

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF SOLVENCY REGULATION

Producer Licensing
Managing General Agents

Proposed Amendment: N.J.A.C. 11:17-6.3

Authorized By: Neil N. Jasey, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:22C-10

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-314

Submit comments by December 18, 2009 to:

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The agency proposal follows:

Summary

N.J.S.A. 17:22C-1 et seq., enacted in 1993 and effective February 5, 1994, imposes requirements and limitations upon the use and appointment of managing general agents (MGAs) by insurers in this State. The statutes provide that an MGA must be licensed as an insurance producer in this State. In addition, the statute requires that the contracts between MGAs and insurers contain certain provisions and that insurers properly oversee the actions of MGAs. MGAs are entities that perform the following actions on behalf of an insurer: bind ceding reinsurance contracts on behalf of an insurer or manage all or part of the insurance business of an

insurer; and underwrite an amount of the insurer's gross written premium equal to or more than five percent of the policyholder surplus in any one quarter or year of the insurer as reported in the last annual statement, and either: (1) adjusts or pays claims in excess of \$5,000 per claim or in the aggregate of \$100,000 in any one year; or (2) negotiates reinsurance on behalf of the insurer. Notwithstanding the foregoing, the statute specifically provides that the following persons shall not be considered an MGA: (1) an employee of the insurer; (2) the United States manager of the United States branch of an alien insurer; (3) an underwriting manager, which pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to N.J.S.A. 17:27A-1 et seq., and whose compensation is not solely based on the volume of premiums written; and (4) an attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

The Department of Banking and Insurance (Department) adopted rules to implement this statute at N.J.A.C. 11:17-6. After almost 15 years of experience with the statutory scheme, the Department has determined that it is appropriate to amend the rules to clarify that an insurer authorized or admitted to transact property/casualty insurance in this State pursuant to N.J.S.A. 17:17-1 et seq. or 17:32-1 et seq., as applicable, and acting as an MGA for an unaffiliated insurer, shall not be required to comply with the MGA requirements of N.J.A.C. 11:17-6.3. Specifically, such MGAs shall not be required to be licensed as insurance producers, maintain surety bonds or obtain errors and omissions (E&O) coverages. The authorized or admitted insurer acting as an MGA for an unaffiliated insurer shall be authorized or admitted to transact the lines of insurance in this State for which it is acting as an MGA. Insurers utilizing another insurer as an MGA and insurers acting as MGAs will continue to be subject to the other

requirements of the MGA law and rules, including adherence to contract provisions in N.J.S.A. 17:22C-6 and claims handling requirements in N.J.A.C. 11:17-6.6.

The intent of the MGA law is to attempt to ensure that an entity that has the “power of the pen” for an insurer has the requisite expertise and its actions are monitored so that the actions of MGAs do not cause the insurer to become in a hazardous financial condition. Insurers have never been required to become licensed as insurance producers, and usually do not maintain surety bonds or obtain E&O coverage. Also, these goals of the MGA law are subsumed within the formation and admission processes for insurers. Insurers are required to demonstrate the financial capability and operational expertise to transact business in this State. Moreover, the Department has the ability to monitor and examine the operations and financial condition of licensed insurers, and admitted insurers are also authorized and monitored by their state of domicile. Accordingly, the Department believes that it would be inconsistent and redundant with the overall intent of the statute to require that an insurer be licensed as an insurance producer, maintain a surety bond, and obtain E&O coverage in order to perform actions as an MGA for another insurer.

A 60-day comment period is provided for this notice of proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments will exempt insurers authorized or admitted in this State that act as an MGA for another insurer from the requirements discussed in the Summary above. As also noted in the Summary above, the Department does not believe that it is feasible, nor was it

contemplated by the intent of the Act, that an insurer be licensed as an insurance producer, maintain a surety bond or obtain E&O coverage to perform functions as an MGA. The Department will continue to be in a position to monitor operations of an insurer through the normal authorization/admission process and the ongoing examination process.

Economic Impact

No negative economic impact should result from the proposed amendments. As noted above, the proposed amendments clarify that insurers authorized or admitted to transact property/casualty insurance in this State are not subject to producer licensing, bond and E&O coverage requirements of the MGA law. As noted above, these requirements are neither feasible or necessary to achieve the goals of the MGA statute. The Department will continue to be in a position to adequately monitor the operations of insurers pursuant to existing law, including review in connection with an application for the issuance of a certificate of authority, and the ability to examine the operations and financial condition of an insurer at any time.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendments.

The Department invites commenters to submit any data or studies on the potential jobs impact of the proposed amendments together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments impose no reporting, recordkeeping or other compliance requirements on “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As noted above, the proposed amendments provides that an insurer acting as an MGA for another insurer will not be subject to the producer licensing, bond or E&O coverage requirements of N.J.S.A. 17:22C-1 et seq. and N.J.A.C. 11:17-6.3.

Smart Growth Impact

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Analysis

The proposed amendments will not have an impact on housing affordability in this State because the proposed amendments relate to the regulation of MGAs.

Smart Growth Development Impact

The Department believes that there is an extreme unlikelihood that these proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the proposed amendments relate to the regulation of MGAs.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

11:17-6.3 Requirements for MGA

(a) [No] **Subject to (f) below, no** person, firm, association or corporation shall act in the capacity of a managing general agent with respect to risks located in this State for an insurer licensed in this State unless such person is licensed as an insurance producer in this State, with authority for the kind or kinds of business to be transacted.

(b) [No] **Subject to (f) below, no** person, firm, association or corporation shall act in the capacity of a managing general agent representing an insurer domiciled in this State with respect to risks located outside of this State unless such person is licensed as a producer in this State.

(c) [All] **Subject to (f) below, all** managing general agents shall acquire and maintain a surety bond for the protection of the insurer contracting with the managing general agent. The bond shall be in the amount of \$100,000 or 10 percent up to \$500,000 of the direct premium written by the insurer for the previous calendar year that is attributable to the managing general agent, whichever is greater.

1. – 3. (No change.)

(d) [All] **Subject to (f) below, all** managing general agents shall acquire and maintain an errors and omissions insurance policy. The policy coverage limits shall be set at \$100,000 or 10 percent up to \$500,000 of the direct premium written by an insurer for the previous calendar year that is attributable to the MGA, whichever is greater.

1. – 3. (No change.)

(e) (No change.)

(f) An insurer authorized or admitted to transact property/casualty insurance in this State pursuant to N.J.S.A. 17:17-1 et seq. or 17:32-1 et seq., as applicable, that acts as

an MGA for an unaffiliated insurer, shall not be subject to this section provided that the authorized or admitted insurer acting as an MGA for an unaffiliated insurer is authorized or admitted to transact the lines of insurance in this State for which it is acting as an MGA.

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