubley did not explain, however, how the Rule 2 “Member” definition and the Rule 22 “Member” definition are the engines that drive this asserted distinction.

<sup>11</sup> Under the MAIP, an “Assigned Risk Company” is a private passenger motor vehicle insurance residual market servicing carrier. The term is defined in Rule 22.

private passenger motor vehicle insurance residual market quota shares under the MAIP as did the Rule 2 “Member” definition under the prior § 113H reinsurance facility plan. Under the § 113H reinsurance facility plan, CAR’s assignment of Exclusive Representative Producers was the mechanism by which the burden of the residual market was shared and all drivers were ensured private passenger motor vehicle insurance.<sup>12</sup> CAR assigned ERPs to CAR Members who were appointed to be “Servicing Carriers.”<sup>13</sup> Separately managed companies in an insurer group (“separately managed companies” or “separately managed company”), under CAR Rule 2, could elect to be treated as separate Members, including treatment as separate Members for the purposes of appointment as Servicing Carriers and ERP assignments. Each of the separately managed companies could be a Servicing Carrier, servicing policyholders in the residual market, because they were not under the same management (the only thing they had in common was ownership). Until a separately managed company that elected to be treated as a separate Member qualified for appointment as a Servicing Carrier, the separately managed company neither could service policies submitted by ERPs, nor could it cede any premiums or losses to CAR. When a separately managed company that elected to be treated as a separate Member qualified for appointment as a Servicing Carrier, its share of the residual market was measured in the same way as that of any other Member that was a Servicing Carrier.<sup>14</sup>

---

<sup>12</sup> Historically, some insurance producers were unable to voluntarily secure contracts with insurance companies, often those with books of business with large volumes of inadequately priced business that companies did not wish to write for financial reasons. These producers were referred to as Exclusive Representative Producers (“ERPs”). The legislature, in its effort to ensure the availability of insurance for everyone, enacted a law, M.G.L. c. 175, Section 113H(C), guaranteeing all producers access to the residual market through at least one insurance company, notwithstanding the fact that no company may have had a desire to partner with the producer. In order to ensure that motor vehicle insurance was available in all geographic areas, CAR assigned ERPs to insurance companies. This assignment process involved a very complicated subscription methodology that was often manipulated by companies in an effort to protect themselves from being assigned the ERPs with the worst loss ratios. See *Order on Proposed Changes to Rules of Operation 2, 9 through 14, and 17 And Rules 21 through 40*, which was filed in Docket No. C2004-02 on November 23, 2004, pages 4-5.

<sup>13</sup> CAR Rule 2 defines a “Servicing Carrier” as “a Member which has been appointed pursuant to the Plan and Rules of Operation to issue motor vehicle insurance policies at the request of a Representative Producer or an Exclusive Representative Producer. Where a company within a group under the same management cedes exclusively private passenger type motor vehicle insurance and another company within that same group cedes exclusively commercial motor vehicle insurance, those companies shall be considered as one Servicing Carrier for purposes of this definition.”

<sup>14</sup> When multiple companies in a group elected to be treated as a single Member, policies written by any of the companies counted toward the Member’s quota share of ERP assignments.

Several speakers asserted that CAR will encounter practical problems in applying the definition of “Member” in Emergency Rule 22 because the Emergency Rule gives no meaningful guidance for determining when affiliated insurers are “under the same management.” These assertions are surprising because the separate management provision has been part of the Rule 2 “Member” definition for many years. It is premature and unfounded to anticipate that CAR will encounter problems in the future administering the concept of separate management which has existed for years. Applying standard principles of corporate law should resolve any problems.

Some speakers expressed concerns that electing separate Member status under the Emergency Rule 22 “Member” definition could trigger a full 24-month delay in MAIP assignments for an electing company that was eligible for Newly Writing Company status but which, prior to the election, had been writing policies as part of an insurer group that had been active in Massachusetts for years.<sup>15</sup> These concerns are baseless because separate Member status has no effect on the period of a Newly Writing Company’s potential delay in MAIP assignments.

Rules 30.A provides for a delay in MAIP assignments of up to 24 months for what Rule 22 defines as “Newly Writing Companies.”<sup>16</sup> Rule 30.A provides that a Newly Writing Company will be eligible for appointment as an Assigned Risk Company (*i.e.*, a MAIP servicing carrier) and be required to accept assignments through the MAIP on the 24-month anniversary of the calendar date on which the Newly Writing Company’s initial private passenger motor vehicle insurance rates and rate manual became effective.<sup>17</sup> Rule 30.A effectively resolves the concerns voiced about extended delays in MAIP assignments by means of electing separate Member status.

---

<sup>15</sup> One speaker even suggested that the Emergency Rule 22 “Member” definition could lead to three years of delay in MAIP assignments. No rationale for this concern was provided.

<sup>16</sup> Speakers referred to this period as a “two year” delay.

<sup>17</sup> Rule 22 defines “Newly Writing Company” as “any Member which did not provide physical damage and/or liability coverage under a Private Passenger Motor Vehicle insurance policy in the Commonwealth of Massachusetts in the 12 consecutive calendar months preceding the calendar date on which the Member’s initial Private Passenger Motor Vehicle insurance rates and rate manual became effective.” Although the Rule 22 definition presumes Member status, the date of a company’s election to become a separate Member has no effect on the commencement date of the potential 24-months of delay that is provided by Rule 30.A.

The effect of Rule 30.A can be illustrated by the example some speakers used of a company, separately managed but part of an insurer group with other companies that have written Massachusetts motor vehicle insurance for years, that entered the Massachusetts market in 2008. The Rule 22 “Member” definition in effect in 2008 did not allow this company to elect to be treated as a Member separate from the other companies in the group.<sup>18</sup> Independent of this circumstance, sometime in 2008 the company’s individual initial private passenger motor vehicle insurance rates and rate manual became effective. The company’s potential for experiencing a period of delay in MAIP assignments is tied irrevocably to this date. Emergency Rule 22 allows the company in 2009 to elect to be treated as a Member separate from other companies in its group. Even if entitled to the status of a Newly Writing Company, the company’s obligation to participate in the residual market is prescribed by MAIP Rule 30.A. The potential duration of any delay in MAIP assignments is measured only from the calendar date on which the company’s initial private passenger motor vehicle insurance rates and rate manual became effective. In the case of a Newly Writing Company that entered the Massachusetts motor vehicle insurance market in 2008, and which elected separate Member status in 2009, the company’s delay in MAIP assignments would consist only of the remainder of the delay period measured from the calendar date in 2008 on which its initial private passenger motor vehicle insurance rates and rate manual became effective. Any policies written by the company prior to its election to be treated as a separate Member will count toward the quota share of the Member of which the company previously was a part for MAIP quota share purposes.

Some speakers expressed concerns that an insurer group could create separately managed company affiliates *ad seriatim*, and enjoy, on a group level, potentially unending assignment delays. It was suggested that, as each insurer affiliate entered the Commonwealth, an insurer group could extend the period of delay in MAIP assignments by another two years, then another, effectively using separately managed affiliate companies to grow the insurer group’s voluntary market share and avoid its statutory obligation to share fairly and equitably in the assigned risk

---

<sup>18</sup> The 2008 version of Rule 22 was consistent with MAIP Rule 29.A, which established each Member’s quota share based on the Member’s voluntary market share for the 12 months ending June 30, 2007 for all residual market assignments to be made through March 31, 2009. When the Commissioner promulgated Emergency Rule 22 on February 5, 2009, it allowed a company to elect to be treated as a Member separate from other companies in its group in advance of the change in the computation of each Member’s quota share for residual market assignments on and after April 1, 2009 under MAIP Rule 29.C, which uses each Member’s most recent 12-month voluntary market share.

market. Speakers at the hearing posited various negative possibilities, but provided no substantive information on the likelihood that an insurer group would adopt such strategies. On a practical level, the substantial start-up costs, including marketing and infrastructure expenses that are involved in establishing a separately managed business in a newly competitive and somewhat idiosyncratic market makes such a strategy unlikely. It also is improbable because managers of separately managed companies likely are rewarded for what they achieve on behalf of their own organizations; not what they do on behalf of other affiliates within the insurer group.

Speakers concerned about Members manipulating the Emergency Rule 22 “Member” definition to avoid an equitable quota share of the residual market failed to appreciate the carefully crafted provisions of Emergency Rule 29, discussed below, which protect against such abuse. They also overlooked that the Commissioner, independent of the CAR Rules, can ensure that competition is conducted fairly. To ensure a fair and equitable distribution of the residual market burden, the Commissioner under § 113H(E)(¶7) can assign to a company, found to have used practices that have the effect of distributing risks or expenses or losses of risks unfairly and inequitably on other companies, a share of the expenses and losses of said risks. M.G.L. c. 175, § 113D(¶2), furthermore, provides that the allocation of premiums, losses and expenses “shall be based on a method so that no company materially or substantially reduces its percentage of participation by reducing its writings, nor shall any company have their participation materially or substantially increased because of the action of other companies.” If necessary, the Commissioner will exercise her authority to address any abuses connected to the election of separate Member status by companies of an insurer group.

## ***B. Emergency Rule 29***

### ***1. Section B.1.a of Emergency Rule 29***

No one opposed the 2009 emergency amendment made to Section B.1.a of Rule 29. This portion of Rule 29 addresses the method CAR will use for the assignment of applications that are eligible for coverage through the MAIP. Rule 29 originally established that exposures that qualify as “clean-in-three risks” as of the effective date of their current private passenger motor vehicle insurance policy would be adjusted by a factor of 0.0, provided all of four criteria were



satisfied.<sup>19</sup> Using a factor of 0.0 means that these exposures will not count towards a Member's quota share, which is used for determining its share of MAIP assignments. Emergency Rule 29 deleted the fourth criterion, which provided: "(4) The producer of record has not obtained a voluntary appointment for selling private passenger motor vehicle insurance policies in Massachusetts at any time between March 31, 2008 and earlier of the policy effective date of March 31, 2011." Elimination of this fourth criterion will provide additional incentive for companies to offer voluntary policies to clean-in-three risks, and also will encourage companies to offer voluntary contracts to producers of record who have not obtained a voluntary appointment for selling private passenger motor vehicle insurance policies in Massachusetts at any time between March 31, 2008 and March 31, 2011.

## 2. Section C of Emergency Rule 29

Emergency Rule 29 added the following paragraphs to Rule 29.C, which establishes a Quota Share Adjustment for MAIP assignments:

An additional adjustment shall be made to the latest rolling 12-month voluntary exposure based market share that is used to determine the current premium Quota Share of a Member(s) when that Member(s) is part of an insurer group that includes any other insurance company that qualifies as a Newly Writing Company, and that Newly Writing Company has elected to be treated as a Member separate from the current Member(s) under these Rules. This adjustment shall continue until the Newly Writing Company becomes eligible for appointment as an Assigned Risk Company pursuant to Rule 30.

The latest rolling 12-month voluntary exposure based market share used to determine such Member(s) current premium Quota Share shall not be adjusted to reflect any reduction in vehicle exposures that were insured under a private passenger motor vehicle insurance policy issued voluntarily by such Member(s) immediately prior to the vehicle's initial policy inception date with such Newly Writing Company.

This adjustment will apply regardless of whether the initial policy inception date with the Newly Writing Company pre-dates the calendar months underlying the latest rolling 12-month voluntary exposure based market share used to determine the Member(s) current premium Quota Share.

The additional adjustment added by Emergency Rule 29 is carefully crafted to prevent a Member of an insurance company group from reducing its voluntary market share, and therefore its quota share for residual market assignments, by directing renewals to an affiliate that has elected to be

---

<sup>19</sup> A "clean-in-three risk" is defined in MAIP Rule 22.

treated as a separate Member, and that qualifies as a Newly Writing Company, during the period when that Newly Writing Company is not obligated to participate in MAIP assignments. Such a practice would unfairly raise the quota shares of rival insurers.

Opponents of the Emergency Rules asserted that the additional adjustment of Emergency Rule 29.C fails to address a different potential abuse, because its scope is limited to renewal business only. A Member of long-standing, they assert, could avoid increasing its voluntary market share, and thus its MAIP quota share, by steering all voluntary business new to the companies of the group to an affiliated Newly Writing Company. No speaker, however, addressed the practical or legal difficulties that might arise, or the realities of a competitive market, if different companies in an insurer group, each of which are separately managed, were encouraged to focus on one particular company's growth at any given time. It is difficult to envision two companies under truly separate management, but the same ownership, competing against each other, where only one company writes new business and the other does not.<sup>20</sup>

Some speakers posited that an insurance producer could be appointed agent by both of two separately managed Members of an insurer group, and could then steer all voluntary business new to the companies of the group to the Newly Writing Company. Independent agents are expected to place their customers with the company that offers the best value for the policyholder; not to help one of the insurers avoid growth of its voluntary market share. A producer's self-interest in providing good service and creating satisfied customers, furthermore, makes such a collusive agreement highly unlikely.

#### **IV. Conclusions**

Emergency Rule 22 does not unbalance the field of competition; it creates a level playing field for both companies already writing private passenger motor vehicle insurance in Massachusetts and those new to the Commonwealth. The provisions of Emergency Rule 29 and rational business practices will control the remote potential for abuse by means of creating, *ad*

---

<sup>20</sup> The Emergency Rules do not create an opportunity that did not exist previously for insurer groups that might seek to expand their rating plans through the use of multiple insurance companies. Such activity often takes the form of introducing totally new rating plans in new companies, which often are used solely for new business to control the costs of re-underwriting the current book of business. Such strategies are conceived by the management of a current company as a way of sustaining the competitive position of the group of companies within the marketplace. Under such circumstances, the newly created "new business" companies are not "separately managed," may not elect to be treated as a separate Member, and thus will not qualify as a Newly Writing Company for the purposes of MAIP residual market obligations.

*seriatim*, Newly Writing Companies. The Commissioner also has tools available to address any abusive exercise of the options available to Members that are undertaken for the purpose of improperly reducing a Member's participation in the residual market.

To implement Emergency Rules 22 and 29, CAR likely will need to develop some administrative rules. CAR may want to consider, for example, a requirement that any company that qualifies as a Newly Writing Company must provide monthly data to the MAIP administrator that identifies each exposure's prior insurer, if there are other companies within the same insurer group already participating in the residual market. If CAR encounters any implementation problems in administering the Emergency Rules, it can craft amendments that it believes are needed, and submit them for the Commissioner's review.

**V. Order**

The changes made by Emergency Rule 22 and Emergency Rule 29 shall become permanent.

Filed: \_\_\_\_\_

\_\_\_\_\_  
Stephen M. Sumner, Esq.  
Presiding Officer

Affirmed:

Date: \_\_\_\_\_

\_\_\_\_\_  
Nonnie S. Burnes  
Commissioner of Insurance

## **Appendix A**

At the hearing on March 6, 2009, Daniel R. Judson, Esq., on behalf of CAR; Francis Mancini, on behalf of the Massachusetts Association of Insurance Agents (“MAIA”); Susan K. Scott, on behalf of Premier Insurance Company of Massachusetts; William Cahill, on behalf of The Hanover Insurance Group; and Roberta Fitzpatrick, on behalf of Arbella Mutual Insurance Company, provided oral and written comment. Andrew Carpentier, on behalf of Encompass Insurance, provided oral comment; and Edward N. Patrick, Jr., on behalf of Safety Insurance; James T. Harrington, on behalf of Massachusetts Insurance Federation, Inc.; Gregory M. Redmond, on behalf of MetLife (submitted by Peter Robertson); and Paula W. Gold, on behalf of Plymouth Rock, submitted written comment. Ms. Fitzpatrick, Mr. Cahill and Mr. Patrick submitted supplemental or amended written comment after the hearing.

## Appendix B

### History of the Changing Definition of “Member” in Rule 22, Compared to the Enduring Definition of “Member” in Rule 2

1. The *Order* filed on August 27, 2004 in Docket No. C2004-02, Proposed Changes to the Commonwealth Automobile Reinsurers’ Rules of Operation (“Docket No. C2004-02”), states at page 35 that CAR’s proposed Rule 22 had revised the definition of “Member,” meaning that the proposed Rule 22 definition differed from the “Member” definition in Rule 2. CAR Bulletin 782 includes as an attachment the new language proposed for Rules 21 through 40 that were adopted at the June 29, 2004, meeting of CAR’s Governing Committee. CAR’s proposed Rule 22 definition of “Member” was as follows:

MEMBER means any insurer which is licensed to write motor vehicle insurance policies or bonds in Massachusetts and which does not qualify for inactive membership status. Groups of companies under the same ownership and/or management will be treated as a single Member.

CAR Bulletin 782 shows no proposed change to the Rule 2 definition of “Member,” which at the time of the Bulletin read as follows:

MEMBER means any insurer which is licensed to write motor vehicle insurance policies or bonds in Massachusetts and which does not qualify for inactive membership status. Groups of companies under the same ownership and management will be treated as a single Member. Groups of companies under either the same ownership or management, but not both, may elect to be treated either separately or as a single Member.

This Rule 2 definition of “Member” has continued to the present.

2. In the *Order on Proposed Changes to Rules of Operation 2, 9 through 14, and 17 And Rules 21 through 40*, which was filed in Docket No. C2004-02 on November 23, 2004, the approved Rule 22 definition of “Member” was as follows (page 104):

MEMBER means any insurer which is licensed to write motor vehicle insurance policies or bonds in Massachusetts and which does not qualify for inactive membership status. Groups of companies under the same ownership and/or management will be treated as a single Member.

3. In October 2006, the Division proposed to amend the Rule 22 definition of “Member” to add the following sentence: “A LADC that functions exclusively as an LADC is not a

Member.” This amendment was made part of the Rule 22 “Member” definition in December 2006, and remained there until it was removed by the Division in the Emergency Rules of February 6, 2008.

4. In the *Amended Decision and Order Following Remand on Changes to Rules of Operation 21 through 40*, which was filed in Docket No. C2004-02 on July 16, 2007, Appendix “B” contained the following definition of “Member” in Rule 22:

MEMBER means any insurer which is licensed to write motor vehicle insurance policies or bonds in Massachusetts and which does not qualify for inactive membership status. Groups of companies under the same ownership and/or management will be treated as a single Member. A LADC that functions exclusively as an LADC is not a Member.

5. On February 6, 2008, the Commissioner promulgated amendments to Rules 22 and 29 of the Massachusetts Automobile Insurance Plan (“MAIP”) as Emergency Rules to be effective immediately. The Emergency Rule 22 definition of “Member” was as follows:

**MEMBER** means any insurer which is licensed to write private passenger motor vehicle insurance policies or bonds in Massachusetts and which does not qualify for inactive membership status. Groups of companies under the same ownership or management will be treated as a single Member.

In the May 6, 2008, *Decision and Order on Amendments*, filed in Docket C2008-01, Amendments to Rules 21 through 24 and 26 through 38 of the Massachusetts Automobile Insurance Plan, the MAIP rules promulgated on an emergency basis were approved.

6. The Commissioner on February 5, 2009, promulgated amendments to Rules 22 and 29 as Emergency Rules to be effective immediately. The Emergency Rule 22 “Member” definition for the first time changed the Rule 22 “Member” definition for the MAIP to be identical to the long-standing Rule 22 “Member” definition:

**MEMBER** means any insurer which is licensed to write private passenger motor vehicle insurance policies or bonds in Massachusetts and which does not qualify for inactive membership status. Groups of companies under the same ownership and management will be treated as a single Member. Groups of companies under either the same ownership or management, but not both, may elect to be treated either separately or as a single Member.