

## **SUBCHAPTER B. Insurance Holding Company Systems 28 TAC §7.202**

## **SUBCHAPTER D. Risk-Based Capital and Surplus 28 TAC §7.402**

**1. INTRODUCTION.** The Commissioner of Insurance adopts amendments to §7.202, concerning insurance holding company systems, and to §7.402, concerning risk-based capital and surplus requirements for insurers and health maintenance organizations for year-end 2008. The amendments to §7.402 are adopted without changes to the proposed text published in the July 24, 2009 issue of the *Texas Register* (34 TexReg 4818). The amendments to §7.202 are adopted with two changes to update obsolete citations to the Insurance Code.

**2. REASONED JUSTIFICATION.** The adopted amendments to §7.402 are necessary to regulate risk-based capital and surplus requirements for (i) property and casualty insurers, (ii) life insurance companies, (iii) fraternal benefit societies, (iv) stipulated premium companies that do business in other states, (v) HMOs, and (vi) insurers filing the National Association of Insurance Commissioners (NAIC) Health Blank. These insurers and HMOs are referred to collectively as “carriers” in this adoption. The risk-based capital requirement is a method of ensuring that a carrier has an appropriate level of policyholder surplus after taking into account the underwriting, financial, and investment risks of a carrier. The NAIC risk-based capital formulas provide the Department with a widely used regulatory tool to identify the minimum amount of capital

and surplus appropriate for a carrier to support its overall business operations in consideration of its size and risk exposure.

Section 7.402(d) adopts by reference the NAIC risk-based capital formulas for use by insurers and health maintenance organizations. The amendments to §7.402(d) are necessary to adopt by reference the 2008 NAIC risk-based capital formulas to be used for year-end 2008. These formulas include (i) the 2008 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, (ii) the 2008 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, (iii) the 2008 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, and (iv) the 2008 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies. Copies of the documents adopted by reference are available for inspection in the office of the Texas Department of Insurance, Financial Analysis Division, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, MC 303-1A, 333 Guadalupe, Austin, Texas.

Chapter 823 of the Insurance Code regulates insurance holding company systems. Subchapter B, Chapter 7, of Title 28 of the Texas Administrative Code sets forth the administrative regulations for implementing the Insurance Code Chapter 823. Section 823.015 authorizes the Commissioner to exempt from the provisions of Chapter 823 of the Insurance Code and the administrative regulations in Subchapter B, except the registration requirement, any commercially domiciled insurer if the Commissioner

determines that the insurer has assets physically located in this state or an asset to liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state. Adopted §7.202 implements §823.015. Section 7.202(a) defines the terms that are used in the section. Section 7.202(a)(1) defines the term "Act." The obsolete reference in §7.202(a)(1) to "The Insurance Code, Article 21.49-1, as amended (Senate Bill 233, 62nd Legislature of the State of Texas)" is updated in adopted §7.202(a)(1) to "The Insurance Code, Chapter 823." Section 7.202(a)(15) defines the term "Insurer." The obsolete reference in §7.202(a)(15) to "the Insurance Code, Article 21.49-1" is updated in adopted §7.202(a)(15) to "the Insurance Code, Chapter 823." The Insurance Holding Company System Regulatory Act, formerly Article 21.49-1 of the Insurance Code, was repealed in the nonsubstantive Insurance Code revision, Acts 2001, 77th Legislature, Chapter 1419, §1, effective June 1, 2003. The Act was re-adopted as Chapter 823 in the same nonsubstantive Insurance Code revision.

Adopted §7.202(b) addresses the procedures for the exemption authorized by the Insurance Code §823.015. Amendments are also adopted to the title of Subchapter B and to §7.202(b) to make minor, nonsubstantive changes. These changes are necessary to (i) update references to the "Insurance Holding Company System Regulatory Act," to the "Act," and Insurance Code references to be consistent with the nonsubstantive Insurance Code revision enacted in Acts 2001, 77th Legislature, Chapter 1419, §1, effective June 1, 2003; (ii) update obsolete Texas Administrative

Code references; and (iii) correct the name of the Department's Financial Analysis Division. Specifically, the adopted amendments amend the title of Subchapter B by changing the word "System" to "Systems" and deleting the words "Regulatory Act." The adopted amendments to §7.202(b)(1) replace two statutory references to the "Act:" with "the Insurance Code Chapter 823." The adopted amendments to §7.202(b)(1) replace the statutory reference to the "Act, §2(s)" with "the Insurance Code §823.015." The Act, §2(s) was repealed in the nonsubstantive Insurance Code revision, Acts 2001, 77th Legislature, Chapter 1419, §1, effective June 1, 2003. The Act, §2(s) was re-adopted as §823.015 in the same nonsubstantive Insurance Code revision. The adopted amendments to §7.202(b)(1)(B)(iii) add a reference to §7.402 (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs) and remove the obsolete references to §7.401 and §7.410. The adopted amendment to §7.202(b)(2) replaces the statutory reference to "Article 21.49-2C" with "Chapter 827." Article 21.49-2C was repealed in the nonsubstantive Insurance Code revision, Acts 2001, 77th Legislature, Chapter 1419, §1, effective June 1, 2003. Article 21.49-2C was re-adopted as Chapter 827 in the same nonsubstantive Insurance Code revision.

Simultaneously with the adoption of these amendments, the Department adopts the repeal of §7.401, concerning risk-based capital and surplus requirements for insurers and HMOs for year-end 2006, and §11.809, concerning risk-based capital for HMOs and insurers filing the NAIC health blank for year-end 2006. The adopted repeals of §7.401 and §11.809 are also published in this issue of the *Texas Register*.

**3. HOW THE SECTIONS WILL FUNCTION.** Adopted §7.402(d) adopts by reference the 2008 NAIC risk-based capital formulas for year-end 2008, replacing the year-end 2007 formulas. Insurers and health maintenance organizations will use these formulas to comply with the Department's regulatory requirements pertaining to minimum amounts of capital and policyholder surplus appropriate for carriers to support their overall business operations in consideration of their size and risk exposure. The NAIC formulas provide the insurance industry and the Department with a widely used regulatory standard for this purpose.

Other non-substantive editorial amendments have been made to adopted §7.202 and §7.402 to improve ease of use and readability, including updating of obsolete statutory references and obsolete Texas Administrative Code references.

**4. SUMMARY OF COMMENTS.** The Department did not receive any comments on the published proposal.

**5. STATUTORY AUTHORITY.** The amendments are adopted under the Insurance Code Chapters 404 and 441 and §§441.005, 441.051, 541.401, 822.210, 841.205, 884.206, 823.012, 843.404, 885.401, 982.105, 982.106, and 36.001. Chapters 404 and 441 address the duties of the Department when an insurer's solvency is impaired. Chapter 404 authorizes the Commissioner to set standards for evaluating the financial condition of an insurer. Chapter 441 addresses the prevention of insurer delinquencies. Under §441.005, the Commissioner may adopt reasonable rules as necessary to

implement and supplement the purposes of Chapter 441. Section 441.051 specifies “the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency” and includes certain statutorily specified conditions, including if an insurer’s required surplus, capital, or capital stock is impaired to an extent prohibited by law. Section 541.401 authorizes the Commissioner to adopt reasonable rules necessary to accomplish the purposes of trade practices regulation in Chapter 541. Section 822.210, §841.205, and §884.206 authorize the Commissioner to adopt rules to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 823.012 authorizes the Commissioner to issue rules and orders necessary to implement the provisions of Chapter 823 of the Insurance Code (Insurance Holding Company Systems). Section 843.404 authorizes the Commissioner to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of health maintenance organizations for the protection of enrollees. Section 885.401 requires each fraternal benefit society to file an annual report on the society’s financial condition, including any information the Commissioner considers necessary to demonstrate the society’s business and method of operation, and authorizes the Department to use the annual report in determining a society’s financial solvency. Section 982.105 specifies the capital, stock, and surplus requirements for foreign or alien life, health, or accident insurance companies. Section 982.106 specifies the capital, stock, and surplus requirements for foreign or alien insurance companies other

than life, health, or accident insurance companies. Section 36.001 authorizes the Commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

## **6. TEXT.**

### **SUBCHAPTER B. INSURANCE HOLDING COMPANY SYSTEMS**

#### **§7.202. Definitions.**

(a) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Insurance Code, Chapter 823.

(2) Affiliate--An affiliate of, or person affiliated with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. If such controlling person includes a member of the immediate family of a person, any other person that is an affiliate of such family member shall be deemed to be an affiliate of such controlling person.

(3) Commercially domiciled insurer--A foreign or alien insurer authorized to do business in this state that during its three preceding fiscal years taken together, or any lesser period if it has been licensed to transact business in this state only for that lesser period, has written an average of more gross premiums in this state than it has written in its state of domicile during the same period, and such gross premiums

constitute 30% or more of its total gross premiums everywhere in the United States for that three-year or lesser period, as reported in its three most recent annual statements. To determine if an insurer is a commercially domiciled insurer, the annual average ratio for premium receipts addressed in subparagraphs (A) and (B) of this paragraph shall be calculated, as follows:

(A) total Texas premium for the preceding three fiscal years (or any lesser period if licensed in Texas less than three years) divided by total premium countrywide for the preceding three years; and

(B) total premium in the state of domicile for the preceding three years divided by total premium countrywide for the preceding three years.

(4) Commissioner--The commissioner of insurance of the State of Texas, the commissioner's senior associates, associates or deputies, or their designees, as appropriate.

(5) Control--The term "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, or with members of the person's immediate family, owns, controls, or holds with the power to vote, or if any person other than a corporate officer or director of a person holds proxies



representing 10% or more of the voting securities or authority of any other person, or if any person by contract or agreement is designated as an attorney-in-fact for a Lloyd's plan insurer under the Insurance Code, Chapter 941, or for a reciprocal or interinsurance exchange under the Insurance Code, Chapter 942. This presumption may be rebutted by a showing made in the manner provided by the Act, §823.005, that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect, where a person exercises directly or indirectly either alone or pursuant to an agreement with one or more other persons such a controlling influence over the management or policies of an authorized insurer as to make it necessary or appropriate in the public interest or for the protection of the policyholders of the insurer that the person be deemed to control the insurer.

(6) ~~Controlled insurer~~--An insurer controlled directly or indirectly by a holding company (as a holding company is defined in this section).

(7) ~~Controlled person~~--Any person, other than a controlled insurer, who is controlled directly or indirectly by a holding company (as a holding company is defined in this section).

(8) ~~Controlling producer~~--An insurance broker or brokers or any person, firm, association or corporation domiciled, licensed, or operating in a state other than Texas, when, for any compensation, commission or other thing of value, such person, firm, association or corporation acts or aids in any manner in soliciting, negotiating or

procuring the making of any insurance contract on behalf of an insured other than such person, firm, association or corporation, and who, directly or indirectly:

(A) controls or seeks to control a property and casualty insurer as the term control is defined in paragraph (5) of this subsection; and

(B) writes or places, in any calendar year, an aggregate amount of gross written premiums with such controlled property and casualty insurer which is equal to or greater than 5.0% of the admitted assets of such insurer as reported in such insurer's quarterly statement filed as of September 30th of the prior year. The term "producer" or "controlling producer" as used in these sections is not intended to include an agent or any independent agent acting on behalf of the controlled insurer, licensed pursuant to the Insurance Code, Chapter 21, Subchapter A, and any subagent or representative of the agent, who acts as such in the solicitation of, negotiation for, or procurement or making of an insurance contract, if the agent is not also acting on behalf of an insured as set forth in this paragraph, in the transaction in question. The term "producer" or "controlling producer" as used in these sections is not intended to include an attorney-in-fact acting on behalf of a licensed Lloyd's or licensed reciprocal or interinsurance exchange.

(9) Director--A person elected or appointed as a member of a board of directors responsible for the management of an insurer. The term shall also include an attorney-in-fact of a Lloyds or reciprocal or interinsurance exchange who is charged with responsibility for the management of an insurer.

(10) Executive officer--The chairman of the board of directors, the president, any vice-president of an applicant in charge of a principal business unit, division, or function (such as sales, administration, finance, or underwriting), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for an applicant. Executive officers of subsidiaries may be deemed executive officers of an applicant if they perform such policy-making functions for an applicant.

(11) Foreign insurer--Includes an alien insurer.

(12) Holding company--Any person who directly or indirectly controls any insurer except that it shall not be deemed to include: the United States, a state or any political subdivision, agency or instrumentality thereof or any corporation which is wholly owned, directly or indirectly, by one or more of the foregoing.

(13) Immediate family--A person's spouse, father, mother, children, brothers, sisters, and grandchildren, the father, mother, brothers, and sisters of the person's spouse, and the spouse of the person's child, brother or sister, mother, father, or grandparent.

(14) Insurance holding company system--Consists of two or more affiliated persons, one or more of which is an insurer.

(15) Insurer--Includes all insurance companies organized or chartered under the laws of this state, commercially domiciled insurers, or insurers licensed to do business in this state, including capital stock companies, mutual companies, farm mutual insurance companies, title insurance companies, fraternal benefit societies, local

mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual insurance companies, Lloyds' plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies and group hospital service companies, and any other entity which is made subject to the Insurance Code, Chapter 823 by applicable law, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(16) Person--An individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(17) Security holder--Of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing. The term "debt obligation" shall not include trade, commercial, or open accounts, matured claims, or agents' commissions.

(18) Subsidiary--Of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(19) Ultimate controlling person--That person which is not controlled by another person (as defined in this subsection).

(20) Voting security--Any security or other instrument giving or granting to the holder the power to vote at a meeting of shareholders of a person for or against the election of directors or any other matter involving the direction of the management and policies of such person, or any other security or instrument which the Texas Department of Insurance deems to be of similar nature including, but not limited to, those described in such rules and regulations as the Texas Department of Insurance may prescribe in the public interest as a voting security.

(b) Exemption--Commercially Domiciled Insurer.

(1) The commissioner may exempt from the provisions of the Insurance Code Chapter 823 and these sections, except the registration requirement, any commercially domiciled insurer if the commissioner determines that the insurer has assets physically located in this state or an asset to liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state. The exemption granted under this subsection shall set forth the specific criteria under which it is granted and shall be subject to annual review. The commissioner may, after notice and opportunity for hearing, rescind an exemption granted to a commercially domiciled insurer under the provisions of the Insurance Code Chapter 823 and these sections. A rescission of an exemption shall set forth the rationale for the rescission. Requests for an exemption under this subsection shall be filed with the Financial Analysis Division, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099. The request must contain a

signed and notarized affidavit of an executive officer of the insurer that, should the exemption be granted, the insurer has agreed to notify the Financial Analysis Division within ten days after it no longer meets the criteria set out in this section on which the exemption is based. In determining that a commercially domiciled insurer has sufficient assets to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to policyholders of this state, the commissioner shall give consideration to the matters contacted in subparagraphs (A) - (D) of this paragraph in connection with an exemption requested under the Insurance Code §823.015, and these sections.

(A) Assets in Texas, which are either:

(i) permanent, free, and unencumbered and physically located in Texas in an amount equal to the total unpaid losses attributable to Texas risks; or

(ii) qualifying authorized investments under the Insurance Code comprising 20% of the insurer's admitted assets and physically located in Texas.

(B) Adequacy of policyholder surplus, based upon:

(i) an asset-to-liability ratio of two to one, if the insurer is a property and casualty insurer;

(ii) an asset-to-liability ratio of one and one-half to one, if the insurer is a life, accident and health insurer;

(iii) the insurer having capital and surplus equal to 250% of the minimum risk-based capital described in §7.402 of this chapter (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs); or

(iv) the insurer having total capital and surplus of at least \$50 million.

(C) Consideration may be given to financial conditions specified in §8.3 of this title (relating to Hazardous Conditions) to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state.

(D) Consideration may be given to other positive factors regarding an insurer's operations or conduct.

(2) The provisions of this subchapter shall not apply to a foreign or alien insurer if the commissioner has approved a total withdrawal plan from writing all lines of insurance for such insurer under the Insurance Code Chapter 827.

## **SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS**

### **§7.402. Risk-Based Capital and Surplus Requirements for Insurers and HMOs**

(a) Purpose. The purpose of implementing a risk-based capital and surplus provision is to require a minimum level of capital and surplus to absorb the financial, underwriting, and investment risks assumed by an insurer or a health maintenance organization.

(b) Scope.

(1) Life companies. This section applies to any insurer authorized to do business in Texas as an insurance company that writes or assumes a life insurance or annuity contract or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or any combination of these policies, in an amount that exceeds \$10,000 including: capital stock companies, mutual life companies, and stipulated premium companies doing business in other states. Fraternal benefit societies are subject to their own separate risk-based capital instructions as provided in subsection (d)(2) of this section. This section does not apply to stipulated premium companies only doing business in Texas.

(2) Property and casualty companies. This section applies to all domestic, foreign, and alien property and casualty companies subject to the provisions of the Insurance Code §§822.210 and 982.106, excluding monoline financial guaranty insurers, monoline mortgage guaranty insurers, title insurers, and those insurers that write business only in this state and are not required by law to have capital stock.

(3) Health Maintenance Organizations. This section applies to all domestic and foreign health maintenance organizations subject to the provisions of Insurance Code Chapter 843 and insurers that file the NAIC Health Annual Statement Blank with the department under department filing requirements.

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.



(1) Annual financial statement--The annual statement blank to be used by insurance companies, as promulgated by the NAIC and as adopted by the commissioner.

(2) Authorized control level--The result determined under the RBC formula in accordance with the RBC instructions.

(3) NAIC--National Association of Insurance Commissioners.

(4) RBC--Risk-based capital.

(5) RBC formula--NAIC risk-based capital formula.

(6) RBC instructions--NAIC Risk-Based Capital Report Including Overview and Instructions for Companies.

(7) Total adjusted capital--An insurer's adjusted statutory capital and surplus as determined under the RBC formula in accordance with the RBC instructions.

(d) Adoption of RBC formula by reference. The commissioner adopts by reference the following:

(1) The 2008 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(2) The 2008 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(3) The 2008 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(4) The 2008 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(e) Filing requirements.

(1) All companies, except fraternal, subject to this section are required to file both a paper copy and an electronic version with the NAIC in accordance with and by the due date specified in the RBC instructions.

(2) Fraternal shall maintain a paper copy of the report for review by the department.

(f) Conflicts. In the event of a conflict between the Insurance Code, any rule of the department or any specific requirement of this section, and the RBC formula and/or the RBC instructions, the Insurance Code, rule or specific requirement of this section shall take precedence and in all respects control. It is the express intent of this section that the adoption by reference of the NAIC Risk-Based Capital Reports Including Overview and Instructions for Companies does not repeal or modify or amend any rule of the department or any provision of the Insurance Code.

(g) Actions of commissioner. The level of risk-based capital is calculated and reported annually. Depending on the results computed by the risk-based capital formula, the commissioner of insurance may take a number of remedial actions, as considered necessary. The ratio result of the total adjusted capital to authorized control level risk-based capital requires the following actions related to an insurer within the specified ranges:

(1) An insurer reporting total adjusted capital of 150 percent to 200 percent of authorized control level risk-based capital institutes a company action level under which the insurer must prepare a comprehensive financial plan that identifies the

conditions that contribute to the company's financial condition. The plan must contain proposals to correct areas of substantial regulatory concern and projections of the company's financial condition, both with and without the proposed corrections. The plan must list the key assumptions underlying the projections and identify the concerns associated with the insurer's business. The RBC plan is to be submitted within 45 days of filing the RBC report with the NAIC. After review, the commissioner will notify the company if the plan is satisfactory or not satisfactory. In the event the commissioner notifies the company that the plan is not satisfactory, the company shall prepare a revised plan and submit it to the commissioner. Failure to file this comprehensive financial plan triggers the next lower action level described in this subsection.

(2) An insurer reporting total adjusted capital of 100 percent to 150 percent of authorized control level risk-based capital triggers a regulatory action level initiative. At this action level, an insurance company is also required to file an RBC plan or revised RBC plan within 45 days of filing the RBC report with the NAIC, and the commissioner is required to perform any examinations or analyses to the insurer's business and operations that is deemed necessary. The commissioner may issue orders specifying corrective actions to be taken or may require other appropriate action.

(3) An insurer reporting total adjusted capital of 70 percent to 100 percent of authorized control level risk-based capital triggers an authorized control level. In addition to the remedies available at the higher action levels, the commissioner may take other action deemed necessary, including initiating a regulatory intervention to place an insurer under regulatory control.

(4) An insurer reporting total adjusted capital of less than 70 percent of authorized control level triggers a mandatory control level which subjects the insurer to one of the following actions:

(A) being placed in supervision or conservation;

(B) being determined to be in hazardous financial condition as provided by the Insurance Code Chapter 404 and §8.3 of this title (relating to Hazardous Conditions) regardless of percentage of assets in excess of liabilities;

(C) being determined to be impaired as provided by the Insurance Code §§404.051 and 404.052 or 841.206; or

(D) any other applicable sanctions under the Texas Insurance Code.

(5) A life insurer subject to this section is subject to a trend test described in the RBC formula, if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 250 percent. Any life insurer that trends below 190 percent of total adjusted capital to authorized control level risk-based capital triggers the company action level.

(6) A property and casualty insurer subject to this section is subject to a trend test if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent. If the result of the trend test as determined by the formula is "YES", the insurer triggers regulatory attention at the company action level.

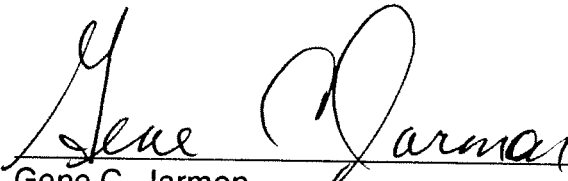
(h) Prohibition on announcements. Except as otherwise required under the provisions of this section, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, 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 any component derived in the calculation, by any insurer, agent, broker or the person engaged in any manner in the insurance business would be misleading and is, therefore, prohibited. Any violation of this subsection may be considered a violation of Insurance Code Chapter 541, regulating unfair methods of competition and unfair or deceptive acts or practices.

(i) Prohibition on use in ratemaking. The RBC instructions and any related filings are intended solely for use by the commissioner in monitoring the solvency of insurers subject to this section and in taking 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 that an insurer or any affiliate is authorized to write.

(j) Limitations. In no event shall the requirements of this section reduce the amount of capital and surplus otherwise required by the Insurance Code, Department rules, or by authority of the commissioner of insurance as provided by law.


**CERTIFICATION.** This agency hereby certifies that the adopted amendments have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas on October 5, 2009.


  
Gene C. Jarmon  
General Counsel and Chief Clerk

**IT IS THEREFORE THE ORDER** of the Commissioner of Insurance that the amendments to §7.202(b) specified herein, concerning insurance holding company systems, and the amendments to §7.402 specified herein, concerning risk-based capital and surplus for insurers and health maintenance organizations, are adopted.

**AND IT IS SO ORDERED.**

  
MIKE GEESLIN  
COMMISSIONER OF INSURANCE

ATTEST:

  
Gene C. Jarmon  
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. 09-0819