

22nd November, 2011

Dear Class 3B/Class 4 insurers:

Re: INSURANCE (PRUDENTIAL STANDARDS) (CLASS 4 AND CLASS 3B SOLVENCY REQUIREMENT) AMENDMENT RULES 2011 (“the Rules”)

The Bermuda Monetary Authority (“the Authority”) wishes to thank the stakeholders for their continued support of our key initiatives. In June 2011, the Authority published the Rules in draft for consultation. The Authority is committed to engaging our stakeholders in such initiatives as we strive to achieve our supervisory objectives, while retaining Bermuda’s role as a key player in international fora.

The Authority’s responses to the key substantive comments that were received are outlined below.

Market Comment	The Authority’s Response
It was recommended that the Authority hold market meetings on the results of the Bermuda Solvency Capital Requirement (“BSCR”) and the trial run filings.	The Authority generally holds market meetings where there are material revisions or additions to filings. The Authority will not necessarily hold meetings where filings remain largely unchanged; however, a BSCR market report is normally published annually.
Confirmation was sought with respect to whether the “material intra-group transactions” in the Rules pertain only to those affecting the Bermuda licensed insurer.	This is correct. For the legal entity regime covered by the Rules, only those material intra-group transactions affecting a Bermuda licensed entity are to be reported.
Examples were requested for “material intra-group transactions”.	Any intra-group transaction that meets the criteria outlined in the Rules is a material intra-group transaction. Examples may include loans, guarantees, service agreements, etc. It should be noted that, although they are intra-group transactions that must be reported, reinsurance and retrocessional arrangements are not defined as “material intra-group transactions” by the Rules. These must be reported at an aggregate level regardless of amount (i.e. these are required separately, and are not subject to the minimum threshold under the “material intra-group transaction” definition).

Market Comment	The Authority's Response
Inquiry was made with respect to whether the Authority will address in guidance how it plans to remedy the fees paid for internal model approvals in the event that the approval is revoked.	Response on this matter will be addressed as part of the Fees Consultation.
Support was expressed in terms of the Authority receiving quarterly management accounts for Bermuda insurers of non-Bermuda groups, but one response expressed that intra-group transactions and Material Concentrations (Top Ten Exposures) should be obtained on a quarterly basis from the Group-wide Supervisor ("GWS") instead of the Bermuda licensed entities themselves.	The Authority disagrees. There may be a variety of reasons that the GWS does not have the information for a Bermuda licensed entity. For example, a similar materiality threshold for the group may not yield the same legal entity transactions since the group capital may be higher. This is best obtained from the Bermuda licensed entity.
Clarity was sought in terms of the quarterly filing dates.	The Authority's proposal was that given a fiscal year that corresponds with a calendar year, quarterly filing would be January, July and October. This matter was raised at the recent Bermuda groups' post-mortem meeting, and industry preference was expressed for May, August and November. The legislation will be updated to reflect this preference; however, the Authority will allow additional comment on a quarterly cycle that works best. In any case, the financial statements submitted must reflect a financial position that is no older than two months from the date of submission.
One comment expressed that, rather than indicating that quarterly unaudited "financial statements" should be filed, the legislation should require quarterly unaudited "management accounts"	The Authority disagrees. Financial statements is a broader and more precise term for what is intended to be filed. Financial statements may include management accounts, but other statements (that are not strictly management accounts) filed publicly. A given entity may have management accounts that follow conventions that are difficult to understand.

Market Comment	The Authority's Response
Confirmation was sought in terms of whether a quarterly filing under the Rules only pertains to members of non-Bermuda groups.	Quarterly filing under the Rules pertains to all Class 4 and Class 3B insurers that are not members of a group for which the Authority is the Group Supervisor.
Inquiry was made in terms of whether companies still have to file their Ten Largest Exposures where these do not meet materiality thresholds (e.g. 10% of statutory capital).	The Top Ten Largest Exposures are required regardless of exposure.
It was highlighted that the meaning of “executive management” requires a definition.	The Rules will be updated with the terms “Chief Executive and Senior Executive” to be consistent with the Insurance Act and Insurance Code of Conduct.
One response inquired in terms of whether Subparagraphs 6(2)(d) and 6AB(2)(b)(i) are duplicative.	Subparagraph 6(2)(d) pertains to the annual filing, whereas subparagraph 6AB(2)(b)(i) relates to the other quarterly filing dates. It is intended that there will be 4 filings per year.
Clarification was sought with respect to the meaning of a “group’s internal controls reside”.	The legislation will be updated to use the term group control functions, which include finance, actuarial and risk management functions at the group level.
Comment was made that there should be a maximum date for the retention of information related to the Probable Maximum Loss.	The Rules require that the Capital and Solvency Return should be retained for a period of five years (Subparagraph 6(5) of the Rules). Given Schedule V requiring this additional information is a component of the Capital and Solvency Return, this additional documentation should also be retained for five years. The legislation will be amended to make this more specific.

Market Comment	The Authority's Response
A definition for double or multiple gearing was requested.	Double or multiple gearing describes a situation where the same capital is used simultaneously as a buffer against risk in two or more legal entities. For example, a parent could provide guarantees to subsidiaries (for statutory capital purposes) that exceed the parent's available capital. Accordingly, there is duplicate use of capital for statutory purposes. Another example could be that a parent injects capital in a subsidiary. The subsidiary then turns around and invests some of the capital in the parent and the two account for it in their respective regulatory filings in a manner that the aggregate exceeds the actual capital available to the parent (i.e. "internal creation of capital").

The Authority again would like to thank stakeholders for their comments on the Rules. We are committed to working with the industry and other stakeholders to ensure a result that is in the best interest of the Bermuda market, taking into account the costs to the industry.

Please feel free to contact the Authority if you have any questions.