



NYCIRB

New York Compensation
Insurance Rating Board

CONSTITUTION

Adopted May 20, 1914
As Last Amended June 22, 2017
Effective, September 1, 2017

**New York Compensation
Insurance Rating Board**
733 Third Avenue
New York, New York 10017
(212) 697-3535

**ARTICLE I
NAME**

The name of this organization shall be the New York Compensation Insurance Rating Board, hereinafter referred to as the Rating Board.

**ARTICLE II
ORGANIZATION**

The Rating Board shall be a voluntary, non-profit, unincorporated association of insurers.

**ARTICLE III
OFFICES**

The Rating Board shall maintain its principal office at such place in the State of New York as the Board of Governors shall determine. Other offices may be established and maintained when and wherever required.

**ARTICLE IV
DEFINITIONS**

The term “workers’ compensation insurance” whenever hereinafter used, shall include workers’ compensation and employers liability insurance but shall not include employers liability insurance on residence and farm employees written in conjunction with other liability insurance.

**ARTICLE V
OBJECTS**

The objects of the Rating Board shall be as follows, all with respect to workers’ compensation insurance, and to the extent permitted by law:

- (a) for such insurance as is subject to regulation by the New York State Superintendent of Financial Services, to establish, maintain and administer advisory manuals of loss costs, rules, classifications, and rating plans, to develop policy and other forms, and to make filings thereof with the regulatory authority;
- (b) to collect, compile and analyze statistical and other data as directed by the New York State Superintendent of Financial Services, or as otherwise permitted by law, and to act as the licensed statistical provider for the insurance regulatory authority at their request and

designation and as may be necessary or desirable to accomplish the objects of the Rating Board;

- (c) to inspect and classify risks rated by the Rating Board and to make test audits of the books and records thereof;
- (d) to help bring about reduction in the number and severity of occupational accidents and diseases by devising rating systems which encourage such reduction;
- (e) to furnish, upon request to any insured affected by a classification or advisory loss cost made by the Rating Board, all pertinent information as to such classification and advisory loss cost, and to provide reasonable means whereby any person aggrieved by the application of a classification or rating system filed by the Rating Board may be heard;
- (f) to cooperate with state and with other public authorities and with other appropriate organizations and insurers in the development and application of loss costs and rating plans and in the development of policy and other forms which include workers' compensation insurance;
- (g) to foster, advance, advocate and monitor the use by members of advisory loss costs, manuals and rating plans and policy provisions and other forms filed by the Rating Board with and approved by the regulatory authority except, to the extent that any such member may, in accordance with applicable provisions of law, obtain the right from the regulatory authority to use deviations from such filings made by the Rating Board;
- (h) to cooperate with public authorities, other persons and organizations in activities intended to achieve the aims and advantages of the workers' compensation system;
- (i) to provide legislative cost analyses to stakeholders, including, but not limited to, legislators, regulators, insurer members, and interest groups;
- (j) to collect, compile and provide workers' compensation data and perform other data related services on behalf of government authorities through contractual agreements entered into between the Rating Board and such government authorities;
- (k) to the extent permitted by law or at the direction of the New York State Superintendent of Financial Services, to provide data collection, data compilation and other services to persons or organizations who are not members of the Rating Board and who may operate in jurisdictions other than the State of New York; and
- (l) to do everything necessary or appropriate for the accomplishment of the objects herein set forth.

ARTICLE VI
MEMBERS AND SUBSCRIBERS

1. Eligibility.

- (a) Any insurer authorized to write workers' compensation insurance in the State of New York, including the State Insurance Fund, shall be entitled to membership and to receive the services of the Rating Board without discrimination upon accepting the obligations of membership.
- (b) No insurer under the same management as one or more other insurers may be a member unless all eligible insurers, writing workers' compensation insurance in the State of New York under such management, are or become members. No Public Member appointed to the Board of Governors shall be a member of the Rating Board.

2. Member Obligations.

Each member of the Rating Board shall:

- (a) comply with the provisions of this Constitution and with all procedures duly promulgated and made hereunder;
- (b) report statistical and other data to the Rating Board as directed by the New York State Superintendent of Financial Services or as otherwise permitted by law;
- (c) pay all proper fees, charges, assessments, and fines levied against it; and
- (d) execute such authorizations and other documents as may be required by the Rating Board to effectuate its objects.

3. Member Resignation.

A member may resign from the Rating Board at any time for any reason, provided:

- (a) the resignation shall not become effective until at least ninety days after written notice of resignation is filed with the Rating Board;
- (b) until such effective date of resignation, the member shall have every right and be under every obligation established by this Constitution and all regulations made hereunder;
- (c) such resigned member shall have no rights whatever to any asset of the Rating Board;

(d) such resigned member shall report such statistics or other data to the Rating Board as the New York State Superintendent of Financial Services may direct on its policies which became effective during its membership; and

(e) such resigned member shall not be relieved of liability for fees, charges, assessments, or fines incurred during its membership.

4. Failure to Fulfill Obligations.

A member may continue as such only so long as the obligations attendant upon such status are fulfilled.

In the event that a member fails to fulfill its obligations under this Constitution, including the failure to pay all proper fees, charges, assessments and fines levied against it, the President may present a Proposed Resolution to the Board of Governors at any meeting thereof or by email, detailing the alleged conduct, and proposing termination of membership, additional fines, or other remedial or corrective action.

The Board of Governors shall afford the member in question an opportunity to appear before it for a hearing to justify or otherwise explain its conduct. The President shall cause the Proposed Resolution and a Notice of Hearing to be provided to the member in question, by either overnight mail or email, at least twenty days prior to the hearing. A vote by the Board of Governors on the Proposed Resolution shall not be taken until the member in question has been provided with the requisite notice and afforded an opportunity to appear at a hearing, and shall not be adopted unless there are a majority of affirmative votes.

Following the hearing, the Board of Governors may modify the remedial or corrective action set forth in the Proposed Resolution to reflect its findings.

If the Board of Governors votes to terminate membership, such member:

(a) shall have no rights whatever to any asset of the Rating Board;

(b) shall report such statistics or other data to the Rating Board, as the New York State Superintendent of Financial Services may require, on its policies which became effective during its membership; and

(c) shall not be relieved of liability for fees, charges, assessments and fines incurred during its membership.

5. Subscribers.

There shall be a class of affiliation with the Rating Board designated as “subscribers.” Subscribers shall enjoy certain rights to the Rating Board’s products and services as determined by the Board of Governors, but shall not otherwise be entitled to the benefits of membership under this Constitution. The Board of Governors may, at its discretion, adopt rules governing subscribership and the benefits and conditions relating thereto, including rules relating to subscribership agreements, fees, and rights to the Rating Board’s products and services.

**ARTICLE VII
FEES, ASSESSMENTS AND EXPENSES**

1. Each member shall pay an annual fee as determined by the Board of Governors. Any change in the annual fee shall be approved by a majority of the membership in attendance at an Annual Meeting or Special Meeting of the Rating Board.
2. Each member shall pay, as and when demanded, the charges levied against it for special services and materials.
3. Services which may be rendered for persons or organizations not members shall be subject to reasonable charges as determined by the Board of Governors or the President, upon notice to the Chair of the Board of Governors.
4. The balance of the net expenses incurred by the Rating Board shall be levied upon the members pro rata according to their respective proportions of the New York workers’ compensation premiums, as defined by the Board of Governors, of all members for the calendar year in which such expenses have been incurred.
5. Preliminary assessments may be made according to the best information available. Such assessments shall be adjusted when the premium figures for the current year become available.

**ARTICLE VIII
COMMITTEES**

1. Representation on Committees.

At the Annual Meeting of the Rating Board, or at a Special Meeting called for such purpose, all private insurer members shall together elect six members to serve as a Nominating Committee, which shall have the duty at the next succeeding Annual Meeting of the Rating Board, or at a Special Meeting called for such purpose, of nominating

members for election to the Board of Governors, Actuarial Committee, and Underwriting Committee. The Nominating Committee, so elected, shall elect a member to serve as its Chair, and another member to serve as its Vice Chair. The President shall solicit interest in serving on the Nominating Committee from among the membership.

Whenever practicable, consideration shall be given to the various types of insurers. The individuals representing private insurer members of the Board of Governors, Actuarial Committee, Underwriting Committee, Nominating Committee, Medical and Claims Committee, and Administration Committee shall be salaried or contracted personnel of such private insurers.

The State Insurance Fund may select a representative to serve on each standing committee.

2. Board of Governors.

(a) *Composition*

The Board of Governors shall be comprised of nine voting members, including four members representing private insurers authorized to write workers' compensation insurance in New York State, one member representing the State Insurance Fund, and four Public Members representing the New York State Department of Financial Services, the New York State Workers' Compensation Board, the American Federation of Labor – Congress of Industrial Organizations of New York State ("AFL-CIO"), and the Business Council of New York State, Inc. ("Business Council").

(b) *Appointment of Public Members*

One Public Member of the Board of Governors shall be appointed by the New York State Superintendent of Financial Services, and the remaining three Public Member appointments shall be subject to the approval of the New York State Superintendent of Financial Services. Each Public Member shall serve for a term of two years, commencing upon the date of approval by the New York State Superintendent of Financial Services unless the Superintendent directs otherwise, and until his or her successor shall have been appointed and approved, provided that the appointing entity appoints a successor member within one hundred twenty days of the expiration of the term of office. Public Members shall not be employed by, or serve as an officer or director of, an insurer authorized to write workers' compensation insurance in New York State, or any parent, subsidiary, or affiliate thereof.

(c) *Election of Insurer Members*

At each Annual Meeting of the Rating Board, or at a Special Meeting called for such purpose, all private insurer members shall together elect members to the Board of Governors to serve for two years. Each two year term shall commence on the day of the first meeting of the Board of Governors of the calendar year following election, which shall be held within the first 60 days of the new year. Similarly, each two year

term shall expire the day prior to the first meeting of the Board of Governors of the calendar year two years subsequent to the commencement of the term. The State Insurance Fund shall be regarded as having been elected to the Board of Governors at each Annual Meeting of the Rating Board, or at a Special Meeting called for such purpose.

(d) *Nominations and Election of Chair and Vice Chair*

Nominations to the Board of Governors will be submitted to the membership for election by the Nominating Committee. The members of the Board of Governors shall elect a Chair and a Vice Chair. Only insurer members of the Rating Board are eligible to serve as Chair or Vice Chair. The Chair, or in his/her absence the Vice Chair, or in the absence of both, a Chair pro-tem, elected by the members present, shall act as Chair of every meeting of the Board of Governors.

(e) *Purpose and Authority*

The Board of Governors shall have overall authority over the Rating Board's activities including control and supervision over its finances and authority to establish budgets, approve assessments and impose fines on members of the Rating Board. It shall appoint committees as it may deem necessary or advisable, and shall have the power to assume jurisdiction over any of the activities of any committee. Committees shall have the powers and duties herein specified, unless any alterations or additions to such powers and duties are made by the Board of Governors consistent with its authority under this Constitution and governing law.

The Board of Governors shall have full authority to accept, reject or modify any action by a committee. Further, all filings approved and ordered by the Underwriting Committee shall be reviewed by the Board of Governors if (i) two members of the Board of Governors make a request, in writing, to the President that a proposed filing receive Board of Governors' approval; (ii) the President, in his or her discretion, refers a proposed filing to the Board of Governors for approval; or (iii) a proposed filing does not receive approval by at least six of the nine voting members of the Underwriting Committee.

Notwithstanding Section 8 of this Article, if the New York State Superintendent of Financial Services directs the Rating Board to amend a filing and refile it, the Rating Board may act on such direction without an additional committee vote, and will provide notice of such refiling to the relevant committee prior to refiling; provided, however, that any amendment to a loss cost filing requires a majority of affirmative votes of the Board of Governors.

The Board of Governors shall be considered a "committee" for purposes of this Constitution unless otherwise specified.

3. Actuarial Committee.

(a) *Composition*

The Actuarial Committee shall be comprised of eleven voting members, including nine members representing private insurers authorized to write workers' compensation insurance in New York State, one member representing the State Insurance Fund, and one member appointed jointly by the AFL-CIO and Business Council ("Public Actuary"). Private insurer representatives on the Actuarial Committee must be (i) credentialed members of the Casualty Actuarial Society (*i.e.*, FCAS or ACAS), in good standing and familiar with workers' compensation, or (ii) individuals who have gained a comprehensive knowledge of workers' compensation ratemaking with at least five years of experience in the workers' compensation field.

(b) *Public Actuary*

The Public Actuary shall be a casualty actuary who is a credentialed member of the Casualty Actuarial Society (*i.e.*, FCAS or ACAS). The (i) appointment of the Public Actuary, and (ii) his or her compensation and terms and conditions of retention, which shall be reasonable and customary for such professional and paid by the Rating Board, shall be subject to the approval of the New York State Superintendent of Financial Services. The Public Actuary shall have the same access to the Rating Board's data and documents as the other members of the Actuarial Committee.

(c) *Election of Insurer Members*

At each Annual Meeting of the Rating Board, or at a Special Meeting called for such purpose, all private insurer members shall together elect nine private insurer members to the Actuarial Committee to serve a one year term. Each term shall commence on January 1 and expire on December 31 of each year. The State Insurance Fund shall be regarded as having been elected to the Actuarial Committee at each Annual Meeting of the Rating Board, or at a Special Meeting called for such purpose.

(d) *Nominations and Selection of the Chief Actuary*

Nominations to the Actuarial Committee will be submitted to the membership for election by the Nominating Committee. The Board of Governors shall select a chief actuary of the Actuarial Committee, who shall serve at the pleasure of the Board of Governors and whose terms and conditions of employment shall be approved by the Board of Governors.

(e) *Purpose and Authority*

The principal functions of the Actuarial Committee are: (i) to advise the Underwriting Committee and the Board of Governors with respect to the development of advisory manuals, rating plans and loss costs; (ii) oversee ratemaking and other data compilation methodologies; (iii) assist the New York State Superintendent of Financial Services in the collection and exchange of data as directed; and (iv) oversee research into workers' compensation insurance cost drivers and other associated public policy concerns as directed by the Board of Governors or Underwriting Committee.

The Actuarial Committee shall have the power to appoint, from time to time, such committees as it may deem necessary or advisable to assist it in the performance of its duties. Such committees shall have such duties and powers as are assigned to them by the Actuarial Committee.

4. Underwriting Committee.

(a) *Composition*

The Underwriting Committee shall be comprised of nine voting members, including four members representing private insurers authorized to write workers' compensation insurance in New York State, one member representing the State Insurance Fund, and four Public Members representing the New York State Department of Financial Services, the New York State Workers' Compensation Board, the AFL-CIO, and the Business Council. The Underwriting Committee may also include up to five additional non-voting private insurer members. Representatives of private insurer members must have a comprehensive knowledge of workers' compensation insurance underwriting practices with at least five years of experience in the workers' compensation field.

(b) *Appointment of Public Members*

The four Public Members shall serve two year terms, each commencing upon the date of appointment.

(c) *Election of Insurer Members and Non-Voting Members*

At each Annual Meeting of the Rating Board, or at a Special Meeting called for such purpose, all private insurer members shall together elect (i) four voting members to the Underwriting Committee, and (ii) up to five non-voting members to the Underwriting Committee, to serve a one year term. Each term shall commence on January 1 and expire on December 31 each year. The State Insurance Fund shall be regarded as having been elected to the Underwriting Committee at each Annual Meeting of the Rating Board, or at a Special Meeting called for such purpose.

(d) *Nominations*

Nominations to the Underwriting Committee will be submitted to the membership for election by the Nominating Committee.

(e) *Purpose and Authority*

The Underwriting Committee shall have full authority to address matters with respect to payroll audits and other employer related issues, adopt policy forms and endorsements, make advisory loss costs, classifications, rating plans, statistical plans and rules relating thereto, and order filings thereof to be made by the President, provided, however, that any such policy form, endorsement, loss cost, classification, plan or rule adopted by the Underwriting Committee may be subject to review or modification by the Board of Governors, consistent with Section 2 of this Article, either prior to the filing thereof or prior to action thereon by the New York State Superintendent of Financial Services.

The Underwriting Committee shall have the power to appoint, from time to time, such committees as it may deem necessary or advisable to assist it in the performance of its duties. Such committees shall have such duties and powers as are assigned to them by the Underwriting Committee.

The Underwriting Committee shall provide a means whereby any person affected by a classification or loss cost made by the Rating Board may be heard in person or by his/her authorized representative on an application for a change in such classification or loss cost.

5. Medical and Claims Committee.

(a) *Composition*

The Medical and Claims Committee shall be comprised of no less than five but no greater than seven private insurer members, and such members shall be appointed by the Board of Governors. In addition, there shall be one member representing the State Insurance Fund, and one member representing the New York State Workers' Compensation Board.

(b) *Appointment of Committee Members*

Each private insurer member shall serve a one year term commencing upon appointment by the Board of Governors at the first meeting of the Board of Governors of the calendar year, which shall be held within the first 60 days of the new year, and expiring on the day prior to the first meeting of the Board of Governors of the subsequent calendar year. The State Insurance Fund shall be regarded as having been appointed to the Medical and Claims Committee each year. The New York State Workers' Compensation Board will serve as a standing member of the Medical and Claims Committee.

(c) *Purpose*

The principal function of the Medical and Claims Committee is to study the administration of claims under the Workers' Compensation Law and medical, surgical and hospital care of injured workers.

6. Administration Committee.

(a) *Composition*

The Administration Committee shall be comprised of five members, including the four private insurer members serving on the Board of Governors, and the State Insurance Fund.

(b) *Appointment of Committee Members*

Each member shall serve a one year term commencing upon appointment by the Board of Governors at the first meeting of the Board of Governors of the calendar year, which shall be held within the first 60 days of the new year, and expiring on the day prior to the first meeting of the Board of Governors of the subsequent calendar year. The State Insurance Fund shall be regarded as having been appointed to the Administration Committee each year.

(c) *Purpose*

The principal function of the Administration Committee is to review the financial activity of the Rating Board and review, advise and approve the proposed budget in advance of the Board of Governors.

7. Committee Meetings.

A meeting of any committee may be called at any time by the President for any reason. A meeting of any committee shall be called by the President upon written request of two members of such committee.

Any one or more members of any committee may participate in a meeting of such committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at the meeting.

8. Action Without Committee Meeting.

Any action required or permitted to be taken by any committee may be taken without a meeting if a majority of members of the committee consent in writing to the action. The resolution and the written consents thereto by the members of the committee shall be filed with the meeting minutes of the subsequent meeting of the committee.

9. Quorum.

A majority of the members of any committee shall constitute a quorum.

10. Vacancies.

(a) *Board of Governors*

Public Member vacancies on the Board of Governors shall be filled by the appointing body and approved by the New York State Superintendent of Financial Services. Private insurer member vacancies shall be filled by the Nominating Committee with an eligible private insurer member; provided, however, that if the time remaining in the outgoing member's term is less than 22 months, such interim appointment shall not impact the replacement member's eligibility to serve another term on the Board of Governors at the conclusion of the interim appointment.

(b) *Actuarial Committee*

A vacancy of the Public Actuary member of the Actuarial Committee shall be filled by the appointing bodies, *i.e.*, the AFL-CIO and the Business Council, and approved by the New York State Superintendent of Financial Services. Private insurer member vacancies shall be filled by the Nominating Committee with an eligible private insurer member.

(c) *Underwriting Committee*

Public Member vacancies on the Underwriting Committee shall be filled by the appointing body. Private insurer member vacancies shall be filled by the Nominating Committee with an eligible private insurer member.

(d) *Other Committee Vacancies*

Vacancies in committees appointed by the Board of Governors, including the Medical and Claims Committee and the Administration Committee, shall be filled by vote of the Board of Governors. Vacancies in committees appointed by the Actuarial Committee shall be filled by vote of the Actuarial Committee. Vacancies in committees appointed by the Underwriting Committee shall be filled by vote of the Underwriting Committee.

**ARTICLE IX
PRESIDENT**

1. The President shall be the chief executive officer of the Rating Board under the general supervision of the Board of Governors and he/she shall have general control of all of the employees of the Rating Board and of all the affairs of the Rating Board not herein delegated to committees.

2. The President shall be a member ex-officio of all committees of the Rating Board but shall have no right to vote. He/she or his/her designee shall preside at all meetings of the Rating Board and at all committees except the Board of Governors. Whenever he/she does not preside at any meeting of the Rating Board or any committee, an officer of the Rating Board designated by the President or, if he/she fails to make such designation, an officer of the Rating Board chosen by the meeting shall preside.
3. The President shall prepare a budget and submit same to the Board of Governors for approval. The budget shall consist of an estimate of the amount of necessary expenses of the Rating Board for the next succeeding fiscal period, together with an estimate of the anticipated receipts from all sources for the same period, together with the amount of moneys required to be assessed upon, and collected from, the members. Upon the order of the Board of Governors, he/she shall make such assessments as may be necessary to maintain the work of the Rating Board and the attainment of its objects.

No liability for expenditures shall be incurred unless funds to meet such liabilities have been provided in the budget, amendments thereto, or at the direction of the Board of Governors. Salaries of all employees, other than officers, shall be fixed by the President within the limits and conditions prescribed by the Board of Governors.

The President and such other officers and employees as may be required by the Board of Governors shall be bonded in the amounts specified by the Board of Governors.

4. The President shall cause to be recorded the transactions of the Rating Board and the minutes of all committees. He/she shall collect or cause to be collected all fees, dues, fines and assessments and other moneys payable to or belonging to the Rating Board. All such moneys shall be deposited in a bank or banks designated by the Board of Governors to the credit of the Rating Board, and he/she shall cause to be kept proper accounts of all moneys and transactions of the Rating Board. Funds of the Rating Board shall be disbursed in payment only of such expenses as are approved in writing by the President or by order of the Board of Governors.

ARTICLE X RETENTION OF RECORDS

The Rating Board shall maintain records of its member companies, which shall include, but not necessarily be limited to, policies, unit statistical reports, ratings and other related policy information, for a total of twenty-one years from the policy effective date or as otherwise required by the New York State Superintendent of Financial Services and as provided by law. These records may be maintained in any "durable medium," defined as a medium for maintaining a record where the properties of such medium provides reasonable assurances against tampering with the information contained in the original and degradation of any reproduction generated

and where the reproduction is an exact copy of the original. The medium may include paper, facsimile or photographic, micrographic, magnetic, optical, mechanical or electronic media.

**ARTICLE XI
RELATIONS WITH RATING AND OTHER ORGANIZATIONS**

The Rating Board shall cooperate with Rating Organizations, Advisory Organizations and other similar organizations as permitted by law in carrying out its objects. In effecting such cooperation, the Board of Governors or the President, upon notice to the Chair of the Board of Governors, may authorize the making of such contracts with such organizations as it may deem appropriate.

**ARTICLE XII
INITIATION OF WORK**

Any matter within the scope of the objects of the Rating Board may be brought before the appropriate committee by any member of the Rating Board or by the President.

**ARTICLE XIII
ANNUAL AND SPECIAL MEETINGS**

1. Annual Meeting.

The Annual Meeting of the Rating Board shall be held in New York City, on a day in September or October of each year as designated by the President in consultation with the Chair of the Board of Governors. However, the President may designate another date or place for the Annual Meeting, if doing so is necessary and approved by the Chair of the Board of Governors.

2. Special Meeting.

A Special Meeting of the Rating Board shall be called at any time upon the written request of a majority of the members of the Board of Governors, or upon the written request of three members of the Rating Board or upon the call of the President.

3. Quorum.

Thirty members of the Rating Board shall constitute a quorum at an Annual Meeting or Special Meeting of the Rating Board.

**ARTICLE XIV
VOTING**

1. At any meeting of the Rating Board each member shall be entitled to one vote. All resolutions presented at such a meeting of the Rating Board shall be deemed adopted when assented to by two-thirds of the members present or by proxy.
2. Except as otherwise provided by this Constitution, at meetings of committees, all resolutions shall be deemed adopted when assented to by a majority of the members of the full committee.
3. Except as otherwise provided by this Constitution, in the event of a tie vote in any committee, the matter fails of adoption. In the event of a tie vote in any committee appointed by the Board of Governors, Actuarial or Underwriting Committee, the matter shall be referred to the appointing body.

**ARTICLE XV
INDEMNIFICATION**

1. Any person or insurer made or threatened to be made a party to any action, suit or proceeding, because such person or insurer was a member, or served on a committee or was an officer or employee of the Rating Board shall be indemnified against all judgments, fines, amounts paid in settlement, reasonable costs and expenses including attorney's fees and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding, except in relation to matters as to which he/she or it shall be adjudged in such action, suit or proceeding to be liable by reason of willful misconduct in the performance of his/her or its duties or obligations to the Rating Board and, with respect to any criminal actions or proceedings, except when such person or insurer had reasonable cause to believe that his/her or its conduct was unlawful. Such indemnification shall be provided whether or not such person or insurer is a member or is holding office or is employed at the time of such action, suit or proceeding and whether or not any such liability is incurred prior to the adoption of this Article. Such indemnification shall not be exclusive of other rights such person or insurer may have and shall pass to the successors, heirs, executors or administrators of such person or insurer. The termination of any such civil or criminal action, suit or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such person or insurer was liable by reason of willful misconduct or that he/she or it had reasonable cause to believe that his/her or its conduct was unlawful. If any such action, suit or proceeding is compromised, it must be with the approval of the Board of Governors of the Rating Board.
2. In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth in Section I of this Article, shall be determined by the

Board of Governors which shall also determine the time and manner of payment of such indemnification; provided, however, that a person or insurer who or which has been wholly successful, on the merits or otherwise, in the defense of a civil or criminal action, suit or proceeding of the character described in Section I of this Article shall be entitled to indemnification as authorized in such section. Nothing herein shall be deemed to bind a person or insurer who or which the Board of Governors has determined not to be entitled to indemnification, or to preclude such person or insurer from asserting the right to such indemnification by legal proceedings. Such indemnification as is herein provided shall be apportioned among all members, including any named in any such action, suit or proceeding pursuant to Article VII of this Constitution.

ARTICLE XVI AMENDMENTS

1. This Constitution may be amended by a two-thirds vote of the votes cast at any regular Annual Meeting of the Rating Board, or at any Special Meeting called for such purpose, but no amendment shall be acted upon unless fifteen days written notice with a copy of the proposed amendment shall have been given to the members.
2. Notwithstanding any other provision herein, the President is authorized to amend this Constitution to conform with any recently enacted or promulgated state or federal statute or regulation, provided, however, such amendment shall be submitted for ratification at the next regular Annual Meeting of the Rating Board, or at any Special Meeting called for such purpose.

ARTICLE XVII EFFECTIVE DATE

1. The effective date of this Constitution is September 1, 2017.
2. Any amendment to this Constitution pursuant to Section 1 of Article XVI (Amendments) shall become effective no earlier than 31 days after it is filed with the New York State Superintendent of Financial Services, unless otherwise specified in the amendment, and permissible under New York State law and regulation.
3. Any amendment to this Constitution pursuant to Section 2 of Article XVI (Amendments) shall become effective no earlier than 31 days after it is filed with the New York State Superintendent of Financial Services, unless otherwise specified in the amendment or deemed by the President to be in compliance with any enacted or promulgated state or federal statute or regulation.