

January 21, 2011

VIA ELECTRONIC DELIVERY

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: **Supplemental Comments on Proposed Revisions to Forms S-3 and F-3
File Number S7-18-08; Release No. 33-9069**

Dear Ms. Murphy:

We are submitting this supplemental comment letter at the request of several of our insurance company clients that issue non-convertible investment grade insurance contracts registered on Form S-3 or F-3. The Securities and Exchange Commission (the “SEC” or the “Commission”) previously proposed modifications to the eligibility requirements of Forms S-3 and F-3 to eliminate the applicable provisions permitting primary issuances of non-convertible investment grade securities (the “Investment Grade Transactional Provision”).¹ We previously submitted two comment letters regarding the Commission’s proposed modifications and requested an accommodation for various fixed annuity and life insurance contracts (and guarantees thereon) (“Non-Variable Insurance Contracts”), based on the existence of an additional substantive regulatory regime, as well as our position that Non-Variable Insurance Contracts do not raise the same policy concerns as asset-backed and other more traditional securities.²

¹ See Security Ratings, Rel. Nos. 33-8940, 34-58071 (July 1, 2008), File No. S7-18-08 (proposing to replace rule and form requirements that rely on security ratings, such as Forms S-3 and F-3 eligibility criteria, with alternative requirements); References to Ratings of Nationally Recognized Statistical Rating Organizations, Rel. Nos. 33-9069; 34-60790; IA-2932; IC-28940; File Nos. S7-17-08, S7-18-08, S7-19-08 (Oct. 5, 2009), File Nos. S7-17-08, S7-18-08, S7-19-08 (reopening the comment period for Rel. No. 33-8940).

² See Letter to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, from Sutherland Asbill & Brennan LLP Commenting on Proposed Revisions to Forms S-3 and F-3 Regarding Issuances of Non-Convertible Investment Grade Securities, File Number S7-18-08 (December 8, 2009); Letter to Florence E. Harmon, Acting

Although the comment periods on the SEC's prior releases have closed, in light of the requirement in Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") for the Commission to "remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations," our clients have requested that we take the opportunity to provide an additional alternative standard of creditworthiness for eligibility to use Forms S-3 and F-3 for the SEC's consideration.³ This letter merely supplements our prior comment letters, which contain an in depth discussion of the issues facing our clients with regard to registration of Non-Variable Insurance Contracts, as well as the impact and undue burdens of eliminating the Investment Grade Transactional Provision for our clients. Our clients continue to fully endorse the alternatives outlined in our prior comment letters, and in particular would reiterate our suggestions: (1) that insurance companies be permitted to use Forms S-3 and F-3 without any additional eligibility requirements based on the highly regulated nature of the insurance industry, and (2) that the previously proposed publicly issued non-convertible securities threshold (if part of any reproposal) be reduced to \$500 million, that variable annuity and variable life insurance contracts be included in the calculation of such publicly issued non-convertible securities, and that all outstanding publicly issued non-convertible securities be included (as opposed to only those issued in the past three years).

Our prior comment letters stress the extensive regulatory oversight to which insurance companies and their life insurance and annuity products are subject, as well as the greater level of investor protection thereby provided to purchasers of Non-Variable Insurance Contracts, as compared to purchasers of other investment grade debt products, including asset-backed securities. Applicable insurance regulatory requirements mandate specific investment requirements with respect to reserves maintained in connection with an insurance company issuer's contractual obligations and its overall solvency, and also impose capital adequacy requirements not applicable to issuers of asset-backed securities or other traditional debt instruments. Insurance companies also must submit to periodic examinations by the insurance authorities in every state in which their contracts are sold. Further, we would note that policyholders generally stand ahead of all other general creditors in liquidation proceedings (including owners of debt instruments issued by an insurance company), under insurance laws and regulations.⁴

Thus, we submit that – to the extent the SEC determines to propose an alternative standard of creditworthiness to permit insurance companies to register Non-Variable Insurance

Secretary, U.S. Securities and Exchange Commission, from Sutherland Asbill & Brennan LLP Commenting on Proposed Revisions to Forms S-3 and F-3 Regarding Issuances of Non-Convertible Investment Grade Securities, File Number S7-18-08 (September 5, 2008).

³ The Commission's published timetable for implementing various provisions of Dodd-Frank on its website (<http://www.sec.gov/spotlight/dodd-frank/dfactivity-upcoming.shtml#11-10>) indicates the intent to "propose revisions to rules that contain references to credit ratings" between January and March 2011, with final rules to be adopted by the statutory deadline in July.

⁴ See, e.g., N.Y. INS. LAW § 7435 (McKinney 2010); INSURANCE RECEIVERSHIP MODEL ACT § 801 (NAIC 2007).

Contracts on Form S-3 or F-3 – it would be appropriate for the Commission to take advantage of the extensive capital adequacy requirements applicable to insurance companies that already exist, based on the fact that these standards are substantially consistent among jurisdictions, are transparent as to the factors affecting their calculation, and are substantively monitored by state insurance regulators in the relevant jurisdictions.

Risk-Based Capital Requirements

Capital adequacy of insurance companies generally is assessed by insurance regulators with reference to risk-based capital (“RBC”) standards. RBC is a method developed by the National Association of Insurance Commissioners (“NAIC”) to measure the minimum amount of capital that an insurance company needs to support its overall business operations. RBC is used to set capital requirements considering the size and degree of risk taken by the insurer. Most U.S. insurance jurisdictions have adopted laws, regulations, or other guidance that is substantially similar to the NAIC’s Risk Based Capital (RBC) for Insurers Model Act (the “Model Act”). A copy of the Model Act is attached for your reference as Appendix A.

Insurance companies calculate and report RBC amounts annually based on financial statements prepared in accordance with statutory accounting standards, rather than financial statements prepared in accordance with generally accepted accounting principles. Insurance companies must submit a report with their RBC level to the relevant insurance jurisdictions on or before March 1st of each year.

RBC is uniquely tailored to focus on the material risks applicable to life insurance companies. For example, interest rate risk is included in the RBC formula because it is a material risk affecting many life insurance products. Investment and other asset risks, such as credit risk and concentration risk, are also included in the RBC formula. Specifically, RBC factors in: 1) the risk of default of assets for affiliated investments; 2) the potential for default of principal and interest or fluctuation in fair value of assets; 3) the surplus needed to provide for excess claims; 4) the risk of losses due to changes in interest rate levels; and 5) business risk based on premium income, annuity considerations, and separate account liabilities. Therefore, RBC is a comprehensive look at the risk profile of an insurer and its products.⁵

To briefly summarize the operation of the Model Act, there are several levels of RBC, all of which are derived from the Authorized Control Level RBC. Authorized Control Level RBC is the number determined under the RBC formula in accordance with the Model Act or similar state law or regulation. The additional levels of RBC are as follows:

- Company Action Level RBC = 200% of Authorized Control Level RBC
- Regulatory Action Level RBC = 150% of Authorized Control Level RBC
- Mandatory Control Level RBC = 70% of Authorized Control Level RBC

⁵ For an overview of how RBC is calculated, see the NAIC Capital Adequacy Task Force’s Risk-Based Capital General Overview (July 15, 2009) at http://www.naic.org/documents/committees_e_capad_RBCoverview.pdf.

Various requirements are triggered at each level of RBC. In general, as long as an insurance company maintains Total Adjusted Capital (as defined in the Model Act) at a level not less than the Company Action Level RBC (or, in certain cases where a company has a negative trend, a slightly higher level), it will avoid the need to take any remedial actions. If an insurance company does not meet the Company Action Level RBC, but is above the Regulatory Action Level RBC, the insurer must prepare a report to the insurance regulator in its state of domicile outlining a comprehensive financial plan that identifies the conditions that contributed to the company's financial condition and lays out proposals to correct the financial problems (an "Action Plan"). At levels below the Regulatory Action Level RBC, but above the Authorized Control Level RBC, an insurance company must file an Action Plan, and the state insurance commissioner is required to perform any examination or analysis of the insurer's business and operations that he or she deems necessary. The state insurance commissioner may also issue an order specifying corrective actions that the insurance company must take to address its financial problems. At levels below the Authorized Control Level RBC, but above the Mandatory Control Level RBC, the state insurance regulator is authorized (but not required) to take control of the insurer, in addition to the other remedial actions discussed above. Finally, if an insurance company falls below the Mandatory Control Level RBC, the state insurance regulator is required to take control of the company.

Proposed Alternative Standard of Creditworthiness

Because insurance companies must already calculate and report RBC annually under existing insurance requirements, the existing RBC standard provides an appropriate basis for the Commission to gauge the creditworthiness of an insurance company issuing Non-Variable Insurance Contracts. Compared to the Investment Grade Transactional Provision, we would assert that the RBC standard is a more reliable and objective test for reliance on Forms S-3 and F-3. In particular and as discussed above, RBC is largely a formulaic assessment of the unique risk profile of each insurance company. It is based on a formula and factors that are substantially consistent among insurance jurisdictions and are publicly available (providing transparency as to their calculation). This contrasts with investment grade ratings, which vary from rating organization to rating organization and are based on factors that are not disclosed or otherwise publicly available and could change at any time without warning. Moreover, the existence of extensive oversight by insurance regulators and the host of remedies relating to RBC levels under the insurance regulatory regime support the use of RBC standards as a replacement for credit ratings under these registration forms with regard to Non-Variable Insurance Contracts.⁶ As noted previously, the Commission should derive additional comfort from the fact that policyholders generally stand ahead of all other general creditors when an insurance company is in receivership.⁷

⁶ Among some of the remedies available to an insurance regulator are the ability to take control of an insurer, stop it from issuing new business, and transfer existing contract obligations to stronger companies.

⁷ In addition, policyholders are protected by guaranty associations which will pay claims subject to certain limitations in the event an insolvent company's assets are exhausted.

Because the Company Action Level RBC is the minimum level of Total Adjusted Capital that an insurance company must maintain to avoid any remedial action, we suggest that any such eligibility standard for Forms S-3 and F-3 be an amount significantly higher than that level of RBC. Most insurance companies seeking to maintain appropriate financial strength to consistently offer products would strive to maintain a cushion above Company Action Level RBC at 200% or more. Thus, we would propose that an insurance company be permitted to register Non-Variable Insurance Contracts on Form S-3 or F-3 as long as that insurance company maintains Total Adjusted Capital at a level not less than 200% of the Company Action Level RBC (or double what is generally necessary to avoid any remedial action, as noted above).⁸ Because RBC is calculated and reported annually, we suggest that the eligibility instruction reference the RBC for the most recently ended fiscal year. To the extent that RBC for the most recently ended fiscal year has not yet been filed with the relevant insurance jurisdictions (which would generally be the case in January and February), insurers should have the ability to continue to rely on the prior year's RBC.

Insofar as the Commission determines to adopt an alternative standard of creditworthiness for insurance companies, we propose that Form S-3 be amended to include as a Transaction Requirement in General Instructions I.B. the following or similar language:

Primary Offerings of Non-Variable Insurance Contracts by Certain Insurance Companies.

Non-variable insurance contracts to be offered for cash by or on behalf of an insurance company⁹ registrant that has the amount of capital and surplus as shall be necessary to maintain a Total Adjusted Capital at a level not less than 200% of the Company Action Level RBC for that insurance company registrant, calculated as of the end of the most recent fiscal year (or, if Company Action Level RBC for the most recently ended fiscal year has not yet been filed with the insurance company's state of domicile, as of the end of the prior fiscal year). As used in this section, "non-variable insurance contracts" are securities that do not constitute an equity interest in the issuer and are either subject to regulation under the insurance laws of the domiciliary state of the issuer or are guarantees of securities that are subject to regulation under the insurance laws of that jurisdiction, other than variable annuity and variable life insurance contracts (and guarantees thereon) registered on Form N-3, N-4, N-6, or S-6; and "Total Adjusted Capital" and "Company Action Level RBC" shall be as defined in the Risk Based Capital (RBC) for Insurers Model Act adopted by the National Association of Insurance Commissioners or any similar law or regulation applicable in the insurance company's state of domicile.

⁸ This level can also be expressed as 400% of Authorized Control Level RBC, which is the level at which an insurance commissioner would have the permissive ability to take control of an insurance company.

⁹ Section 2(a)(13) of the Securities Act of 1933, as amended, defines "insurance company" to mean "a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such."

Similarly, insofar as the Commission determines to adopt an alternative standard of creditworthiness for insurance companies, we propose that Form F-3 be amended to include as a Transaction Requirement in General Instructions I.B. the following or similar language:

Primary Offerings of Non-Variable Insurance Contracts by Certain Insurance Companies.

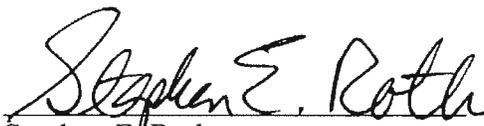
Non-variable insurance contracts to be offered for cash by or on behalf of an insurance company registrant that has the amount of capital and surplus as shall be necessary to maintain a Total Adjusted Capital at a level not less than 200% of the Company Action Level RBC for that insurance company registrant, calculated as of the end of the most recent fiscal year (or, if Company Action Level RBC for the most recently ended fiscal year has not yet been filed with the insurance company's state of domicile, as of the end of the prior fiscal year). As used in this section, "non-variable insurance contracts" are securities that do not constitute an equity interest in the issuer and are either subject to regulation under the insurance laws of the domiciliary state of the issuer or are guarantees of securities that are subject to regulation under the insurance laws of that jurisdiction, other than variable annuity and variable life insurance contracts (and guarantees thereon) registered on Form N-3, N-4, N-6, or S-6; and "Total Adjusted Capital" and "Company Action Level RBC" shall be as defined in the Risk Based Capital (RBC) for Insurers Model Act adopted by the National Association of Insurance Commissioners or any similar regulation applicable in the insurance company's state of domicile. For the registrant's fiscal years ending before December 15, 2011, in the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20-F. For the registrant's fiscal years ending on or after December 15, 2011, in the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement must comply with Item 18 of Form 20-F.

* * *

We hope this supplemental comment letter has been informative, and appreciate the Commission's consideration of our comments. We would be pleased to meet with the SEC staff in person or to answer any questions or provide any additional information that would be helpful. In that regard, please feel free to contact either Steve Roth at 202.383.0158 (steve.roth@sutherland.com) or Mary Payne at 202.383.0698 (mary.payne@sutherland.com).

Respectfully Submitted,

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APPENDIX A

**National Association of Insurance Commissioners
Risk Based Capital (RBC) for Insurers Model Act**

RISK-BASED CAPITAL (RBC) FOR INSURERS MODEL ACT

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Section 1. Definitions

As used in this Act, these terms shall have the following meanings:

- A. “Adjusted RBC Report” means an RBC report which has been adjusted by the commissioner in accordance with Section 2E.
- B. “Corrective order” means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term “commissioner” appears.

- C. “Domestic insurer” means any insurance company domiciled in this state.
- D. “Foreign insurer” means any insurance company which is licensed to do business in this State under [cite appropriate statute] but is not domiciled in this State.

Drafting Note: The drafting committee does not recommend application of the risk-based capital model act to any insurance company organized under the laws of any state of the United States if such company (1) has a provision in its certificate of incorporation (or like corporate instrument) prohibiting the doing of insurance business with persons or entities which are citizens or residents of, or organized or located within, the United States and (2) does not, in fact, do insurance business with such persons or entities, so that none of its insurance liabilities are to any such person or entity.

- E. “NAIC” means the National Association of Insurance Commissioners.
- F. “Life and/or health insurer” means any insurance company licensed under Section [cite appropriate statute], or a licensed property and casualty insurer writing only accident and health insurance.

Drafting Note: The drafting committee did not specifically examine, and expresses no opinion with respect to, the application of the risk-based capital formula to fraternal benefit societies, health service organizations, dental service organizations, health maintenance organizations, dental plan organizations or mutual benefit associations (including without limitation Blue Cross/Blue Shield organizations). States may wish to consider the application of the risk-based capital model act to these entities, or any of them.

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- G. "Property and casualty insurer" means any insurance company licensed under Section [cite appropriate statute] but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

Drafting Note: The drafting committee did not specifically examine, and expresses no opinion with respect to, the application of the risk-based capital formula to farm and county mutuals, health service organizations, dental service organizations, health maintenance organizations, dental plan organizations or any single state specialty insurer not subject to rules and regulations applicable to property and casualty insurers. States may wish to consider the application of the risk-based capital model act to these entities, or any of them.

- H. "Negative trend" means, with respect to a life and/or health insurer, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the Life RBC Instructions.
- I. "RBC instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC, as such RBC Instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.
- J. "RBC Level" means an insurer's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:
- (1) "Company Action Level RBC" means, with respect to any insurer, the product of 2.0 and its Authorized Control Level RBC;
 - (2) "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;
 - (3) "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions;
 - (4) "Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC.
- K. "RBC Plan" means a comprehensive financial plan containing the elements specified in Section 3B. If the commissioner rejects the RBC Plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "Revised RBC Plan."
- L. "RBC Report" means the report required in Section 2.
- M. "Total adjusted capital" means the sum of:
- (1) 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 [cite appropriate statute]; and
 - (2) Such other items, if any, as the RBC instructions may provide.

Section 2. RBC Reports

- A. Every domestic insurer shall, on or prior to each March 1 (the "filing date"), prepare and submit to the 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:

- (1) With the NAIC in accordance with the RBC instructions; and
 - (2) With the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance 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:
 - (a) Fifteen (15) days from the receipt of notice to file its RBC Report with that state; or
 - (b) The filing date.
- B. A life and health insurer'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.
- (1) The risk with respect to the insurer's assets;
 - (2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
 - (3) The interest rate risk with respect to the insurer's business; and
 - (4) All other business risks and such other relevant risks as are set forth in the RBC instructions.
- C. 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.
- (1) Asset risk;
 - (2) Credit risk;
 - (3) Underwriting risk; and
 - (4) All other business risks and such other relevant risks as are set forth in the RBC instructions.
- D. An excess of capital over the amount produced by the risk-based capital requirements contained in the Act and the formulas, schedules and instructions referenced in this Act is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by this Act. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this Act.
- E. If a domestic insurer files an RBC Report which in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC Report to correct the inaccuracy and 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."

Section 3. Company Action Level Event

- A. “Company Action Level Event” means any of the following events:
- (1) The filing of an RBC Report by an insurer which indicates that:
 - (a) 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;
 - (b) If a life and/or health insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 2.5 and has a negative trend; or
 - (c) 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;
 - (2) The notification by the commissioner to the insurer of an Adjusted RBC Report that indicates an event in Paragraph (1) of this subsection, provided the insurer does not challenge the Adjusted RBC Report under Section 7; or
 - (3) If, pursuant to Section 7, an insurer challenges an Adjusted RBC Report that indicates the event in Paragraph (1) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer’s challenge.
- B. In the event of a Company Action Level Event, the insurer shall prepare and submit to the commissioner an RBC Plan which shall:
- (1) Identify the conditions which contribute to the Company Action Level Event;
 - (2) 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;
 - (3) Provide projections of the insurer’s financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory 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);
 - (4) Identify the key assumptions impacting the insurer’s projections and the sensitivity of the projections to the assumptions; and
 - (5) 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.

- C. The RBC Plan shall be submitted
- (1) Within forty-five (45) days of the Company Action Level Event; or
 - (2) If the insurer challenges an Adjusted RBC Report pursuant to Section 7, within forty-five (45) days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.
- D. Within sixty (60) days after the submission by an insurer of an RBC Plan to the commissioner, the commissioner shall notify the insurer whether the RBC Plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the 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. Upon notification from the commissioner, the insurer shall prepare a Revised RBC Plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the Revised RBC Plan to the commissioner:
- (1) Within forty-five (45) days after the notification from the commissioner; or
 - (2) If the insurer challenges the notification from the commissioner under Section 7, within forty-five (45) days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.
- E. In the event of a notification by the commissioner to an insurer that the insurer's RBC Plan or Revised RBC Plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the insurer's right to a hearing under Section 7, specify in the notification that the notification constitutes a Regulatory Action Level Event.
- F. Every domestic insurer that files an RBC Plan or Revised RBC Plan with the commissioner shall file a copy of the RBC Plan or Revised RBC Plan with the insurance commissioner in any state in which the insurer is authorized to do business if:
- (1) Such state has an RBC provision substantially similar to Section 8A; and
 - (2) The insurance 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:
 - (a) Fifteen (15) days after the receipt of notice to file a copy of its RBC Plan or Revised RBC Plan with the state; or
 - (b) The date on which the RBC Plan or Revised RBC Plan is filed under Section 3C and 3D.

Section 4. Regulatory Action Level Event

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

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- (2) The notification by the commissioner to an insurer of an Adjusted RBC Report that indicates the event in Paragraph (1), provided the insurer does not challenge the Adjusted RBC Report under Section 7;
 - (3) If, pursuant to Section 7, the insurer challenges an Adjusted RBC Report that indicates the event in Paragraph (1), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;
 - (4) The failure of the insurer to file an RBC Report by the filing date, unless the insurer has provided an explanation for such failure which is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date;
 - (5) The failure of the insurer to submit an RBC Plan to the commissioner within the time period set forth in Section 3C;
 - (6) Notification by the commissioner to the insurer that
 - (a) The RBC Plan or revised RBC Plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and
 - (b) Such notification constitutes a Regulatory Action Level Event with respect to the insurer, provided the insurer has not challenged the determination under Section 7;
 - (7) If, pursuant to Section 7, the insurer challenges a determination by the commissioner under Paragraph (6), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected such challenge;
 - (8) Notification by the 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 has so stated in the notification, provided the insurer has not challenged the determination under Section 7; or
 - (9) If, pursuant to Section 7, the insurer challenges a determination by the commissioner under Paragraph (8), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.
- B. In the event of a Regulatory Action Level Event the commissioner shall:
- (1) Require the insurer to prepare and submit an RBC Plan or, if applicable, a Revised RBC Plan;
 - (2) Perform such examination or analysis as the commissioner deems necessary of the assets, liabilities and operations of the insurer including a review of its RBC Plan or Revised RBC Plan; and
 - (3) Subsequent to the examination or analysis, issue an order specifying such corrective actions as the commissioner shall determine are required (a "corrective order").

- C. In determining corrective actions, the commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC Plan or Revised RBC Plan shall be submitted:
- (1) Within forty-five (45) days after the occurrence of the Regulatory Action Level Event;
 - (2) If the insurer challenges an Adjusted RBC Report pursuant to Section 7 and the challenge is not frivolous in the judgment of the commissioner within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or
 - (3) If the insurer challenges a Revised RBC Plan pursuant to Section 7 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.
- D. The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the 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.

Section 5. Authorized Control Level Event

- A. "Authorized Control Level Event" means any of the following events:
- (1) 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;
 - (2) The notification by the commissioner to the insurer of an Adjusted RBC Report that indicates the event in Paragraph (1), provided the insurer does not challenge the Adjusted RBC Report under Section 7;
 - (3) If, pursuant to Section 7, the insurer challenges an Adjusted RBC Report that indicates the event in Paragraph (1), notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;
 - (4) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order (provided the insurer has not challenged the corrective order under Section 7); or
 - (5) If the insurer has challenged a corrective order under Section 7 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

- B. In the event of an Authorized Control Level Event with respect to an insurer, the commissioner shall:
- (1) Take such actions as are required under Section 4 regarding an insurer with respect to which an Regulatory Action Level Event has occurred; or
 - (2) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control under [insert reference to relevant insurance company rehabilitation and liquidation act]. In the event the commissioner takes such actions, the Authorized Control Level Event shall be deemed sufficient grounds for the commissioner to take action under [insert same reference], and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in [insert same reference]. In the event the commissioner takes actions under this paragraph pursuant to an Adjusted RBC Report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of Section [insert reference] pertaining to summary proceedings.

Section 6. Mandatory Control Level Event

- A. "Mandatory Control Level Event" means any of the following events:
- (1) The filing of an RBC Report which indicates that the insurer's total adjusted capital is less than its Mandatory Control Level RBC;
 - (2) Notification by the commissioner to the insurer of an Adjusted RBC Report that indicates the event in Paragraph (1), provided the insurer does not challenge the Adjusted RBC Report under Section 7; or
 - (3) If, pursuant to Section 7, the insurer challenges an Adjusted RBC Report that indicates the event in Paragraph (1), notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.
- B. In the event of a Mandatory Control Level Event:
- (1) With respect to a life insurer, the commissioner shall take such actions as are necessary to place the insurer under regulatory control under [insert reference to relevant insurance company rehabilitation and liquidation act]. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the commissioner to take action under [insert same reference], and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in [insert same reference]. If the commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to the protections of Section [insert reference] pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety (90) day period.

- (2) With respect to a property and casualty insurer, the commissioner shall take such actions as are necessary to place the insurer under regulatory control under [insert reference to relevant insurance company rehabilitation and liquidation act], 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. In either event, the Mandatory Control Level Event shall be deemed sufficient grounds for the commissioner to take action under [insert same reference] and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in [insert same reference]. If the commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to the protections of Section [insert reference] pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety (90) day period.

Section 7. Hearings

Upon any of the following the insurer shall have the right to a confidential departmental hearing, on a record, at which the insurer may challenge any determination or action by the commissioner. The insurer shall notify the commissioner of its request for a hearing within five (5) days after the notification by the commissioner under Subsection A, B, C or D. Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which date shall be no less than ten (10) nor more than thirty (30) days after the date of the insurer's request.

- A. Notification to an insurer by the commissioner of an Adjusted RBC Report; or
- B. Notification to an insurer by the commissioner that
 - (1) The insurer's RBC Plan or Revised RBC Plan is unsatisfactory; and
 - (2) Such notification constitutes a Regulatory Action Level Event with respect to such insurer; or
- C. Notification to any insurer by the 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
- D. Notification to an insurer by the commissioner of a corrective order with respect to the insurer.

Section 8. Confidentiality; Prohibition on Announcements, Prohibition on Use in Ratemaking

- A. All RBC Reports (to the extent the information therein is not required to be set forth in a publicly available annual statement schedule) and RBC Plans (including the results or report of any examination or analysis of an insurer performed pursuant hereto and any corrective order issued by the commissioner pursuant to examination or analysis) with respect to any domestic insurer or foreign insurer that are in the possession or control of the Department of Insurance shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information,

sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

- B. 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 Subsection A.
- C. In order to assist in the performance of the commissioner's duties, the commissioner:
 - (1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, 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;
 - (2) 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, material or information; and
 - (3) [Optional provision] May enter into agreements governing sharing and use of information consistent with this subsection.

Drafting Note: The language in Subsection C(1) assumes the recipient has the authority to protect the applicable confidentiality or privilege, but does not address the verification of that authority, which would presumably occur in the context of a broader information sharing agreement.

- D. 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 this section or as a result of sharing as authorized in Subsection C.
- E. It is the judgment of the legislature that 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 this Act, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC Levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the comparison

regarding an insurer's Total Adjusted Capital to its RBC Levels (or any of them) or an inappropriate comparison of any other amount to the insurers' RBC Levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

- F. It is the further judgment of the legislature that the RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans and Revised RBC Plans are intended solely for use by the 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 for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or an affiliate is authorized to write.

Section 9. Supplemental Provisions; Rules; Exemption

- A. The provisions of this Act are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under such laws, including, but not limited to, [cite rehabilitation and liquidation law and law pertaining to insurers in hazardous financial condition].
- B. The commissioner may adopt reasonable rules necessary for the implementation of this Act.
- C. The commissioner may exempt from the application of this Act any domestic property and casualty insurer which;
- (1) Writes direct business only in this state;
 - (2) Writes direct annual premiums of [\$X] or less; and
 - (3) Assumes no reinsurance in excess of five percent (5%) of direct premium written.

Drafting Note: It is the drafters' intent that the domiciliary commissioner have the ability to exempt certain insurers doing business only within the commissioner's jurisdiction. The intent is to limit this exemption to insurers that do not write in excess of \$2,000,000 in annual premiums.

Section 10. Foreign Insurers

- A. Any foreign insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC Report as of the end of the calendar year just ended the later of:
- (1) The date an RBC Report would be required to be filed by a domestic insurer under this Act; or
 - (2) Fifteen (15) days after the request is received by the foreign insurer.

Any foreign insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC Plan that is filed with the insurance commissioner of any other state.

- B. In the event of a Company Action Level Event, Regulatory Action Level Event or Authorized Control Level Event with respect to any foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer (or, if no RBC statute is in force in that state, under the provisions of this Act), if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC Plan in the manner specified under that state's RBC statute (or, if no RBC statute is in force in that state, under Section 3 hereof), the commissioner may require the foreign insurer to file an RBC Plan with the commissioner. In such event, the failure of the foreign insurer to file an RBC Plan with the commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in this state.
- C. In the event of a Mandatory Control Level Event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to the [cite appropriate state court] permitted under the [cite rehabilitation and liquidation statute] 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.

Section 11. Immunity

There shall be no liability on the part of, and no cause of action shall arise against, the commissioner or the insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under this Act.

Section 12. Severability Clause

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

Section 13. Notices

All notices by the 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.

Section 14. Phase-In Provision

- A. For RBC Reports required to be filed by life insurers with respect to 1993, the following requirements shall apply in lieu of the provisions of Section 3, 4, 5 and 6:
 - (1) In the event of a Company Action Level Event with respect to a domestic insurer, the commissioner shall take no regulatory action hereunder.
 - (2) In the event of an Regulatory Action Level Event under Section 4A(1), (2) or (3) the commissioner shall take the actions required under Section 3.
 - (3) In the event of an Regulatory Action Level Event under Section 4A(4), (5), (6), (7), (8) or (9) or an Authorized Control Level Event, the commissioner shall take the actions required under Section 4 with respect to the insurer.

- (4) In the event of a Mandatory Control Level Event with respect to an insurer, the commissioner shall take the actions required under Section 5 with respect to the insurer.

Drafting Note: This provision should be included for states which adopt the model law in 1993 for implementation in 1994 (based on 1993 annual statements).

B. For RBC Reports required to be filed by property and casualty insurers with respect to 1994, the following requirements shall apply in lieu of the provisions of Section 3, 4, 5 and 6:

- (1) In the event of a Company Action Level Event with respect to a domestic insurer, the commissioner shall take no regulatory action hereunder.
- (2) In the event of an Regulatory Action Level Event under Section 4A(1), (2) or (3) the commissioner shall take the actions required under Section 3.
- (3) In the event of an Regulatory Action Level Event under Section 4A(4), (5), (6), (7), (8) or (9) or an Authorized Control Level Event, the commissioner shall take the actions required under Section 4 with respect to the insurer.
- (4) In the event of a Mandatory Control Level Event with respect to an insurer, the commissioner shall take the actions required under Section 5 with respect to the insurer.

Drafting Note: This provision should be included for states which adopt the model law as amended to include property and casualty insurers or which adopt the property and casualty amendments in 1994 for implementation in 1995 (based on 1994 annual statements).

Section 15. Effective Date

This Act shall become effective immediately upon its enactment.

Legislative History (all references are to the Proceedings of the NAIC).

*1993 Proc. 1 8, 137, 275-276, 556-557, 559-565, (adopted model applying only to life and health insurers).
1993 Proc. 4th Quarter 16, 20, 163, 390-398 (amended to include property and casualty insurers and reprinted).
1994 Proc. 3rd Quarter 14, 58, 264, 316, 347-356 (amended and reprinted).
1999 Proc. 4th Quarter 15, 364, 369, 375-376 (amended).
2006 Proc. 1st Quarter 36, 44-52 (amended).*

Risk-Based Capital (RBC) For Insurers Model Act

RISK-BASED CAPITAL (RBC) FOR INSURERS MODEL ACT

These charts are intended to provide the readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings which are related to the NAIC model. Such guidance provides the reader with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state's activity in this area and has made an interpretation of adoption or related state activity based on the definitions listed below. The NAIC's interpretation may or may not be shared by the individual states or by interested readers.

This state page does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Every effort has been made to provide correct and accurate summaries to assist the reader in targeting useful information. For further details, the laws cited should be consulted. The NAIC attempts to provide current information; however, due to the timing of our publication production, the information provided may not reflect the most up to date status. Therefore, readers should consult state law for additional adoptions and subsequent bill status.

RISK-BASED CAPITAL (RBC) FOR INSURERS MODEL ACT

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RISK-BASED CAPITAL (RBC) FOR INSURERS MODEL ACT

KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY: States that have citations identified in this column have **not** adopted the most recent version of the NAIC model in a substantially similar manner. Examples of Related State Activity include but are not limited to: An older version of the NAIC model, legislation or regulation derived from other sources such as Bulletins and Administrative Rulings.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

| NAIC MEMBER | MODEL ADOPTION | RELATED STATE ACTIVITY |
|--------------------|---|---|
| Alabama | ALA. CODE §§ 27-2B-1 to 27-2B-14 (1996). | |
| Alaska | ALASKA STAT. §§ 21.14.010 to 21.14.200 (1994/2002). | Ins. Order R. 2006-10 (2006); Ins. Order R. 2007-9 (2007); Ins. Order R. 2009-6 (2009). |
| American Samoa | NO CURRENT ACTIVITY | |
| Arizona | ARIZ. REV. STAT. ANN. §§ 20-488 to 20-488.11 (1995/2001). | |
| Arkansas | ARK. CODE ANN. §§ 23-63-1301 to 23-63-1316 (1995/2001); §§ 23-63-1501 to 23-63-1512 (1999). | |
| California | CAL. INS. CODE §§ 739 to 739.12 (1997/2003). | |
| Colorado | 3 COLO. CODE REGS. § 1-11(1994/2002). | |
| Connecticut | CONN. AGENCIES REGS. §§ 38a-72-1 to 38a-72-13 (1994/2007); §§ 38a-193-1 to 38a-193-13 (2000). | |
| Delaware | DEL. CODE ANN. tit.18, §§ 5801 to 5813 (1995). | |

RISK-BASED CAPITAL (RBC) FOR INSURERS MODEL ACT

| NAIC MEMBER | MODEL ADOPTION | RELATED STATE ACTIVITY |
|----------------------|---|--|
| District of Columbia | D.C. CODE §§ 31-2001 to 31-2013 (1997/2001); §§ 31-3851.01 to 31-3851.13 (2002/2005). | |
| Florida | FLA. STAT. § 624.4085 (1997). | |
| Georgia | GA. CODE ANN. §§ 33-56-1 to 33-56-13 (1996/2000). | |
| Guam | NO CURRENT ACTIVITY | |
| Hawaii | HAW. REV. STAT. §§ 431:3-401 to 431:3-413 (1994/2009). | |
| Idaho | IDAHO CODE ANN. §§ 41-5401 to 41-5413 (1996/2004). | |
| Illinois | 215 ILL. COMP. STAT. 5/35A-1 to 5/35A-70 (1995/1999). | |
| Indiana | IND. CODE §§ 27-1-36-1 to 27-1-36-56 (1996/2004). | |
| Iowa | IOWA CODE §§ 521E.1 to 521E.12 (1996); §§ 521F.1 to 521F.13 (2000). | |
| Kansas | KAN. STAT. ANN. §§ 40-2c01 to 40-2c27 (1994/2010); §§ 40-2d01 to 40-2d30 (2000). | KAN. ADMIN. REGS. § 40-1-48 (2006/2008). |
| Kentucky | 806 KY. ADMIN. REGS. § 3:190 (1997); § 38:100 (2000). | |
| Louisiana | LA. REV. STAT. ANN. §§ 22:611 to 22:620 (1995/2009); §§ 22:2036.1 to 22:2036.10 (2003). | |
| Maine | ME. REV. STAT. ANN. tit. 24-A, §§ 6451 to 6461 (1994/2010). | |
| Maryland | MD. CODE ANN. INS. §§ 4-301 to 4-314 (1995/2009). | |

RISK-BASED CAPITAL (RBC) FOR INSURERS MODEL ACT

| NAIC MEMBER | MODEL ADOPTION | RELATED STATE ACTIVITY |
|--------------------|---|--|
| Massachusetts | 211 MASS. CODE REGS. 20.01 to 20.14 (1997/2008). | |
| Michigan | MICH. COMP. LAWS § 550:1204a (2003) (Adopts NAIC model by reference). | BULLETIN 2010-16-INS (2010). |
| Minnesota | MINN. STAT. §§ 60A.60 to 60A.696 (1996); §§ 60A.50 to 60A.592 (2004). | |
| Mississippi | MISS. CODE ANN. §§ 83-5-401 to 83-5-427 (1996/2010). | |
| Missouri | MO. REV. STAT. §§ 375.1250 to 375.1275 (1993/2010). | |
| Montana | MONT. CODE ANN. §§ 33-2-1901 to 33-2-1913 (1995/1997). | |
| Nebraska | NEB. REV. STAT. §§ 44-6001 to 44-6026 (1993/1999). | |
| Nevada | NEV. ADMIN. CODE §§ 681B.400 to 681B.595 (1998). | NEV. ADMIN. CODE § 695D.300 (1988/2004) (Dental organization). |
| New Hampshire | N.H. REV. STAT. ANN. §§ 404-F:1 to 404-F:14 (1995/2000). | |
| New Jersey | N.J. ADMIN. CODE §§ 11:2-39.1 to 11:2-39.15 (1993/2001). | N.J. STAT. ANN. §§ 26: 2J-18.2 to 26: 2J-18.6 (2005) |
| New Mexico | N.M. STAT. ANN. §§ 59A-5A-1 to 59A-5A-13 (1995/2007). | |
| New York | N.Y. INS. LAW § 1322 (1993/2009). | N.Y. INS. LAW § 1325 (2008); Circular Letter 2009-24 (2009). |
| North Carolina | N.C. GEN. STAT. §§ 58-12-2 to 58-12-70 (1996/2001). | |
| North Dakota | N.D. CENT. CODE §§ 26.1-03.1-01 to 26.1-03.1-13 (1995); §§ 26.1-03.2-01 to 26.1-03.2-13 (1999). | |

RISK-BASED CAPITAL (RBC) FOR INSURERS MODEL ACT

| NAIC MEMBER | MODEL ADOPTION | RELATED STATE ACTIVITY |
|--------------------|---|--|
| Northern Marianas | NO CURRENT ACTIVITY | |
| Ohio | OHIO REV. CODE ANN. §§ 3903.81 to 3903.93 (1995/2010); OHIO ADMIN. CODE 3901:3-14 to 3901:3-15 (2007/2009) (incorporates model by reference). | |
| Oklahoma | OKLA. STAT. tit. 36, §§ 1521 to 1533 (1997); §§ 6937 to 6951 (2003/2004). | OKLA. ADMIN. CODE §§ 310:655-57-1 to 310:655-57-6 (2003). |
| Oregon | OR. ADMIN. R. 836-011-0300 to 836-011-0400 (1995); 836-011-0500 to 836-011-0550 (2002). | OR. REV. STAT. § 731.554 (1993) (References NAIC RBC standards). |
| Pennsylvania | 40 PA. CONS. STAT. §§ 7-601 to 7-615 (1997); §§ 7-701 to 7-715 (2000). | |
| Puerto Rico | NO CURRENT ACTIVITY | |
| Rhode Island | R.I. GEN. LAWS §§ 27-4.6-1 to 27-4.6-13 (1994/2010); §§ 27-4.7-1 to 27-4.7-16 (2000/2002). | R.I. GEN. LAWS § 27-41-2, § 27-41-13 (1983/1999) (Use NAIC standards). |
| South Carolina | S.C. CODE ANN. §§ 38-9-310 to 38-9-460 (1996/2009). | |
| South Dakota | S.D. ADMIN. R. §§ 20:06:36:01 to 20:06:36:28 (1997/2010). | |
| Tennessee | TENN. CODE ANN. §§ 56-46-101 to 56-46-112 (1997). | |
| Texas | | TEX. INS. CODE ANN. §§ 822.001 to 822.207; 28 TEX. ADMIN. CODE § 7.401 (1992/2009); § 7.402 (2008/2009); § 11.809 (2000/2009). |
| Utah | UTAH CODE ANN. §§ 31A-17-601 to 31A-17-613 (1996/2003). | |
| Vermont | Vt. STAT. ANN. tit. 8, §§ 8301 to 8312 (1994/2010); Vt. CODE R. § 97-2 (1997). | |

RISK-BASED CAPITAL (RBC) FOR INSURERS MODEL ACT

| NAIC MEMBER | MODEL ADOPTION | RELATED STATE ACTIVITY |
|----------------|---|---|
| Virgin Islands | NO ACTION TO DATE | |
| Virginia | VA. CODE ANN. §§ 38.2-5500 to 38.2-5515 (1995/2001). | |
| Washington | WASH. REV. CODE §§ 48.05.430 to 48.05.490 (1995); §§ 48.43.300 to 48.43.370 (1998). | WASH. ADMIN. CODE 284-36A-005 to 284-36A-065 (1996/1998) (RBC for fraternal). |
| West Virginia | W. VA. CODE §§ 33-40-1 to 33-40-13 (1994/2005). | |
| Wisconsin | WIS. ADMIN. CODE INS. §§ 51.01 to 51.80 (1997/1999). | |
| Wyoming | WYO. STAT. ANN. §§ 26-48-101 to 26-48-112 (1994/2010). | |

RISK-BASED CAPITAL (RBC) FOR INSURERS MODEL ACT

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RISK-BASED CAPITAL (RBC) FOR INSURERS MODEL ACT

Case Law

The following cases are a sampling of court decisions on the subject.

| NAIC MEMBER | CITATION | CASE SUMMARY |
|----------------------|-------------------|--|
| Alabama | | NO ACTION TO DATE |
| Alaska | | NO ACTION TO DATE |
| American Samoa | | NO ACTION TO DATE |
| Arizona | | NO ACTION TO DATE |
| Arkansas | | NO ACTION TO DATE |
| California | | NO ACTION TO DATE |
| Colorado | | NO ACTION TO DATE |
| Connecticut | | NO ACTION TO DATE |
| Delaware | | NO ACTION TO DATE |
| District of Columbia | | NO ACTION TO DATE |
| Florida | | NO ACTION TO DATE |
| Georgia | | NO ACTION TO DATE |
| Guam | | NO ACTION TO DATE |
| Hawaii | | NO ACTION TO DATE |
| Idaho | | NO ACTION TO DATE |
| Illinois | 215 ILCS 5/35A-50 | <u>Goodrich Corp. v. Clark</u> , 837 N.E.2d 953 (Ill. App. 2005). Goodrich Corporation requested records concerning Kemper Insurance Company under the Freedom of Information Act from the Department of Insurance. The Department contended that 215 ILCS 5/35A-50 prohibits confirming or denying the existence of corrective orders or risk-based capital plans. The court held that it did not have jurisdiction over ruling of the lower court, but continued to say that the language in 215 ILCS 5/35A-50 does not make the mere existence confidential. The language only makes information contained in the plans or reports confidential to the extent the information is not required to be set forth in a publicly available annual statement schedule. |
| Indiana | | NO ACTION TO DATE |
| Iowa | | NO ACTION TO DATE |

RISK-BASED CAPITAL (RBC) FOR INSURERS MODEL ACT

Case Law

| NAIC MEMBER | CITATION | CASE SUMMARY |
|--------------------|---------------------------------------|---|
| Kansas | K.S.A. § 40-2c01; K.S.A. § 40-2c03 | <p>Blue Cross and Blue Shield of Kansas, Inc. v. Praeger, 75 P.3d 226 (Kan. 2003). Commissioner Praeger disapproved of the acquisition of Blue Cross and Blue Shield by Anthem Insurance. The Commissioner had two concerns: first that successful lines of insurance would be used supplement lines that were not as successful; additionally, she was concerned about the drastic decrease in surplus. The opposition maintained that even after the reduction of surplus, the surplus held by the company will meet the statutory minimum required in K.S.A. § 40-2c01. The court held that the Commissioner was within her rights to disapprove of the acquisition. The court looked to the companion statute of K.S.A § 40-2c01, which is K.S.A. § 40-2c03. The companion statute cautions that merely maintaining the minimums is not necessarily good business practice. The statute urges exceeding the minimums. Therefore, the Commissioner could rule against the acquisition.</p> |
| Kentucky | | NO ACTION TO DATE |
| Louisiana | | NO ACTION TO DATE |
| Maine | | NO ACTION TO DATE |
| Maryland | | NO ACTION TO DATE |
| Massachusetts | | NO ACTION TO DATE |
| Michigan | | NO ACTION TO DATE |
| Minnesota | | NO ACTION TO DATE |
| Mississippi | | NO ACTION TO DATE |
| Missouri | | NO ACTION TO DATE |
| Montana | | NO ACTION TO DATE |
| Nebraska | | NO ACTION TO DATE |
| Nevada | | NO ACTION TO DATE |
| New Hampshire | | NO ACTION TO DATE |
| New Jersey | | NO ACTION TO DATE |
| New Mexico | | NO ACTION TO DATE |
| New York | | NO ACTION TO DATE |
| North Carolina | | NO ACTION TO DATE |

RISK-BASED CAPITAL (RBC) FOR INSURERS MODEL ACT

Case Law

| NAIC MEMBER | CITATION | CASE SUMMARY |
|--------------------|-----------------|---------------------|
| North Dakota | | NO ACTION TO DATE |
| Northern Marianas | | NO ACTION TO DATE |
| Ohio | | NO ACTION TO DATE |
| Oklahoma | | NO ACTION TO DATE |
| Oregon | | NO ACTION TO DATE |
| Pennsylvania | | NO ACTION TO DATE |
| Puerto Rico | | NO ACTION TO DATE |
| Rhode Island | | NO ACTION TO DATE |
| South Carolina | | NO ACTION TO DATE |
| South Dakota | | NO ACTION TO DATE |
| Tennessee | | NO ACTION TO DATE |
| Texas | | NO ACTION TO DATE |
| Utah | | NO ACTION TO DATE |
| Vermont | | NO ACTION TO DATE |
| Virgin Islands | | NO ACTION TO DATE |
| Virginia | | NO ACTION TO DATE |
| Washington | | NO ACTION TO DATE |
| West Virginia | | NO ACTION TO DATE |
| Wisconsin | | NO ACTION TO DATE |
| Wyoming | | NO ACTION TO DATE |

These case law summaries do not constitute a formal legal opinion by the NAIC staff on the interpretation of state law and should not be relied upon as such. Every effort has been made to provide correct and accurate information. However, for further details, the cases cited should be consulted. The NAIC attempts to provide current information; however, due to the timing of our publication production, the information provided may not reflect the most up to date status. Therefore, readers should consult state law for additional authority.