

insurer, with or without the Commissioner's recommendation, the plan shall be called the "Revised RBC Plan."

"RBC Report" means the NAIC RBC Report as supplemented pursuant to the RBC Instructions.

"Total adjusted capital" means an insurer's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed pursuant to N.J.S.A. 17:23-1 et seq., and 17B:21-1 et seq., increased or decreased by such other items, if any, as the RBC Instructions may provide.

Amended by R.1993 d.561, effective November 15, 1993.

See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a).

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Amended by R.1997 d.186, effective May 5, 1997.

See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

Added "Domestic insurer", "Foreign insurer", "Life/health insurer", and "Property/casualty insurer"; and amended "NAIC RBC Report", "Negative trend", and "Total adjusted capital".

Amended by R.2001 d.6, effective January 2, 2001.

See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

Added "Commissioner" and "Department".

Amended by R.2005 d.350, effective October 17, 2005.

See: 37 N.J.R. 2285(a), 37 N.J.R. 4026(a).

In (a), deleted "Life" preceding "Risk-Based" in "NAIC RBC Instructions" definition, and substituted "11:2-39.3" for "11-2-29.3" in "NAIC RBC Report" definition.

Amended by R.2005 d.421, effective December 5, 2005.

See: 37 N.J.R. 2992(a), 37 N.J.R. 4556(b).

Removed designation "(a)" and added definitions "Health maintenance organization" and "Insurer."

11:2-39.3 RBC reports

(a) Every domestic insurer shall, on or before each March 1 (the "filing date"), prepare and submit to the Commissioner an RBC Report as of the preceding December 31. The RBC Report shall be sent or delivered to:

New Jersey Department of Banking and Insurance
Office of Solvency Regulation, RBC Reports
20 West State Street
PO Box 325
Trenton, New Jersey 08625-0325

(b) If at any time the Commissioner believes that the financial condition of an insurer may have materially changed, the Commissioner may request in writing an updated RBC Report from the insurer. In such event, the insurer shall, on or before the 45th day following such request (the "filing date"), prepare and submit to the Commissioner at the address in (a) above an RBC Report as of the last day of the calendar month coincident with or last preceding the date of the request.

(c) Every domestic insurer shall also file its NAIC RBC Report with the NAIC in accordance with the NAIC RBC Instructions. In addition, if the insurer has been notified in writing by the insurance department of any state in which the insurer is authorized to do business, the insurer shall file its NAIC RBC Report with such state by the filing date or, if later, within 15 days from receipt of notice to file.

(d) If an 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 so adjusted shall be referred to as an Adjusted RBC Report.

(e) The calculation of an insurer's Required Surplus as set forth in an RBC Report filed and accepted by the Commissioner pursuant to (a) or (b) above, or as adjusted by the Commissioner pursuant to (d) above, shall be deemed to be a redetermination of the insurer's minimum statutory capital and surplus requirement pursuant to N.J.S.A. 17:17-16 and 17B:18-70, and N.J.A.C. 8:38-11.1, as applicable.

1. If an insurer disagrees with the minimum capital and surplus as determined above, it may request a hearing as provided at N.J.A.C. 11:2-39.9.

2. An insurer requesting a hearing shall do so upon filing an RBC Report, or within 20 days of receipt of notice from the Commissioner of an adjustment.

3. Failure to request a hearing shall be deemed to be a waiver of the right to a hearing on the redetermined minimum capital and surplus requirement for the insurer.

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Amended by R.1997 d.186, effective May 5, 1997.

See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

In (a) and (b), deleted reference to specified types of insurers; in (a), changed filing date from March 15 to March 1 and amended Department reference in delivery address; in (d), added last sentence; and in (e), inserted additional N.J.S.A. reference.

Amended by R.2005 d.421, effective December 5, 2005.

See: 37 N.J.R. 2992(a), 37 N.J.R. 4556(b).

In the address of (a), substituted "Solvency Regulation" for "Financial Examinations"; in (e), added "and N.J.A.C. 8:38-11.1, as applicable."

11:2-39.4 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:

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

ii. If a life/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;

2. The notification by the Commissioner to the insurer of an Adjusted RBC Report that indicates the event in (a) i or ii above, provided the insurer does not challenge the Adjusted RBC Report under N.J.A.C. 11:2-39.9; or

3. If the insurer, under N.J.A.C. 11:2-39.9, challenges an Adjusted RBC Report that indicates the event in (a)1i or ii above, 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, a domestic insurer shall within 45 days prepare and submit to the Commissioner an RBC Plan which shall:

1. Identify the conditions which contribute to the company action level event;

2. Set forth corrective actions which the insurer intends to take that are reasonably 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 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/or surplus. (The projections of both new and renewal business shall 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 in each case, if any.

(c) Within 60 days after the submission by a domestic insurer of an RBC Plan or a Revised RBC Plan to the Commissioner, the Commissioner shall notify the insurer whether such Plan shall be implemented or is, in the judgment of the Commissioner, unsatisfactory. If the Commissioner determines that the 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 Plan satisfactory, in the judgment of the Commissioner. The Commissioner may, at his or her discretion, subject to the insurer's right to a hearing under N.J.A.C. 11:2-39.9, specify in the notification that the notification constitutes a regulatory action level event. 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 45 days after the notification from the Commissioner; or

2. If the insurer challenges the notification from the Commissioner under N.J.A.C. 11:2-39.9, within 45 days

after a notification to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(d) 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 a confidentiality provision substantially similar to N.J.A.C. 11:2-39.10(a); 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:

i. Fifteen days after the receipt of notice to file a copy of its RBC Plan or Revised RBC Plan with the state; or

ii. The date on which the RBC Plan or Revised RBC Plan is filed under (b) or (c) above.

Amended by R.1993 d.561, effective November 15, 1993.

See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a).

Amended by R.1997 d.186, effective May 5, 1997.

See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

In (a)1ii, inserted "If a life/health insurer,;" and in (b)1, deleted "in the insurer" following "the conditions".

11:2-39.5 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 an 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;

2. The notification by the Commissioner to an insurer of an Adjusted RBC Report that indicates the event in (a)1 above, provided the insurer does not challenge the Adjusted RBC Report under N.J.A.C. 11:2-39.9;

3. If the insurer, under N.J.A.C. 11:2-39.9, challenges an Adjusted RBC Report that indicates the event in (a)1 above, 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 10 days after the filing date;

5. The failure of the insurer to comply with the filing deadlines set forth at N.J.A.C. 11:2-39.4(b) and (c);

6. Notification by the Commissioner to the insurer that: