

211 CMR 20.00: RISK-BASED CAPITAL (RBC) FOR INSURERS

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20.01: Definitions

The following words as used in 211 CMR 20.00 shall, unless the context requires otherwise, have the following meanings:

Adjusted RBC Report, ~~means~~ an RBC report which has been adjusted by the ~~commissioner~~ Commissioner in accordance with 211 CMR 20.02(5).

Commissioner, ~~means~~ the Commissioner of Insurance, appointed pursuant to M.G.L. c. 26, § 6 or his or her designee.

Corrective order, ~~means~~ an order issued by the ~~commissioner~~ Commissioner pursuant to 211 CMR 20.04(2)(c), specifying corrective actions which the ~~commissioner~~ Commissioner has determined are required.

Domestic insurer, ~~means~~ any insurance company domiciled in Massachusetts.

Filing Date, ~~means~~ March 1st.

Foreign insurer, ~~means~~ any insurance company which is licensed to do an insurance business in Massachusetts but is not domiciled in Massachusetts.

Fraternal Benefit Society, ~~any insurer organized under Chapter 176 of the General Laws.~~

NAIC, ~~means~~ the National Association of Insurance Commissioners.

Life and/or health insurer, ~~means~~ any insurance company which is authorized to write life and/or health insurance in Massachusetts.

Property and casualty insurer, ~~means~~ any insurance company authorized to write property and casualty insurance in Massachusetts but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

Negative trend, ~~means~~, with respect to a life and/or health insurer ~~or a Fraternal Benefit Society,~~ negative trend over a period of time, as determined in accordance with the “Trend Test Calculation” included in the RBC ~~i~~ instructions.

RBC instructions, ~~means~~ the RBC Report including risk-based capital instructions adopted by the NAIC, as such RBC ~~i~~ instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

RBC Level, ~~means~~ an insurer’s Company Action Level RBC, Regulatory Action Level RBC,

Authorized Control Level RBC, or Mandatory Control Level RBC where:

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

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Regulatory Action Level RBC, ~~means~~ the product of 1.5 and its Authorized Control Level RBC;

Authorized Control Level RBC, ~~means~~ the number determined under the risk-based capital formula in accordance with the RBC Instructions;

Mandatory Control Level RBC, ~~means~~ the product of .70 and the Authorized Control Level RBC.

RBC Plan, ~~means~~ a comprehensive financial plan containing the elements specified in 211 CMR 20.03(2). If the ~~commissioner~~ Commissioner rejects the RBC Plan, and it is revised by the insurer, with or without the ~~commissioner~~ Commissioner's recommendation, the plan shall be called the "Revised RBC Plan."

RBC Report, ~~means~~ the report required in 211 CMR 20.02.

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 M.G.L. c. 175, § 25; and
- (b) Such other items, if any, as the RBC instructions may provide.

20.02: RBC Reports

(1) Every domestic insurer shall, on or prior to each March 1, prepare and submit to the ~~commissioner~~ Commissioner a report of its RBC Levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, every domestic insurer shall file its RBC Report:

- (a) With the NAIC in accordance with the RBC instructions; and
- (b) With the insurance ~~commissioner~~ Commissioner in any state in which the insurer is authorized to do business, if the insurance ~~commissioner~~ Commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC Report not later than the later of:
 1. 15 days from the receipt of notice to file its RBC Report with that state; or
 2. The Filing Date.

(2) A life and health insurer's or Fraternal Benefit Society's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account (and may adjust for the covariance between) the following factors determined in each case by applying the factors in the manner set forth in the RBC instructions.

- (a) The risk with respect to the insurer's assets;
- (b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
- (c) The interest rate risk with respect to the insurer's business; and
- (d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(3) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account (and may adjust for the covariance between) determined in each case by applying the factors in the manner set forth in the RBC instructions.

- (a) Asset risk;
- (b) Credit risk;
- (c) Underwriting risk; and
- (d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(4) An excess of capital over the amount produced by the risk-based capital requirements contained in 211 CMR 20.00 and the formulas, schedules and instructions referenced in 211 CMR 20.00 is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by 211 CMR 20.00.

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(5) If a domestic insurer files an RBC Report which in the judgment of the ~~commissioner~~Commissioner is inaccurate, then the ~~commissioner~~Commissioner shall adjust the RBC Report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC Report as so adjusted is referred to as an "Adjusted RBC Report."

20.03: Company Action Level Event

- (1) "Company Action Level Event" means any of the following events:
- (a) The filing of an RBC Report by an insurer which indicates that:
 1. 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
 2. If a life and/or health insurer ~~or a Fraternal Benefit Society~~, the insurer ~~or society~~ 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 ~~2.5-3.0~~ and has a negative trend.
 3. 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.
 - (b) The notification by the ~~commissioner~~Commissioner to the insurer of an Adjusted RBC Report that indicates an event in 211 CMR 20.03(1)(a), provided the insurer does not challenge the Adjusted RBC Report under 211 CMR 20.07; or
 - (c) If, pursuant to 211 CMR 20.07, an insurer challenges an Adjusted RBC Report that indicates the event in 211 CMR 20.03(1)(a), the notification by the ~~commissioner~~Commissioner to the insurer that the ~~commissioner~~Commissioner has, after a hearing, rejected the insurer's challenge.
- (2) In the event of a Company Action Level Event, the insurer shall prepare and submit to the ~~commissioner~~Commissioner an RBC Plan which 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 succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and surplus. (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.
- (3) The RBC Plan shall be submitted
- (a) Within 45 days of the Company Action Level Event; or
 - (b) If the insurer challenges an Adjusted RBC Report pursuant to 211 CMR 20.07, within 45 days after notification to the insurer that the ~~commissioner~~Commissioner has, after a hearing, rejected the insurer's challenge.
- (4) Within 60 days after the submission by an insurer of an RBC Plan to the ~~commissioner~~Commissioner, the ~~commissioner~~Commissioner shall notify the insurer whether the RBC Plan shall be implemented or is, in the judgment of the ~~commissioner~~Commissioner, unsatisfactory. If the ~~commissioner~~Commissioner determines the RBC Plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC Plan satisfactory, in the judgment of the ~~commissioner~~Commissioner. Upon notification from the ~~commissioner~~Commissioner, the insurer shall prepare a Revised RBC Plan, which may incorporate by reference any revisions proposed by the ~~commissioner~~Commissioner, and shall submit the Revised RBC Plan to the

~~commissioner~~Commissioner:

- (a) Within 45 days after the notification from the ~~commissioner~~Commissioner; or
- (b) If the insurer challenges the notification from the ~~commissioner~~Commissioner under 211 CMR 20.07, within 45 days after a notification to the insurer that the ~~commissioner~~Commissioner has, after a hearing, rejected the insurer's challenge.

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(5) In the event of a notification by the ~~commissioner~~Commissioner to an insurer that the insurer's RBC Plan or Revised RBC Plan is unsatisfactory, the ~~commissioner~~Commissioner may at the ~~commissioner~~Commissioner's discretion, subject to the insurer's right to a hearing under 211 CMR 20.07, specify in the notification that the notification constitutes a Regulatory Action Level Event.

(6) Every domestic insurer that files an RBC Plan or Revised RBC Plan with the ~~commissioner~~Commissioner shall file a copy of the RBC Plan or Revised RBC Plan with the insurance ~~commissioner~~Commissioner in any state in which the insurer is authorized to do business if:

- (a) Such state has an RBC provision substantially similar to 211 CMR 20.08(1); and
- (b) The insurance ~~commissioner~~Commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC Plan or Revised RBC Plan in that state no later than the later of:
 1. 15 days after the receipt of notice to file a copy of its RBC Plan or Revised RBC Plan with the state; or
 2. The date on which the RBC Plan or Revised RBC Plan is filed under 211 CMR 20.03(3) and 211 CMR 20.03(4).

20.04: 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 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~~Commissioner to an insurer of an Adjusted RBC Report that indicates the event in 211 CMR 20.04(1)(a), provided the insurer does not challenge the Adjusted RBC Report under 211 CMR 20.07;
- (c) If, pursuant to 211 CMR 20.07, the insurer challenges an Adjusted RBC Report that indicates the event in 211 CMR 20.04(1)(a), the notification by the ~~commissioner~~Commissioner to the insurer that the ~~commissioner~~Commissioner has, after a hearing, rejected the insurer's challenge;
- (d) The failure of the insurer to file an RBC Report by the ~~F~~filing ~~D~~date, unless the insurer has provided an explanation for such failure which is satisfactory to the ~~commissioner~~Commissioner and has cured the failure within ten days after the ~~F~~filing ~~D~~date;
- (e) The failure of the insurer to submit an RBC Plan to the ~~commissioner~~Commissioner within the time period set forth in 211 CMR 20.03(3);
- (f) Notification by the ~~commissioner~~Commissioner to the insurer that
 1. The RBC Plan or ~~R~~revised RBC Plan submitted by the insurer is, in the judgment of the ~~commissioner~~Commissioner, unsatisfactory; and
 2. Such notification constitutes a Regulatory Action Level Event with respect to the insurer, provided the insurer has not challenged the determination under 211 CMR 20.07;
- (g) If, pursuant to 211 CMR 20.07, the insurer challenges a determination by the ~~commissioner~~Commissioner under 211 CMR 20.04(1)(f), the notification by the ~~commissioner~~Commissioner to the insurer that the ~~commissioner~~Commissioner has, after a hearing, rejected such challenge;
- (h) Notification by the ~~commissioner~~Commissioner to the insurer that the insurer has failed to adhere to its RBC Plan or Revised RBC Plan, but only if 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 and the ~~commissioner~~Commissioner has so stated in the notification, provided the insurer has not challenged the determination under 211 CMR 20.07; or
- (i) If, pursuant to 211 CMR 20.07, the insurer challenges a determination by the ~~commissioner~~Commissioner under 211 CMR 20.04(1)(h), the notification by the ~~commissioner~~Commissioner to the insurer that the ~~commissioner~~Commissioner has, after a hearing, rejected the challenge.

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

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

(b) Perform such examination or analysis as the ~~commissioner~~Commissioner deems necessary of the assets, liabilities and operations of the insurer including a review of its RBC Plan or Revised RBC Plan; and

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(c) Subsequent to the examination or analysis, issue an order specifying such corrective actions as the ~~commissioner~~Commissioner shall determine are required.

(3) In determining corrective actions, the ~~commissioner~~Commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the ~~commissioner~~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. The RBC Plan or Revised RBC Plan shall be submitted:

- (a) Within 45 days after the occurrence of the Regulatory Action Level Event;
- (b) If the insurer challenges an Adjusted RBC Report pursuant to 211 CMR 20.07 and the challenge is not frivolous in the judgment of the ~~commissioner~~Commissioner within 45 days after the notification to the insurer that the ~~commissioner~~Commissioner has, after a hearing, rejected the insurer's challenge; or
- (c) If the insurer challenges a Revised RBC Plan pursuant to 211 CMR 20.07 and the challenge is not frivolous in the judgment of the ~~commissioner~~Commissioner, within 45 days after the notification to the insurer that the ~~commissioner~~Commissioner has, after a hearing, rejected the insurer's challenge.

(4) The ~~commissioner~~Commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the ~~commissioner~~Commissioner to review the insurer's RBC Plan or Revised RBC Plan, examine or analyze the assets, liabilities and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs and expenses relating to consultants shall be borne by the affected insurer or such other party as directed by the ~~commissioner~~Commissioner.

20.05: Authorized Control Level Event

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

- (a) The filing of an RBC Report by the insurer 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;
- (b) The notification by the ~~commissioner~~Commissioner to the insurer of an Adjusted RBC Report that indicates the event in 211 CMR 20.05(1)(a), provided the insurer does not challenge the Adjusted RBC Report under 211 CMR 20.07;
- (c) If, pursuant to 211 CMR 20.07, the insurer challenges an Adjusted RBC Report that indicates the event in 211 CMR 20.05(1)(a), notification by the ~~commissioner~~Commissioner to the insurer that the ~~commissioner~~Commissioner has, after a hearing, rejected the insurer's challenge;
- (d) The failure of the insurer to respond, in a manner satisfactory to the ~~commissioner~~Commissioner, to a corrective order (provided the insurer has not challenged the corrective order under 211 CMR 20.07); or
- (e) If the insurer has challenged a corrective order under 211 CMR 20.07, and the ~~commissioner~~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~~Commissioner, to the corrective order subsequent to rejection or modification by the ~~commissioner~~Commissioner.

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

- (a) Take such actions as are required under 211 CMR 20.04 regarding an insurer with respect to which an Regulatory Action Level Event has occurred; or
- (b) If the ~~commissioner~~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 M.G.L. c. 175, §§ 180A through 180L½ or M.G.L. c. 176, §33 as applicable. In the event the ~~commissioner~~Commissioner takes such actions, the Authorized Control Level Event shall be deemed sufficient grounds for the ~~commissioner~~Commissioner to take action under either M.G.L. c. 175, §§ 180A through 180L½ or M.G.L. c. 176, §33, and the ~~commissioner~~Commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in M.G.L. c. 175, §§ 180A through 180L½ and M.G.L. c. 176, §33 as applicable. In the event the ~~commissioner~~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 [either](#) M.G.L. c. 175, §§ 180A through 180L^{1/2} or [M.G.L. c. 176, §33 as applicable](#), pertaining to summary proceedings.

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20.06: Mandatory Control Level Event

- (1) “Mandatory Control Level Event” means any of the following events:
- (a) The filing of an RBC Report which indicates that the insurer’s total adjusted capital is less than its Mandatory Control Level RBC;
 - (b) Notification by the ~~commissioner~~Commissioner to the insurer of an Adjusted RBC Report that indicates the event in 211 CMR 20.06(1)(a), provided the insurer does not challenge the Adjusted RBC Report under 211 CMR 20.07; or
 - (c) If, pursuant to 211 CMR 20.07, the insurer challenges an Adjusted RBC Report that indicates the event in 211 CMR 20.06(1)(a), notification by the ~~commissioner~~Commissioner to the insurer that the ~~commissioner~~Commissioner has, after a hearing, rejected the insurer’s challenge.
- (2) In the event of a Mandatory Control Level Event:
- (a) With respect to a life insurer or a Fraternal Benefit Society, the ~~commissioner~~Commissioner shall take such actions as are necessary to place the insurer under regulatory control under M.G.L. c. 175, §§ 180A through 180L½ in the case of a life insurer or M.G.L. c. 176, § 33 in the case of a Fraternal Benefit Society. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the ~~commissioner~~Commissioner to take action under M.G.L. c. 175, §§ 180A through 180L½ or M.G.L. c. 176, § 33, and the ~~commissioner~~Commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in M.G.L. c. 175, §§ 180A through 180L½ or M.G.L. c. 176, § 33 as applicable. —If the ~~commissioner~~Commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to the protections of M.G.L. c. 175, §§ 180A through 180L½ or M.G.L. c. 176, § 33 as applicable, pertaining to summary proceedings. —Notwithstanding any of the foregoing, the ~~commissioner~~Commissioner may forego action for up to 90 days after the Mandatory Control Level Event if the ~~commissioner~~Commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the 90 day period.
 - (b) With respect to a property and casualty insurer, the ~~commissioner~~Commissioner shall take ~~such actions~~such actions as are necessary to place the insurer under regulatory control under M.G.L. c. 175, §§ 180A through 180L½, or, in the case of an insurer which is writing no business and which is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the ~~commissioner~~Commissioner. In either event, the Mandatory Control Level Event shall be deemed sufficient grounds for the ~~commissioner~~Commissioner to take action under M.G.L. c. 175, §§ 180A through 180L½, and the ~~commissioner~~Commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in M.G.L. c. 175, §§ 180A through 180L½. If the ~~commissioner~~Commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to the protections of M.G.L. c. 175, §§ 180A through 180L½, pertaining to summary proceedings. Notwithstanding any of the foregoing, the ~~commissioner~~Commissioner may forego action for up to 90 days after the Mandatory Control Level Event if the ~~commissioner~~Commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the 90 day period.

20.07: Hearings

Upon any of the following the insurer shall have the right to a confidential hearing, on a record, at which the insurer may challenge any determination or action by the ~~commissioner~~Commissioner. The insurer shall notify the ~~commissioner~~Commissioner of its request for a hearing within five days after the notification by the ~~commissioner~~Commissioner under 211 CMR 20.07(1), (2), (3) or (4). Upon receipt of the insurer’s request for a hearing, the ~~commissioner~~Commissioner shall set a date for the hearing, which date shall be no less than ten nor more than 30 days after the date of the insurer’s request.

- (1) Notification to an insurer by the ~~commissioner~~Commissioner of an Adjusted RBC Report; or
- (2) Notification to an insurer by the ~~commissioner~~Commissioner ~~that that~~:
 - (a) The insurer’s RBC Plan or Revised RBC Plan is unsatisfactory; and
 - (b) Such notification constitutes a Regulatory Action Level Event with respect to such insurer; or

(3) Notification to any insurer by the ~~commissioner~~Commissioner 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 with respect to the insurer in accordance with its RBC Plan or Revised RBC Plan; or

(4) Notification to an insurer by the ~~commissioner~~Commissioner of a corrective order with respect to the insurer.

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20.08: 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~~ Commissioner pursuant to examination or analysis) with respect to any domestic insurer or foreign insurer that are in the possession or control of the Commissioner shall be confidential by law and privileged, shall not be subject to M.G.L. c. 66 or the 26th clause of M.G.L. c. 4, § 7, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. which are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to 211 CMR 20.00 or any other provision of the insurance laws of Massachusetts. However, the Commissioner is authorized to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

(2) Neither the Commissioner nor any person who received documents, materials or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to 211 CMR 20.08(1).

(3) In order to assist in the performance of the Commissioner's duties, the Commissioner:

(a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to 211 CMR 20.08(1), with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(b) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, materials or information; and

(c) May enter into agreements governing sharing and use of information consistent with 211 CMR 20.08(3).

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the Commissioner under 211 CMR 20.08 or as a result of sharing as authorized in 211 CMR 20.08(3).

(5) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this section shall be available and enforced in any proceeding in, and in any court of the Commonwealth.

(26) 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 211 CMR 20.00, 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, ~~produceragent, broker~~ or other person engaged in any manner in the insurance business would be misleading and is therefore

considered to be an unfair method of competition and an unfair or deceptive act or practice under —M.G.L. c. 176D, § 3; 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~~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.

(37) The RBC instructions, RBC Reports, Adjusted RBC Reports, RBC Plans and Revised RBC Plans are intended solely for use by the ~~commissioner~~Commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the ~~commissioner~~Commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the ~~commissioner~~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.

20.09: Supplemental Provisions; Exemption

(1) The provisions of 211 CMR 20.00 are supplemental to any other provisions of the laws of Massachusetts, and shall not preclude or limit any other powers or duties of the ~~commissioner~~Commissioner under such laws, including, but not limited to M.G.L. c. 175, §§ 180A through 180L½ and M.G.L. c. 176, § 33.

(2) The ~~commissioner~~Commissioner may exempt from the application of 211 CMR 20.00, 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 5% of direct premium written.

20.10: Foreign Insurers

(1) Any foreign insurer shall, upon the written request of the ~~commissioner~~Commissioner, submit to the ~~commissioner~~Commissioner an RBC Report as of the end of the calendar year just ended not later than the later of:

- (a) The date an RBC Report would be required to be filed by a domestic insurer under this Act; or
- (b) 15 days after the request is received by the foreign insurer.

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Any foreign insurer shall, at the written request of the ~~commissioner~~Commissioner, promptly submit to the ~~commissioner~~Commissioner a copy of any RBC Plan that is filed with the insurance ~~commissioner~~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 or regulation applicable in the state of domicile of the insurer (or, if no RBC statute or regulation is in force in that state, under the provisions of 211 CMR 20.00), if the insurance ~~commissioner~~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 or regulation (or, if no RBC statute or regulation is in force in that state, under 211 CMR 20.03), the ~~commissioner~~Commissioner may require the foreign insurer to file an RBC Plan with the ~~commissioner~~Commissioner. In such event, the failure of the foreign insurer to file an RBC Plan with the ~~commissioner~~Commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in the Commonwealth~~this state~~.

(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~~Commissioner may make application to the supreme judicial court permitted under M.G.L. c. 175, §§ 180A through 180L $\frac{1}{2}$, with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the Mandatory Control Level Event shall be considered adequate grounds for the application.

20.11: Immunity

There shall be no liability on the part of, and no cause of action shall arise against, the ~~commissioner~~Commissioner or the insurance division or its employees or agents for any action taken by them in the performance of their powers and duties under 211 CMR 20.00.

20.12: Severability Clause

If any provision of 211 CMR 20.00, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of 211 CMR 20.00 which can be given effect without the invalid provision or application, and to that end the provisions of 211 CMR 20.00 are severable.

20.13: Notices

All notices by the ~~commissioner~~Commissioner to an insurer which may result in regulatory action hereunder shall be effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission shall be effective upon the insurer's receipt of such notice.

~~20.14: Phase-In Provision~~

~~(1) For RBC Reports required to be filed by life insurers with respect to 1997, the following requirements shall apply in lieu of the provisions of 211 CMR 20.03; 211 CMR 20.04; 211 CMR 20.05; and 211 CMR 20.06:~~

~~(a) In the event of a Company Action Level Event with respect to a domestic insurer, the ~~commissioner~~Commissioner shall take no regulatory action hereunder.~~

~~(b) In the event of an Regulatory Action Level Event under 211 CMR 20.04(1)(a), (b) or (c), the ~~commissioner~~Commissioner shall take the actions required under 211 CMR 20.03.~~

~~(c) In the event of an Regulatory Action Level Event under 211 CMR 20.04(1)(d), (e), (f), (g), (h) or (i), or an Authorized Control Level Event, the ~~commissioner~~Commissioner shall take the actions required under 211 CMR 20.04, with respect to the insurer.~~

~~(d) In the event of a Mandatory Control Level Event with respect to an insurer, the ~~commissioner~~Commissioner shall take the actions required under 211 CMR 20.05, with respect to the insurer.~~

~~20.14: continued~~

~~(2) For RBC Reports required to be filed by property and casualty insurers with respect to 1997, the following requirements shall apply in lieu of the provisions of 211 CMR 20.03; 211 CMR 20.04; 211 CMR 20.05; and 211 CMR 20.06:~~

~~(a) In the event of a Company Action Level Event with respect to a domestic insurer, the commissioner~~Commissioner ~~shall take no regulatory action hereunder.~~

~~(b) In the event of an Regulatory Action Level Event under 211 CMR 20.04(1)(a), (b) or (c), the commissioner~~Commissioner ~~shall take the actions required under 211 CMR 20.03.~~

~~(c) In the event of an Regulatory Action Level Event under 211 CMR 20.04(1)(d), (e), (f), (g), (h) or (i), or an Authorized Control Level Event, the commissioner~~Commissioner ~~shall take the actions required under 211 CMR 20.04 with respect to the insurer.~~

~~(d) In the event of a Mandatory Control Level Event with respect to an insurer, the commissioner~~Commissioner ~~shall take the actions required under 211 CMR 20.05 with respect to the insurer.~~

REGULATORY AUTHORITY

211 CMR 20.00: M.G.L. c. 175, §§ 3A, 4, 48, 180A - 180L^{1/2}; c. 175J; M.G.L. c. 176, §§ 33, 41
-and c. 176D, § 11.

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